



Briefing Note: Ministry response to ERO's concerns about early learning services' compliance with the licensing criteria

To:	Hon Chris Hipkins, Minister of Education		
Cc:	Hon Jan Tinetti, Associate Minister of Education		
Date:	26 January 2021	Priority:	Medium
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Messaging seen by Communications team:	Yes / No	Round Robin:	Yes / No

Purpose of Report

The purpose of this paper is for you to:

Note that Minister Tinetti sent you the Briefing report: *Education Review Office concerns regarding Early Learning Service compliance with criteria licensing and regulatory standards* (M20-54).

Note the Ministry's response to non-compliance identified through an Akanuku | Assurance review.

Note that the Ministry and ERO will confirm protocols relating to non-compliance by March 2021.

Note that the Ministry will work with ERO on a shared understanding of the data related to Akanuku | Assurance Reviews and Akarangi | Quality Evaluations and how we support the sector.

Agree that this Briefing will be proactively released.

☒ Agree ☐ Disagree

Summary

- The Ministry and ERO have developed draft protocols that detail how the two agencies work together in response to non-compliance outlined in an Akanuku | Assurance Review. The two agencies have met regularly to track progress and discuss any issues identified by the two agencies.
- The Ministry responds to any non-compliance identified through an Akanuku | Assurance Review as outlined in the draft protocols. We undertake a licensing assessment to determine any breaches and have regulatory levers to manage any confirmed non-compliance, including any breaches deemed to be an immediate risk.
- The Ministry has tools to support services when non-compliance is identified, including guidance and advice as well as government-funded professional learning and development (Strengthening Early Learning Opportunities (SELO)).
- The Ministry will work with ERO to have a shared understanding of the data ahead of further consideration about what this means for how we support the sector.



Katrina Casey
Deputy Secretary
Sector Enablement and Support

26 / 1 / 2021



Hon Chris Hipkins
Minister of Education

31 / 3 / 2021

Background

1. ERO have been undertaking Akanuku | Assurance Reviews in early learning services since March 2019. Akanuku | Assurance Reviews have an explicit focus on early learning services' compliance with the licensing criteria.
2. The introduction of Akanuku | Assurance Reviews sees an increased focus on compliance against each licensing criteria where reports note whether services are meeting/not meeting the regulatory standards.
3. Following implementation of ERO's new methodology it became apparent that previously agreed processes between the Ministry and ERO would need to be revised given ERO's increased focus on compliance.
4. The Ministry and ERO have been trialling draft protocols since February 2020 outlining how the two agencies will work together when non-compliance is identified through an Akanuku | Assurance Review.
5. Trialling of the draft protocols has been supported by regular meetings between the Ministry and ERO to share information about the use of the draft protocols and Akanuku | Assurance Reviews in general. We expect to finalise the draft protocols by March 2021. We will also include how to respond to non-compliance identified through an Akarangi | Quality Evaluation. This review type was introduced in October 2020.
6. Key discussion points at the joint meeting on 26 November included:
 - a. ERO outlined general trend statements on the level of non-compliance, including that ERO were concerned at the number of Akarangi | Quality Evaluations identifying non-compliance requiring them to be moved to an Akanuku | Assurance Review.
 - b. The Ministry and ERO agreed to undertake further analysis of the data to better understand trends and patterns of non-compliance ahead of finalising the draft protocols. This includes concern at the number of services identified in the data that have review times in excess of 3 years.
 - c. ERO requested Ministry support to provide professional learning and development to ERO evaluators on assessing compliance.
 - d. ERO noted that there were increased challenges from services as to the validity of the breaches identified by ERO leading to delays in confirming reports.
7. At the joint meeting on 3 December 2020, about the Early Learning Action Plan, ERO also provided general trend statements on non-compliance.

The Ministry response to non-compliance

8. One aspect of the Ministry's regulatory function is to respond to identified breaches of the regulatory framework, whether from a complaint or incident, or when ERO identifies non-compliance through a review.
9. When ERO identify non-compliance during an Akanuku | Assurance Review Ministry staff follow the process developed with ERO, outlined in the draft protocols:
 - a. For reviews that identify *non-compliance that must be addressed* Ministry staff will undertake a licensing assessment based on the nature of the breach(es). If the Ministry determines that there is a breach of the licensing criteria, then the service's licence will be reclassified as provisional. The service must meet the conditions on the licence within the specified timeframe or the Secretary must cancel the licence.
 - b. For reviews that identify *non-compliance that is an unacceptable risk to children* Ministry staff will undertake a full licence assessment. If there are any serious breaches that meet a suspension threshold then the licence will be suspended. The service will be required to meet the suspension conditions within the timeframe, or the licence will be cancelled. For other breaches the service's licence will be reclassified as provisional.
10. Current Ministry staffing provides for licensing activity and responses to complaints, incidents and non-compliance issues as they arise. However, the Ministry is not resourced to proactively monitor compliance with the regulatory framework.
11. The process above and outlined in the draft protocols ensures that the Ministry and ERO intersects in the compliance arena are managed and responded to effectively in alignment with our respective statutory functions.

How the Ministry supports services to meet the regulations and licensing criteria

12. Where a service's licence has been reclassified as provisional the Ministry has a number of supports for services. These include advice and guidance from Ministry staff, web guidance, licensing criteria guidance as well as government-funded professional learning and development (SELO). This is a contracted programme that can be tailored to meet the particular needs of a service.
13. In addition to working with relevant early learning services to address areas of non-compliance identified by ERO, we are also logging and tracking the specific non-compliance identified by ERO in each report. We intend to use this information to update our licensing criteria guidance for the sector and wider general guidance on the Ministry website.

Early Learning Regulatory Review

14. Consultation on tranche 1 of the Early Learning Regulatory Review closes on 12 February 2021. As part of this review the Ministry is looking to clarify its powers to issue written directions for health and safety matters that can be quickly remedied by services.
15. If a service does not carry out the written direction, then its licence will be reclassified as provisional. This provides a clear regulatory pathway for Ministry staff to follow when services do not meet the conditions of the written direction.
16. ERO are proposing four amendments to the Education and Training Act, including an amendment for similar powers in early learning. The Ministry will brief you separately on ERO's proposals for legislative change.

Next Steps

17. The Ministry will work with ERO to seek clarity on the data and review and finalise the protocols on how we work together when non-compliance is identified. We anticipate that the joint protocols will be confirmed in March 2021.
18. At ERO's request the Ministry will provide professional learning and development to ERO staff on how to assess a number of licensing criteria. This will take place at an agreed time once the protocols have been finalised.
19. We will continue to analyse the number and type of breaches as well as the Ministry's assessment to inform how we can better support services.

Proactive Release

20. We recommend that this Briefing Note is released.