

Submission to the Ministry of Education on proposed Education (Early Childhood Services) Amendment Regulations 2025

Introducing Mana Mokopuna – Children's Commissioner

Mana Mokopuna – Children's Commissioner (Mana Mokopuna) is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and well-being of mokopuna¹ (all children and young people) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years of age if they are, or have been, in care or custody. The Children's Commissioner is Dr Claire Achmad.

We independently advocate for and with mokopuna within the context of their families, whānau, hapū, iwi and communities, based on evidence, data and research, including the perspectives of mokopuna.

Our work is grounded in the United Nations Convention on the Rights of the Child (the Children's Convention), Te Tiriti o Waitangi and other international human rights instruments. We are a National Preventative Mechanism under the Optional Protocol to the Convention Against Torture, meaning we monitor places where mokopuna are deprived of their liberty, including in the care and protection, youth justice, youth mental health and intellectual disability spaces.

We have a statutory mandate to promote the Children's Convention and monitor the Government's implementation of its duties under the Convention, and to work in ways that uphold the rights of mokopuna Māori including under Te Tiriti o Waitangi. We place a focus on advocating for and with mokopuna who are experiencing disadvantage, and we recognise and celebrate the diversity of mokopuna in all its forms.

Our moemoeā (vision) is *Kia kuru pounamu te rongo* – All mokopuna live their best lives, which we see as a collective vision and challenge for Aotearoa New Zealand.

When it comes to the rights of mokopuna, our advocacy focuses on four strategic advocacy areas:

- A strong start in life (first 2000 days)
- Growing up safe and well (free of all forms of child maltreatment in all circumstances; thriving mental health and wellbeing)
- Thriving families and whānau (living free of poverty, with resources needed to support mokopuna to thrive), and
- Participating in what matters to me (mokopuna have told us, for example, about the importance of participating in their education, culture and identity, sport and recreation, and caring for the natural environment).

¹ At Mana Mokopuna we have adopted the term 'mokopuna' to describe all children and young people in Aotearoa New Zealand. 'Mokopuna' brings together 'moko' (imprint or tattoo) and 'puna' (spring of water). Mokopuna describes that we are descendants, and or grandchildren, and how we need to think across generations for a better present and future. We acknowledge the special status held by mokopuna in their families, whānau, hapū and iwi and reflect that in all we do. Referring to children and young people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from, matters for their identity, belonging and well-being at every stage of their lives.



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Summary & Recommendations

1. In line with our submission on the Education and Training (Early Childhood Education Reform) Amendment Bill (the Bill),² we remain of the view that:
 - the Bill should be amended to ensure children's rights are the first and primary consideration in all Early Childhood Education (ECE) regulation and decision-making,
 - from a process perspective, the fast-tracked and fragmented nature of the ECE reform process is concerning and further consultation with key stakeholders should be undertaken on final reform proposals before key pieces, including the Bill and the Education (Early Childhood Services) Amendment Regulations 2025 (Amendment Regulations) become law, and
 - the Government should undertake a Child Impact Assessment of the final reform proposals to ensure they uphold children's rights and prevent or mitigate negative consequences for children.
2. In relation to the Amendment Regulations 2025 specifically:
 - While we have some concerns the graduated compliance and enforcement regime proposed by the Amendment Regulations may risk creating a culture of delay, as ECE providers may no longer expect immediate licence action for non-compliance, we are generally supportive of the proposed changes as, on balance, they are more likely to provide a better-enforced and well-regulated ECE sector with potential benefits to mokopuna as well as their parents and caregivers.
 - We welcome the proposal that the Director of Regulation will be required to publicly notify when they reclassify as provisional, suspend or cancel an ECE provider's licence, however, we are of the view the Director of Regulation should also be required to publicly notify when an ECE provider is given a written direction to remedy a health and safety risk.
 - We are concerned about the proposal to increase the threshold for suspending an ECE provider's licence and are of the view the current threshold in Regulation 30 should be retained.

In relation to the Amendment Regulations, Mana Mokopuna recommends:

3. Regulation 30 is retained in its current form and the threshold for suspension is not increased.
4. The Director of Regulation is required to also publicly notify when they give an ECE provider a written direction to remedy a health and safety risk.
5. The proposed amendments relating to keeping records of non-compliance are strengthened to require the Director of Regulation must (rather than may) keep a record of non-compliance.

Feedback on the Amendment Regulations

6. All mokopuna are taonga (treasures) with an inherent right to have the strongest start in life and achieve their full potential.

² [Submission on Education and Training Amendment Bill | Mana Mokopuna](#)

7. A strong start in life means ensuring every mokopuna is nurtured in an environment that supports their physical, emotional, and cognitive development during the first 2,000 days. This includes access to quality ECE, which is known to contribute to a strong start in life and is a right from birth.³
8. The United Nations Committee on the Rights of the Child is clear children's rights must be realised in their early childhood to have the best chance of avoiding poor outcomes later in life. To achieve this, numerous enablers must be in place, not least of which includes universal, free ECE, robust and inclusive early childhood policies, and accessible, affordable childcare for working parents.⁴
9. The Government has prioritised supporting children in their first 2,000 days in its Child and Youth Strategy 2024-2027.⁵ It recognises this is a critical window in a child's development and that access to a quality ECE system is key to setting up children up to succeed.
10. The right to quality ECE includes the right to learn in a safe and healthy environment. As a States Party to the Children's Convention, the Government is required to monitor and regulate the quality of ECE provision to ensure children's rights are protected and their best interests are served.⁶ The Education (Early Childhood Services) Regulations 2008 are a key way the Government meets these obligations and any amendment to them, including by the Amendment Regulations, should ensure these standards continue to be met.
11. We acknowledge, as found in the ECE Regulatory Review, the current enforcement tools relating to compliance in the Education (Early Childhood Services) Regulations 2008 are limited in nature. These can lead to situations where ECE providers are at risk of being closed down for minor breaches of licensing criteria disproportionate to the risk and children's consistent access to ECE could be impacted. Second, the review found the regulator has limited compliance monitoring. There is no proactive monitoring system in place, which prevents early identification of non-compliance, heightening child safety risks.
12. The benefit of having a wider range of graduated compliance and enforcement tools, as proposed by the Amendment Regulations, is that a service can remain open while it works to achieve compliance with licence requirements. Some benefits accrue to children, because there is more certainty they can maintain participation in, and relationships with, their ECE, as long as the risk to them is negligible.
13. Another benefit is that, with a wider range of graduated compliance and enforcement tools, the Director of Regulation will be able to action and proportionately enforce low-level breaches and the overall quality and practice in the sector is likely to improve.
14. Expanding the range of compliance and enforcement tools, however, risks creating a culture of delay, as ECE providers may no longer expect immediate licence action for non-compliance. Instead, they could exploit the additional enforcement options to postpone meeting requirements. The wider range of enforcement options could transfer the risks of non-compliance from the ECE provider to children. We welcome the proposed stipulation, however, that if the breach is a risk to the health and safety of any person and that risk would remain if the ECE provider continues to operate, the Director of Regulation must direct the ECE provider to remedy the risk within 24 hours.

³ This includes but is not limited to the Children's Convention articles: Art. 28/29 - to learn and develop to their fullest potential, Art. 5 - the rights and responsibilities of parents /whānau to make decisions about mokopuna care, Art. 24 - to be afforded the highest possible standard of health, Art. 31 - the right to recreation and play.

⁴ [General comment No. 7 \(2005\): Implementing Child Rights in Early Childhood | Refworld](#)

⁵ [The Child and Youth Strategy 2024-2027](#)

⁶ [General comment No. 7 \(2005\): Implementing Child Rights in Early Childhood | Refworld](#) at 32.

15. We also welcome the new mandatory public notification requirements, which require the Director of Regulation to publicly notify when they reclassify as provisional, suspend or cancel an ECE provider's licence. We are also supportive of the proposal that the Director of Regulation may give public notice, or inform parents and caregivers of, an investigation of serious or high-level complaint or incident.
16. We do not support the proposed amendments to Regulation 30, which currently stipulates an ECE provider's licence can be suspended if it is not in the interests of the children attending or participating in the service, for the service to continue to operate. The Amendment Regulations propose to impose a higher threshold for licence suspension by requiring an immediate risk to health, safety or wellbeing of children attending or participating to be present. In line with our primary submission on the Bill, that the rights of mokopuna are the first and primary consideration in ECE regulation and decision-making, we recommend the current threshold in Regulation 30 be retained and that licences can be suspended if the continued operation of an ECE service is not in children's best interests.
17. In relation to public notification requirements, we also recommend public notification is mandatory (rather than discretionary) if the Director of Regulation gives an ECE provider written direction to remedy a health and safety risk.
18. In relation to the proposed amendments relating to keeping records of non-compliance, we also recommend these provisions are strengthened to require the Director of Regulation must (rather than may) keep a record of non-compliance.

Conclusion

19. On balance, we are supportive of the Amendment Regulations, subject to our recommendations above relating to Regulation 30, public notifications and non-compliance records, as we recognise greater flexibility and proportionality is likely to ensure improved compliance and enforcement in the ECE sector with potential benefits for mokopuna, as well as their parents and caregivers.
20. In line with our submission on the Bill, it is essential the compliance regime is matched with a decision-making framework that elevates children's rights and best interests as the first and primary consideration in ECE regulation and decision-making, including when the Director of Regulation makes decisions under the Amendment Regulations. We therefore expect, in line with our submission on the Bill, the Bill is amended to ensure this is the case, in line with your obligations as a States Party to the Children's Convention.