

Departmental Disclosure Statement

Education and Training (Early Childhood Education Reform) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 July 2025

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Part One: General Policy Statement

The Education and Training (Early Childhood Education Reform) Amendment Bill (the **Bill**) amends the Education and Training Act 2020 (the **principal Act**) to:

- Clarify the purpose, objectives, and guiding principles of regulating the early childhood education (ECE) services; and
- Establish a new statutory role, a Director of Regulation, with responsibilities for performing key regulatory functions in the ECE system; and
- Clarify responsibilities relating to the prescribing of licensing criteria.

The purpose of this Bill is to improve the effectiveness of the ECE regulatory system for children and parents and reduce the regulatory burden for service providers.

The Bill partly implements the Government's decisions resulting from the *Regulatory Review of Early Childhood Education*, undertaken by the Ministry for Regulation in 2024 (the **Review**). The Review fulfilled a commitment in the Coalition Agreement between Act and National Party to carry out a regulatory sector review of ECE and legislate to improve the quality of regulation. The Review found that the ECE system was outdated and not up to the standard of other regulatory systems in New Zealand or ECE regulations in comparable countries, and that this had resulted in confusion about regulatory roles and responsibilities and a lack of compliance monitoring.

The Bill seeks to address some of the review's concerns through proposing the following amendments. These changes are focused around clarifying the purpose of the ECE regulatory system, establishing a new statutory role to perform key regulatory functions and clarifying responsibilities around the prescription of licensing criteria.

Clarifying the purpose, objectives and guiding principles for regulating ECE services

The Bill-

- replaces section 14 of the principal Act relating to the purpose of Part 2 (Early childhood education); and
- inserts new section 14A into the principal Act which sets out the objectives of Part 2; and
- specifies principles relevant to the performance and exercise of the Director of Regulation's functions, duties, and powers.

These amendments provide more clarity about the purpose and objectives of the legislation to inform regulatory decision-making. They include recognising the role of ECE in supporting parental participation in the labour market, clarifying the role of regulation in protecting children's health, safety, and well-being and improving educational and developmental outcomes, as well as in supporting accessibility and choice for parents, including ensuring that they have the information that they need to make informed decisions about using ECE services.

These amendments also set out the following guiding principles to inform regulatory decision-making by the Director of Regulation:

- the health, safety and well-being of children is paramount;
- children's learning and development is essential and supporting their transition to school;
- the role of parents and caregivers in their children's education is recognised;
- principles relating to good regulatory practice that include avoiding unnecessary costs for parents, caregivers and service providers.

Establishing a new statutory role with responsibility for performing core regulatory functions

The Bill establishes a new statutory role, a Director of Regulation, by-

- requiring the Secretary for Education (the **Secretary**) to appoint a person to be the Director of Regulation; and

- specifying the functions of the Director of Regulation, including some that must be performed independently of any influence from the Minister of Education (the **Minister**); and
- specifying the powers of the Director of Regulation, including the power to require information and the power to authorise entry and inspection without a warrant; and
- requiring the Director of Regulation, in performing and exercising their functions, duties, and powers, to give effect to the purpose and objectives of Part 2 of the principal Act.

The Bill enables the Director of Regulation to delegate certain functions, duties, and powers.

The Bill also makes consequential amendments to the Education (Early Childhood Services) Regulations 2008 and the Education (Playgroups) Regulations 2008 to reflect the establishment of the Director of Regulation role.

These amendments will help to provide certainty and clarity for parents and service providers by clearly defining regulatory roles and responsibilities. They will also improve efficiency by removing duplication and improving co-ordination across the ECE system and help to reduce the risk of regulatory failure by strengthening accountability, increasing compliance oversight, and focusing regulatory resources on building regulatory capability.

Clarifying responsibilities relating to prescribing licensing criteria

The Bill amends the principal Act and associated regulations so that the-

- Secretary is the Minister's principal policy advisor in relation to the prescribing of criteria the Director of Regulation must use when assessing whether ECE services and playgroups comply with the minimum standards set in regulation; and
- Secretary's advice to the Minister must set out the effects of the proposed criteria, including who will be affected by the criteria.

This creates greater clarity about the Director of Regulation's and the Secretary's responsibilities regarding the prescribing of licensing criteria.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
The Bill responds to findings and recommendations from the Ministry for Regulation's Early Childhood Education regulatory sector review, released in December 2024. The final report can be found at https://www.regulation.govt.nz/regulatory-reviews/early-childhood-education-ece-regulatory-sector-review/	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Proposals responding to the ECE regulatory sector review. Ministry of Education. 11 April 2025. URL: https://www.education.govt.nz/our-work/information-releases/issue-specific-information-releases/early-learning-regulatory-review	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Ministry of Education's Regulatory Impact Assessment Quality Assurance Panel considered the statement failed to meet Cabinet's quality assurance criteria for impact analysis, due to tight constraints on the options considered, limited analysis of impacts, costs and benefits and lack of consultation on the proposals imposed by the timeframe.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The Regulatory Impact Statement provides analysis on the potential costs and benefits in relation to the proposals outlined in the Bill. This analysis can be found at https://www.education.govt.nz/our-work/information-releases/issue-specific-information-releases/early-learning-regulatory-review</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Non-compliance with the requirements set out in this Bill may result in ECE service closures which would impose costs on parents and caregivers through the disruption in childcare arrangements. The level of proactive monitoring and enforcement undertaken by the regulator will also have an impact on the level of compliance of the ECE service, which in turn may have impacts for parents and caregivers if non-complaint services close.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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We do not consider the changes in the Bill to have an impact on New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

There were several limitations and constraints on the regulatory impact analysis, including limited time to both undertake detailed analysis of the impacts of the proposals and undertake consultation with key stakeholders, such as service providers, parents and Māori on the proposals. The Ministry of Education advised Ministers that these limitations on the regulatory impact analysis creates risk of policy failure and litigation.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
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The Bill inserts clause 128 into Schedule 1 of the principal Act, setting out that personal information that was held by the Secretary before the commencement date when performing a Director of Regulation function is to be treated on and after the commencement date as having been held by the Director of Regulation.

The Bill extends powers currently held by the Secretary for Education to request records and other information held by ECE service providers. Specifically, the Bill proposes:

- Amending section 22 of the principal Act to extend to the Director of Regulation the ability to request records held by ECE service providers on children's attendance, fees and other charges paid in respect of children's attendance, evidence that parents have examined the attendance record, and any other records necessary to monitor the ECE service's performance; and
- Amending section 619A of the principal Act to extend to the Director of Regulation the ability to request information from ECE services and playgroups for the administration of Part 2 of the principal Act.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
Minor technical amendments were made to the Bill to reflect their feedback.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
There was no external consultation undertaken on the policy proposals that are the subject of the Bill due to time constraints. However, the Ministry for Regulation undertook consultation with the ECE sector from early June to mid-September 2024 as part of their ECE regulatory sector review. This consultation engaged a range of stakeholders from the ECE sector, receiving 2,300 written submissions, as well as direct engagement with 40 ECE service providers and non-government organisations, and on-site visits with 16 ECE services of different types, sizes and locations.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The proposals in this Bill have been tested with Ministry of Education officials responsible for the implementation of the proposals.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill proposes an amendment to section 28 of the principal Act that would make it an offence for service providers who operate early childhood education and care centres to not tell the Director of Regulation when they intend to stop operating (in non-emergency situations) or as soon as practicable after they stop operating (in emergency situations). This is a change from the current requirements where service providers only need to tell the Secretary for Education when they stop operating. This change supports the Director of Regulation's role in performing key regulatory functions in the ECE system.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill establishes the Director of Regulation, who will take over key regulatory duties from the Secretary for Education, including:</p> <ul style="list-style-type: none">• Licensing of early childhood services and certification of playgroups;• Monitoring and enforcement of compliance of service providers with the requirements under the principal Act, including investigations and prosecutions; and• Assessing and responding to complaints about ECE service provision and incidents at ECE services.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?

NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?

YES

The Bill amends sections 636 and 637 of the principal Act to authorise that the Minister, after consultation with the Director of Regulation and those organisations that appear to the Minister to be representative of persons likely to be substantially affected by the regulations, to prescribe criteria to be used by the Director of Regulation to assess compliance with the minimum standards imposed by the regulations. The Bill also authorises that if the Minister prescribes criteria that the regulations must contain a statement to that effect and that the Secretary is the Minister's principal policy advisor in relation to the prescription of criteria.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

NO