

Legislative Statement for the Education and Training Amendment Bill

Legislative Statement presented in accordance with Standing Order 272 J.17.

Education and Training Amendment Bill – First Reading

This legislative statement supports the first reading of the Education and Training Amendment Bill.

Overview

1. This Bill sets out three proposals:
 - establishes a legislative framework for charter schools/kura hourua (charter schools) and allows for State schools to convert to charter schools; (charter school proposal)
 - removes the requirement to obtain ministerial approval to apply for a licence to operate an early childhood service (ECE network approval proposal) and
 - enables the Secretary for Education (the Secretary) to make rules for State schools about collecting, recording, and providing attendance data (attendance rules proposal).
2. The charter school proposal sets out a new governance and accountability schooling model that provides freedom from some existing restrictions, in return for adhering to contractual obligations to meet specified performance outcomes. This will allow charter schools to find new and innovative ways to provide education intended to better engage their students and improve their learning outcomes.
3. The ECE network approval proposal will simplify the process for establishing a new ECE service, reduce costs to businesses and the Ministry, and enable the market to respond more quickly and directly to the needs of parents and communities.
4. The attendance rules proposal will support new attendance regulations that will require State schools to report attendance on a daily basis. It will enable the Secretary to make rules that set out administrative and procedural requirements relating to attendance records. Having these rules will enable the Ministry to be more responsive to any future changes to systems and data requirements.
5. The intention is for the Bill to come into force this year. This will allow charter schools to be ready to open for Term 1 2025, for attendance rules to be made for Term 1 2025, and for the network approval requirements to be removed soon after Royal Assent.

Key legislative provisions for the charter school proposal

6. The Bill establishes charter schools as a new type of schooling system based on the legislative framework proposed in this Bill and a contract between the Crown and a sponsor. The key features of the charter school model are outlined in the Bill, with details for specific charter schools to be set in contracts between the Charter School Agency and sponsors of charter schools.
7. New subpart 6A of Part 3 provides the legislative framework for charter schools. Schedule 1 provides transitional provisions for State schools converting to charter

schools. Schedules 2 and 3 provide administrative type provisions for the Authorisation Board.

8. Note, section references below relate to new sections in new subpart 6A.

An Authorisation Board will be responsible for making key decisions

9. The Bill establishes a statutory Authorisation Board that will have between five and nine members appointed by the Minister. The Authorisation Board will:

- approve applications for new and converted charter schools;
- oversee the performance of charter schools;
- provide strategic policy advice to the Minister of Education and Ministry of Education on the charter school model; and
- decide whether to apply an intervention to a sponsor.

10. The Authorisation Board will be supported by a Charter School Agency which will be the secretariat for the Authorisation Board.

11. Under the Bill, the Agency makes and manages contracts with sponsors of charter schools.

A proposed sponsor will apply to the Authorisation Board to operate a charter school

12. The Bill outlines the application and approval process for new and converted charter schools.

13. New schools require a proposed sponsor to apply to the Authorisation Board for approval to operate a charter school. For converting schools, the application is made by either the school board with the support of a proposed sponsor, or one or more members of the school community with the support of a proposed sponsor. Specialist schools will not be able to convert.

14. The application must be in an approved form (if any) which will require evidence (including evidence of support) and a prescribed fee (if any).

15. The Bill also allows the Minister of Education to direct a school board to apply to convert a State school to a charter school. The Minister cannot direct boards of the following schools to apply: specialist schools, State integrated schools, distance schools, kura kaupapa Māori, or designated character schools.

16. The Bill requires the Authorisation Board to be satisfied that the proposed sponsor and its governing members are fit and proper persons. The Bill requires the Board to take into account the following mandatory criteria when considering an application:

- the focus of the proposed charter school;
- the capability of the proposed sponsor, including its experience and knowledge of the schooling system and its financial and governance capability;
- the standard of tuition to be provided by the proposed charter school, including the mode of curriculum delivery, and the regularity of instruction;

- the financial implications for the Crown if the proposed school is established;
 - whether the purpose in section 32(e) would be achieved if the proposed charter school is established (this is establishing and managing a network of State and charter schools that allows every student to access quality schooling and provides choice about the types of education they receive);
 - the level of support for the charter school from the community in which it is proposed to be established; and
 - any other matters the Authorisation Board considers relevant.
17. The Authorisation Board must also seek the views of the Secretary for Education and the Chief Review Office (ERO) when considering these criteria.
18. There are additional criteria for converting school applications:
- the performance of the school; and
 - the level of support from the school community, school staff, and students for the proposed and conversion.
19. To find out the level of support for a proposed sponsor and conversion, the Bill requires the Authorisation Board to consult with the school board, school community, staff and students, and anyone else it thinks fit.
20. The Authorisation Board can set conditions on its approval of a sponsor. Two mandatory conditions are:
- all students currently enrolled at the State school who wish to attend the charter school must be allowed to do so; and
 - if the State school is a designated character school, a Kura Kaupapa Māori, or a State integrated school, the character of the school must be maintained.

Sponsors are responsible for governing charter schools

21. Under the Bill, a sponsor is the governing body of a charter school (i.e., similar to a State school board). They can be a body corporate, a corporation sole, limited partnership, institution, or a related entity.

Once approved, the Charter School Agency will negotiate and enter a contract with a sponsor

22. Once the Authorisation Board has approved a sponsor and set conditions on the approval, the Charter School Agency may enter into a charter school contract with the approved sponsor. If the Agency is unable to conclude a contract (for example, insufficient funding, or if the approved sponsor does not have access to adequate infrastructure, a curriculum, or teachers), then the application must be referred back to the Authorisation Board for a reconsideration.
23. Once a charter school contract is signed, the Minister must notify the establishment of the charter school in the Gazette.
24. The Bill outlines requirements of a charter school contract which must include:

- the physical capacity of the school premises;
- performance targets and outcomes the sponsors must meet;
- specific measures that will be used to determine if those targets have been met;
- annual financial statement timeframes;
- the annual self-audit report that the sponsor must complete;
- the number or percentage of teaching positions that must be filled by teachers with practising certificates, or persons holding a limited authority to teach;
- the curriculum to be taught at the school and its mode of delivery;
- the qualifications to be offered by the school;
- renewal and termination of the contract;
- what happens if the contract expires or is terminated;
- the need to have a complaints policy; and
- the grounds for the Authorisation Board to apply the lower-level interventions and the process to follow.

Charter schools will have more flexibility than State schools

25. Under the Bill, sponsors will have more flexibility than boards of State schools in some areas. For example, they will have the flexibility (with some restrictions) to determine the use of funding, the type of teachers they use, the hours and days of operation, and the curriculum and qualifications offered at their schools.

Curriculum and qualifications

26. When deciding on the curriculum, the Bill requires a sponsor to have regard to any statement of national education and learning priorities and ensure that the curriculum meets tuition standards that are at least equivalent to State schools of the same year levels.
27. The Bill requires a sponsor to ensure that students have access to a nationally and internationally recognised qualification system.

Governance

28. The Bill requires the sponsor to govern the school so as to ensure that every student is able to attain the highest possible standard of educational achievement.
29. A sponsor must employ a chief executive (for the day-to-day management of the school) and a person to be responsible for teaching and learning at the school (who is appropriately qualified and holds a current practising certificate).

Teaching staff

30. The Bill requires the charter school contract to specify the number or percentage of teaching positions that must be filled by teachers with practising certificates, or persons holding a limited authority to teach (LAT). LAT holders employed at charter schools will have more flexibility than LAT holders at State schools as they:
- can be appointed permanently;
 - will only be subject to the disciplinary procedures of the Teaching Council and not the competency procedures; and
 - can be appointed even if the person's skills are not in short supply and are not specialist skills.

Hours and days open

31. The Bill is silent on the hours and days a charter school must be open as this will be specified in the charter school contracts.

Funding

32. The Bill is silent on the funding model. The funding model has a strong per-student focus, with charter schools funded on a "per student basis", broadly equivalent to resourcing for State schools of the same type and roll. For converting schools, the model ensures that funding follows the student as they move from a State school to a charter school.

There are transition arrangements for converting schools

33. The Bill provides transition arrangements for converting schools which:
- dissolve the board of the converted school when a school converts;
 - treat an integration agreement for a State integrated school as if cancelled;
 - vests all rights, assets, and liabilities that belong to a converted school immediately before the conversion date as vested in the Minister on behalf of the Crown;
 - provides for how property of a converted school that is held in a trust is treated; and
 - provides for how employees of a converted school are treated.
34. Employees are transferred on terms and conditions that are no less favourable overall to those that applied to the person immediately before they became an employee of a sponsor. This is until they are varied by agreement between the transferred employee and the sponsor (on an individual employment agreement), or the transferred employee becomes bound by a collective agreement.
35. The transferred employee is not entitled to receive any contractual notice, payment, benefit, or compensation from the converted school on the grounds that their position has ceased to exist, or they are no longer an employee of the board of the converted school as a result of the transfer. This overrides Part 6A of the Employment Relations

Act 2000 and any employment protection provision in any relevant employment agreement.

36. There will need to be some modifications to some terms, for example, to reflect the eligibility of a transferred employee who holds a teaching position for any specific awards, grants, or leave.

Sponsors are responsible for the charter school

37. The Bill sets out the following duties of sponsors:

- govern the school so as to ensure that every student is able to attain the highest possible standard of educational achievement;
- ensure that every governing member of the sponsor remains a fit and proper person to operate the school;
- ensure that a safe physical and emotional environment is provided for students and staff;
- appoint a chief executive (for the day-to-day management of the school) and a person to be responsible for teaching and learning at the school (who is appropriately qualified and holds a current practising certificate);
- ensure that teachers employed in the school have the necessary qualifications and skills to teach;
- ensure that the school's chief executive and staff develop and deliver a curriculum for teaching, learning, and assessment having regard to any statement of national education and learning priorities; and that meets tuition standards at least equivalent to State schools of the same year levels;
- in operating the school, take into consideration any statement of national education and learning priorities;
- ensure that students have access to a nationally and internationally recognised qualification system;
- inform parents of the progress of their children at school, and any barriers to progress, at intervals specified in the charter school contract;
- make details of the curriculum and its delivery available to parents;
- have policies for internal disputes management, and engagement with the school community; and
- ensure that any complaints against the school are responded to promptly.

38. Sponsors have complete discretion over the management of their school. Under the Bill they can make bylaws for the control and management of the school. They can delegate their functions but must not delegate the power to delegate, the power to make bylaws, or its functions relating to stand-down, suspensions, exclusions, or expulsion of students.

What happens if a sponsor is not complying with their legislative and contractual obligations?

39. If a sponsor is not complying with their legislative or contractual obligations, the Authorisation Board, may make a decision on the use of an intervention against the school.
40. The Bill sets out five interventions:
- require the Chief Review Officer to conduct a review of the governance and management of a school by its sponsor;
 - require a sponsor to provide the Authorisation Board (or any other person authorised by the Authorisation Board) the following at a given time, at specified intervals, or both;
 - specified information:
 - an analysis of the specified information to be provided:
 - require a sponsor to do the following at a given time, at specified intervals, or both:
 - carry out a specified action:
 - provide the chief executive of the Agency with a report (for example, a progress report and a final report) on the action taken;
 - terminate the charter school contract with a sponsor; and
 - terminate the charter school contract and replace the sponsor of the charter school with another sponsor.
41. The triggers and processes behind the interventions that involve terminating a contract are set out in the Bill. To consider this level of intervention, the Authorisation Board must deem that a lesser intervention is not sufficient and either:
- have reasonable grounds to believe the sponsor has failed to comply with any of its contractual or legislative obligations, and has not remedied that failure within a reasonable time or the failure cannot be remedied; or
 - consider there is a significant risk that the sponsor will not comply with the any of its contractual or legislative obligations, and the sponsor is unlikely to mitigate this risk within a reasonable time.
42. The Authorisation Board may use the other interventions as permitted under the contract.

Charter schools must accept eligible applications to enrol from domestic students unless oversubscribed

43. Provided that they are not oversubscribed (the number of students exceeds the physical capacity of the school), charter schools must enrol all eligible domestic students who apply to the school. However, a charter school can refuse to enrol a student if a parent refuses to accept the school's character.

44. In the case of a converting school that is oversubscribed and had an enrolment scheme before its conversion, the Bill provides a priority list for applications (section 212T). The first priority is given to applicants who live in the area of the converting school's previous zone.
45. There is a different priority order for converting schools that did not have an enrolment scheme in place before conversion, and for new charter schools.

Sponsors may not charge tuition fees but can charge property maintenance fees

46. Sponsors may not charge domestic students tuition fees but can charge international students tuition fees.
47. Charter schools that own property will be able to charge property maintenance fees. This will also apply to sponsors of State integrated schools that convert where the proprietor owned, leased or held in trust property and their integration agreement provided for them to charge attendance dues.

Students may receive tuition from another charter school or State school

48. Students at charter schools may, by agreement between the sponsor of the charter school and the board of a State school, receive tuition at or from a State school. They can also receive tuition at or from another charter school.
49. The sponsor of the charter school may pay the board of the State school or the other charter school that gives the tuition. This includes tuition delivered through any medium including digital technology.
50. This is mirrored for students at State schools, who may receive tuition at a charter school.

A person may make a complaint about a charter school to an independent reviewer or an Ombudsman

51. Each charter school must have a complaints policy, including a procedure for the independent review of complaints. Sponsors must ensure complaints against the school are responded to promptly.
52. The charter school contract will specify that a person may make a complaint to an independent reviewer (appointed by the sponsor under the complaints policy) or an Ombudsman, or both.

The Bill provides for bylaws made by sponsors and regulations made by the Governor-General

53. The Bill amends section 638 (Regulations relating to how schools must be run) by extending the regulation-making powers so that regulations may:
 - give powers to, or impose duties on, sponsors or persons responsible for teaching and learning; and
 - prescribe processes and procedures regarding sponsors or persons responsible for teaching and learning.

54. The Bill inserts a new section 651A, which empowers the Governor-General to make regulations around prescribing fees for applications seeking the approval to operate a charter school.
55. There are several regulations that apply to State schools that will also apply to charter schools. These are:
 - Education (School Risk Management Scheme) Regulations 2003;
 - Education (School Boards) Regulations 2020 (to allow students enrolled at State schools to also be given tuition at a charter school)
 - Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999
56. Similar to the boards of State schools, sponsors will be able to make any bylaws that they think are necessary or desirable for the control and management of the school.
57. The Bill allows the Secretary to make rules that apply to sponsors and persons responsible for teaching and learning. These are currently the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999 referenced above.

Some provisions for State schools in the Act will also apply to charter schools

58. Under the Bill some existing provisions of the Act that apply to State schools will also apply to charter schools, with appropriate modifications. This includes provisions on:
 - the right to free enrolment and free education;
 - students with special education needs having the same rights to education;
 - special education;
 - attendance officers;
 - release from tuition;
 - cohort entry policy;
 - stand down, suspension, exclusion, and expulsion;
 - appointment of teachers, appointment of holders of limited authority to teach;
 - complaints assessment committee and disciplinary tribunal;
 - guidance and counselling;
 - police vetting;
 - enrolment and attendance records; and
 - international students.

Other legislation that will apply

59. The Bill applies certain other legislation to sponsors and/or the Authorisation Board. This includes:
- The New Zealand Bill of Rights Act 1990 applies to sponsors and persons employed or engaged to work by a sponsor;
 - The Ombudsmen Act 1975 will apply to the Authorisation Board and sponsors
 - The Official Information Act 1982 will apply to the Authorisation Board but not sponsors
 - The Children's Act 2013 will apply to sponsors.
60. There are several regulations that apply to State schools that will also apply to charter schools. These are:
- Education (School Risk Management Scheme) Regulations 2003;
 - Education (School Boards) Regulations 2020 (to allow students enrolled at State schools to also be given tuition at a charter school)
 - Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999

Key legislative provisions for the ECE proposal

61. For the ECE network approval proposal, the Bill repeals the following sections from the Act:
- Sections 17 to 18C of the Act which requires prospective new services to apply for network approval; and requires the Secretary to assess whether the applicants are fit and proper, and the financial viability of the service.
 - The definition of 'excluded early childhood service' in section 10 of the Act, which relates to services that teach in or through te reo Māori and are excluded from the requirement to apply for network approval if they meet the criteria as set out in the Gazette notice.
62. The Bill also makes the following changes to regulations:
- revokes the Education (Early Childhood Services Network Approval) Regulations 2022 that include information requirements, processing timeframes, approval notice, and fees;
 - removes consequential changes to the Education (Early Childhood Services) Regulations 2008 that were necessary to implement network approval, including:
 - the network approval details that must be included on a licence application;
 - the provision that licences may be subject to network approval conditions; and
 - the provision which requires network considerations to be taken into account when assessing applications to amend licenses.

Key legislative provisions for the attendance rules proposal

63. For the attendance rule proposal, the Bill inserts a new section that:

- requires principals of State schools to ensure that attendance records are kept for all students;
- requires that attendance records must be in the correct form, and contain all the required information, as specified in the rules;
- enables the secretary to make rules that set out the administrative and procedural requirements relating to attendance records, including on:
 - specifying the form and content of attendance records:
 - relating to the collection, storage, and disclosure of information contained in attendance records:
 - specifying the circumstances in which any exceptions to any general requirements for specific school types may be made; and
 - requiring principals to comply with the rules (if any).