

# Briefing report

## Education Review Office (ERO): Education Review Office concerns regarding Early Learning Service compliance with criteria licencing and regulatory standards

Date	14 December 2020
Security Level	N/A
ERO Priority	Medium
ERO Reference	M20-54
Date requested	ERO initiated
Date due	ERO initiated
Proactive release	Recommended

<b>Addressee</b>	<b>Action sought</b>	<b>Deadline</b>
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**Associate  
Minister of  
Education**

It is recommended that you:

- a) **note** ERO's findings in early childhood services since onsite evaluations recommenced post the Covid-19 lockdowns
- b) **note** ERO's concerns in relation to the non-compliances identified in the assurance reviews and quality evaluations undertaken since August 2020
- c) **note** the steps that ERO is taking to inform the sector about its responsibilities, and the vigilance required around the provision of a safe and healthy environment for children
- d) **note** continue to monitor and report to you on this situation
- e) **note** the recommendation that this briefing be shared with Minister Hipkins
- f) **note** that this briefing is recommended for proactive release



**Attachments:**

***Education Review Office (ERO):  
Education Review Office concerns  
regarding Early Learning Service  
compliance with criteria licencing  
and regulatory standards***



**Comments:**

### Minister's Office to complete

Noted	<input type="checkbox"/>
Seen	<input type="checkbox"/>
Approved	<input type="checkbox"/>
Referred to:	
Date signed by Minister:	

Our Ref: M20-54

14 December 2020

I'd like a Ministry of Education briefing outlining what they are doing in response to these findings.  
CH

**Hon Jan Tinetti**  
**Associate Minister of Education**

## **ERO concerns regarding Early Learning Services' compliance with Licensing Criteria and Regulatory Standards**

### **Purpose**

1. This Briefing updates you on ERO's findings in Early Learning Services since onsite evaluations recommenced post the Covid-19 lockdowns.
2. This Briefing provides detail about our concerns in relation to the non-compliances identified in the Assurance Reviews and Quality Evaluations undertaken since August 2020.
3. This note also provides detail on the steps we have taken to support and inform the sector about what we are finding, and the actions needed to be assured of children's safety and wellbeing.

### **Background**

4. ERO briefed you on 12 November 2020 about our methodology developments and implementation (M20-39).
5. ERO's Assurance Reviews of Early Learning Services recommenced from 31 August 2020 and our Quality Evaluations were rolled out from 12 October 2020, due to delays associated with Covid-19 lockdowns.
6. During these evaluation approaches, ERO has identified considerable non-compliance in some services with the Licensing Criteria and Regulatory Standards.
7. To operate, a service must meet or exceed all the rules governing early childhood education. The rules governing early childhood education are:
  - a) The Education and Training Act 2020
  - b) The Children's Act 2014
  - c) Food Act 2014 and Food Regulations 2015
  - d) Licensing criteria
  - e) regulations

8. The Education (Early childhood Services) Regulations 2008 are based on the Education and Training Act 2020.
9. These outline:
  - a) licensing process
  - b) miscellaneous requirements
  - c) structural requirements
  - d) standards.

10. The Standards are:

- a) curriculum
- b) governance, management, and administration
- c) premises and facilities
- d) health and safety.

11. The Licensing Criteria are based on the Regulations and are the day-to-day standards that a service must follow to retain its licence.

**At the heart of ERO's process is ensuring that services operate a safe educative environment**

12. As we have previously briefed you, Akanuku | Assurance Review assess whether services are meeting regulatory standards. We have been implementing a separate assurance reviews process since July 2019 following a trial in the first half of 2019.

13. An assurance review process provides assurance of legal requirements being maintained, identifies compliance matters to be addressed, and scaffolds services into a quality evaluation process that focuses on improvement for equity and excellence.

14. ERO undertakes an Akanuku | Assurance Review process in any centre-based service:

- a) that is having its first ERO review – including if it is part of a governing organisation
- b) that has previously been identified as 'not well placed' or 'requiring further development'
- c) that has moved from a provisional to a full licence
- d) that has been re-licensed due to a change of ownership
- e) where an Akanuku | Assurance Review process is determined to be appropriate.

15. Since recommencing these reviews in August 2020, ERO has prioritised those services that are in the highest-risk group. This includes those whose previous licensing and/or ERO reporting history has been poor, or of concern.

**What we are finding**

16. Since 31 August ERO has completed 220 assurance reviews and more recently, we have undertaken 66 quality education reviews. The findings from our Assurance Reviews since August 2020 show that approximately 60% of services were not meeting one or more of the regulatory standards at the time of ERO's onsite evaluation. The health and safety, premises and facilities and governance, management and administration standards are the most common breaches of the regulations. Around two-thirds of these services had addressed the non-compliances and met the regulatory standards as a consequence of ERO highlighting the breach by the time ERO's report was confirmed.

17. Of those services where a quality evaluation has occurred, 26% are being shifted to an Assurance Review where we focus specifically on compliance matters. The trigger for

this is where we identify fundamental issues that are unacceptable or an immediate risk to children's health and safety.

18. The nature of many of the non-compliances identified pose an immediate or unacceptable risk to children's safety and wellbeing relate to issues with:
  - a) **physical safety** (including supervision, sleep procedures and monitoring, accident records, medication, hygiene practices, daily hazards checking, excursion policies and procedures, supervision of children's eating, securing of heavy furniture and fixings)
  - b) **emotional safety** (including positive guidance, and meeting all the requirements of the Children's Act 2014)
  - c) **evacuation procedures and practices** for fire and earthquake (including at least 3 monthly drills for each of the potential events that could impact a service)
  - d) **suitable staffing** (police vetting as part of the Safety Checking requirements).

### **Steps we take on identifying an immediate risk**

19. When an immediate risk to children's safety and wellbeing is identified, ERO's regional offices inform the Ministry of Education through established protocols. This triggers a rapid response to these concerns by the Ministry's regional teams.

### **What we are doing**

20. Our role and function remain unchanged and encompass accountability (including compliance with legal requirements), educational improvement and knowledge generation.
21. ERO alerted the Ministry on 26 November 2020 to the patterns emerging around non-compliance as part of our regular national liaison meeting. A further discussion about ERO's emerging sector findings was shared with Ministry representatives on 3 December as part of a discussion and update about the Early Learning Action Plan.
22. We also raised our emerging findings with the sector group of peak bodies at our meeting with them on 1 December 2020. ERO has engaged several times with this group during 2020.
23. Our findings align with Child Forum's survey findings (16 November 2020) in relation to teacher concerns about sector quality, children's safety, and accountability.
24. This week I have written to the sector to inform it of the unacceptable risks to children's safety and wellbeing that we are finding in our evaluations. I have asked that services check their systems for regular reviewing and monitoring to be assured that they are meeting their obligations. I have alerted them to the common areas that are non-compliant and asked for their vigilance in promoting a safe and healthy environment for children.
25. It is ERO's view that many services do not have sufficient systems for the self-monitoring of their processes and procedures to maintain compliance with the regulatory standards. We are particularly concerned about these issues in relation to standalone services. Greater vigilance is needed by service providers, and all staff, to assure and provide confidence to their communities that their service is a safe place for children's learning and wellbeing.
26. ERO Regional Directors will be undertaking regional roadshows in early 2021 to further engage with the sector about our and the government's requirements of licensed services, our accountability and improvement function, and the fundamental

role services have, to ensure that children in their care are safe and accessing quality education and care.

27. ERO has information on its website outlining its approach to review and evaluation in early childhood services.

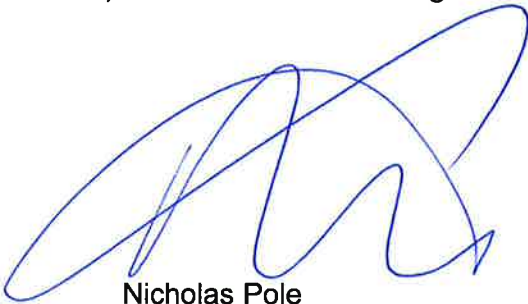
### **Review of the Early Childhood Education Regulations**

28. Review of the Early Childhood Education Regulations. The Ministry has recently announced that it is reviewing the current Early Childhood Regulations. This review should provide greater clarity for the sector and determine which regulations are most necessary for children's safety and well-being.
29. Currently, ERO has only recommendatory powers and as such has no powers to direct services to address identified issues (see our recent briefing METIS M20-39 on this issue). ERO has previously recommended that it be given stronger powers to be able to direct services to address core issues of health and safety.
30. While your portfolio has responsibilities for the functions of the ERO, accountability for the early learning sector remains with Minister Hipkins – we recommend that this briefing be brought to his attention.

## Recommendations

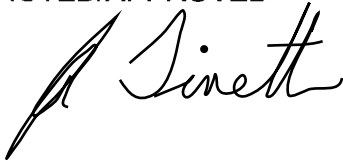
It is recommended that you:

- a) **note** ERO's findings in early childhood services since onsite evaluations recommenced post the Covid-19 lockdowns **noted**
- b) **note** ERO's concerns in relation to the non-compliances identified in the assurance reviews and quality evaluations undertaken since August 2020 **noted**
- c) **note** the steps that ERO is taking to inform the sector about its responsibilities, and the vigilance required around the provision of a safe and healthy environment for children **noted**
- d) **note** continue to monitor and report to you on this situation **noted**
- e) **note** the recommendation that this briefing be shared with Minister Hipkins **noted**
- f) **note** that this briefing is recommended for proactive release **noted**



Nicholas Pole  
**Chief Executive**

NOTED/APPROVED



Jan Tinetti  
**Associate Minister of Education**

14/12/2020