This document sets out legislative settings and sections of the Terms of Reference that impose constraints / parameters that the Ministerial Advisory Group (MAG) must work within when developing options for consultation. Relevant legislation / materials (and additional explanatory documents) are hyperlinked below.

Education and Training Act 2020

Section 10: Interpretation

Early childhood education and care centre essential means a place that regularly provides education or care for three or more children under six years old (who are not the educators' own children and are not school students in before/after-school care).

The section then goes on to explain:

- Such a centre can still count as a centre even if it is located inside another organisation (like a workplace, hostel, or similar) as long as it mainly cares for young children of staff, residents, or students there
- It does not include a number of specific kinds of premises, such as registered schools, hostels, health facilities, children's health camps, family only care situations, short duration care where parents are nearby, playgroups, homebased or hospital-based licensed services, or places where care occurs only a few hours a week with parents close and available.

early childhood education and care service means:

- A free kindergarten that is an early childhood service whose licence permits no child to attend for a period of more than 4 hours on any day; and
- Any other early childhood service that is declared to be an early childhood education and care service by regulations made under the Act.

early childhood service means an early childhood education and care centre, a home-based education and care service, or a hospital-based education and care service

Section 14 – Purpose of Part 2 (the relevant Part for ECE)

Provisions under the Education and Training (Early Childhood Education Reform) Amendment Act 2025 (not yet in force: commences 23 February)

5 Section 14 replaced (Purpose of Part 2)

Replace section 14 with:

14 Purpose of Part 2

The purpose of this Part is to regulate an early childhood education system to—

(a) set and implement minimum standards to provide for quality early childhood education that allows all children to establish strong foundations for learning, well-being, and life outcomes; and

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(b) support the choice of parents and caregivers to participate in the labour market.

14A Objectives of Part 2

The objectives of this Part are to support the purpose in section 14 by

(a) protecting the health, safety, and well-being of children receiving early childhood education; and

(b) improving educational and developmental outcomes for those children; and

(c) supporting accessibility and choice for parents and caregivers, including by providing for licensing and certification of different types of services and enabling their funding; and

(d) providing information to parents, caregivers, and others to improve knowledge about the quality of early childhood education, including to inform parental choice; and

(e) implementing a licensing and certification system that provides service providers, parents, and caregivers with certainty and clarity, as far as is reasonably practicable, regarding minimum standards for quality services.

Current provisions of the Education and Training Act 2020

The purpose of this Part is 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:

- Setting standards to support quality provision and learning
- Supporting the health, safety, and well-being of children
- Enabling parental choice by providing for licensing and funding of different types of provision.

There is scope for the MAG to recommend amendments to section 14 to support any necessary funding policy changes. However, the threshold for doing so is high, as the current provision is broad and reflects Cabinet's recent decisions from the ECE Regulatory Review.

Section 15 – Service providers operating early childhood education and care centres must be licenced

- A service provider who operates an early childhood education and care centre must be licensed in accordance with regulations made under section 636
    - Section 636 is the empowering provision for the Education (Early Childhood Services) Regulations 2008 which sets out provisions for licensing, standards, and additional duties.

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- A licensed early childhood education and care centre may be operated within the premises of a registered school, and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises.

Public Finance Act 1989 (PFA)

The PFA sets out transparency and accountability mechanisms that are crucial for ECE funding. There is a legislated expectation for accountability of public funding stemming from provisions in the Public Finance Act. The Act places expectations on departments and their chief executives in relation to the appropriated funding they are responsible for. This creates flow-on requirements and expectations on non-government providers of services in receipt of this appropriated funding, including with respect to the amount of funding received and what is delivered in return for that funding. Some relevant sections include:

- Section 4 – **"Expenses or capital expenditure must not be incurred unless in accordance with appropriation or statutory authority."** Core constitutional control on spending e.g. ECE funding must be backed by an appropriation (or other statutory authority).
- Section 5 – **"Public money must not be spent unless in accordance with statutory authority."**
- Section 7C – **"Responsibility for, and administration and use of, appropriations."** Minister is responsible for the appropriation and it must be administered by one department on behalf of the Minister
- **Sections 8, 9, and 10 – "Appropriation limited by amount, scope, and period."** Spending cannot exceed maximum amount specified for an appropriation, must fall within the scope of the appropriation, and expenditure is limited to the time period for which the appropriation is authorised.

The "Accountability for ECE Funding" paper also links back to the PFA and highlighted that accountability covers multiple dimensions, including:

- **Performance and outcomes**. Providers may be required to confirm or agree to outcomes and other performance indicators and report on these
- **Financial accountability.** This involves assessing if providers have received appropriate levels of public funding and used these responsibly and transparently. This may be based on compliance against procurement and financial management standards. It also covers use of funding for the purpose/s agreed with the funder.

Funding accountability tends to focus more on performance and outcomes, financial accountability, and legal and contractual dimensions. Accountability does not specify actual technical accounting requirements, as these are governed by a standard setting body (the XRB). However, the providing of financial statements to a funder or service users, compiled according to XRB standards, may be used as an accountability requirement. Accountability may therefore indirectly leverage off transparency and trust created by these external standards.

Guidance from the Treasury and the Office of the Auditor-General (OAG) further reinforces these accountability expectations:

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- Treasury's guidance on financial and performance reporting supports agencies to meet their obligations under the Public Finance Act by clarifying expectations for meaningful performance measures, clear strategic intentions, and robust annual reporting processes
- The OAG's performance-reporting guidance and its audit and Controller functions strengthen scrutiny of how public funding is used, ensuring that expenditure aligns with parliamentary authority and that performance information is coherent, outcome-focused, and reliable
- Joint Treasury / OAG publications on good practice in performance reporting further outline "what good looks like," promoting transparency, credible reporting, and strengthened public trust.

Constraints from the MAG's Terms of Reference

The MAG must consider options that are at least fiscally neutral for the Crown, that is, within total forecast expenditure in scope (The Treasury provided additional advice to the MAG on how to interpret this aspect of the Terms of Reference).

The MAG's focus is on funding allocated to teacher-led early childhood services (education and care services, including casual education and care services, kindergartens, home-based services and hospital-based services) licensed under the Education (Early Childhood Services) Regulations 2008.

Funding that is out of scope is a subset of government funding that is either not provided to ECE services directly or contributes to the education and care and support of ECE-aged children through other channels. The MAG's options for consultation should not cross into the following:

- Curriculum support and learning support
  - Specific and contracted support is **out of scope**, as well as support for individual students
  - Funding subsidy for universal curriculum and learning support, and equity funding the reflects learning support needs is **in scope**
- Te Aho o Te Kura Pounamu (Te Kura)
- Playgroups (grants only) - playgroups are certified rather than licensed
  - However, additional contracted funding for supported playgroups is **in scope.**

Playcentres and kōhanga reo

Funding available only to playcentres and kōhanga reo is out of scope. This is due to these service types either not being so closely linked to labour market participation or because of their main focus being on Māori language revitalisation. Both service types have also received specific funding support and re-consideration of their funding structures recently. The MAG will need to be aware of how proposals may affect playcentres and kōhanga reo in future.

The Ministry has commenced work to approximate the quantum of funding across Votes Education, Revenue, and Social Development that is distributed to playcentre and kōhanga

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reo services. As well as supporting the MAG to understand what quantum of funding which is in-scope of the Review, it will also help the MAG consider the potential impacts of changes to in-scope funding streams which out-of-scope services also benefit from, such as MSD's Childcare Assistance which is paid to both families attending in-scope and out-of-scope services.

20 Hours ECE

The Terms of Reference also directs the MAG to preserve the policy benefits of 20 Hours ECE. The MAG may, if necessary, consider the interaction of this funding stream with other funding in scope but is not expected to make a formal recommendation for a reduction to the benefits of 20 Hours ECE. A paper on intended and identified policy benefits of 20 Hours ECE was provided to the MAG last year. There is scope to:

- Consider the interaction of 20 Hours ECE funding with other funding that is in scope of the Review
- Provide advice about how to preserve (or better achieve) the intended policy benefits of 20 Hours ECE.

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