



Consultation report on Tranche 1 of the Early Learning Regulatory Review

May 2021

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Introduction

Review of the Early Learning Regulatory System

The Ministry is currently undertaking a review of the early learning regulatory system. The purpose of this Review is to ensure that the regulatory system for the early learning sector is clear and fit for purpose to support high quality educational outcomes. This review is timely due to the significant changes in the sector since the current regulatory system was established in 2008, as well as those changes proposed as part of the Early Learning Action Plan 2019-2029 (Action Plan) and Review of Home-based Education.

The review is being completed in three tranches to ensure high priority issues can be progressed in a timely fashion while allowing additional time for the matters that require further policy work and consultation. This consultation report covers the proposed regulation changes that are within the first tranche of the Review.

Submissions

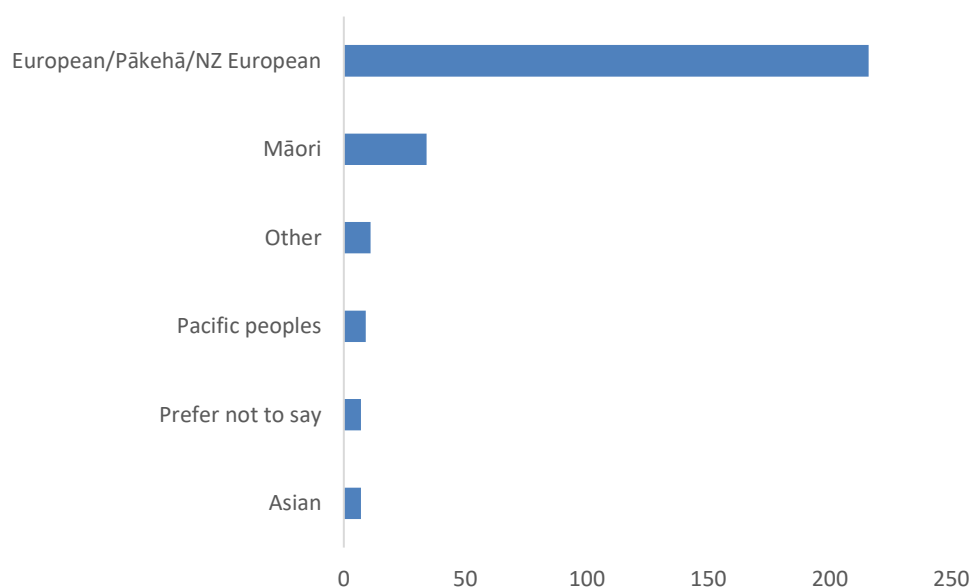
On 8 December 2020, a discussion document was released outlining the eleven proposals in tranche one. Stakeholders could make submissions either by answering an online survey or by emailing in a written submission. Consultation closed on 12 February 2021.

Online submissions via the survey

The online survey seeking feedback on the proposals received 258 responses. Information was collected about these survey respondents' ethnicity, region in which they reside, the stakeholder group and type of learning service that they belonged to.

Ethnicity

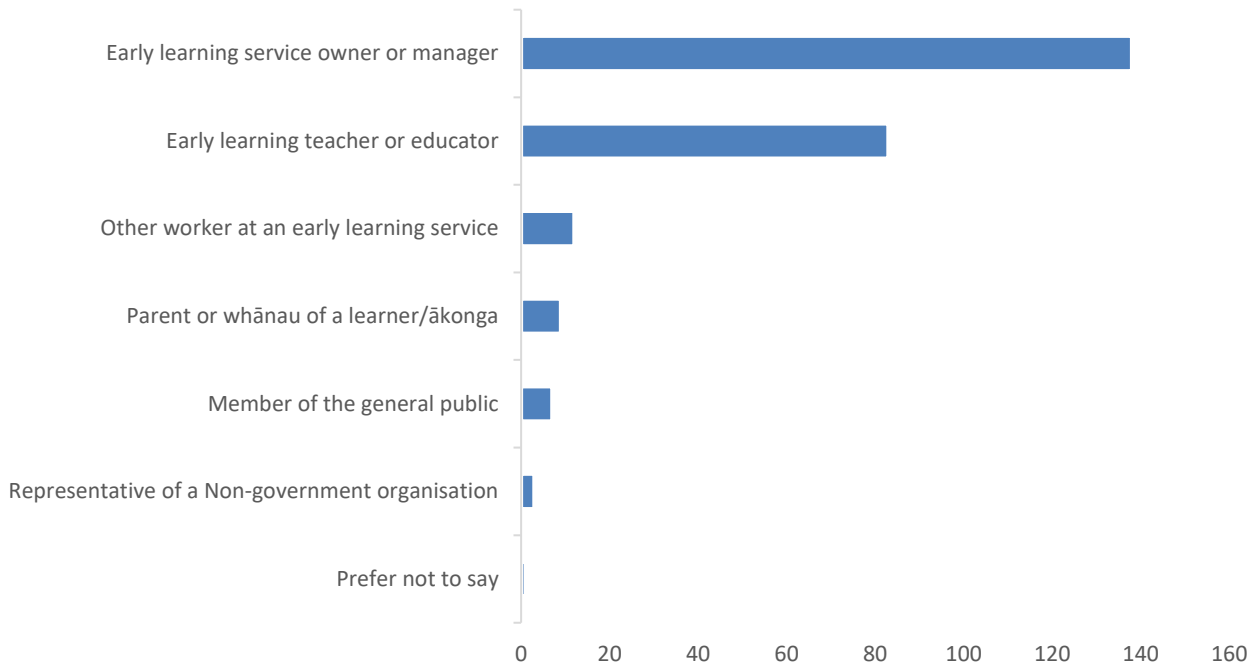
In the survey, respondents were asked to select the ethnicities that best described them. Respondents were largely comprised of European/Pākehā/NZ European (76%) and Māori (12%). A few survey submissions were on behalf of a group of people or an entity and therefore were grouped under 'other'.



*This was a multi-response question, which enabled respondents to choose multiple categories. For example, several respondents noted that they were both European/pākehā/NZ European and Māori/Pacific. The raw numbers for each category therefore sum up to a number greater than the number of respondents.

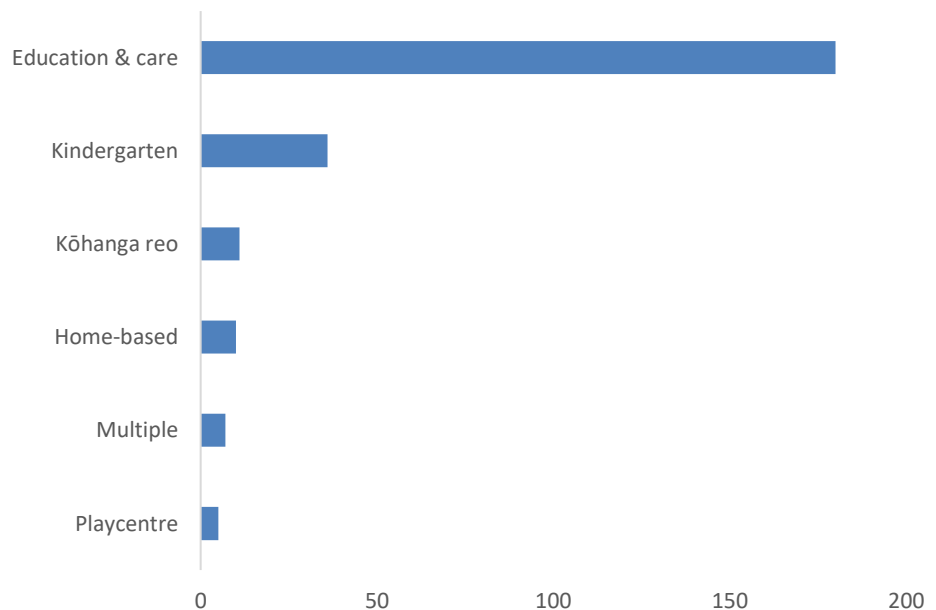
Stakeholder group

In the survey, respondents were asked to select the category that best described their connection to the sector. Respondents were largely comprised of early learning service owners/managers (55%) and early learning teachers/educators (33%). A few survey respondents fell into more than one of these categories, such as both a teacher and manager. There were also a few initial teacher education lecturers and professional learning & development (PLD) providers, who have been grouped into the 'other' category.



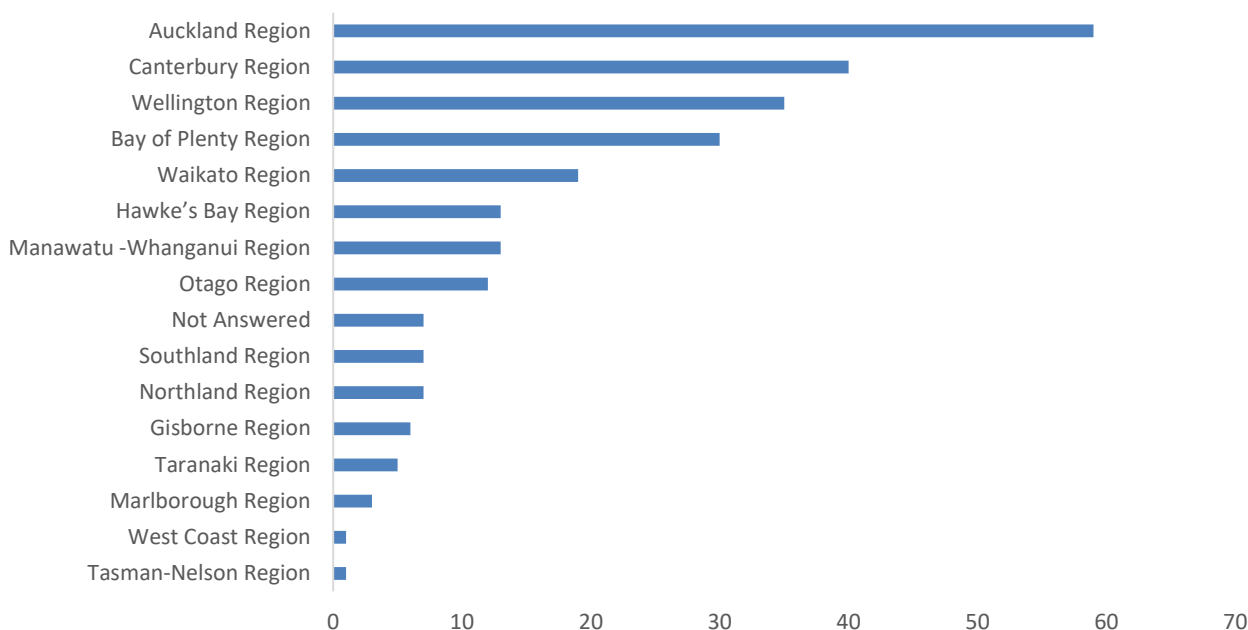
Type of early learning service

In the survey, respondents were asked to which early learning service type they were associated with. Respondents were largely comprised of education & care (72%) and kindergarten (14%). Respondents who said they were part of multiple categories were grouped under 'multiple'.



Regions

Regional data was also collected. 52% of survey respondents were from the major population centres of Auckland, Wellington, and Canterbury regions.



Written submissions

21 detailed written submissions were received via email from the 19 people and organisations listed below.

Organisations

Auckland University of Technology
BestStart
Canterbury District Health Board
ChildForum
Early Childhood Council
Early Childhood Leadership
Montessori Aotearoa New Zealand
NZEI Te Riu Roa
Te Rito Maioha Early Childhood New Zealand
Teaching Council of Aotearoa New Zealand
Waikato Kindergarten Association / Early Education Waikato
World Organization for Early Childhood Education (OMEP)

Individuals

Alexandria Till
David Haynes
Hayley Brice (Director at ECE Advice)
Hugo van Stratum
Mary McLeod (Director at Kids Count)
Mike Bedford (Executive Officer at ECE Reform)
Sue Cherrington (Director at Institute for Early Childhood Studies)

Method of analysis

The online survey submissions and the written submissions were analysed using a coding framework that organised survey data by question and theme. Most written submissions followed the structure of the online survey which allowed comments to be analysed by question and theme. The submission excerpts presented for each question come from both the online survey and the written submissions.

Where respondents discussed several issues related to a given proposal, these were cross-coded to multiple themes. In this way, respondents with comments that spanned multiple themes had their views captured in all appropriate places.

Generally, themes that were referenced the most frequently are presented in this report. However, in some cases, more minor themes are included to enhance the understanding of other themes or add nuance to the overall narrative of sector views.

Proposals

In the online survey, one to three questions invited survey participants to express the extent to which they agreed with an aspect of each proposal. Respondents could select 'strongly agree', 'agree', 'neutral', 'disagree' and 'strongly disagree'. However, for the purpose of this report, 'strongly agree' and 'agree' are merged into 'agree', and 'strongly disagree' and 'disagree' are merged into 'disagree'.

Survey participants also had the option to not answer a question. When considering the sentiment percentages for each question, those who did not answer the question were excluded from the denominator. For example, if 150 people agreed to the question and there were 200 responses to the question, this would be recorded as 75% agreement rather than using the total survey participants (258) as the denominator.

A free-text box was available for each proposal except for proposal 9. This allowed respondents to provide written responses to the proposal. Proposal 1 included two free-text boxes where written comments were sought for two separate aspects of the proposal.

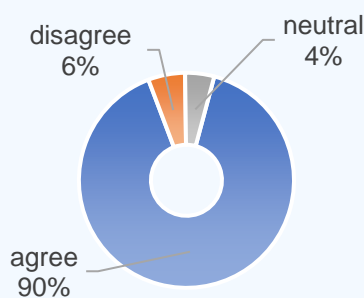
Proposal 1: Creating a cancellation pathway based on a service's provisional licence history

Explanatory text from the survey

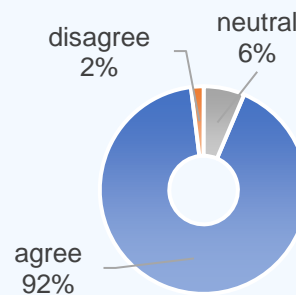
Currently, there is no statutory limit to the number of times a service can be put on a provisional licence. A service will be returned to a full licence if it meets the conditions within the specified timeframes. There are also specified circumstances where the Secretary must cancel a service's licence. This means that a service can potentially cycle on and off a provisional licence for not complying with the regulations, including repeated breaches of the same regulation. If a service is cycling on and off a provisional licence, it is unlikely to be consistently complying with the regulations. This could be putting children's safety and wellbeing at risk.

We are proposing to amend the regulations to give the Secretary the power to cancel a licence based on a service provider's provisional licence history for that service.

Question 1: Do you agree that the Secretary should be able to cancel a licence when there is evidence that a service provider is not consistently complying with the regulations?

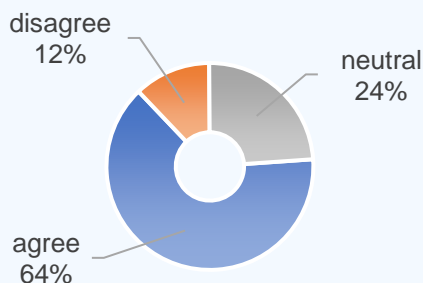


Question 2: Do you agree that the regulations should be more explicit in what the Secretary can consider when cancelling a licence because of the service provider's provisional licence history?



Question 3: If you disagree with the Secretary being able to cancel a licence based on a provisional licence history, do you think it would be more appropriate for the Secretary to reclassify the licence as provisional instead?

NB: This question was aimed at survey respondents who did not agree with question 1. Therefore, this question was filtered to only include the 25 respondents who did not agree.



Health and safety

The most prominent theme from written responses was the health, safety, and wellbeing of both children and staff, including physical, mental and emotional wellbeing.

“The health and welfare of children and staff is paramount to being a successful learning environment.” – **Education and care teacher**

Discretion

Many respondents commented on the level of discretion that should be exercised when applying the proposed regulation. Some respondents felt that there should be very little room for discretion with concerns about inconsistencies in interpreting and applying the regulations.

“Wording could be further strengthened to avoid inconsistent interpretation and ensure that decisions made around canceling licences are fact-based.” – **Home-based service owner or manager**

Other respondents felt that all cancellations should be evaluated on a case-by-case basis and depend on the nature of the breach.

“There ought to be some flexibility and consideration for individual situations. I can imagine situations where centres could be unintentionally non-compliant and end up on a provisional license for very different reasons” – **Education and care teacher**

This view related to commentary from respondents that suggested that the Ministry should approach breaches through a support-based lens, rather than a punitive one.

“If a Centre has been pulled up on several occasions on a number of issues and they have not rectified them and are not attempting to fix the issues. That is I would hope the MOE would work alongside these Centres and give them the advice and help that is needed. – **Kindergarten owner or manager**

Staffing and management

Respondents also commented on staff turnover, change in centre management and the responsibility that should be placed on centre owners for breaches of regulations. Some respondents pointed to high staff turnover as an

indicator of problems in a service and suggested this should be included in cancellation considerations. Other respondents felt that substantial changes in staff or management of a service should serve as an opportunity to raise the quality of practice in the service.

“Staffing - large turnover of staff in between re-licensing means that new staff may not understand what went wrong. Changes of Centre Managers is also something to consider as turnover with them is also concerning.” – **Montessori owner or manager**

Accountability

There were conflicting responses about the level of responsibility that should be held by centre owners. Some respondents suggested that if one service is found to be breaching regulations, all other services owned by the same service provider/owner should be investigated for possible breaches.

“there should be more fall back for the owners of services that go on provisional rather than the teachers... If services are constantly going on provisional it is because the owners care more about profit than quality education which needs to be addressed.” – **Education and care teacher**

“If they have problems at 1 centre then look at them all.” – **Former education and care centre manager**

Other respondents believed that actions taken by staff should not reflect on the centre owner.

“The service provider must be compliant as a governor but that does not mean they have full and total control over every person that works for them. Of the 100+ regulations, it is impossible to think there will be 100% perfection at all times.” – **Education and care service owner or manager**

“Persons responsible need to be named on a licence and they need to be aware it's all their responsibility not just the service provider. Some service providers own more than 1 centre and aren't at all their centres at the same time.” – **Education and care service owner or manager**

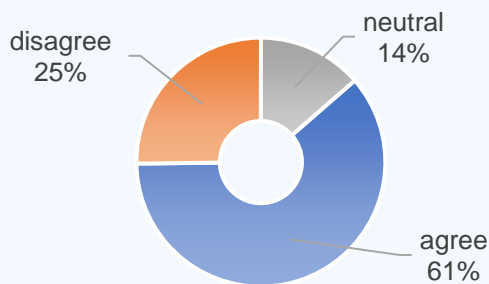
Proposal 2: Issuing a provisional licence to carry out an investigation in the event of an incident

Explanatory text from the survey

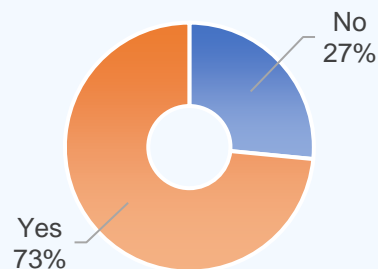
Services can have their full or probationary licence reclassified as provisional in certain circumstances. One circumstance is if there has been a complaint that the Secretary considers warrants investigation. There may be times when the Secretary is notified of other incidents (not via a complaint) that the Secretary considers warrants investigation. In these situations, the Secretary does not have the ability to reclassify the licence as provisional ahead of an investigation to determine if there has been a breach of the regulations. In these circumstances, it would be useful for the Secretary to have the ability to reclassify the licence as provisional while an investigation takes place.

We are proposing to clarify in the regulations that the Secretary can issue a provisional licence while an investigation is carried out.

Question 1: Do you agree that, following an incident involving a child, the Secretary should have the ability to reclassify a licence as provisional while an investigation takes place?



Question 2: Do you think that Clause 9(1) makes these changes clear?



Health and safety

Respondents were generally supportive of this proposal as they felt it was important to take immediate action to ensure the safety of children and ensure parents are aware of what is happening in their child's service.

“Health and safety needs to be of the upmost importance in a centre or kindy.” – **Education and care teacher**

“Sounds like a great plan, if an investigation takes place then a provisional makes sense.” – **Education and care teacher**

Nature of breach

Some respondents felt that there needed to be more clarity in the regulations and raised concerns about the types of incidents that would result in a licence being reclassified as provisional.

“Some clarity around what a serious breach would be that would warrant this change.” – **Education and Care service owner or manager**

“I feel that the secretary should have grounds to put a centre on a provisional licence but this should be dependant on what the incident is.” – **Education and Care service owner or manager**

Natural justice

There were a number of respondents that raised concerns about issues of natural justice including being innocent until proven guilty.

“How do you know the circumstances until you have investigated. This is a case of guilty until proven not guilty and by placing centres on provisional licence allows processes to slow down impacting on centres” – **Education and care service teacher**

“This would be saying that the centre is guilty before doing the investigation which would be unfair, particularly if this is then taken into consideration for cancellation of licence.” – **Education and care service worker**

Unintended consequences

In addition to this, some felt that there may be a risk of under reporting of incidents due to the impact of the potential provisional licence.

“The last thing you want is services NOT reporting incidents which should be reported. If this is to be instituted there will need to be a fair process around escalation to "investigation" level.” – **Education and care service owner or manager**

Reputational damage

Some respondents also raised concerns about the negative consequences including reputational damage from having a licence reclassified as provisional for an incident involving a child.

“Having a provisional licence impacts on the future reputation of a centre. If a complaint is found to have no substance the confidence of parents and staff is still impacted.” – **Education and care service owner or manager**

“Another consequence is that these provisional licences will be included in OIA releases (either in the form of high-level numbers or reasons for the provisional) which could lead to media interest and reputational damage for services.” – **Te Rito Maioha**

“Sometimes things just happen that is why they are called accidents and would not like to see a service disadvantaged because of this” – **Home-based service teacher**

Alternative solutions

A couple of respondents suggested an alternative route for dealing with incidents involving children.

“I wonder if this should be given a different name from 'provisional'. Provisional licence is for neglect and not following regulations. Sometimes freak accidents occur, that need investigation, and parents need to know this is happening. But the accidents may not be a result of neglect and negligence.” – **Initial teacher education lecturer**

“No not to a provisional licence. But it must reclassify a licence as being under investigation ... A provisional licence implies, that there are non-compliances.” – **ChildForum**

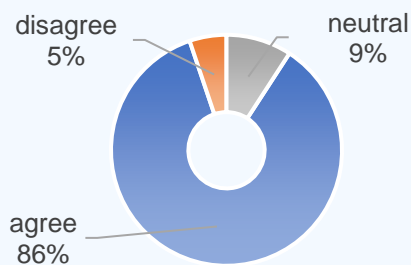
Proposal 3: Creating written directions for health and safety matters that require immediate attention

Explanatory text from the survey

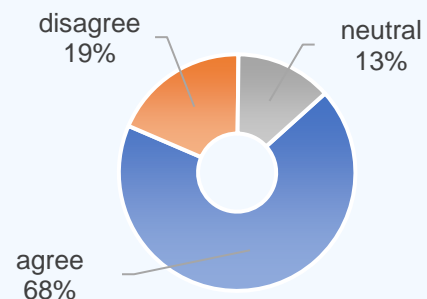
There are two regulatory tools available to the Secretary when a service needs to address a health and safety matter. If a service has breached the regulations, the Secretary can reclassify a service's licence as provisional or suspend it. These tools can cause delays in addressing health and safety matters that require immediate attention.

We propose amending the regulations to expand the situations where the Secretary can issue written directions to include health and safety matters that require immediate attention.

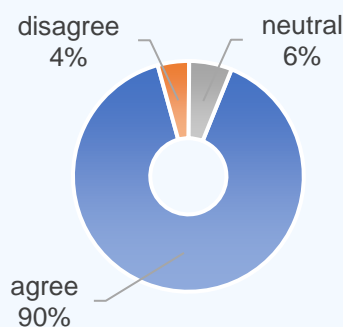
Question 1: Do you agree that this approach to issuing written directions strikes the right balance between requiring a service to immediately address health and safety matters while allowing them to safely remain open?



Question 2: Do you agree that up to 5 working days is an appropriate length of time for a service to comply with a written direction?



Question 3: Do you agree that the Secretary should be able to suspend a licence, or reclassify it as provisional, if a service has not complied with the written direction within the specified timeframe?



Health and safety

There was relatively strong support for this proposal as a way to deal with health and safety issues that come to the attention of the Ministry.

“Sounds like a fair balance to support a service that may have misinterpreted something yet is quality elsewhere, while catching those who are less compliant and holding them accountable” – **Education and care service teacher**

Timeframe

As evidenced in the responses to question 2, there were many respondents that felt that up to 5 working days was not a sufficient period for compliance with the written direction. Often the reason being challenges around accessing tradespeople.

“In current times, 5 days may not be long enough to complete this full process - trades and prof advisors are hard to get hold of (we are waiting months).” – **Education and care service owner or manager**

“It is not always possible to remedy a written direction within 5 days - maybe there could be a longer timeframe or a way of wording that shows the centre has begun the process.” – **Kindergarten teacher**

On the other hand, others felt that up to five working days was too long when health and safety was concerned.

“5 working days may be too long. The breach may need to be rectified immediately with 24 hours.” – **Education and care service owner or manager**

“I think if there is an immediate health and safety issue then it should be addressed immediately or the service not open. 5 days of operating with it not being addressed is 5 days where children are at risk.” – **Parent or whānau of a learner/ākonga at multiple service types**

Many respondents felt that there should be some flexibility in the timeframes for compliance as some issues take longer to deal with than others. There were also some suggestions that there should be a more tailored approach depending on the level of risk.

“The timeframe of 5 working days would be dependent on the circumstances - what the risk is, what it takes to remedy the risk, the availability of resources/services to remedy the risk” – **Education and care owner or manager**

“The Ministry should consider a categorized approach to risks. Certain risks are HIGH (all practical steps taken to resolve in 5 days) others are MEDIUM (as above 10 days) others are LOW (as above 20 days). This is sensible.” – **Education and care service owner or manager**

Some respondents felt that there should be the ability for the timeframe for compliance to be extended if the service provider had shown that they had tried to remedy the issue but was not able to due to things outside of their control.

“When the 5 working day time frame has been issued, there should be a process where the centre can extend this if it is proven that the required action has commenced, but may not quite be completed in 5 days.” – **Education and care service owner or manager**

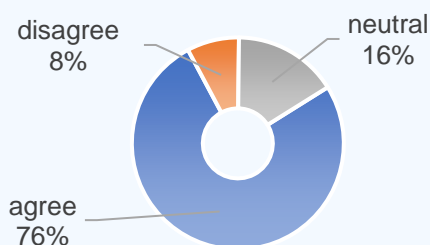
Proposal 4: Clarifying the provisions for licence amendments when the service provider changes

Explanatory text from the survey

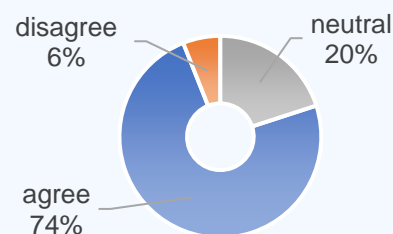
An existing service provider operating a service must apply for a licence amendment if there is a change in the identity of the service provider. Before accepting or declining the licence amendment, the Secretary must be satisfied that the proposed service provider is a 'fit and proper person' and must 'review the licence.' Currently, the regulations for licence amendments when a service provider changes do not clearly state that the application needs to be made before the change occurs and what is meant by 'reviewing the licence.'

We propose clarify in the regulations the timing of when licence amendments are applied for, and what 'review the licence' means.

Question 1: Do you agree that Clause 13(1) would better reflect that service providers have to apply for an amendment before there is a change in the identity of the service provider?



Question 2: Do you agree that Clause 13(4) would better reflect that the Secretary has the discretion to use appropriate assessments?



Quality provision

Respondents supported the Ministry preventing poor service provision by making these clarifications.

"I'm all for good providers having licences and if the MoE is in any doubt or the provider taking over a service doesn't have a good record then by all means do something about it." – **Kindergarten owner or manager**

Impact

However, a few respondents were concerned about the impact on sale and purchase processes.

"I am concerned that this provision may unnecessarily complicate sale/purchases of centres and transfer of license." – **Education and care owner or manager**

"If you have an unconditional agreement to sell your centre at what point would you have to apply for a change of service provider. How long is the process? it becomes very difficult with employment laws...if you give appropriate

advice to staff about the change, then there is a delay by MOE or they don't approve the person." – **Education and care owner or manager**

Some respondents were concerned about the impact on community-based services.

"As we are a community based not for profit centre governed by a parent committee, we often do not know who the new chair/MoE contact person will be until after the AGM thus it would be utterly impossible to advise the change earlier." – **Education and care owner or manager**

Clarification

Several respondents felt that clarification on nature and intensity of assessments was needed.

"Can you specify what 'appropriate assessments' are or what they could look like." – **Kindergarten owner or manager**

"I don't think it is made clear what is meant by 'reviewing the licence'" – **Parent or whānau of a learner/ākonga**

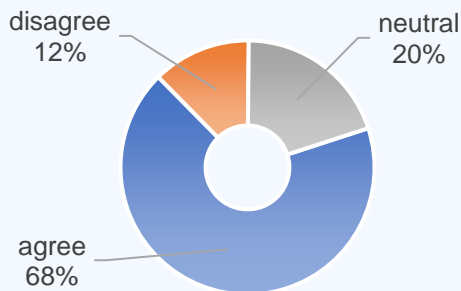
Proposal 5: Removing the 21-day minimum notice period for suspensions for change of control

Explanatory text from the survey

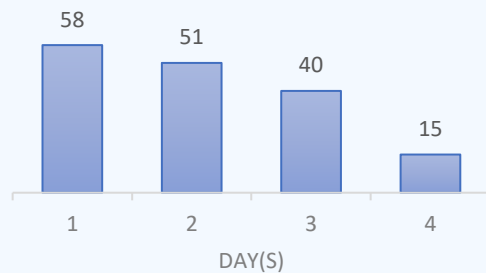
Currently a service provider must apply for a licence amendment if there is a change in the identity of the service provider operating the service. If a service is no longer under the control of its licenced service provider, the Secretary can suspend the licence, which prevents the service from operating and receiving government funding. The notice period for the suspension must be at least 21 days after the day on which the notice of a suspension is given. Removal of this 21-day notice period would allow the Ministry to respond more promptly to risks to children’s health, safety and education.

We propose removing the 21-day minimum notice period for suspensions where a service is no longer under the control of its licensed service provider.

Question 1: Do you agree that we should remove the 21-day minimum notice period for suspensions for change in control of a service provider without a licence amendment?



Question 2: If you think this notice period should be reduced instead, what minimum number of days’ notice period would be more appropriate?



Health and safety

Respondents generally supported more timely protection of children’s health and safety.

“The sooner the process is started the sooner it can be resolved and the sooner risks can be addressed and lessened to our children and staff.” – **Education and care owner or manager**

Impact on families

The concern that respondents mentioned the most was the impact on children, whānau and staff of having to find alternative services.

“Whanau need time and help to manage shifting children and cover if notice period is too short this would impact on them.” – **Kindergarten owner or manager**

“The main concern would be for working families to be able to arrange/find new

childcare on a permanent basis for their children. Some areas in NZ are very tight [in terms of] the ability to take large enrolments at short notice.” – **Parent or whānau of a learner/ākonga**

Discretion

Some respondents believed the provisions need to take into account administrative errors and unexpected circumstances e.g. death or illness.

“There are circumstances where notice cannot be given - the sudden death or disability of the service provider; family issues requiring them to be absent, etc” – **Education and care owner or manager**

“A week’s notice period is more appropriate as this would allow more time for service providers to respond to what could essentially be an administrative delay.” – **BestStart**

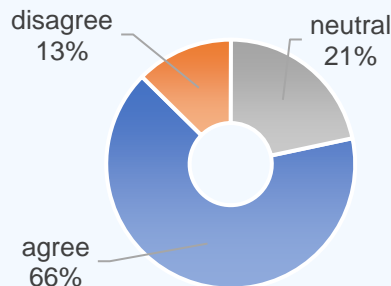
Proposal 6: Removing the 21-day minimum notice period for suspensions for not returning an invalid full licence

Explanatory text from the survey

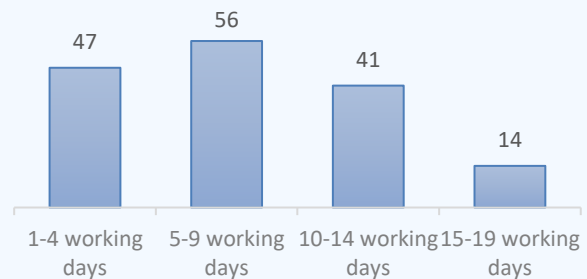
If a service has been put on a provisional licence it must return its physical licence to the Secretary. If the service provider does not return the full or probationary licence during this period, the Secretary can suspend the licence, which stops it from operating and receiving government funding. The notice period for this suspension must be at least 21 days after the day on which the notice of a suspension is given. Removal of this 21-day notice period would enable the Ministry to respond more promptly to any risks. These are risks that pose a degree of risk to children's health, safety and education.

We propose removing the 21-day minimum notice period for suspensions for not returning a full licence when it is invalid.

Question 1: Do you agree that we should remove the 21-day minimum notice period for suspensions for not returning a full or probationary licence when it is invalid?



Question 2: If you think this notice period should be reduced instead, what minimum number of days for the notice period would be more appropriate?



Health and safety

Respondents supported more timely protection of children's health and safety.

"We see that it gives the Secretary a mechanism for managing services who have chosen not to comply with the existing regulations" – **Institute for Early Childhood Studies**

Impact on families

Some respondents were also concerned about the impact on children and whānau of having to find alternative early learning services.

"Families need a short period to enable them to seek out alternative care for their child." – **Kindergarten teacher**

Grounds for suspension

Some respondents were concerned about service providers being unnecessarily penalised for administrative errors.

"This seems to be a significant reaction to what could essentially be an administration error" – **Education and care owner or manager**

Several respondents questioned the need for the ability to suspend on these grounds, for example services can just photocopy the licence.

"The original document could easily be copied and displayed before returning it if the centre management really wanted to..." – **Education and care owner or manager**

"If licensee want to be deceptive they will just put up a photocopy of the full license anyway even if the original is returned." – **Education and care owner or manager**

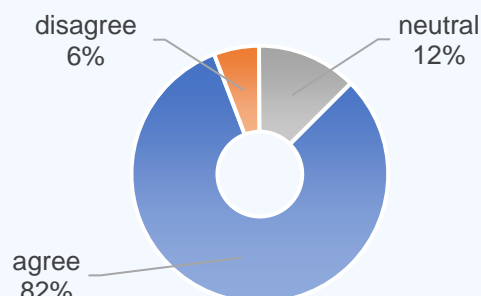
Proposal 7: Clarifying the information used to assess an application for a probationary licence

Explanatory text from the survey

Currently, the Secretary must grant a probationary licence if they are satisfied on reasonable grounds that a service is likely to comply with the curriculum, health and safety standards, and the governance, management, and administration standards. The current wording implies that the Secretary can only assess applications based on information provided by the applicant, rather than any relevant public or Ministry held information.

We propose clarifying that the Secretary can draw from public or Ministry-held information when assessing an application for a probationary licence.

Question 1: Do you agree with how the proposed regulations have been drafted?



Relevant information

Many respondents agreed that all relevant information should be taken into account when deciding who is granted a licence to operate an early learning service.

“I believe this important, especially as there could be previous negative history they have concealed” – **Education and care service teacher**

“If something is hidden and not disclosed then the Secretary should be able to gain information from other sources to get an accurate picture of someone's suitability have a license.” – **Education and care service teacher**

However, some respondents were concerned about the types of information that would be used in these circumstances.

“I am worried about the use of hearsay/gossip/social media and vindictive parent complaints/gossip being included. Quality/reliability of the information being relied on is paramount.” – **Education and care service owner or manager**

“Any other information' is vague and could be intrusive of personal privacy. It could also imply the use of unverified gossip as relevant. Suggest the wording should be 'and any public or MoE held information the Secretary considers relevant'.” – **Member of the general public**

“Past historical performance in an ECE based environment would be relevant but 'relevant public held information' does not seem appropriate unless it is around legal compliance, failed directorships, Police checks etc.” – **Education and care service owner or manager**

Transparency

Some respondents raised issues with transparency around the source of the information and how it was used in the decision-making process. There were also some that believed that applicants should have a right to appeal decisions that used information not supplied by them.

“While I agree in principle, it will be important that the Ministry is transparent as to what other information it has considered before making a decision.” – **Education and care service owner or manager**

“It needs to be clear what information the Ministry can gather and why, and the information obtained must be declared otherwise this may offend the Privacy Act. The service provider must have a say in whether that added information is relevant or not when it comes to appeal.” – **Home-based service owner or manager**

“The service provider should also have the opportunity to comment on or clarify any information the Ministry has drawn in” – **BestStart**

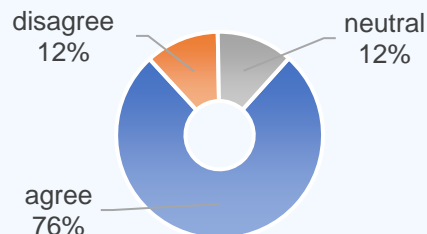
Proposal 8: Increasing the minimum room temperature from 16 degrees to 18 degrees Celsius

Explanatory text from the survey

Currently, licensed services and certified playgroups must keep the minimum indoor room temperature to at least 16 degrees Celsius. However, this minimum does not comply with World Health Organisation guidelines, which recommends a minimum of 18 degrees for residential living spaces.

We propose permanently increasing the minimum indoor temperature to 18 degrees Celsius in the Licensing Criteria for licensed services.

Question 1: Do you agree that the minimum indoor temperature in the licensing criteria should increase to 18 degrees Celsius?



Health

Many respondents that agreed with this proposal for the health and comfort of children.

“For the health and wellbeing of our tamariki this should come into immediate effect!!” – **Kindergarten head teacher**

Indoor/outdoor flow

A number of respondents raised concerns about the ability to maintain the temperature at 18 degrees especially as children move between indoor and outdoor spaces.

“Leaving doors open to encourage outdoor play drops the temperature. Even with a heater going in each indoor room we cannot guarantee an ambient temperature of 18 degrees. We can dress children warmly in Winter instead.” – **Education and care teacher**

“It is very hard to heat a centre with the doors constantly open/ing. This will discourage having open access to outside.” – **Playcentre parent or whānau of a learner/ākonga**

Regional and seasonal considerations

A few respondents noted that some parts of the country have different experiences with temperature and that seasonal variations should also be a consideration.

“In Summer particularly, here is Auckland it is very muggy and we are able to use air conditioning units to keep the room cool. A warm room in summer can also cause health

issues.” – **Education and care service owner or manager**

“Please consider the effect of temperature change in cooler area of the country.” – **Education and care service owner or manager**

Increased costs

There were some respondents that raised concerns about the increased costs associated with the higher room temperature.

“For older buildings this may prove to be a costly exercise.” – **Kindergarten owner or manager**

“During Level 2 and 3 earlier this year when this rule was applied out electricity bill skyrocketed to over \$500 a month for one 30 child centre, and that was only autumn. Perhaps the wording could be softened slightly to “best attempts to maintain an indoor temperature of 18 degrees C” – **Education and care service owner or manager**

“There may be some services which require some assistance (a grant?) to make this happen.” – **Parent or whānau of a learner/ākonga**

Maximum room temperature

Some respondents suggested that there should also be a maximum room temperature stipulated in the Licensing Criteria.

“A maximum indoor temperature is also required. Some buildings are poorly designed for hot days and pressure to keep costs down can mean there is reluctance to use air cons.” – **Education and care service teacher**

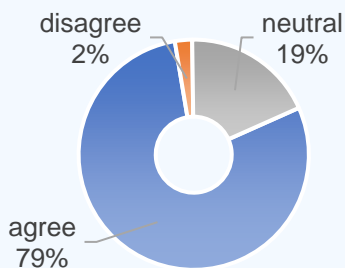
Proposal 9: Clarifying that the fee for a new licence is payable upon application and is non-refundable

Explanatory text from the survey

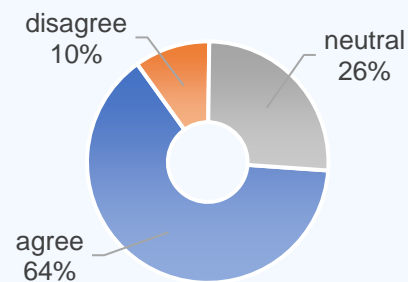
Service providers pay a one-off fee when applying for a new licence. This is designed to cover some of the costs that the Ministry incurs when processing and assessing applications. This is important because the licensing process typically requires considerable time and resource. Currently, the wording implies that an application can be made and processed before the fee is paid.

We propose clarifying in the regulations that the fee is non-refundable and payable upon application.

Question 1 Do you agree that having the fee payable upon application better meets the purpose of the application fee?



Question 2: Do you agree that having the fee non-refundable better meets the purpose of the application fee?



Payable upon application

Responses were generally supportive of the proposal.

“The administrative proposal makes sense and reflects standard government practice whereby fees are paid prior to a service being rendered”
– **Waikato Kindergarten Association.**

Impact on small services

However, there was some concern about the impact on community-based providers.

“Yes, however we wonder whether this requirement might be difficult to meet for some small community services who do not have experience in establishing services and who are reliant on fundraising.” – **OMEP Auckland**

Partial refund

Some respondents supported a partial refund of the fee in certain circumstances.

“Yes, the full payment should be made at the time of application; but if the application is declined at least half of the licensing fee should be refundable.” – **ChildForum**

“survey respondents support a partial refund and partial retention to offset administrative costs. The view of our members is that a provision to withhold all of the licence fee places no incentive on efficiency within the Ministry.” – **Early Childhood Council**

Proposal 10: Consolidation existing person responsible requirements

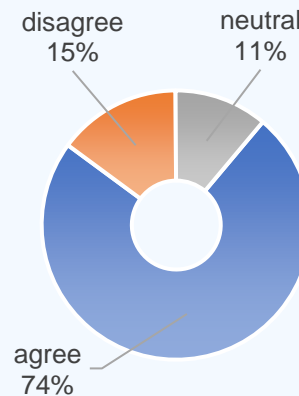
Explanatory text from the survey

In teacher-led centres, hospital-based services and home-based services, a person responsible must hold a recognised qualification and be registered and certificated with the Teaching Council of Aotearoa New Zealand. This requirement is set out across the primary regulations, the Education (Registration of Early Childhood Services Teachers) Regulations 2004, and the Education and Training Act 2020.

In 2019, during consultation on changes to the person responsible requirement in teacher-led centres, several respondents suggested requiring the person responsible to hold a practicing certificate. This shows that there is some misunderstanding of the person responsible requirement within the sector.

We propose clarifying in the regulations the practicing certificate requirement for these services

Question 1: Do you agree that the proposed changes to Schedule 1 are clear and easy to follow?



Formatting

A number of respondents suggested inserting lines into the Schedule to differentiate between the items more clearly.

“The layout needs to be clearer - either put a line between each one or the space between each one needs to be increased.” – **Early Childhood consultant**

Defining ‘recognised qualification’

Several respondents recommended defining ‘recognised qualification’ in the Schedule itself.

“A ‘recognised qualification’ is not defined in Schedule 1. To find out what a ‘recognised qualification’ a person needs to go to 3. Interpretation in the Regulations, so this does not make the Schedule any easier to follow.” – **ChildForum**

Schedule 1 content

Respondents generally discussed other parts of Schedule 1, such as the qualification requirements for persons responsible and the 50% requirement.

“The “person responsible” should be required to hold an ECE teaching qualification, as well as a practising certificate.” – **World Organization for Early Childhood Education**

“We recommend that 50% of all staff working on the floor at any time must hold a recognized qualification rather than 50% of all staff on the payroll.” – **BestStart**

“Is this not a great time to increase the 50% to 80%, whilst the changes are being made? Tell the minister to put his focus here, now, save time and effort.” – **Early learning service owner or manager**

There were a few other respondents who suggested removing the qualification requirements for persons responsible entirely.

“The person responsible needn’t have to hold a current practising certificate. There are many experienced managers who do the role well without being “certificated”.” – **Early learning service owner or manager**

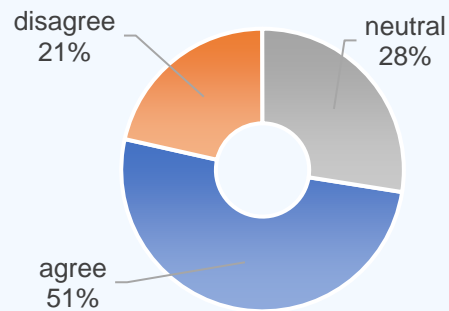
Proposal 11: Amending the licensing criteria for philosophy statements, self-review and annual planning, requiring services to demonstrate regard for the Statement of National Education and Learning Priorities (NELP).

Explanatory text from the survey

Education legislation requires all licensed early learning services to have regard for to the Statement of National and Learning Priorities (NELP). The NELP set out the Government's education priorities across the education system for early learning services and kōhanga reo, schools and kura to help every child and young person to progress and achieve their aspirations.

We propose amending the existing governance, management and administration (GMA) licensing criteria for licensed early learning services relating to philosophy statements, self-review and annual planning.

Question 1: Do you agree that the proposed changes to the licensing criteria provide services with enough information on how to demonstrate having regard to the National Education and Learning Priorities?



Support for the proposal

Among respondents who agreed, there was broad support for the NELP itself.

“I like the NELP and I think it encompasses what we do as teachers and leaders in ECE” – Early learning service owner or manager

Respondents particularly supported the addition of “internal evaluation” to the self-review criterion, to align with inquiry processes already in use by the sector and supported by the Education Review Office (ERO).

“I like the self review/ internal evaluation part. It makes sense for services to consider the NELP, and including strengthening their focus on meeting Te Tiriti o Waitangi.” – Early learning service owner or manager

“Need to alter self-review to Internal evaluation as it has been named for years.” – Registered teacher

Priorities

Some made suggestions for how to build on the finalised priorities.

“The mainstream or non-Māori education sector NEED to be held to account to meet the Learning Priorities compliances - so full support for the wording of these criterion to be

more specific.” – Administrator of a Māori medium early learning service

Implementation support

Respondents commented that further information and support relating to the NELP was needed.

“It's all the interpretation. There needs to be clear professional development developed.” – Early learning service owner or manager

“Not enough information is provided and no models and support for service providers on how to translate the NELP into ECE documentation and practice has been freely provided to service providers by the Ministry of Education.” – ChildForum

Concerns

Some respondents expressed concerns about these changes causing an increase in paperwork, workload and compliance.

“Any benefits of explicitly incorporating the NELP into self-review and annual planning documentation need to be carefully weighed up and considered because of the additional administrative and time burdens that this will place on people in services.” – ChildForum

“I understand and agree with the intent. My concern is that MOE and government can keep writing new documents and including them in

requirements as much as they like. This creates both confusion (too many sources of information to correctly understand the requirements, and creates a significant overhead.” – **Early learning service owner or manager**

“Regulatory creep - more expectations no time or funding.” – **Early learning service owner or manager**

Respondents commented that they disagreed with making any change to the philosophy statement, to preserve the unique ideology and aspirations expressed by services in the statement.

“We do not support the imposition of references to NELP in a service’s philosophy statement. Philosophy statements are an expression by the service of the characteristics

of the education and care to be delivered and should reference the service’s values, special character and Te Whāriki as the sector’s national curriculum.” – **Early Childhood Council**

“A philosophy must be left to each centre to develop, mould and change as whanau come and go and teachers grow. When teachers are implementing Te Whāriki, meeting the teacher standards, following internal evaluation, have a good teacher mentors, use Te Ara Poutama, Tātaiako, Tapasā, and Ka Hikitia then the NELP will be demonstrated. Please do not make this part of the licensing criteria.” – **Early learning service owner or manager**

Additional comments

At the end of the survey, respondents were given the opportunity to provide any additional comments that they may have.

Regulatory powers

There was mixed support for the Ministry to have greater power to regulate the sector, with some supporting the increased measures to ensure the quality of care for children.

“it is important that Ministry of Education has sufficient powers to deal strongly and swiftly with providers who appear to regularly break regulations or provide poor quality education outcomes.” – **Waikato Kindergarten Association**

“As a general principle, where children's safety and wellbeing is concerned, we'd like to see the regulatory powers of the Ministry strengthened. Children’s safety and wellbeing should always be the primary focus and priority.” – **World Organisation for Early Childhood Education**

Others had concerns about regulation compliance being too much and being counter-productive for teachers and children.

“It is past time we reviewed both the need and effectiveness of the increasing compliance demands placed on the ELS industry with the lens of the actual net benefit to the child vs the potential mitigation of a potential risk that is

never defined.” – **Mary McLeod (Director of Kids Count)**

Implementation

Respondents also had concerns about how the Ministry implemented the regulations.

“One of our biggest concerns and where alot of our time is taken is ensuring that there is a level of consistency across MoE Regional Offices and ERO when interpreting any regulations.” – **Kindergarten owner or manager**

There were also concerns about the impact of these regulation changes on smaller, community-based services and the need for implementation support.

“There's a difference between larger centres that are purpose built and small centres that are renovated homes etc. It's unrealistic to say that these smaller centres need to meet some of the unrealistic demands that large purpose-built corporations do instantly. There needs to be some leniency and support to the smaller sector.” – **Early learning service teacher**

Other areas of work

Respondents brought up areas that will be covered in later tranches of the Early Learning Regulatory Review such as ratio improvements, qualification standard changes and network planning.

Ratios

A number of respondents brought up the effect that ratios have on child and teacher wellbeing.

“Ratios and group size really need to be foregrounded for children emotional well-being and the impact this has on their whole lives.” – **Early years facilitator**

“I think with regulations being so strict great teachers are becoming stressed and leaving ECE because services are not required to increase their teaching ratios. The minimum teacher ratios should be increased to reflect the regulations.” – **Early learning service teacher**

Qualifications

Respondents raised the need for more qualified ECE teaching staff to ensure children receive quality education and care. There were different perspectives on what constitutes ‘qualified’.

“We do believe that tamariki deserve quality education and care with professional knowledgeable, ECE “qualified” and caring staff, not just because they have a “recognised(?)” qualification.” – **Early learning service owner or manager**

Network planning

A couple of respondents noted that there is an oversupply of early learning services in some regions, which impacts on the sustainability of community-based services.

“Included in Tranche 1 should be the consideration by the MOE for where new services can open, in Auckland it is shocking, too many services in some regions, meaning that the larger organisation can undercut the smaller community based services just to get children enrolled” – **Early years facilitator**

“these proposed changes won’t mitigate the increasing damage to child and staff wellbeing from working conditions, services being under-staffed, and under-funded, with staff shortages and an oversupply of centres in many cities including Christchurch.” – **Canterbury DHB**

Funding and pay parity

Many respondents also mentioned the current funding settings and pay parity, which sit outside the Regulations.

“If the staff wages were paid by the government and an appropriate rate taking this away from the owners it would lead to a fairer system and therefore happier teachers and happy teachers = good teachers who will provide safer places for children.” – **Early learning teacher**

“I believe that Community education and Care services should be treated in the same way that Kindergartens are as they are not for profit i.e. the same funding bands.” – **Early learning service owner or manager**

Consultation

Another area that respondents touched on was consultation with the sector on the regulatory changes.

“The government really needs to spend time at centres talking to teachers and managers to get a real feel as to what the issues are. Doing a nation wide tour and listen really listen to what our tamariki need from the people who are on the ground working with them” – **Early learning service owner or manager**

“There needs to be more teachers who are actually in teaching roles to be advising the Ministry of Education. If you look at the names of people in advisory positions on committees, they are either owners (with vested interests in changing things), or people who haven't been teaching in a very, very long time.” – **Early learning service owner or manager**

“We hope however, the design of tranches Two and Three provides the opportunity for the early learning sector to identify and share with the Ministry of Education those areas of the regulations that the sector considers would benefit from changes, rather than the sector responding to priority areas as assessed by the Ministry.” – **Teaching Council of Aotearoa NZ**



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He mea **tārai** e mātou te **mātauranga**
kia **rangatira** ai, kia **mana taurite** ai ōna **huanga**