



# Terms of Reference for the regulatory sector review of early childhood education

## Purpose and objectives

Children are critical to the future of New Zealand. The health, well-being and development of children are important, and the regulatory framework must reflect this. This review will assess whether the current set of regulations are achieving the right outcomes for early childhood education.

The review will take a principles-based approach to assess regulatory systems against standards based on the Government Expectations for Good Regulatory Practice<sup>1</sup>, the Regulatory Standards Bill<sup>2</sup>, and OECD guidance on good practice for reviewing regulations<sup>3</sup>. The review will ask:

- What are the problems?
  - What market failures or other problems are the regulations seeking to address?
  - What market failures or other problems are the regulations failing to address?
  - What is the evidence that the regulations are working or not?
- Is regulation the best way to address these problems?
- What are the costs and benefits of the regulations?
  - Who is receiving the benefits?
  - Who is bearing the costs?
  - Are the benefits reasonable, affordable, and proportionate to the costs?
- Are the regulations working?
  - What were the intended outcomes of the regulation?
  - How well are the regulations achieving their purpose?
  - What are the unintended consequences?
  - Are the outcomes and unintended consequences being tracked?
  - How well do the regulated parties understand what they need to do?
  - How are the regulatory agencies carrying out their roles?

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<sup>1</sup> Accessed at <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

<sup>2</sup> The Regulatory Standards Bill continues to be developed and the first sector review will incorporate the principles into its work as appropriate given the status of the bill.

<sup>3</sup> Accessed at: <https://www.oecd-ilibrary.org/sites/1a8f33bc-en/index.html?itemId=/content/publication/1a8f33bc-en>

## Scope

Any regulatory system that affects the early childhood education sector is in scope. The Government Expectations for Good Regulatory Practice describe a regulatory system as “a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people’s behaviour or interactions in pursuit of a broad goal or outcome.” It includes:

- primary legislation;
- secondary legislation (including Orders-in-Council);
- other rules or conditions that apply to providers of early childhood education (for example in funding agreements); and
- roles and approaches of the agencies that carry out the range of functions within a regulatory system (e.g., compliance and enforcement).

The review will examine the regulatory systems for early childhood education, health, safety, child protection, food safety, buildings, and workplaces, as they apply to the early childhood education sector. This includes (but is not limited to) the Education and Training Act 2020 and associated regulations, 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.

All licenced or certified early childhood education services under the Education and Training Act 2020 are in scope of this review. It includes early childhood services and playgroups. Kōhanga Reo have specific licencing criteria and will be considered on that basis.

## Limits to scope

- Funding: The review will not assess funding levels but will consider how funding mechanisms, criteria and conditions create regulatory impacts. The Childcare Subsidy, Social Security Act 2018 and Social Security Regulations 2018 are out of scope.
- Curriculum: The review will not assess curriculum content (Te Whāriki: He whāriki mātauranga mō ngā mokopuna o Aotearoa Early childhood curriculum and Te Whāriki a Te Kōhanga Reo) but will consider how they are used as levers for achieving outcomes.
- Complaints: The review will not consider individual complaints about early childhood education service providers or their regulators.
- Other sectors: The regulatory systems in scope may impact sectors other than the early childhood education sector, but these will not be considered.

Broad-based regulatory systems covering many sectors are out of scope, except where there are:

- Sector-specific components of the regulation – in which case that component only is in scope.
- Sector-specific guidance – in which case that guidance only is in scope.
- Linked regulatory systems (e.g., meeting requirements for one regulatory system is dependent on meeting requirements for a different regulatory system) – in which case the link only is in scope.
- Overlaps or inconsistencies with sector-specific regulation – in which case the area of overlap or inconsistency only is in scope.
- Specific implications for the sector that are unique compared to other sectors.

## **Roles**

The review will be led by the Ministry for Regulation with its central government agency mandate to strengthen the regulatory management system and improve regulatory quality. The Ministry for Regulation may make comments and recommendations that are not fully supported by other agencies but recognises that changes are more likely to succeed and endure where there is consensus.

The Ministry for Regulation will work with other agencies, especially the Ministry of Education as the regulatory steward for the early childhood education sector and the Education Review Office with statutory responsibilities to review education organisations. The review team will include employees from the Ministry of Education and the Education Review Office.

An inter-agency forum comprising a wider set of agencies will support the review, test recommendations, and consider implementation in parallel to the review.

## **Review procedures**

The review will start from a first principles analysis of the rationale for government's involvement in and regulation of the sector. This includes policy objectives and looking at the evidence supporting the regulations including distortions in the market, regulatory costs and benefits, and available policy choices.

The review will prioritise issues against the number of people affected, the size of the costs and/or opportunities, and their effect on outcomes.

The review will draw on existing domestic and international evidence and avoid duplicating work already undertaken or underway in the system. It will consider any previous regulatory reviews, as well as any relevant recommendations arising from petitions to Parliament, Select Committees or Ombudsman reports. The review may commission specific reports or studies as needed.

The review will examine the roles and approaches of the agencies within the regulatory system(s) for early childhood education. It will consider the distribution of the roles and functions across both government agencies and sector actors such as professional bodies. The following functions are included:

- Policy Design
- Monitor and Evaluate
- Compliance and Enforcement
- Delivery
- Operational Policy
- Advice and Education
- Standard Setting
- Dispute Resolution

## **Engagement**

The review will engage with those impacted by, and subject to, the early childhood education regulatory system(s). It will include regulated parties, regulators, interested groups, early childhood workforce, and users (parents & caregivers). It will use a variety of engagement methods including face-to-face, online engagement, visits to early childhood education services and inviting written submissions.

## **Reporting**

The review will provide a report to both the Minister for Regulation and the Associate Minister for Education responsible for early childhood education. It will be followed by a Cabinet paper seeking decisions on its recommendations and next steps. The review report will be published after it has been considered by Cabinet. The review will provide Ministers with regular updates.

## **Implementing the review's recommendations**

The Ministry for Regulation will take a pragmatic approach to progressing its recommendations and recognises that other agencies will need to lead most of the likely changes and that they are likely to continue after the review has finished.

The Ministry for Regulation will work with other agencies to make improvements as quickly as possible and will support and drive actions in parallel with its review work where appropriate.

Progressing any recommendations may involve several different mechanisms that have set processes and varied timeframes, including changes to primary legislation, secondary legislation, operational policy and guidance and practice changes.

Any actions arising from the review will need to be agreed with relevant ministers and made with sufficient analysis of implications, including costs and resourcing.

## Timing, stages, and milestones

| Timing              | Review recommendations                                  |                                      | Review implementation       |                     |
|---------------------|---|--------------------------------------|-----------------------------|---------------------|
|                     | Activities  | Outputs                              | Activities                  | Outputs             |
| March – April       | Scoping and commissioning                               |                                      |                             |                     |
| May                 | Cabinet approval of Terms of Reference                  | Terms of Reference                   |                             |                     |
| June – July         | Review commences<br>Discovery<br>Engagement with sector |                                      |                             |                     |
| August              | Analysis  |                                      | Planning for implementation |                     |
| September           | Draft report  |                                      | Scope and analyse changes   |                     |
| October             | Decide next steps                                       | Final report and advice to Ministers | Option analysis             | Advice to Ministers |
| November - December |   | Report back to cabinet               | Ongoing review              |                     |

## Background

### Regulatory system policy objectives

Quality early childhood education can be transformational to the lives of children and their parents and whānau, as well as the economy and society. Section 14 of the Education and Training Act 2020 outlines the purpose of regulating the early childhood education system to: “regulate an early childhood education system where all children are able to participate and receive a strong foundation for learning, positive well-being, and life outcomes by:

- (a) setting standards to support quality provision and learning; and
- (b) supporting the health, safety, and well-being of children; and
- (c) enabling parental choice by providing for licensing and funding of different types of provision.”

The Crown also has Treaty settlement obligations that relate to early childhood education<sup>4</sup>.

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<sup>4</sup> Key outcomes sought in ECE have been addressed through treaty settlements, such as Ngāi Tahu Settlement, finalized in 1998, Waikato-Tainui Raupatu Settlement, concluded in 1995 and Ngāti Awa Claims [Settlement, reached in 2005.](#), Also relevant: Wai 2336: Matua Rautia: Report on the Kōhanga Reo Claim.

The principles of Te Whāriki: He whāriki mātauranga mō ngā mokopuna o Aotearoa Early childhood curriculum and Te Whāriki a Te Kōhanga Reo – the New Zealand Early Childhood Education curriculum will also be considered<sup>5</sup>.

The main regulatory settings for the early childhood education sector are in the Education and Training Act 2020 and associated regulations<sup>6</sup>. These include:

- **Education and Training Act 2020:** This is the primary legislation governing the early childhood education sector. All service providers that operate an early childhood education and care centre must be licensed in accordance with this Act. Service providers that provide a home-based education and care service or a hospital-based education and care service may, but need not, be licensed. Service providers that operate a playgroup may, but need not, be certificated. Section 548 of the Act requires that general grants must be paid to all licensed early childhood education services from appropriated funding. The Act also allows the Minister of Education to set conditions on funding which are set out in the Funding Handbook.
- **Education (Early Childhood Services) Regulations 2008:** These regulations set out the specific requirements for licensing early childhood education services, including standards for: curriculum; qualifications, ratios, and service-size; premises and facilities; health and safety practices; and governance, management, and administration.
- **Education (Playgroups) Regulations 2008<sup>7</sup>:** These regulations set out the requirements for the certification of playgroups, including standards for: curriculum; ratios; premises and facilities; health and safety practices; and management and administration.
- **Education (Registration of Early Childhood Services Teachers) Regulations 2004:** These regulations set out the requirements for the registration of teachers in early childhood education services.
- **Licensing Criteria:** The Minister may prescribe criteria to assess compliance with the minimum standards set out in the Education (Early Childhood Services) Regulations 2008. Licensing criteria are in place for: centre-based early childhood education services, home-based early childhood education services, Kōhanga

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<sup>5</sup> Te Whāriki: He whāriki mātauranga mō ngā mokopuna o Aotearoa - Early childhood curriculum (education.govt.nz)

<sup>6</sup> <https://www.education.govt.nz/early-childhood/licensing-and-regulations/>

<sup>7</sup> The Act defines a playgroup as a group that meets on a regular basis to facilitate children's play where:

- no child attends for more than 4 hours on any day; and
- more than half of the children attending on any occasion have a parent or caregiver present in the same play area at the same time; and

the total number of children attending on any occasion is not greater than 4 times the number of parents and caregivers present in the same play area at the same time.

Reo, and hospital-based early childhood education services, and certification criteria are in place for playgroups.

## **The early childhood education sector**

The early childhood education sector is part of New Zealand's education system and wider economy. Quality early childhood education provides positive developmental and educational outcomes for young children (aged 0 – 6 years old) and helps prepare children for schooling. The benefits are particularly significant for children from disadvantaged families. Early childhood education enables parents to participate in labour markets, attend further education, volunteer, and contribute to their community.

Early childhood education services are provided through private and community-based ownership models. Unlike compulsory schooling, the government is not directly involved in the ownership and delivery of these services. Service provision is paid for through a mix of government funding and parent fees (or donations), and other sources. Some services charge no, or very low, parent fees.

Participation in early childhood education is not compulsory in New Zealand, meaning that attendance is at the discretion of parents and caregivers. Overall participation data shows approximately 96% of children regularly attending early childhood education in the six months prior to starting school in the year to 30 June 2023. However, participation rates for Māori children (93.3%), Pacific children (90.1%), and children from low socio-economic status schools (92.6%) track below the national average.

The sector has undergone a significant level of change over the past 5 years, including due to the impact of COVID-19 and ongoing workforce constraints. Key areas of focus for Government have included the 2018 Review of Home-based Early childhood education and the Early Learning Action Plan 2019 – 2029. The introduction of pay parity and network approval have also had a significant impact on service providers.

## **Sector Size and Numbers**

In 2023, there were 4,483 licensed early learning services and 560 certified playgroups. Licensed service providers range in size from operating a single service to operating over 250 services. Approximately 191,602 children were enrolled in licensed services in June 2023, which represents a significant portion of the child population. This highlights the extensive reach and potential impact of early childhood education services.

The distribution of enrolments across different types of services has evolved over time. In 2023, 71% of children were enrolled at an education and care centre, an increase from 65% in 2017. The percentage of children attending kindergartens, home-based services, and playcentres decreased compared to 2017. The proportion of children attending Kōhanga Reo has remained stable at 4% since 2017<sup>8</sup>.

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<sup>8</sup> (1) Annual EARLY CHILDHOOD EDUCATION Census 2022: Fact Sheets | Education Counts.  
[https://www.educationcounts.govt.nz/publications/EARLY CHILDHOOD EDUCATION /annual-early-childhood-education-census/annual-early-childhood-education -census-2022-fact-sheets](https://www.educationcounts.govt.nz/publications/EARLY%20CHILDHOOD%20EDUCATION/annual-early-childhood-education-census/annual-early-childhood-education-census-2022-fact-sheets).

## Definitions

**Early childhood education sector** includes the government and non-government organisations that govern and provide early childhood education to children aged 0 to 6.

**Providers of early childhood education** include the following as defined in the Education and Training Act 2020: early childhood services (which includes early childhood education and care centres; home-based education and care centres and hospital and education and care centres); early childhood education and care services; and playgroups; as well as Kōhanga Reo.

**Regulatory systems** are sets of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.

**Regulated party / parties** are a person or organisation that is subject to behavioural expectations, obligations, and/or sanctions within a regulatory system, and will include providers of Early childhood education services and their employees. Parents can also be regulated parties (parent-led and home-based care), as well as consumers of the services.