

# House of Representatives

## Supplementary Order Paper

Wednesday, 5 April 2006

### Education Amendment Bill

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#### *Proposed amendments*

Hon Steve Maharey, in Committee, to move the following amendments:

#### *Clause 2*

To add the following subclause (after line 9 on page 3):

- (3) Despite **subsections (1) and (2), sections 314(1) to (4), 317, and 319** (as inserted by **section 43** of this Act) come into force on the day after the date on which this Act receives the Royal assent.

#### *New clause 5A*

To insert the following clause after *clause 5* (after line 6 on page 4):

#### **5A Delegations**

Section 66(8) is amended by omitting “subsection (1)(b)” and substituting “subsection (4)(b)”.

#### *Clause 15*

To add the following subclause as *subclause (2)* (after line 31 on page 10):

- (2) Regulation 4 of the Education (Registration of Early Childhood Services Teachers) Regulations 2004 is consequentially amended by repealing subclause (2)(a) and substituting the following paragraph:
  - “(a) 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:”.

#### *New clause 17*

To insert the following clause above *clause 18* (above line 9 on page 11):

#### **17 Restrictions on continued employment of teachers**

Section 120B(4)(b) is amended by omitting “Board” and substituting “Teachers Council”.

*Clause 18*

To add the following subclause as *subclause (2)* (after line 12 on page 11):

- (2) Section 126(7) is amended by omitting “the High Court” in the second place where it appears and substituting “the District Court”.

*New clause 23AA*

To insert the following clause after *clause 23(3C)* (after line 28 on page 16):

**23AA Complaints and reports relating to teacher conduct**

- (1) Section 139AS(1)(a) is amended by omitting “relate” and substituting “relates”.
- (2) Section 139AS(1)(b) is repealed.

*Clause 23A*

To insert the following subclauses immediately after the heading (after line 29 on page 16):

- (1AA) Section 139AT(2) is amended by omitting “a complaint or report referred to it under section 139AS,—” and substituting “any matter other than a conviction to which section 139AV relates, do any of the following:”.
- (1AB) Section 139AT(2) is amended by repealing paragraph (d) and substituting the following paragraph:
  - “(d) by agreement with the teacher and the person who made the complaint or report, do any of the following:
    - “(i) censure the teacher:
    - “(ii) impose conditions on the teacher’s practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
    - “(iii) suspend the teacher’s practising certificate or authority for a specified period, or until specified conditions are met:
    - “(iv) annotate the register or the list of authorised persons in a specified manner.”

*New clause 23B*

To insert the following clause after *clause 23A* (after line 9 on page 17):

**23B Investigation of reports of convictions**

- (1) The heading to section 139AV is amended by inserting “by **Complaints Assessment Committee**” after “**Investigation**”.
- (2) Section 139AV is amended by repealing subsection (2) and substituting the following subsection:
  - “(2) Following the investigation of such a conviction, the Complaints Assessment Committee may do any of the following:
    - “(a) dismiss the matter, or resolve to take it no further:
    - “(b) refer the teacher concerned to a competency review:

- “(c) refer the teacher concerned to an impairment process which may involve assessing, and (if necessary) assisting with, an impairment:
- “(d) by agreement with the teacher, do any of the following:
  - “(i) censure the teacher:
  - “(ii) impose conditions on the teacher’s practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
  - “(iii) annotate the register or the list of authorised persons in a specified manner.”

*Clause 29: new section 139E*

To omit *subsection (4)* (lines 8 to 11 on page 20) and substitute the following subsection:

- “(4) Agreements entered into under this section may be declared, under **section 307AC**, to be bonded scholarships.

*New clause 29A*

To insert the following clause after *clause 29* (after line 12 on page 20):

**29A Single sex schools**

Section 146A(1) is amended by omitting “secondary”.

*Clause 30: new section 154A*

To insert the following subsection after *subsection (5)* (after line 11 on page 21):

- “(5A) No state school may be designated as a Kura Kaupapa Maori unless the Minister has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A)”.

*New clause 30A*

To insert the following clause after *clause 30* (after line 15 on page 21):

**30A Kura Kaupapa Maori**

Section 155 is amended by inserting the following subsection after subsection (3):

- “(3A) The Minister may not establish a state school as a Kura Kaupapa Maori unless he or she has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A).”

*Clause 40*

To omit “**section 307AB**” from the heading (line 10 on page 24) and substitute “**sections 307AB and 307AC**”.

To omit “following section” (line 12 on page 24) and substitute “following sections”.

New *section 307AB*: to omit *subsection (2)* (lines 17 to 20 on page 24) and substitute the following subsection:

- “(2) **Subsection (1)** applies to any allowance paid otherwise than under an enactment, whether it first became payable before or after this section comes into force.

To add the following section (after line 20 on page 24):

**“307AC Bonded scholarships**

- “(1) The Minister may, by notice in the *Gazette*, declare that any allowance that is gazetted under **section 307AB**, and any agreement under **section 139E**, is a bonded scholarship.
- “(2) The effect of declaring an allowance or agreement to be a bonded scholarship is that, under **section 2A** of the Student Loan Scheme Act 1992, the Student Loan Scheme Act 1992 applies to enable the recovery of money in accordance with the terms of the scholarship.”

*Clause 43*

The definition of **home-based education and care service** in new *section 309*: to omit “education and care” where it appears in lines 10, 12 and 13, and 15 and 16 on page 26, and substitute in each case “education or care”.

The definition of **hospital-based education and care service** in new *section 309*: to omit “education and care” (line 20 on page 26) and substitute “education or care”.

Paragraphs (b) and (c) of the definition of **service provider** in new *section 309*: to omit “that education and care” in both places where it appears (lines 28 and 31 on page 27) and substitute in each case “that education or care”.

New *section 310(1)*: to omit “education and care of 3 or more children (not being children of the persons providing the education and care)” (lines 37 and 38 on page 27) and substitute “education or care of 3 or more children (not being children of the persons providing the education or care, or children enrolled at a school being provided with education or care before or after school)”.

New *section 310(2)*: to insert the following paragraph after paragraph (a) (after line 6 on page 28):

- “(ab) hostels (within the meaning of section 2(1) of this Act):

New *section 310(2)(f)*: to omit “caregiver” (line 22 on page 28) and substitute “members of the same family in the care of a caregiver who is not acting for gain or reward”.

New *section 310(2)(g)*: to omit “care and education” (lines 23 and 24 on page 28) and substitute “education or care”.

New *section 310(3)(b)*: to omit “education and care” (line 37 on page 28) and substitute “education or care”.

New *section 317(2)(a)*: to insert “staffing and parental or caregiver participation (including adult:child ratios), health and safety,” after “development,” (line 20 on page 33).

New *section 317(2)(b)*: to omit “Secretary” in the first two places where it appears (lines 27 and 28 on page 33) and substitute in both places “Minister”.

New *section 317(2)(e)*: to add “, or do any of these things” (line 13 on page 34).

New *section 317(2)*: to insert the following paragraph after paragraph (h) (after line 34 on page 34):

“(ha) provide for transitional matters not dealt with in this Act:

New *section 317(3)*: to omit “, criteria,” (line 39 on page 34).

New *section 317*: to add the following subsection (after line 1 on page 35):

“(4) Criteria prescribed by the Minister for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including (without limitation), for—

“(a) early childhood services of different types or descriptions; and

“(b) different kinds of licences; and

“(c) different minimum standards.

New *section 318*: to omit “The” (line 3 on page 35) and substitute “A”.

New *section 319(a)*: to insert “parental or caregiver participation (including adult:child ratios), health and safety,” after “development,” (line 12 on page 35).

New *section 319(b)*: to omit paragraph (b) (lines 18 to 23 on page 35) and substitute the following paragraph:

“(b) authorise the Minister, after consultation with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the Secretary to assess compliance with minimum standards imposed by these regulations:

New *section 319(e)*: to omit “and cancellation of certificates” (line 34 on page 35) and substitute “reclassification, and cancellation of certificates of 1 or more specified kinds”.

New *section 319(e)*: to add “, or do any of these things” (line 38 on page 35).

New *section 319(h)*: to insert “either or both of” after “for” (line 8 on page 36).

New *section 319*: to add the following paragraph and the following subsection as subsection (2) (after line 12 on page 36):

“(i) provide for transitional matters not dealt with in this Act.

“(2) Criteria prescribed by the Minister for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including (without limitation), for—

“(a) different kinds of certificates; and

“(b) different standards.

New *section 319B*: to insert “all or” after “do” (line 15 on page 37).

New *section 319K*: to omit subsection (1) (lines 10 to 20 on page 43) and substitute the following subsection:

- “(1) Subject to **subsections (2), (3), and (6)**, every early childhood centre that, immediately before the commencement of this section, was licensed as an early childhood centre is deemed to be licensed as an early childhood education and care centre under this subsection, and continues to be so licensed—
- “(a) for the relevant period, and in accordance with the regulations referred to in **section 319M(1)(a) and (b)**; or
  - “(b) if the service provider who operates that centre applies within the relevant period for a licence in accordance with regulations made under **section 317**, until that application is determined.

New *section 319K(9)*: to omit “**(3) to (6)**” (line 26 on page 44) and substitute “**(1) to (6)**”.

New *section 319K*: to add the following subsection (after line 28 on page 44):

- “(10) In this section, **relevant period** means,—
- “(a) in relation to an early childhood centre for which a probationary licence was in force immediately before the commencement of this section, the period expiring on—
    - “(i) the date specified in the probationary licence as the date on which it expires; or
    - “(ii) if a full licence is obtained under the regulations referred to in **section 319M(1)(a) and (b)** before the expiry of that probationary licence, the date that is 6 years after the commencement of this section:
  - “(b) in relation to an early childhood centre for which a provisional or full licence was in force immediately before the commencement of this section, the date that is 6 years after the commencement of this section.

New *section 319L(1)*: to omit “**section 317** (as inserted by **section 43** of the Education Amendment Act 2004)” (lines 32 and 33 on page 44) and substitute “this section”.

New *section 319L(1)(a)*: to insert “after the commencement of this section” after “6 years” (line 37 on page 44).

New *section 319L*: to insert the following section (after line 12 on page 46):

**“319LA Funding conditions during transitional period**

- “(1) This section applies in respect of—
- “(a) a service provider who operates an early childhood education and care centre that immediately before the commencement of this section was a chartered early childhood centre, during the period while it is deemed to be licensed under **section 319K(1)**; and

- “(b) a service provider who operates a home-based education and care service and who immediately before the commencement of this section was a chartered care arranger, during the period while the service provider is deemed to be licensed under **section 319L(1)**.
- “(2) While this section applies in respect of a service provider who operates an early childhood education and care centre or a home-based education and care service, it is a condition of any grant paid to that provider under **section 311** that the provider continues to comply with the relevant statement of desirable objectives and practices published in the *Gazette* under section 312 (as that section read before the commencement of this section).
- “(3) The Minister may at any time, while this section applies in respect of any service provider, amend, revoke, or replace any statement of desirable objectives and practices referred to in **subsection (2)** by notice in the *Gazette*.

New *section 319M*: to insert the following subsection after subsection (1) (after line 22 on page 46):

- “(1A) Despite **subsection (1)** the regulations referred to in **subsection (1)** are not to be treated as regulations made under **section 317** (as inserted by **section 43** of the Education Amendment Act **2004**) for the purposes of the following provisions:
  - “(a) **section 319K(1)(b), (2), and (5)**; and
  - “(b) **section 319L(1)(b), (2), and (5)**; and
  - “(c) **section 319N(1)**.

New *section 319N(1)*: to insert “date of the” after “after the” (lines 30 and 31 on page 46).

#### Clause 49

To omit this clause (lines 27 to 32 on page 50) and substitute the following clause:

- 49 Student Loan Scheme Act 1992 amended**
  - (1) The Student Loan Scheme Act 1992 is amended by inserting the following section after section 2:
    - “2A Application of Act to bonded scholarships**
    - “(1) In this section, **bonded scholarship** means an allowance or agreement that is declared under **section 307AC** of the Education Act 1989 to be a bonded scholarship.
    - “(2) Any amount repayable under a bonded scholarship (the **default amount**), along with any interest payable in accordance with the scholarship agreement, may be recovered under this Act as if—
      - “(a) the default amount were a student loan; and
      - “(b) the recipient of the scholarship were a borrower; and
      - “(c) the scholarship agreement were a loan contract.

- “(3) Despite any enactment or rule of law, if a provision in an agreement for a bonded scholarship conflicts with this provision, this provision prevails.”
- (2) For the purpose of giving effect to **section 2A** of the Student Loan Scheme Act 1992 with respect to TeachNZ scholarships entered into before that section comes into force, if TeachNZ scholarships are declared under **section 307AC** of the principal Act to be bonded scholarships, then—
- (a) the provisions of the standard 2005 loan contract for student loans that relate to payment of interest are deemed to be included (with any necessary modifications) in the agreements for TeachNZ scholarships; and
- (b) those provisions are deemed always to have been part of the agreement and therefore apply whether any default under the scholarship occurs before or after the commencement of this section.

*Clause 51(3)(d)*

To add “and the Schedule” after “204” (line 11 on page 51).

*Schedule 2: Part 2*

To add the following items to the items relating to the Education (Early Childhood Centres) Regulations 1998 (after line 12 on page 55):

Definition of **management** from regulation 2(1): omit.

Add to regulation 2:

“**service provider** has the meaning given to it by paragraph (a) of the definition of that term in **section 309** of the Act”.

Insert after regulation 2:

**“2A Application**

These regulations apply in respect of a centre and its service provider while the centre is deemed to be licensed under **section 319K(1)** of the Act.”

Regulations 3(1) and 13(2): omit “management” wherever it appears and substitute “service provider”.

Regulation 11(3): omit “management” and substitute “service provider”.

To insert the following item after the item relating to the Education (Early Childhood Centres) Regulations 1998 (after line 12 on page 55):

**Education (Home-Based Care) Order 1992 (SR 1992/238)**

Clause 1 of the Schedule: omit the definition of “arranger” and substitute in its appropriate alphabetical order:

“**service provider** means a body, an agency, or a person who provides home-based education and care (as defined in clause 1 of the Schedule) as part of a licensed home-based education and care service (as defined in **section 309** of the Act)”.

Clause 1 of the Schedule: omit the definition of “home-based care” and substitute:



**Education (Home-Based Care) Order 1992 (SR 1992/238)—**

*continued*

“**home-based education and care** means the provision of education or care, for gain or reward, to fewer than 5 children under the age of 6 (in addition to any child enrolled at school who is the child of the person who provides education or care), in—

“(a) their own home; or

“(b) the home of the person providing the education and care; or

“(c) any other home nominated by the parents of the children”.

The Schedule: omit “an arranger” wherever it appears and substitute in each case “a service provider”.

The Schedule: omit “care” wherever it appears and substitute in each case “education and care”.

Clause 2 of the Schedule: omit “An arranger” and substitute “A service provider”.

Clause 4 of the Schedule: omit “An arranger” and substitute “A service provider”.

The Schedule: omit “the arranger” wherever it appears and substitute in each case “the service provider”.

The Schedule: omit “The arranger” wherever it appears and substitute in each case “The service provider”.

The Schedule: omit “home-based care” wherever it appears and substitute in each case “home-based education and care”.

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**Explanatory note**

This Supplementary Order Paper (SOP) amends the Education Amendment Bill (the **principal Act**).

New *clause 23AA*, the amendment to *clause 23A*, and new *clause 23B* make changes to the principal Act that relate to the powers of the Complaints Assessment Committee of the Teachers Council. They are intended to—

- clarify that reports of convictions are dealt with solely under section 139AV;
- change section 139AT(2)(d) so that things that may presently be done by agreement with the teacher and complainant may be done whether the original complaint or report was about misconduct or any other matter (except a conviction).

The amendment to *clause 30* and new *clause 30A* insert a requirement to consult with te kaitiaki o Te Aho Matua before a school is established or designated as a Kura Kaupapa Maori.

Various amendments are made to more adequately provide for the application of the Student Loan Scheme Act 1992 to certain scholarships. For this purpose, the SOP—

- amends new *section 139E (clause 29)* to clarify that agreements for bonds for trainee teachers, as provided for in that section, may be declared to be bonded scholarships:
- amends *clause 40* to split new *section 307AB* into 2 sections. New *section 307AB* now deals with allowances generally. New *section 307AC* deals with bonded scholarships in particular, and provides a reference to recovery under the Student Loan Scheme Act 1992.
- amends *clause 49*, which amends the Student Loan Scheme Act 1992. *Subclause (2)* is a transitional provision that allows the Student Loan Scheme Act 1992 to apply to TeachNZ scholarships that were entered into before *clause 49* comes into force.

Finally, the SOP makes a number of minor and technical amendments as follows:

- new *clause 5A* corrects a wrong cross reference that was inserted by the Crown Entities Act 2004:
- the amendment to *clause 15* makes an amendment to regulations that is required as a consequence of changes made to the principal Act by that clause:
- new *clause 17* corrects a wrong reference in section 120B(4)(b) from the “Board” to the “Teachers Council”:
- an amendment to section 126(7) in *clause 18* corrects a wrong reference to the High Court.
- new *clause 29A* omits the word “secondary” from section 146A(1), which has the effect of meaning that the Minister may gazette any school, not just a secondary school, as a single sex school under that section:
- *clause 51* is amended to repeal the Schedule of the Education Act 1964, which is now spent:
- a number of amendments to new *Part 26* of the principal Act (set out in *clause 43*) and *clause 2* and *Schedule 2* relating to early childhood education and care. These include—
  - enabling the curriculum framework relating to early childhood education and care, new regulations, and their supporting criteria to be promulgated before the rest of new *Part 26* comes into force:
  - removing the ability of the Secretary to prescribe criteria to be used to assess compliance with the minimum standards set out in the regulations and giving that power to the Minister:
  - correcting errors:
  - making further refinements, particularly to the transitional provisions relating to existing licensed or chartered early childhood services:
  - inserting other necessary amendments to regulations consequential on changes made by new *Part 26*.

