

House of Representatives

Supplementary Order Paper

Tuesday, 29 November 2016

Education (Update) Amendment Bill

Proposed amendments

Hon Hekia Parata, in Committee, to move the following amendments:

New clause 96A

After *clause 96* (page 51, after line 13), insert:

96A New sections 139AB to 139AE inserted

After section 139A, insert:

139AB No seclusion at or on behalf of registered school or early childhood service

- (1) A person to whom this section applies must not seclude any student or child who is enrolled at or attending a registered school or an early childhood service.
- (2) This section applies to a teacher or any other person who is—
 - (a) employed by a board; or
 - (b) employed by the managers of a school registered under section 35A; or
 - (c) employed by the sponsor of a partnership school kura hourua; or
 - (d) employed or engaged by the service provider of an early childhood service; or
 - (e) providing education or care to children attending an early childhood service; or
 - (f) supervising or controlling any student or child on behalf of—
 - (i) a board; or

- (ii) the managers of a school registered under section 35A;
or
- (iii) the sponsor of a partnership school kura hourua; or
- (iv) the service provider of an early childhood service.

(3) In this section,—

early childhood service has the meaning given to it by section 309

seclude, in relation to a student or child, means to place the student or child involuntarily alone in a room from which he or she cannot freely exit or from which the student or child believes that he or she cannot freely exit

service provider has the meaning given to it by section 309.

139AC Limits on use of physical restraint

(1) A teacher or authorised staff member must not physically restrain a student unless—

- (a) the teacher or staff member reasonably believes that the safety of the student or of any other person is at serious and imminent risk; and
- (b) the physical restraint is reasonable in the circumstances.

(2) In this section and in **sections 139AD and 139AE**,—

authorised staff member means an employee of a board who is authorised by the board to use physical restraint in accordance with this section

physically restrain, in relation to a student, means to use physical force to prevent, restrict, or subdue the movement of the student's body or part of the student's body

teacher means a person who holds a teaching position (as defined in section 348) at a State school.

139AD Rules on physical restraint

(1) The Secretary must make rules prescribing the practice and procedure to be followed by boards, principals, teachers, and authorised staff members in relation to physical restraint.

(2) The rules must include—

- (a) requirements to keep written records on the use of physical restraint, including requirements to notify, monitor, and report on the use of physical restraint; and
- (b) a procedure for authorising staff members to use physical restraint in accordance with **section 139AC**.

- (3) Rules made under this section are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

139AE Guidelines on physical restraint

- (1) The Secretary must, by notice in the *Gazette*, issue guidelines on the use of physical restraint in State schools and partnership schools kura hourua.
- (2) The guidelines must include—
 - (a) best practice examples for the use of physical restraint; and
 - (b) other examples of best practice in behaviour management.
- (3) Boards, principals, teachers, and authorised staff members must have regard to the guidelines.

New clause 116A

After *clause 116* (page 56, after line 2), insert:

116A Section 158U amended (Application of this Act to partnership schools kura horua)

- (1) In section 158U(1), after “section 78CD,”, insert “**139AC to 139AE**,”.
- (2) In section 158U(2), after “section 78CD,”, insert “**139AC to 139AE**,”.
- (3) In section 158U(5), replace “section 120” with “section 348”.
- (4) After section 158U(5), insert:
- (6) In their application to partnership schools kura hourua under subsection (1), **sections 139AC to 139AE** must also be read as if the definition of teacher in **section 139AC(2)** were replaced with the following definition:
teacher means a person who holds a teaching position (as defined in section 348) at a partnership school kura hourua.

New clauses 128A and 128B

After *clause 128* (page 59, after line 31), insert:

128A Section 317 amended (Regulations relating to licensing)

In section 317(2)(a), after “health and safety,”, insert “practices in relation to behaviour management and limits on the use of physical restraint,”.

128B Section 319 amended (Regulations relating to certification of playgroups)

In section 319(1)(a), after “health and safety,” insert “practices in relation to behaviour management and limits on the use of physical restraint,”.

Explanatory note

This Supplementary Order Paper amends the Education (Update) Amendment Bill (the **Bill**) to make a number of further amendments to the Education Act 1989 (the **Act**). The main objectives of these amendments are to prohibit seclusion and to regulate the use of physical restraint.

To achieve these objectives, *new clause 96A* inserts *new sections 139AB to 139AE*. The proposed new sections—

- prohibit seclusion of a student or child enrolled at or attending a registered school or early childhood service by a teacher or any other person employed or contracted by, or volunteering for, a registered school or early childhood service; and
- define seclusion, in relation to a student or child, as placing the student or child involuntarily alone in a room from which he or she cannot freely exit or from which the student or child believes that he or she cannot freely exit; and
- prohibit the use of physical restraint on a student by a teacher or authorised staff member except in situations where the teacher or staff member reasonably believes that the safety of the student or of any other person is at serious and imminent risk and the physical restraint is reasonable in the circumstances; and
- define physical restraint, in relation to a student, as being the use of physical force to prevent, restrict, or subdue the movement of the student’s body or part of the student’s body; and
- require the Secretary to make rules prescribing the practice and procedure to be followed by boards, principals, teachers, and authorised staff members in relation to physical restraint; and
- require the Secretary to issue guidelines on the use of physical restraint in state schools and partnership schools kura hourua.

The Supplementary Order Paper also inserts *new clause 116A* in the Bill, which amends section 158U of the Act. The amendments provide that *new sections 139AC to 139AE* (relating to physical restraint) apply to partnership schools kura hourua and modify the meaning of certain terms in those provisions in relation to their application to partnership schools kura hourua.

New clause 128A is inserted into the Bill by the Supplementary Order Paper to amend section 317 of the Act. The amendment expands the scope of the empowering provision for regulations relating to the licensing of early childhood services to include practices in relation to behaviour management and limits on the use of physical re-

straint. Likewise, *new clause 128B* amends section 319 of the Act to include behaviour management practices and limits on physical restraint among the subjects on which regulations may be made relating to the certification of playgroups.

Departmental disclosure statement

The Ministry of Education considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.