

August 2024

**To Ministry for Regulation**

Please find attached our submission on the Regulatory Sector Review of Early Childhood Education

For any further inquiries, please contact:

Chris Ford

Policy Advisor – Southern and Central

[policy@dpa.org.nz](mailto:policy@dpa.org.nz)

**Introducing Disabled Persons Assembly NZ**

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/$file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

**Rangatiratanga / Leadership**: reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice**: informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy**: supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring**: monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD article is particularly relevant to this submission:

* **Article 7: Children with disabilities**
* **Article 24: Education**

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcomes are particularly relevant to this submission:

* **Outcome 1 – Education**

# The Submission

DPA welcomes this opportunity to give feedback to the Ministry for Regulation on the Regulatory Sector Review of Early Childhood Education.

**DPA supports the rights of the families/whānau of disabled children to choose which early education option(s) best suits their child’s needs for an inclusive education.**

**However, we are concerned about any moves which, regardless of whether they increase choice for some families, will come at the expense of providing safe, accessible and quality learning requirements.**

From what we understand of the limited rationale for proposing deregulation of the ECE sector, it seems to have arisen out of the findings of the Ministry of Education’s ECE Census 2023 which found that there had been a 7% decrease in the number of children attending early learning between 2021 and 2022,[[3]](#footnote-4) but most of this would have been attributable to the impacts of Covid-19.

Yet, there appear to be early signs that the rate of participation in ECE is beginning to bounce back as there was a 6% growth recorded by the Ministry of Education in the number of children enrolled during the year ending June 2023.[[4]](#footnote-5)

**While DPA acknowledges the issues faced by the ECE sector, the way to resolve them is not through wholesale deregulation of the sector - a move that would disadvantage and even greatly harm disabled children in a variety of ways.**

DPA is concerned that deregulation would compromise moves to ensure that early childhood providers make their learning environments and programmes fully accessible and inclusive to disabled pre-schoolers.

The primary priority of early childhood education centres should be the education of children, and profits should be a secondary consideration, particularly for privately-owned centres.

While the move towards greater deregulation has been cited as a way of enabling competition and reducing fees for families/whānau, there are significant risks involved, especially when it comes to the safety, wellbeing and educational outcomes of disabled pre-schoolers.

Both new and existing providers could decide, for example, to base themselves in cheaper, more inaccessible premises and provide substandard, inaccessible equipment that excludes disabled children.

They might also opt to employ educators who are not trained in inclusive educational practice and may wrongly cite the costs of supporting disabled learners as another factor in restricting the enrolment of disabled children.

Private early childhood centres in a more market-driven system could also start cherry-picking student intakes in that disabled pre-schoolers will only be accepted if they have lower-level impairments, thereby excluding learners with more significant impairments.

A more market-driven system may also lead to the whānau/families of disabled pre-schoolers being charged more to have their child/tamariki in a good quality centre, placing extra stress and responsibility on whanau/families. This will result in the whānau/families of disabled pre-schoolers having fewer choices not more when it comes to enrolling their child/tamariki in ECE.

**DPA believes that deregulation will compromise the commitments Government has made to disabled children and their whānau under the UNCRPD, New Zealand Disability Strategy and Te Tiriti o Waitangi to enable their full participation in early childhood education.**

**Recommendation 1:** that the review of ECE be withdrawn and that the sector be funded adequately to meet the demands being placed upon it.

## Key early childhood education issues facing disabled tamariki

1. **What are the problems?**

Disabled children and their families/whānau have long faced systemic exclusion from early childhood education (ECE).

The Education Review Office (2022) in collaboration with the Office for Disability Issues and the Human Rights Commission published research which found that a high number of disabled children were excluded from ECE and while those services which admitted disabled children provided safe and nurturing environments, there was still a need to strengthen inclusive teaching practices.[[5]](#footnote-6)

Research by Houghton-Kipa (2023) found that engagement in early childhood education offered numerous advantages for all children, including disabled children.[[6]](#footnote-7) However, this research also indicated that the barriers identified by the Human Rights Commission and other research remained resulting in the lower participation rate of disabled children in ECE.

Houghton-Kipa’s key recommendations were that ‘designing for diversity’ approaches using the Universal Design for Learning (UDL) principles could better support a child’s journey through the ECE system. [[7]](#footnote-8)

Another tool that enables inclusion is the core early childhood education curriculum Te Whāriki (2017) which has a more fully inclusive focus on disabled tamariki than the earlier version released in 1996.[[8]](#footnote-9)

**Clearly, inclusive practises can best be delivered by fully qualified early childhood teachers and staff who are trained to do this mahi.**

DPA is concerned about the potential for the pay, conditions and qualifications of early childhood teachers being reduced due to deregulation.

Our concerns about the potential for bringing in unqualified ECE teachers stems from the Government’s plans to introduce charter schools for school-aged children as of term one in 2025, which includes the provision for charters to use non-qualified teachers and to have them teach alongside qualified teachers as well.

Our main concern is that any attempt to similarly remove the requirement for only registered, qualified early childhood teachers/staff to deliver ECE to children would be a retrograde step negatively affecting the education of disabled children/tamariki.

From a disability perspective, this presents the risk that teachers who are fully versed in inclusive educational practice may not be employed in the sector and/or required to work alongside unqualified teachers who may not possess knowledge about inclusive education practises.

If disabled children/tamariki are not given an inclusive education, it can have life long impacts. Quality early childhood education can open the doors to disabled children for future success and increase the likelihood of them being able to go to tertiary education/training later in life which in turn increases their ability to access employment opportunities.[[9]](#footnote-10)

**From DPA’s perspective, the key problem that the ECE sector faces is that of underfunding.**

DPA agrees with the independent Office of Early Childhood Education that Budget 2024 only gave the ECE sector ‘... crumbs from the Education Table. Government’s spending priorities are not [focused] on the early years of education.’[[10]](#footnote-11)

The Office outlined how there was not any new funding to pay for pay parity to match that of kindergartens and for pay rates in education and care centres to keep up with the rising rates of teacher salaries in the school and kindergarten sectors.

This and the previous government’s miscalculations around the funding needed to achieve pay parity have all significantly impacted the sector.

Now, the current government’s proposal to deregulate the entire sector could blow it completely off course, something that could be potentially devastating for young disabled student/ākonga and their families/whānau.

Full deregulation would not resolve the issues described above and nor would it deal with the fact that some learning centres are physically or environmentally inaccessible for disabled children and their families/whānau.

**This brings us to our main concern that existing regulations as they apply to the ECE sector including those associated with the Education and Training Act 2020, the Children’s Act 2014, the Health and Safety at Work Act 2015, the Fire and Emergency New Zealand Act 2017, the Food Act 2014 and the Building Act 2004 are considered as being within the scope of this review.**

**DPA is very alarmed at these proposals as each piece of legislation is designed to, respectively, uphold the quality of the education and training system, protect the health and safety of everyone, safeguard child wellbeing, ensure fire safety and hazard reduction, maintain food hygiene standards and provide for accessible public buildings.**

The wide array of issues that these proposals raise in the early childhood context are very concerning in that:

* Early childhood education quality standards could be lowered.
* The requirement for screening early childhood workers and providing safeguards against abuse could be reduced.
* That fire safety standards could be altered in environments where children and staff are at greater risk of harm from fires.
* That food safety standards could be lowered in early childhood settings where any food safety issues could impact on the wellbeing of both children and staff.
* That ECE centres may not be required to be based in accessible buildings.

For disabled students/ākonga and their families/whanau these moves will be discriminatory and unsafe in that:

* Disabled children could be at risk of experiencing even poorer educational outcomes.
* That disabled children could be at even greater risk of abuse in ECE settings if any screening requirements are reduced.
* That disabled children and staff could be at increased risk of serious injury or death in fires.
* That disabled children and children with health conditions as well as staff could be exposed to unsafe food putting young lives at risk.
* That even more disabled children will be unable to participate in ECE settings.

The risks to the welfare of disabled children, particularly from abuse, were exposed in *Whanaketia* the recent report of the Royal Commission into Abuse in Care.[[11]](#footnote-12)

While DPA acknowledges that there are extensive safeguards to prevent abuse in early childhood settings, it deeply concerns us that in the wake of *Whanaketia* that government could even contemplate reviewing the protections afforded by the Children’s Act within the ECE context.

1. **What market failures or other problems are the regulations seeking to address?**

We have stressed that deregulation is not the way to resolve any challenges the ECE sector may face.

We want to add that the Government’s decision to launch a regulatory impact study of the sector also comes in the wake of its decision in Budget 2024 to reverse the previous government’s plans to make 20 hours ECE free for parents and to extend eligibility to 2-year-olds.

In its place, the new government introduced a $150 Family Bonus payment aimed at working families whose children attend ECE providers to help with the costs of doing so.

DPA notes that the new government’s ECE policy settings indicate that a gradual shift is underway from subsidies being paid directly to providers to one in which parents directly receive a rebate/subsidy to enable them to directly pay for their child’s attendance at a provider.

In DPA’s view, this signals a move towards a freer, deregulated ECE sector where for-profit, privately-run providers (i.e., businesses) will play more of a role than they do at present and where there is the potential for families/whānau/caregivers to pay an increasing share of the cost as direct government subsidies are reduced.

**Recommendation 2:** that full government assistance to the families/whānau of any child who attends ECE are continued with no cuts to the level of subsidies payable.

**Recommendation 3:** that early childhood fees are kept affordable for all families/whānau, especially for the families/whānau of disabled children.

Keeping ECE costs down should not come at the expense of the health and wellbeing of children and staff and the necessity for quality learning.

**3.) What is the evidence that the regulations are working or not?**

DPA notes that the ToR and Ministry of Regulation consultation website did not contain any firm empirical or other evidence to support this review.

Usually, government consultations are conducted with the issuing of discussion papers which outline the case for making change, backed up with empirical evidence and questions.

On this occasion, the process appears to be flawed in that there has been minimal evidence (as we noted earlier) driving the need for this review.

**4.) Is regulation the best way to address these problems?**

DPA supports the current regulatory settings which apply within early childhood education.

While it is always sensible to review regulatory settings from time to time, the main aim should be to strengthen regulation to prevent market failures and other adverse outcomes rather than weaken them.

Maintaining robust legal protections around the need for qualified teachers, good health and safety and accessibility are all important to the successful operation of the ECE sector and to securing good learning outcomes for both disabled and non-disabled ākonga.

**5.) What are the costs and benefits of the regulations?**

DPA asks the opposite question in that what would be the costs of not having regulations?

As we outlined earlier, these could be the consequences of having, for example, more health and safety issues crop up and poorer learning outcomes emerge through limiting the application of existing legislation to the ECE sector.

**6.) Who is receiving the benefits?**

DPA believes that even if the ECE sector is fully deregulated that, while it may see newer operators enter the market, they will be incentivised to do so more through the potential to make extra profits via lower compliance costs and the option of charging market-rate fees.

For some larger existing providers, the profit motive may well overtake any desire to provide a full quality learning/care experience for young children, including disabled children if full deregulation proceeds.

**7.) Who is bearing the costs?**

DPA recognises that this question is being asked in the context of parents/families/whānau bearing the burden of high childcare costs.

Ultimately, the costs of any full-blown deregulation will be borne by both ECE staff and children as well as families/whānau.

As noted earlier, the ability to protect the health, safety and wellbeing of both ECE children and staff would be impacted by any moves to weaken regulations around the need to employ fully qualified staff, lower child protection screening requirements and reducing fire safety standards in any centres.

For example, the results of any safety failures in ECE settings caused by a more deregulated system would be carried by the families/whānau and staff and, foremost, by tamariki themselves in ongoing financial, social, health, educational and emotional costs.

An example of the disproportionate risks that disabled people (including children) run in emergency situations is best exemplified by what happens in fires.

Research by Fire and Emergency New Zealand in association with the University of Otago illustrated that out of the 118 deaths attributed to fire in the 2007-2014 period, 47 deaths (45%) were of people who were found to have a pre-existing disability or health condition.[[12]](#footnote-13)

Currently, all childcare centres are covered by fire safety requirements but if these are relaxed in any way, then as the above figures show within the domestic context, disabled children and disabled staff will be at even greater risk of death if serious fires break out in learning facilities.

**8.) Are the benefits reasonable, affordable, and proportionate to the costs?**

**9.) What were the intended outcomes of the regulation?**

**10.) How well are the regulations achieving their purpose?**

DPA will answer the above questions as one given that these are interrelated.

As we outlined earlier, the case for deregulation has not been robustly made and what limited case that could be made for it in terms of declining enrolments has been countered by the increase in enrolments in the year to June 2023.

DPA believes that the current regulations are at least achieving their purpose in working to deliver safe, quality learning environments which benefit both disabled and non-disabled children alike.

**11.) How are the regulatory agencies carrying out their roles?**

DPA recommends that if there are any issues with coordinating the regulation of various aspects of the early childhood sector that these could be resolved by having the Ministry of Education take the lead in encouraging greater coordination amongst various bodies such as Fire and Emergency New Zealand, WorkSafe, NZ Qualifications Authority and Oranga Tamariki.

**Recommendation 4:** that the Ministry of Education take a greater lead in coordinating the various regulatory stakeholders involved in the ECE sector.

1. <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-articles> [↑](#footnote-ref-2)
2. <https://www.odi.govt.nz/nz-disability-strategy> [↑](#footnote-ref-3)
3. <https://www.educationcounts.govt.nz/publications/ECE/annual-early-childhood-education-census/annual-ece-census-2022-fact-sheets> [↑](#footnote-ref-4)
4. <https://www.educationcounts.govt.nz/__data/assets/pdf_file/0004/243778/ECE-Census-2023-Participation-Fact-Sheet.pdf> [↑](#footnote-ref-5)
5. <https://evidence.ero.govt.nz/documents/a-great-start-education-for-disabled-children-in-early-childhood>

   [↑](#footnote-ref-6)
6. <https://www.equitythrougheducation.nz/latest-news/2023/9/28/fully-inclusive-early-childhood-education-are-we-there-yet>

   [↑](#footnote-ref-7)
7. <https://www.equitythrougheducation.nz/latest-news/2023/9/28/fully-inclusive-early-childhood-education-are-we-there-yet>

   [↑](#footnote-ref-8)
8. <https://www.education.govt.nz/assets/Documents/Early-Childhood/ELS-Te-Whariki-Early-Childhood-Curriculum-ENG-Web.pdf>

   [↑](#footnote-ref-9)
9. <https://www.odi.govt.nz/home/about-disability/key-facts-about-disability-in-new-zealand/> [↑](#footnote-ref-10)
10. <https://oece.nz/public/news-and-views/stories/budget-2024-early-childhood-education/>

    [↑](#footnote-ref-11)
11. <https://www.abuseincare.org.nz/reports/whanaketia>

    [↑](#footnote-ref-12)
12. <https://fireandemergency.nz/assets/Documents/Files/Report-167-Unintentional-domestic-fire-related-injury-in-New-Zealand.pdf> [↑](#footnote-ref-13)