

# Education and Training Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

26 July 2024

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Education and Training Amendment Bill (**Bill**), which amends the Education and Training Act 2020 (**Act**).
- 1.2 This submission, prepared with input from the Law Society's Public Law Committee and Employment Law Committee,<sup>1</sup> comments on the provisions in the Bill, as well as Amendment Paper 49 (**Amendment Paper**).
- 1.3 The Law Society does not wish to be heard.

## 2 Late publication of Amendment Paper

- 2.1 The Law Society understands the Amendment Paper was published on 23 July 2024, and the select committee's submission deadline was subsequently extended to give submitters four additional days to consider the changes in the Amendment Paper. While it is positive the deadline was extended, this is not ideal legislative practice, particularly in circumstances where the proposed reforms are likely to have "a significant impact" on the rights of employees.<sup>2</sup> The reforms proposed in the Amendment Paper include:<sup>3</sup>
  - (a) The cluster resourcing proposal, which will prevent a teacher who provides services in a cluster resourcing stream from refusing to continue to provide services to a charter school.
  - (b) The multi-employer collective agreement (**MECA**) proposal, which will prohibit charter school employees from being employed under a MECA. This will affect a charter school's employee's rights to be employed under a MECA.
- 2.2 The Law Society would expect such significant proposals to be included in the Bill when it is introduced to the House, and subject to a full select committee process, in order to give the public and relevant unions adequate time to consider the potential impacts of the proposed amendments, and provide considered feedback.

## 3 Clarifying how sponsors can meet section 4(d)

- 3.1 Section 127(1)(d) of the Act requires school boards to give effect to te Tiriti o Waitangi, including by:
  - (a) Working to ensure its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori;
  - (b) Taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
  - (c) Achieving equitable outcomes for Māori students.

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<sup>1</sup> More information about these committees is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

<sup>2</sup> Departmental Disclosure Statement for Amendment Paper 49 at page 3.

<sup>3</sup> Departmental Disclosure Statement for Amendment Paper 49 at page 3.

- 3.2 However, the Bill does not include an equivalent requirement for charter schools/kura hourua (**charter schools**). This creates an inconsistency with the statutory framework for State schools, and effectively creates a carve out of the Crown's te Tiriti obligations in relation to charter schools.
- 3.3 As a result, it is unclear whether the Bill will achieve equitable outcomes for Māori students, noting the Regulatory Impact Statement (**RIS**) for the Bill states:
- (a) There has not been any extensive and meaningful Crown engagement with Māori on the underlying policy proposals,<sup>4</sup> and the Bill has been prepared following “a condensed legislative process with limited time to engage with impacted and interested people, including schools, communities, iwi, families, students, school boards, and staff”.<sup>5</sup>
  - (b) There has been only limited consideration of the impacts of the Bill on Articles 1 and 3 of te Tiriti.<sup>6</sup>
  - (c) Charter schools could reinforce existing inequities experienced by ākonga Māori, particularly if a school's leadership lacks the skills needed to address Māori concerns and inequities (and there is a risk that Māori are not involved in the governance structure if the sponsor does not deem it to be important).<sup>7</sup>
- 3.4 We note section 4(d) of the Act, which states that the purpose of the Act is to establish and regulate an education system that honours te Tiriti and supports Māori-Crown relationships, would continue to apply in respect of both State schools and charter schools. The absence of any obligation equivalent to that provided for in section 127 applying to charter schools hinders the likelihood that the purpose in section 4(d) will be achieved. The framework lacks specific and actionable ways for these schools to meet the purpose of section 4(d). The RIS also raises similar concerns.<sup>8</sup>
- 3.5 We therefore invite the select committee to consider if it would be appropriate to include a provision similar to section 127(1)(d) of the Act, to assist sponsors of charter schools with meeting the purposes of the Act.

#### 4 Converting State schools into charter schools (clause 40)

- 4.1 New section 212G, added by clause 40 of the Bill, gives the Minister of Education (**Minister**) the absolute discretion to direct the board of a State school to apply to convert the State school to a charter school, thereby removing the ability for local communities to have agency over the school which serves that community. This is a very strong power, with the only limits on the exercise of that power being that the Minister must:
- (a) First consider whether it is appropriate to issue such a direction in the circumstances; and

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<sup>4</sup> At page 30.

<sup>5</sup> At page 4.

<sup>6</sup> At page 32.

<sup>7</sup> At pages 3 and 32.

<sup>8</sup> At pages 18 and 32.

- (b) Seek the views of the Authorisation Board on the proposed conversion.
- 4.2 The conversion of a State school into a charter school could have significant impacts on its students and staff, as charter schools have the flexibility to operate differently in the areas of governance, teachers, curriculum, qualifications, and operating hours.<sup>9</sup> The select committee should therefore reconsider whether an absolute discretion is necessary or appropriate in this context (noting the RIS and the Departmental Disclosure Statement for the Bill do not discuss this point).
- 4.3 If this absolute discretion is to be retained, we recommend building in further checks and balances on the exercise of the Minister's absolute discretion in order to improve the clarity and certainty of the legislation, increase transparency and Ministerial accountability, and to uphold the rule of law. Additional checks and balances could include requiring the Minister to:
- (a) Keep written records of any consideration of whether it is appropriate to direct a State school to enter the conversion process, as required under new section 212G(1).
  - (b) Publish the views of the Authorisation Board sought under new section 212G(2), or alternatively, make those views available to the State school board, school community, staff and students.
  - (c) Undertake consultation about the Minister's intention to direct the State school to enter the conversion process. In making this recommendation, we acknowledge new section 212I(5) requires the Authorisation Board to consult the school board, school community, school staff, students, and any other person the Board thinks fit during the conversion process. However, we believe it would be appropriate to also require there be a consultation process before the Minister directs the State school to make an application to the Authorisation Board (for example, targeted engagement with the school board).
  - (d) Provide reasons for making such a direction.

## 5 Lawful instruction regarding charter school services (clause 53A)

- 5.1 New section 601A(1), added by clause 53A of the Amendment Paper, provides that employees at State schools may be 'required' to provide services to a charter school 'if that requirement would otherwise be a lawful and reasonable instruction'. Subsection (2) further states that clause overrides anything to the contrary in a relevant employment agreement.
- 5.2 Where such services are provided, State school employees would continue to be employed by the State school, and would therefore be expected to provide services to the charter school under the terms and conditions in their employment agreement with the State school. New subsection (2) therefore creates uncertainty about what terms and conditions would apply in respect of the services provided to the charter school.

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<sup>9</sup> Departmental Disclosure Statement for the Bill at page 4.

- 5.3 We recommend amending this section to clarify that the terms and conditions in a State school employee's employment agreement would continue to apply in relation to services provided to a charter school.

A handwritten signature in black ink, appearing to read 'Jesse Savage', is placed over a rectangular area with a light grey dotted background.

**Jesse Savage**  
Vice-President