




22 June 2021



Tēnā koe 

Thank you for your emails (three) of 26 April 2021 to the Ministry of Education requesting various information relating to statements on our website regarding *Early Childhood Education (ECE) compliance and early learning standards*. Your requests have been considered under the Official Information Act 1982 (the Act). In summary, your three requests relate to the following statements:

- *"Our early learning standards are among the highest in the world." (first request)*
- *"We ensure early learning services provide high quality education and care. At any one time, 98% of early learning services are meeting or exceeding standards." (second request)*
- *"We ensure early learning services provide high quality education and care... Our staff in each of our 10 regions visit early learning services and check they are complying with their licences." (third request)*

Your request has been considered under the Official Information Act 1982 (the Act).

In addition to requesting information under the Act, you provide background commentary and observations on a number of areas, including the Ministry's communications and compliance approach. We answer your specific information requests in this response, noting throughout, that what we are able to provide is somewhat limited by our systems, what we record and what is currently available for publication. We would also be keen to explore your questions and observations further in discussion with you, if you wish. Please contact Colin Meehan, Manager ECE Regulations & Planning by phone on (04) 439 6465 or by email at Colin.Meehan@education.govt.nz.

We acknowledge that you wrote to the Ministry regarding the accuracy of certain statements on our website in 2019. In his response to you on 8 August 2019, Damian Edwards indicated that we aim to ensure our public messaging is current, accurate and complete, and that we were updating our website and removing out-of-date or irrelevant content. I can confirm that our website has now been updated and the statements at issue have been removed.

In your **first request** you requested the following information:

Given the Ministry's knowledge of the serious discrepancy between its website and news media claims about comparison with international standards, and opposing information from research, I am asking the Ministry to provide an accurate indication of New Zealand's standards in relation to other jurisdictions for the following:

- a) ***Teacher:child ratios in centre-based ECE and care by the following age categories:***
 - ***Children under two years old***
 - ***Children between two and three years old***
 - ***Children three years or older***
- b) ***Space per child indoors and space per child outdoors***
- c) ***Teacher qualifications and required proportion of qualified staff***
- d) ***Any environmental measures for which comparisons can be made, e.g. temperatures or noise.***

New Zealand's standards are publicly available, as are standards for other jurisdictions. A comparison of ratios for four countries is available on page 48 of the consultation draft of "*He taonga te tamaiti – Strategic plan for early learning 2019-29*". You can find a copy of the draft strategic plan here: <https://conversation.education.govt.nz/assets/ELSP/Early-Learning-Strategic-10-Year-Plan.pdf>.

The Ministry holds no other comparative analysis. Therefore, I am refusing the other parts of your request under section 18(g) of the Act. I do note that information on other countries standards are publicly available.

Regarding your **second request** headed ***Ministry of Education claims of ECE sector 98% compliance with regulations***, I once again note that you queried this statement with us in 2019. Our data shows that at any one time, less than 2% of services are not compliant with regulatory standards. Based on our compliance approach (which we describe in more detail below) it is not unreasonable therefore to make the statement that 98% of services are compliant. However, we acknowledge the phrase may be misleading without contextual explanation, and so we have removed this statement from our website.

In your second request you requested the following particular information:

Given the Ministry's knowledge of the serious discrepancy between information from research, and its website and news media claims about compliance rates, I am asking the Ministry to provide the following information.

1. ***Identify the most recently available compliance rates for specific legislation (e.g. requirements for ratios, space per child, qualification distribution across rooms, or environmental measures), which would be consistent with the 98% compliance claim. If the Ministry wishes to use ERO reviews to support its claim, please provide the evidence from those reviews.***

Please refer to the spreadsheet attached to this letter as **Appendix A**. This spreadsheet provides a list of licensed early learning services that had their licences reclassified as provisional, suspended, or cancelled in 2020. The spreadsheet includes the non-compliances identified. This information is accurate as at 12 January 2021.

As at 31 December 2020, there were 4,670 licensed early learning services. 98.31% of these services were on a full or probationary licence. Please refer to **Table 1** below. The remaining 1.69% (79 services) were on a temporary relocation licence, had their licence reclassified as provisional or suspended.

Table 2 contains the five key regulatory standards against which non-compliance was identified for the services that were on a provisional or suspended licence. Please note that a service may have non-compliances in more than one standard.

Table 1:

Licence status	# of services	% of services
Full	4,466	95.63%
Probationary	125	2.68%
Temporary Relocation	8	0.17%
Provisional	63	1.35%
Suspended	8	0.17%

Table 2:

Standard	Licence criteria/regulations	# of services
Governance, Management and Administration	GMA standard and regulation 47	50
Health and Safety	Health and Safety standard and regulation 46	51
Premises and Facilities	Premises and Facilities standard and regulation 45 and Schedule 4	49
Curriculum	Curriculum standard and regulation 43	34
Qualifications, ratios, and service size	Regulation 44 & Schedule 2	15

2. Provide the Ministry of Education's most recent data for compliance with the most important regulatory quality and safety measure, which is teacher:child ratios. (Please ensure that this is accurate New Zealand Ministry of Education data, not for example, an inaccurate or inapplicable OECD report. It must be observational data, not owner-reported).

For the 2020 calendar year we identified 11 services as not compliant with regulation 44(1)(b) / Schedule 2 which relates to adult-to-child ratios.

We note that you consider teacher:child ratios to be the most important regulatory quality and safety measure, but we do not necessarily endorse this view; however we ensure that all regulatory requirements are adhered to by early learning services.

3. Provide the Ministry of Education's most recent data for compliance with space per child indoors, and space per child outdoors (operational, not pre-licence).

For the 2020 calendar year we identified two services as not compliant with regulation 45(1)(b) / Schedule 4 which relates to activity spaces.

Please note that activity space measurements are usually only assessed for an application for a new probationary licence, when a request is made to increase licence maximums, or if activity space has been specifically identified as of concern, for example through complaint.

4. Provide the Ministry of Education's most recent data for compliance with the required minimum 50% ratio of qualified teachers observed in teaching spaces.

For the 2020 calendar year we identified 16 services as not compliant with regulation 44(1)(a) / Schedule 1 which relates to qualification requirements for adults.

Please note that the 50% qualification requirement does not need to be met at all times and is not required on a per room basis.

5. Provide the Ministry of Education's most recent data for compliance with any other health and safety measures, for which the Ministry of Education has measured compliance data, that might support the Ministry's claim, e.g. noise, temperatures, room ventilation.

For the 2020 calendar year we identified 180 services as not compliant with the health and safety standard / regulation 46 (Health and safety practices standard: general).

Finally, regarding your **third request** headed *Ministry of Education statement that staff in each of 10 regions visit early learning services and check they are complying with their licences*, I can advise as follows:

The Ministry of Education regulates the New Zealand early childhood education system. Our regulatory role is not just restricted to assessing compliance with regulatory standards and imposing consequences for non-compliance.

It includes providing a skilled workforce to support services, publishing information on the rules and how to comply, funding professional development, and working in partnership with the sector and other agencies. This is in line with Government's broad expectations of regulatory practice, and the way other regulatory agencies fulfil their role.

It is up to early childhood service providers to demonstrate compliance with regulatory standards, both at the application stage and at all other times. We expect providers to comply with the rules and believe that most are willing and able to do so. At the same time, we recognise that a small number of providers do not, or cannot, prioritise compliance.

Our regulatory practice is proportionate within this context and we do not conduct onsite assessments without good reason. Instead, we focus our compliance activity on key areas.

Applications for a new licence or change of management always include a planned onsite assessment. We take complaints and incidents seriously, and analyse each one carefully before deciding on a course of action. In some cases, we will conduct an onsite assessment (which may be unannounced), while in others it may be appropriate to refer the complaint to the provider to resolve. We also work with other agencies when they identify concerns, including ERO.

Regarding your particular questions on the statement from Katrina Casey about ECE sector compliance checks by Ministry staff:

1) The statement from Katrina Casey indicates that approximately 700 license assessments are made annually. For the last annual period for which the Ministry has records, please identify:

- a. How many of these were in relation to a new license, including pre-license or licensing?
- b. Excluding visits for initial licensing purposes, how many centres were visited (as opposed to the number of visits made?).
- c. How many centres were visited in relation to a complaint, or a referral from the Education Review Office?
- d. How many centres were visited in an unannounced visit?

The Ministry's collection regarding in-person service visits is not easily extractable. Therefore, I must refuse this part of your request under section 18(f) of the Act due to the substantial collation and research that would be required to provide a response to these elements. However, for the sake of transparency, we have provided below data pertaining to 'assessments'. An assessment has been defined for this OIA as an onsite assessment, or a desktop assessment.

In 2018 we investigated 391 complaints (assessments). We also conduct licence assessments on all new licence applications (on average 157 per year); low ERO report referrals (on average 100 per year); and funding and audit related assessments. On that basis, and at the time, we conservatively estimated that we conduct about 700 early childhood service licence assessments each year.

Since then, further work was conducted to understand our assessment activity. The information below responds to your questions.

How many of these were in relation to a new license, including pre-license or licensing?

132 probationary licences (new licences) were issued in 2020. Each probationary licence application requires an onsite assessment before the licence is issued. A breakdown of the probationary licences by service type has been included below:

Service type	Quantity
Education & Care Service	97
Free Kindergarten	5
Homebased Network	25
Playcentre	1
Te Kōhanga Reo	4
Grand Total	132

Excluding visits for initial licensing purposes, how many centres were visited (as opposed to the number of visits made?).

898 centre-based services were assessed in 2020, excluding probationary licence assessments. Please note data from the 2020 Complaints and Incidents report has been used to formulate part of this response. However, as the report has not yet been finalised, figures provided are indicative only. The 2020 Complaints and Incidents report will be published on our website later in the year.

How many centres were visited in relation to a complaint, or a referral from the Education Review Office?

253 centre-based services were assessed following a complaint and 133 for a referral from ERO in 2020.

Please note that the 2020 Complaints and Incidents report has not yet been finalised, and therefore the figures provided are indicative only.

How many centres were visited in an unannounced visit?

52 centre-based services were visited without announcement in 2020. Please note this data pertains to unannounced visits that have been captured in our complaints and incidents workflows only. We do not capture other unannounced visits in an easily extractable format and therefore this part of your request has also been refused under section 18(f) of the Act. Also note that the 2020 Complaints and Incidents report has not yet been finalised, and therefore the figures provided are indicative only.

- 2) The Ministry of Education claims that, “We ensure early learning services provide high quality education and care”. This question relates to the way in which the Ministry regularly ensures that this takes place, and may relate to the Provider Assessment Group (PAG).

For each of the following measures please identify the measurement mechanism the Ministry of Education currently uses to ensure compliance. For each measure, please identify whether or not unannounced visits are made. For each measure, please identify the expected number centres to be assessed per year at this stage.

If reference is made to Education Review Office visits, please describe the measurement system for the specific regulatory requirement used by the Education Review Office (rather than just that a visit has taken place).

Please do not include new centre licensing visits in this information, as it only relates to ongoing operation.

- a) Teacher:child ratios
- b) Space per child indoors
- c) Space per child outdoors
- d) Qualification distribution across rooms
- e) Indoor temperatures
- f) Noise levels
- g) Provision of quiet activity space
- h) Ventilation of activity spaces and sleep rooms
- i) Quality of food provision

For each of the following measures please identify the measurement mechanism the Ministry of Education currently uses to ensure compliance

To assess compliance for any standard, we first gather a range of evidence to enable us to determine whether the standard is met or not met. Evidence is gathered through observation, discussion and sighting documentation. This includes viewing and taking photos of the premises and environment.

As the onus is on service providers to demonstrate compliance, our assessment practice also involves asking providers and/or staff to explain how they meet and maintain requirements. Our ECE Education Advisers have previously worked in early learning settings, and are well-placed to have these conversations.

As you know, the regulations set minimum standards, but we expect service providers to exceed these. The public guidance we provide alongside the licensing criteria provides information on how to achieve this.

Some of the licensing criteria are more precise than others. Some are met and assessed in a specific way or using a formula. Examples include ratios, activity space and qualifications. Others are less exact, can be met in a range of ways and therefore require a responsive assessment approach. Examples include quiet spaces, ventilation, and food provision.

The temperature requirement is specific in that a minimum of 16°C is defined, but services may be able to demonstrate compliance in different ways, e.g. with a thermometer or temperature setting on a heat pump.

Assessing the criteria for noise is also not an exact measurement. The criteria do not currently specify a maximum noise level but require steps to be taken to ensure noise doesn't unduly interfere with normal speech and/or communication etc, and acoustic materials are used where necessary.

To support our assessments, we may also require documentation issued under other legislation or from industry experts. For example, documents issued under the Building Act or a health report assessing whether relevant aspects of the premises and facilities, and health and safety standards, are compliant.

Evidence is recorded on the EC3 licence assessment tool, and then analysed to assess whether each standard is met or not met. The EC3 form is used as a tool to assess that services are meeting regulatory requirements from:

- Education and Training Act 2020
- Education (Early Childhood Services) Regulations 2008
- licensing criteria.

You can access a copy of the home-based EC3 licence assessment tool on our website at the following link: <https://www.education.govt.nz/early-childhood/application-forms/ec3-form-tool-we-use-to-assess-services-with-regulatory-requirements/>. I have also attached a copy of the centre-based EC3 licence assessment tool as **Appendix B**.

Our response to non-compliance will depend on a range of factors including the level of non-compliance, and the provider's history and attitude to compliance. All recommendations to reclassify a licence as provisional, suspend or cancel a licence follow a regional and national office peer review process before a final decision is made by the delegated authority holder.

For each measure, please identify whether or not unannounced visits are made

We may conduct an unannounced visit for any reason and to assess compliance with any regulatory standard. We do not share your view that some regulatory standards can *only* be assessed through an unannounced visit. For example, if we became aware that a service wasn't meeting ratios, we would respond, but that response may differ depending on the circumstances. We may initially ask for operational documents to be supplied, such as rosters,

supervision plans and attendance records. If we had concerns, an onsite assessment would occur, and this may or may not be unannounced.

For each measure, please identify the expected number centres to be assessed per year at this stage

We do not forecast the expected number of centres to be assessed.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Nāku noa, nā



Susan Howan
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