

Education and Training Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education and Training Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Overview of the bill

The Education and Training Amendment Bill would amend the Education and Training Act 2020 to implement three main policy changes. The bill would:

- provide a legislative framework for charter schools/kura hourua to operate, as a new type of school in addition to State and private schools, and to allow for the conversion of State schools to charter schools
- remove the Act’s requirement that anyone wanting to operate new licensed early childhood education (ECE) services must first receive “network approval” from the Minister
- enable the Secretary for Education to make rules for State schools about collecting, recording, and providing attendance data.

Amendment Paper No 49

The bill was referred to us on 25 June 2024. On 23 July, the Associate Minister of Education released Amendment Paper No 49 and asked us to consider it as part of our examination of the bill. The amendment paper proposes three new provisions relating to charter schools:

- a restriction on unions from initiating bargaining for a multi-employer collective agreement (MECA) with sponsors of charter schools (new section 212ZCA)

- the ability for a board of a State school to require its employees to provide services to a charter school or a student enrolled at that charter school if that would otherwise be a lawful and reasonable instruction (new section 601A)
- the ability for arrangements between schools for shared education services to continue if a State school converts to a charter school (new clause 125 in Schedule 1 of the Act).

We have, by majority, incorporated the amendment paper in our revision-tracked version of the bill. We have inserted:

- new section 212ZCA into clause 40 of the bill
- new section 601A in new clause 53A of the bill
- new clause 125 of Schedule 1 of the Act into Schedule 1 of the bill.

Legislative scrutiny

As part of our consideration of the bill and Amendment Paper No 49, we have examined its consistency with principles of legislative quality. The majority of us have no issues with the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments. Our amendments mostly relate to the provisions for charter schools.

Charter Schools Authorisation Board

Body corporate with perpetual succession

Clause 40 would insert new subpart 6A in Part 3 of the Act (new sections 212A to 212ZI). New section 212A would establish the Charter Schools Authorisation Board, while new section 212B sets out the board's membership requirements. The bill as introduced is not clear about what type of entity the Authorisation Board would be. We propose specifying that it is a body corporate with perpetual succession. This would mean that the Authorisation Board has a legal personality separate from its membership. The Teaching Council has a similar status. We recommend amending new section 212A accordingly.

Functions and powers

New section 212C(1) sets out the functions of the Authorisation Board. The function specified in paragraph (c) is to "provide strategic policy advice to the Minister and Ministry relating to the charter school model". This function would overlap with the Ministry of Education's role in providing strategic policy advice to the Minister on funding, legislation, and schooling. We propose clarifying the function in paragraph (c) so that the Authorisation Board would provide advice to the Minister on the operation of the charter school model. We recommend amending new section 212C(1)(c) accordingly.

Application of Public Service Act 2020

New section 212D would apply certain provisions of the Public Service Act 2020 to the Authorisation Board as if it were a Crown agent. We consider there may be a need for flexibility in how those sections are applied, given differences in the nature of the Authorisation Board. We recommend amending new section 212D to provide that those sections would apply with any necessary modifications.

We considered which Public Service Act provisions should apply to the Authorisation Board, and how they would apply.

In the bill as introduced, new section 212D would require members of the Authorisation Board to be responsible for upholding the public service principles set out in section 12 of the Public Service Act. In addition, sections 13, and 16 to 20 would apply.

We propose that the sections of the Public Service Act that are referred to in the provision should apply with any necessary modifications, in light of the Authorisation Board's functions. We recommend amending new section 212D accordingly.

We propose deleting the reference to section 13 of the Public Service Act relating to the "spirit of service to community", as we understand that this section is primarily directed at public service leaders and Crown agents that have employees, which the Authorisation Board will not have.

We also propose deleting reference to section 16 as it simply states the public service values.

Application of the Crown Entities Act 2004

New Section 212E would apply certain provisions of the Crown Entities Act 2004 to the Authorisation Board as if it were a Crown entity. The provisions that would apply are set out in new Schedule 6B of the Act (in Schedule 3 of the bill).

We consider that some of the provisions set out in new Schedule 6B would need to be modified to apply to the Authorisation Board, as it does not have financial responsibilities. We recommend amending new section 212E to specify that the provisions apply with any necessary modifications, as if the board were a Crown agent.

We also propose some changes to the provisions included in new Schedule 6B. We recommend adding references to the following sections of the Crown Entities Act:

- sections 47 and 48 on fees and allowances allowed under the fees framework, as these should be applied as if the Authorisation Board is a Crown agent.
- sections 62 to 67 on the conflict of interest disclosure rules
- section 135 on members' liability for bribery and corruption.

We propose removing references to sections 138 to 149A (on statements of intent) and section 150 (on annual reports), as we propose the bespoke arrangement set out below relating to annual reports.

Requirement for annual report

Section 150 of the Crown Entities Act sets out the obligations on Crown entities to prepare, present, and publish an annual report at the end of each financial year. In the bill as introduced, the Authorisation Board would be subject to this requirement under new Schedule 6B of the Education and Training Act.

We propose amending the bill to include a separate provision in the Education and Training Act setting out an obligation for the Authorisation Board to prepare an annual report. The annual report should:

- contain information about the Authorisation Board's operations and the number of new and converted charter schools approved by the Authorisation Board in that year
- be provided to the Minister as soon as practicable after the end of each financial year
- be presented to the House of Representatives by the responsible Minister.

We recommend inserting clause 4A into new Schedule 6A (Further provisions applying to Authorisation Board), as set out in Schedule 2 of the bill.

Staff with limited authority to teach

Schedule 3 of the Education and Training Act enables people to apply to the Teaching Council for a limited authority to teach (LAT). The purpose of a LAT is to enable schools and kura to employ people without teaching qualifications to teach in positions where there is a need for specialist skills or skills in short supply. The Teaching Council must be satisfied that the applicant meets certain criteria.

Purpose of limited authority to teach for charter schools

Clause 60 of the bill would amend clause 14 of Schedule 3 of the Act to vary the purpose of a LAT in relation to charter schools. In the case of charter schools, a sponsor could employ a person with a LAT even if the person's skills are not in short supply and are not specialist skills.

Related to this, clause 60 of the bill would also amend clause 16 of Schedule 3 of the Act. New subclause (1A) would provide that the Teaching Council must grant a LAT if the LAT relates to charter schools, and the Teaching Council considers that the applicant is of a suitable disposition and has the skills and experience appropriate to advance the learning of a student or group of students. There would be no requirement for the applicant's skills to be in short supply.

As introduced, new clause 16(1A) could be interpreted as describing the LAT as being related to a particular charter school. We recommend that the subclause be amended so that a charter school LAT holder could work in any charter school, not just a particular charter school.

We also recommend linking new clause 14(2) of Schedule 3 to new clause 16(1A).

Powers of Complaints Assessment Committee and the Disciplinary Tribunal

The Education and Training Act gives certain powers to the Complaints Assessment Committee and the Disciplinary Tribunal, which are part of the Teaching Council structure, and deal with complaints against teachers. Section 497(2) sets out the actions the Complaints Assessment Committee can take after an investigation. They are to:

- take the matter no further (paragraph (a))
- refer a teacher to a competency review (paragraph (b))
- refer a teacher to an impairment process to assess and/or assist with an impairment (paragraph (c)).

Clause 44 of the bill would prevent the committee from applying provisions for competency reviews and impairment processes to LAT holders in charter schools. However, we propose allowing the committee to refer a LAT holder to an impairment process. Impairment processes are often about conduct matters. Although LAT holders at charter schools would not be subject to the Teaching Council's competency processes, the policy intent is that they would be subject to the Teaching Council's disciplinary processes.

Section 500 of the Act sets out the powers of the Disciplinary Tribunal. Section 500(1) sets out what the Disciplinary Tribunal may do following a Tribunal hearing about serious misconduct or a matter referred by the Complaints Assessment Committee. Paragraph (a) gives the Tribunal the same options as those set out above for the Complaints Assessment Committee.

Clause 45 of the bill would prevent the Disciplinary Tribunal from requiring a competency review or an impairment process for a LAT holder at a charter school. We consider the LAT holder should be able to be referred to an impairment process, and we therefore recommend amending clause 45, new section 500(1A) to ensure that the Disciplinary Tribunal has the discretion to refer a LAT holder at a school to an impairment process, as the Complaints Assessment Committee may do, for conduct matters.

Clarifying the application of reporting requirements

Section 490 of the Act provides for mandatory reporting by employers of complaints received about former employees. Section 492 provides for mandatory reporting by employers if a teacher fails to reach the required level of competence.

We understand that the policy intent of the bill is for charter school LAT holders to not be subject to the Teaching Council's competency requirements. We therefore propose amending sections 490 and 492 of the Act to make it clear that the mandatory reporting requirements set out in those sections do not apply in relation to competence of LAT holders in charter schools. We recommend inserting new clauses 43A and 43B into the bill accordingly.

Enrolment at charter schools

Clause 40, new section 212T provides that a charter school must accept all eligible domestic students who apply, unless the school is oversubscribed or the parent refuses to accept the particular character of a school (if applicable).

Clarifying the grounds on which a student's enrolment could be refused

New section 212T(2) would allow a charter school to refuse to enrol a student if a parent (or other person with responsibility for the student's education) refuses to accept that the school operates in accordance with a character approved by the Authorisation Board.

We recommend amending subsection (2) to make it clear that the character being referred to relates to any religious, philosophical, or other distinguishing characteristics approved by the Authorisation Board and notified in the *Gazette* in accordance with new section 212M(2)(e).

Secretary may direct a charter school to enrol a student

Section 76 of the Act enables the Secretary for Education, on the recommendation of the chief executive of Oranga Tamariki, to direct the board of a State school to enrol a person at that school.

We propose, similarly, that the Secretary should be able to direct the sponsor of a charter school to enrol a person at that charter school on the recommendation of the chief executive of Oranga Tamariki.

Accordingly, we recommend inserting new clause 21A into the bill.

Conversion of State schools to charter schools

New section 212K sets out some conditions that would apply to the approval of an application to become a charter school. Subsection (1) imposes the following conditions on a converting school (that is, a State school that is approved to convert to a charter school):

- All students currently enrolled at the State school who wish to attend the charter school must be allowed to do so.
- 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.

We propose that converting schools that are ordinary State schools should be prohibited from taking on a new special character upon conversion. We recommend inserting new section 212K(1)(c) to provide that if a State school was an ordinary State school, it must not provide education with a special character or that is different from the character of ordinary State schools.

We also recommend amending new section 212L to require charter school contracts to set out the conversion date for converting schools.

Distance learning offered by charter schools

The Act currently allows schools to be designated as distance schools. Distance schools can deliver education through any medium, including digital technology.

New section 212I provides that the Authorisation Board, when deciding whether to approve a proposed sponsor of a charter school, must consider (amongst other things) the mode of curriculum delivery and the regularity of instruction. Depending on the Authorisation Board's decision, new charter schools could provide distance learning.

We propose the following amendments relating to distance learning by charter schools.

Contracts to include specifications on additional matters relating to distance learning

New section 212L provides for the Charter School Agency to enter into a charter school contract with a sponsor, which would be the school's governing body. Subsection (5) sets out certain matters that must be set out or provided for in the charter school contracts

We propose that, if a charter school offers distance learning, the charter school contract should specify additional matters addressing the following:

- how student engagement and attendance will be measured and ensured
- pastoral care, including the online safety of students and adequate supervision arrangements for students aged under 16 years.

Our proposal reflects that schools offering or providing distance learning have different attendance and engagement expectations than schools delivering education in person. For example, the former may focus on work completion rather than attendance during prescribed hours. In terms of pastoral care of students, different arrangements will likely be needed to support the safety and supervision of children in distance learning.

We recommend inserting new section 212L(5A) accordingly.

Notification of charter school offering distance learning

New section 212M would require the Minister to notify the establishment of a charter school through notice in the *Gazette*. Subsection (2) sets out what information must be included in the notice. We propose that the notice should specify whether a school will offer or provide distance learning and, if so, whether the school's main mode of curriculum delivery will be distance learning. We recommend amending new section 212M(2) accordingly.

Matters relating to property

Property maintenance fee

New section 212V would enable a sponsor of a charter school to charge parents (or other persons who have accepted the responsibility for a student's education) a property maintenance fee, if either:

- the sponsor owns the premises; or
- the charter school was a former State integrated school that was permitted to charge attendance dues at the time of conversion.

Property maintenance fees charged to parents (or other persons responsible for the student) would be for a cost that is already covered by charter schools' funding. We propose limiting the ability to charge property maintenance fees to former State integrated schools that were already permitted to charge attendance dues at the time of conversion. We recommend amending new section 212V(1) accordingly.

Rates on land

State schools and private schools not operating for profit do not have to pay rates on land owned or used by, and for the purposes of the State or private school. We propose that charter schools that are not operating for profit should also not have to pay rates on that land. We recommend inserting new clauses 63AAA and 63AAB into the bill to amend Schedule 1, Part 1, clause 6 of the Local Government (Rating) Act 2002 to provide that charter schools that do not operate for profit do not have to pay rates.

As part of this proposal, we recommend amending new section 212L to require charter school contracts to set out whether the sponsor intends to operate the charter school for profit or not-for-profit.

Land owned by, or leased to, the Crown

Section 560 of the Education and Training Act allows for early childhood education and care centres, under certain arrangements, to operate on land owned by or leased to the Crown. We consider that a similar option should be provided for charter schools.

We recommend amending clause 40 by inserting new section 212QA to empower the Crown to grant leases to sponsors to enable charter schools to use Crown-owned property.

Transfer of employees of a converted school

Schedule 1 of the bill would insert new Part 6 into Schedule 1 of the Act. Subpart 2 of new Part 6 sets out transitional provisions that apply when a State school converts to a charter school. We propose some amendments relating to the transfer of employees.

Transfer is not considered new employment

In new Part 6 of Schedule 1 of the Act, clause 119(4) would make it clear that the employment of a transferred employee by the sponsor does not constitute new

employment, including for the purposes of any service-related benefits or entitlements (whether legislative or otherwise). For the avoidance of doubt, we propose that this clause also state that the employment does not constitute new employment for the purposes of the Holidays Act 2003, or the KiwiSaver Act 2006, or treat the employee as a new employee for the purposes of the Employment Relations Act 2000.

No requirement for sponsors to advertise vacancies in *Education Gazette*

Clause 119(1) in new Part 6 of Schedule 1 provides that, on the conversion date, every employee of a converted school would become an employee of the sponsor on terms and conditions that are no less favourable overall to those that applied to the person immediately prior. Subclause (5) sets out what is considered “terms and conditions of employment that are no less favourable overall”.

The current collective employment agreements for State schools require staff vacancies to be advertised in the *Education Gazette*. We propose that this aspect of a collective agreement not be carried over if a State school converts to a charter school. We consider this change would help give sponsors the flexibility envisaged for running appointment processes. We recommend amending clause 119(5) in new Part 6 of Schedule 1 accordingly.

Transfer of employment information

Clause 120 of new Part 6 in Schedule 1 sets out that, on and after the conversion date, all information held by the board of a converted school, the Ministry of Education, or Education Payroll Limited relating to a transferred employee’s employment is to be treated as being held by the sponsor of the converted charter school. Practically, a sponsor is likely to need this information sooner than the conversion date. We recommend amending the clause so it applies from the later of the following dates: the date the sponsor enters into a charter school contract under new section 212L or the date that is 3 months before the conversion date.

Charter schools and wider education services

Communities of learning

Schedule 5 of the Act provides for communities of learning for State schools. Communities of learning must consist of a group of at least 2 State schools, but may also include licensed early childhood services, certified playgroups, or tertiary education organisations. We propose amending clause 1 of Schedule 5 of the Act so that charter schools could also be part of a community of learning. We recommend inserting new clause 61A into the bill to amend Schedule 5 of the Act accordingly.

Secondary-tertiary programmes

Schedule 8 of the Act provides for secondary-tertiary programmes by provider groups. A provider group is a group of organisations that includes at least one government training establishment, institution, or registered establishment, and either:

- a board of a secondary school, a composite school, or a specialist school that is a relevant school
- a body corporate that is the manager of a private school, other than a school registered only as a primary school.

We propose amending clauses 1, 5, and 6 of Schedule 8 of the Act to enable charter schools (that are secondary or composite schools) to be in provider groups offering secondary-tertiary programmes. We recommend inserting new clause 62A into the bill accordingly.

Amendment Paper No 49

As noted earlier, we recommend, by majority, inserting the provisions as proposed by the Associate Minister in Amendment Paper No 49 into the bill. We have recommended, by majority, some amendments to new section 601A to clarify that the section applies to the employees of the board of the State school.

New Zealand Labour Party differing view

Charter schools

The New Zealand Labour Party does not support the reintroduction of charter schools. We believe that the Government should be focused on ensuring that every school in New Zealand is a great school, and that every student has access to a broad education that allows them to fulfil their individual potential. We see this bill as embarking on an ideological experiment that, even if successful, would only benefit a small number of students.

Quality teaching

The New Zealand Labour Party recognises that teaching requires a unique set of skills and believes that all teachers should be appropriately qualified for the job and registered. This bill allows charter schools to employ staff with no formal teaching qualifications at all. We note evidence to show that schooling systems with the highest rates of performance in the OECD also have some of the most stringent teacher registration requirements.

Public scrutiny

The New Zealand Labour Party is concerned that charter schools will once again not be subject to the same level of public scrutiny as existing state schools. We were alarmed to learn that the Government has ignored the concerns raised by the Ombudsman about the exemption of charter schools from the Official Information Act (OIA). These schools will receive significant amounts of taxpayer funding and should be held accountable for how they use it and the OIA is an important part of this.

The profit motive

The New Zealand Labour Party does not believe that charter schools should be allowed to operate as private, profit-making enterprises. Money withdrawn from the

education system in the form of profits is money that is not going towards educating young New Zealanders across the entirety of the system. Parents will be excluded from decisions affecting their child's education because there will be no boards of trustees.

Underachieving students

We recognise that there are a number of learners who are currently struggling within the school system. Māori and Pasifika students often have lower rates of qualification attainment than their counterparts. The New Zealand Labour Party believes that the government should be focused on ensuring that all students, regardless of which school they attend, are supported to reach their full potential. We believe that creating new forms of schools will have very limited impact, if any, on student achievement given research shows the variance in student achievement between schools is small relative to variance within schools.

Flexibility already exists

A variety of different types of school already exist within legislation, for example, special character schools can already be established within the existing public schooling framework. There is no need to create a new category of charter schools in order to achieve the flexibility that the Government claims it seeks.

The future of charter schools

Ongoing funding and support for charter schools will not be guaranteed under a future New Zealand Labour Party government. We will not guarantee any charter schools established during the term of the present Government the right to integrate into the state school system. We reserve the right to impose additional contractual obligations on any charter schools established, such as a requirement to employ registered teachers and the removal of exemption from the Official Information Act 1982. No further charter schools will be established under a New Zealand Labour Party government and legislation allowing for their establishment will be repealed.

Overwhelming public opposition to the bill

Labour members of the committee asked for submitters' views to be included in the body of the report as a way of representing the select committee process but this was refused by the National and ACT members.

From the departmental report you can see how widespread the opposition to charter schools is:

Breakdown of submissions on the charter school proposal

Sentiment	Number of submissions	Percentage of submissions on this proposal
Oppose	389	90.3%
Support	17	3.9%
Support in principle	6	1.4%
Unclear position	19	4.4%
Total submissions on this proposal	431	100%

Removal of rights of teachers in charter schools to collectively bargain

On 23 July 2024, an amendment paper was tabled by the Associate Minister of Education; this amendment paper sought to remove the rights for unions to initiate and bargain for multi-employer collective employment agreements.

On 29 July 2024, a regulatory impact statement was provided widely and emailed to members of the Education and Workforce Select Committee as well as other organisations.

The full document had detailed and concerning advice about the potential legal and diplomatic implications of the changes proposed by the Associate Minister in his amendment paper.

On 30 July 2024, members of the select committee were told that the regulatory impact statement (RIS) on the amendment paper on the Education and Training Amendment Bill that was emailed to members the previous day was legally privileged and not the final version. Members of the committee were asked to delete the original, unredacted version.

This information detailing the concerning advice about the potential legal and diplomatic implications of the changes proposed by the Associate Minister in his amendment paper were hidden in the redacted version.

Importantly, Opposition members of the committee did seek advice on the legality of this proposed amendment paper from Ministry of Education advisers to the committee but were told that no information or advice of this nature could be provided to the committee due to this information being allegedly legally privileged. Through the select committee procedure, no advice was provided to the committee by officials in relation to these concerns, despite these issues being raised by members in questioning to the Associate Minister and by submitters during the select committee process.

Opposition members then tried to obtain separate legal advice to the committee so this issue could be analysed and considered by the committee without the need to refer to the original information that was provided and then subsequently redacted.

Motions seeking independent advice on this issue from the Ministry of Foreign Affairs and Trade were voted down by a majority of the committee by Government members 5 to 4. Therefore, no independent advice was provided to the committee.

The committee has therefore not been in a position to properly scrutinise the Associate Minister's amendment and its implications for our existing domestic, international obligations or trade obligations.

We consider the select committee and the House would not be well served without the provision of this key information in relation to the potential threats to our domestic and international obligations and commitments.

After discussions with the Clerk of the House who advised that the rules and practices of the House did not prevent this course of action, we have therefore decided to reproduce the relevant redacted information below in order that the committee and the House as legislators are provided with fulsome information prior to deciding the final position in relation to the amendment paper, and prior to that becoming law. We consider this to be a serious matter of both public interest and concern to the committee and to the House. The relevant extract of the advice is reproduced below; paragraphs 37-39 were redacted in the second regulatory impact statement:

Regulatory Impact Statement | 10

Option Two – Full Carve Out (The Associate Minister of Education's proposed option)

35. In this option, the union(s) would not be able to initiate a MECA that includes charter schools. They would only be able to seek a SECA, which provides charter schools with full autonomy to negotiate changes to employment terms and conditions relevant to their particular context. This provides bargaining autonomy for charter school employers and reduces the disruption of bargaining for State schools as no MECA bargaining will occur across the State/charter school line.
36. Although this option provides bargaining autonomy for Sponsors and reduces the disruption for bargaining for State schools, it would also preclude charter school employers from participating in union-initiated multi-employer collective bargaining if they want to do so. Some sponsors may prefer to share the time and energy needed to negotiate and manage the industrial process with other employers, allowing them to focus on their core business.

[Legal advice: Legally privileged]

37. Additionally, there is a strong misalignment with the ILO obligations as it creates a significant restriction on parties' ability to bargain freely. If a complaint were to be brought to the ILO, it is likely that the ILO would confirm the misalignment. This could require officials to participate in hearings and follow up on any recommendations and could have reputational impacts.
38. New Zealand has obligations under free trade agreements (FTAs), including with the European Union (EU) and United Kingdom, to "respect, promote and realise" the fundamental rights at work contained

in the ILO fundamental conventions. In light of the above assessment, it follows that this option is also likely to breach some of our binding FTA obligations.

39. Non-compliance also entails risks if unions or individuals challenge the implementation via domestic litigation. There are possible legal challenges based on section 17 of the BORA, which refers to freedom of association. ILO obligations, as interpreted by the ILO supervisory mechanisms, may be used as an interpretation aid by the Court. Any limitation on that right is required to be demonstrably justified under section 5 of the BORA, which says that the rights and freedoms contained of the BORA may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Questions as to the ongoing position of legal privilege of this information

Despite the assertions of the Ministry of Education that this information is subject to legal privilege, there are questions as to whether such privilege remains when the information in question was:

1. Referred to and the content of this advice provided orally by the Associate Minister on Monday, 29 July 2024 during his appearance at a select committee hearing under questioning;
2. The contents of the allegedly legally privileged information was voluntarily sent to an indeterminate number of people for around 24 hours prior to the request to delete and the redaction of this information; and
3. The Regulatory Impact Statement is an assessment of the impacts of the law to decision makers and not legal advice as it is normally understood. It is not clear if the RIS was drafted by a lawyer which would be essential to the claim that the information is privileged.

However, even if the privilege exists (which is disputed), there are important public policy reasons why this information should be made public. There are significant implications for unions and teachers throughout New Zealand and additionally possible implications for our international legal obligations and our trade relationships. It is our position that the committee and the House cannot be fully informed and debate this amendment without this information being provided.

Concerns in relation to s 6A implications

Part 6A of the Employment Relations Act offers protection to the groups of workers set out in Schedule 1A (including school caretakers, cleaners, and canteen workers) who are impacted by a change of employer and who are vulnerable to such a change. We are concerned that clause 119 would prevent employees of a public school that has been converted to a charter school from being eligible for redundancy. Any transfer would constitute a significant change in the nature of these employees' jobs. Those employees who do not wish to take up employment in the charter school

should be entitled to any redundancy compensation provided by their employment agreement.

Transfer of employee information

After the submission process was complete, we received additional advice from officials that they considered that it was necessary for employee information to be passed to sponsors of charter schools prior to the conversion date (prior to the time that the sponsor was the employer of the employees). We have very significant concerns about the privacy implications of employment information, which could include information on medical conditions, emergency contact information, disciplinary or professional development issues including other personal information. This would include the information of employees who were never going to remain at the converted school due to their decision not to maintain their employment with the new sponsor. This was concerning to the committee and particularly concerning given the lack of adequate advice that was able to be provided by officials due to the very short timeframe that the Associate Minister has determined that this legislation should be completed.

Rushed process

The Associate Minister is rushing this process and this legislation will undoubtedly be back in the House for necessary amendments following this rushed process.

This rushed process is noted in the Ministry of Education's regulatory impact statement and notes the significant limitations on the policy process due to the Minister's decision that Charter Schools must be open by 2025.

Early childhood education network management repeal

The New Zealand Labour Party believes removal of network management for early childhood education is a step in the wrong direction and will only intensify the increasing market consolidation and dominance of a small group of large private providers at the expense of smaller, local and community based early learning centres. This will disproportionately impact community-based early learning centres, not-for-profit early learning centres, and those catering to specific cultures such as Pacific Language Nests, Puna Reo and Kōhanga Reo.

Green Party of Aotearoa New Zealand differing view

The Green Party opposes the Education and Training Amendment Bill and would like to comment on three aspects of the bill: charter schools, ECE network approval, and the overall legislative process. The Green Party has no specific issues with attendance data collection, other than general concerns on how the data would and could be used.

The Green Party wants to see a well-funded public education system where all students are able to thrive, particularly those with diverse backgrounds. Hence, we strongly oppose the reintroduction of charter schools, on the grounds that there is no evidence, either domestically or internationally, that charter schools are a successful model for schooling. It is also regrettable that despite the overwhelming feedback and

recommendations from the public submissions, the Government has ignored almost all of these. These include the strong and credible recommendations from the Chief Ombudsman and Mana Mokopuna | Children and Young People's Commission.

Submitters have also raised concerns of the violations to our rights and to our international obligations with the reintroduction of charter schools. The Chief Ombudsman raised the long-standing presumption that any new public bodies created by statute should be made subject to the Official Information Act (OIA) and cited section 14 of the Bill of Rights Act (BORA) as pivotal to our right and freedom to receive information. Mana Mokopuna | Children and Young People's Commission voiced their concern at the absence of student participation as a requirement in the governance of charter schools under Article 12 of the Children's Convention. NZCTU commented on the restriction placed on unions from initiating a multi-employer collective agreement (MECA) and how it counters our obligation under the International Labour Organization (ILO) Convention 98. Finally, a number of submitters were concerned with the omission of Te Tiriti o Waitangi in the bill.

The Green Party strongly opposes the repeal of the ECE network approval process. Considering that the approval process was only introduced in 2023, there has not been sufficient time to determine whether the process is successful or not. Additionally, the number of new ECE services established in 2023 has increased from 2022, which contradicts the narrative that the process has been a barrier to new services wanting to enter the market. Other than this, there has been no empirical evidence provided by the Government that the repeal is a worthwhile endeavour. The most significant concern raised by a number of submitters is the burden this will place to the already stretched workforce.

The Green Party is concerned that while the bill was still progressing through the select committee, the Government already called for applications for charter schools, seemingly pre-empting the result of the legislative process and this select committee's work. It is also of significant concern that two days before the original submission deadline, the Government released a significant amendment paper (AP No. 49). As a result, the select committee had to extend the deadline for submissions to provide additional time for submitters to consider the amendment paper as part of their submission on the bill.

Finally, despite 90.3 percent of submitters opposing charter schools and 96.3 percent of submitters opposing the repeal of ECE network approval, the Government has not listened to the public and persisted with this bill.

Appendix

Committee process

The Education and Training Amendment Bill was referred to the committee on 25 June 2024. Submissions on the bill were called for with a closing date of 17 July. The closing date was extended to 25 July. On 23 July, the Associate Minister of Education released Amendment Paper No 49 and requested that we consider it alongside the bill. We extended the closing date for submissions to 29 July to provide some additional time for the amendment paper to be considered.

We received and considered submissions from 584 interested groups and individuals. We heard oral evidence from 79 submitters at hearings in Wellington and via video-conference. We invited the Associate Minister of Education to speak on the bill. He did so on 29 July 2024.

Advice on the bill was provided by the Ministry of Education. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Katie Nimon (Chairperson)

Carl Bates

Camilla Belich

Mike Butterick

Grant McCallum

Dr Parmjeet Parmar

Hon Jan Tinetti

Hon Phil Twyford

Dr Lawrence Xu-Nan

Related resources

The documents received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon David Seymour

Education and Training Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education and Training Amendment Act **2024**.

2 Commencement

This Act comes into force on the day after Royal assent.

5

3 Principal Act

This Act amends the Education and Training Act 2020.

Part 1

Amendments to principal Act

4 Section 10 amended (Interpretation) 10

(1AAA) In section 10(1), definition of **contract of enrolment**, after “State school”, insert “or a sponsor”.

(1) In section 10(1), definition of **employer**, after paragraph (a), insert:

(aa) a sponsor:

(2) In section 10(1), repeal the definition of **excluded early childhood service**. 15

(3) In section 10(1), insert in their appropriate alphabetical order:

Charter School Agency or **Agency** means the Charter School Agency established under section 23 of the Public Service Act 2020

charter school contract means,—

(a) in relation to the operation of charter school, a contract entered into under **section 212L**: 20

- (b) in relation to a sponsor ~~of a charter school~~, a contract to which the sponsor and the Agency are parties
- charter school/kura hourua** or **charter school** means a school in respect of which—
- (a) the Authorisation Board has approved a sponsor under **section 212I**; 5
and
- (b) a charter school contract with the Crown is in force
- Charter Schools Authorisation Board** or **Authorisation Board** means the board established under **section 212A**
- converting school** means a State school that proposes to convert to a charter school 10
- Crown agent** has the same meaning as in section 10(1) of the Crown Entities Act 2004
- person responsible for teaching and learning** means the person appointed under **section 212O(d)(ii)** 15
- proposed sponsor** has the meaning given in **section 212F(1)(a)**
- sponsor** means the governing body of a charter school that the Authorisation Board has approved under **section 212I** to operate the school
- (4) In section 10(1), definition of **registered school**, replace “or a private school” with “a private school, or a charter school”. 20
- (5) In section 10(1), definition of **relevant school**, after paragraph (d), insert:
- (e) a charter school
- (6) In section 10(1), definition of **school community**, paragraph (c), after “board”, insert “or a sponsor”.
- (7) In section 10(1), definition of **tertiary component**, after paragraph (a)(i), insert: 25
- (ia) a sponsor of a secondary school or composite school:
- 5 Sections 17 to 18C repealed**
- Repeal sections 17 to 18C.
- 6 Section 31 amended (Outline of Part 3)** 30
- After section 31(7), insert:
- (7A) **Subpart 6A** concerns the establishment and operation of charter schools/kura hourua.
- 7 Section 32 amended (Purpose of Part 3)**
- (1) After section 32(d), insert: 35

- (da) providing for the approval of governing bodies for charter schools/kura hourua and their duties, powers, administration, and accountabilities; and
- (2) In section 32(e), after “State schools”, insert “and charter schools”.
- 8 Section 33 amended (Right to free enrolment and free education at State schools (including entitlement to attend full-time))** 5
- (1) In the heading to section 33, after “State schools”, insert “or charter schools”.
- (2) In section 33(1), after “State school”, insert “or charter school”.
- 9 Section 34 amended (Students with special educational needs have same rights to education at State schools as others)** 10
- (1) In the heading to section 34, after “State schools”, insert “or charter schools”.
- (2) In section 34(1), after “State schools”, insert “or charter schools”.
- 10 Section 36 amended (Students of registered schools required to attend whenever schools are open)**
- In section 36(2), after “board”, insert “or sponsor”. 15
- 11 Section 37 amended (Special education)**
- In section 37(1) and (2), after “State school”, insert “, charter school,”.
- 12 Section 43 amended (Exceptions to attendance because of secondary–tertiary programmes and multiple timetable arrangements)**
- In section 43(3), after “board”, insert “or a sponsor”. 20
- 13 Section 48 amended (Board of State school may appoint attendance officer)**
- (1) In the heading to section 48, after “State school”, insert “or sponsor”.
- (2) In section 48(1), after “board of a State school”, insert “or a sponsor”.
- (3) In section 48(2) and (3), after “board”, insert “or sponsor”. 25
- 14 Section 49 amended (Powers of attendance officers and constables)**
- (1) Replace section 49(4) with:
- (4) The following persons may file charging documents, conduct prosecutions, and take any other proceedings under this Part:
- (a) an attendance officer: 30
- (b) a principal:
- (c) ~~a~~ the person responsible for teaching and learning in a charter school:
- (d) a person appointed by a board, a sponsor, or the Secretary for the purpose.

- (2) In section 49(5),—
- (a) after “board”, insert “or a sponsor”; and
 - (b) after “board’s”, insert “or a sponsor’s”.
- 15 Section 50 amended (Release from tuition on religious or cultural grounds)**
- (1) Replace section 50(1) with: 5
- (1) This section applies to students enrolled at—
- (a) a State school that is not a State integrated school; or
 - (b) a charter school.
- (2) In section 50(2), (4), (5), and (6), after “principal”, insert “or person responsible for teaching and learning in a charter school”. 10
- 16 Section 51 amended (Release from tuition for specified parts of health curriculum)**
- (1) In section 51(1),—
- (a) after “State school”, insert “or charter school”; and
 - (b) after “principal”, insert “or person responsible for teaching and learning in a charter school”. 15
- (2) In section 51(2) and (3), after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- 17 Section 52 amended (Release from tuition for outside tuition or if good reasons to leave early)** 20
- (1) In section 52, after “principal of a State school”, insert “or person responsible for teaching and learning in a charter school”.
- (2) In section 52(a), after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- 18 Section 53 amended (Courses, work experience, and visits outside school premises)** 25
- (1) In section 53(1), after “board”, insert “or sponsor”.
- (2) In section 53(3), after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- 19 Section 63 amended (Cohort entry policy)** 30
- In section 63(1), after “State school”, insert “or charter school”.
- 20 Section 64 amended (Dates for starting school under cohort entry policy)**
- In section 64(1), after “State school”, insert “or charter school”.

- 21 Section 65 amended (Adoption or revocation of cohort entry policy)**
- (1) In section 65(1), after “State school”, insert “or charter school”.
- (2) In section 65(1), (1)(b), (2), and (3), after “board”, insert “or sponsor”.
- 21A Section 76 amended (Secretary may direct that students attend particular schools)** 5
- (1) Replace section 76(1) with:
- (1) The Secretary may, on the recommendation of the chief executive of Oranga Tamariki, direct—
- (a) the board of a State school to enrol a person at the school; or
- (b) the sponsor to enrol a person at the charter school. 10
- (2) In section 76(2)(b) and (3), after “board”, insert “or sponsor”.
- 22 Section 77 amended (Principals may preclude students for health reasons)**
- (1) In the heading to section 77, after “Principals”, insert “or persons responsible for teaching and learning”.
- (2) In section 77(1), after “A principal of a State school”, insert “or ~~a~~ the person responsible for teaching and learning in a charter school”. 15
- (3) In section 77(2),—
- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school”; and
- (b) after “board”, insert “or sponsor”. 20
- (4) In section 77(3) and (3)(b), after “board”, insert “or sponsor”.
- (5) Replace section 77(4) with:
- (4) The following persons are not liable for any act done or omitted in good faith with reasonable care in exercising or performing, or in intending to exercise or perform, a power or duty under this section: 25
- (a) a principal:
- (b) ~~a~~ the person responsible for teaching and learning in a charter school:
- (c) a board:
- (d) a sponsor.
- 23 Section 78 amended (Purpose of sections 79 to 89)** 30
- In section 78, after “State school”, insert “or a charter school”.
- 24 Section 79 amended (Application of sections 80 to 89)**
- In section 79, after “State school”, insert “or a charter school”.

- 25 Section 80 amended (Principals of State schools may stand down or suspend students)**
- (1) In the heading to section 80, after “**State schools**”, insert “**or persons responsible for teaching and learning in charter schools**”.
- (2) In section 80(1), after “The principal of a State school”, insert “or the person responsible for teaching and learning in a charter school”. 5
- (3) In section 80(2)(d), (3)(a), and (3)(b), after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place.
- 26 Section 81 amended (Powers of State school board when suspended students aged under 16 years)** 10
- (1) In the heading to section 81, after “**State school board**”, insert “**and charter school sponsor**”.
- (2) In section 81(1),—
- (a) after “State school”, insert “or a charter school”; and
- (b) after “board”, insert “or the sponsor”. 15
- (3) In section 81(2), after “board”, insert “or sponsor” in each place.
- (4) In section 81(3),—
- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school”; and
- (b) after “board”, insert “or sponsor”. 20
- (5) In section 81(4) and (5), after “board”, insert “or sponsor”.
- (6) In section 81(6),—
- (a) after “board”, insert “or sponsor”; and
- (b) after “principal”, insert “or person responsible for teaching and learning in a charter school”. 25
- (7) In section 81(7),—
- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place; and
- (b) after “board’s”, insert “or sponsor’s”.
- 27 Section 82 amended (Secretary’s powers when excluded students aged under 16 years)** 30
- (1) In section 82(1),—
- (a) after “board of a State school”, insert “or a sponsor”; and
- (b) after “principal”, insert “or person responsible for teaching and learning in a charter school”. 35
- (2) Replace section 82(1)(b) with:

- (b) arrange for, and if necessary direct, the following to enrol the student at the other school:
- (i) the board of any other State school (other than a State integrated school):
 - (ii) the sponsor of any other charter school. 5
- (3) In section 82(2)(c), (3), and (4), after “board”, insert “or the sponsor” in each place.
- 28 Section 83 amended (Powers of State school board when suspended students aged 16 years or over)**
- (1) In the heading to section 83, after “**board**”, insert “**and charter school sponsor**”. 10
- (2) In section 83(1),—
- (a) after “State school”, insert “or a charter school”; and
 - (b) after “board”, insert “or sponsor” in each place.
- (3) In section 83(2), after “board”, insert “or sponsor” in each place. 15
- (4) In section 83(3),—
- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school”; and
 - (b) after “board”, insert “or sponsor”.
- (5) In section 83(4) and (5), after “board”, insert “or sponsor”. 20
- 29 Section 84 amended (Duties of principals when students stood down or suspended from State schools)**
- (1) Replace the heading to section 84 with “**Duties of principals or persons responsible for teaching and learning when students stood down or suspended from State schools or charter schools**”. 25
- (2) In section 84(1), after “State school”, insert “or a charter school”.
- (3) In section 84(1) and (2), after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- 30 Section 85 amended (Who may attend State school board meeting concerning suspensions)** 30
- (1) Replace the heading to section 85 with “**Who may attend meeting concerning suspension**”.
- (2) In section 85(1), after “State school”, insert “or a charter school”.
- (3) In section 85(1) and (2), after “board”, insert “or sponsor” in each place.

31 Section 86 amended (Effect of suspension on school register)

In section 86(1), (2), and (3), after “State school”, insert “or a charter school” in each place.

32 Section 87 amended (Re-enrolment of excluded or expelled student)

- (1) In section 87(1), after “board of a State school”, insert “or a sponsor”. 5
- (2) In section 87(2),—
- (a) after “board of a State school”, insert “or a sponsor”; and
- (b) after “another State school”, insert “or another charter school”.
- (3) After section 87(3), insert:
- (3A) The Secretary may, in the case of a student who has turned 16 years, direct the sponsor of another charter school to enrol a student at the charter school if— 10
- (a) the student has been expelled from a charter school under section 83; and
- (b) the Secretary has made all reasonable attempts to consult— 15
- (i) the student; and
- (ii) a parent of the student; and
- (iii) the sponsor; and
- (iv) any other person or organisation that, in the Secretary’s opinion, may be interested in, or able to advise on or help with, the student’s education or welfare. 20
- (4) In section 87(4), after “board”, insert “or sponsor”.

33 Section 88 amended (Notice requirements for stand-downs, suspensions, exclusions, and expulsions)

- (1) In section 88(1), after “principal”, insert “or person responsible for teaching and learning in a charter school”. 25
- (2) Replace section 88(1)(b) with:
- (b) the reasons for the decision of the principal or person responsible for teaching and learning in a charter school; and
- (3) In section 88(2),—
- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school”; and 30
- (b) after “board”, insert “or sponsor”.
- (4) Replace section 88(2)(b) with:
- (b) the reasons for the decision of the principal or person responsible for teaching and learning in a charter school. 35
- (5) In section 88(3),—

- (a) after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place; and
- (b) after “board”, insert “or sponsor” in each place.
- (6) Replace section 88(3)(b) with:
- (b) the reasons for the decision of—
- (i) the principal; or
- (ii) the person responsible for teaching and learning in a charter school; or
- (iii) the board; or
- (iv) the sponsor.
- (7) In section 88(4), after “board”, insert “or sponsor”.
- 34 Section 89 amended (Secretary may make rules)**
- (1) In section 89(1), replace “boards, principals,” with “boards, sponsors, principals, persons responsible for teaching and learning in charter schools,”.
- (2) In section 89(1)(c), replace “principal and board” with “principal (or person responsible for teaching and learning in a charter school) and board (or sponsor)”.
- 35 Section 92 amended (Restrictions on appointment of teachers)**
- After section 92(2), insert:
- (3) Despite subsection (2), an employer who is a sponsor may permanently appoint to a teaching position a person who is the holder of a limited authority to teach.
- 36 Section 98 amended (Prohibition on corporal punishment and seclusion in registered schools)**
- In section 98(a) and (b), after “the school’s board”, insert “, the sponsor,”.
- 37 Section 102 amended (Students at State schools may be released from tuition or for outside tuition)**
- (1) In the heading to section 102, after “**State schools**”, insert “**or charter schools**”.
- (2) In section 102(1), (2), and (3), after “State school”, insert “or a charter school” in each place.
- 38 Section 103 amended (Students at State schools must receive guidance and counselling and their parents must be told about certain things)**
- (1) In the heading to section 103, after “**State schools**”, insert “**or charter schools**”.
- (2) In section 103, after “principal of a State school”, insert “or the person responsible for teaching and learning at a charter school”.

- (3) In section 103(c), replace “in the principal’s opinion” with “in the opinion of the principal or person responsible for teaching and learning at a charter school (as the case may be)”.

39 Section 104 amended (Required Police vetting)

In section 104, after “board of a State school”, insert “, the sponsor,”. 5

40 New subpart 6A of Part 3 inserted

After section 212, insert:

Subpart 6A—Charter schools/kura hourua

Authorisation Board

212A Authorisation Board established 10

- (1) This section establishes the Charter Schools Authorisation Board.
- (2) The Authorisation Board is a body corporate with perpetual succession and is capable of—
- (a) holding real and personal property; and
 - (b) suing and being sued; and 15
 - (c) otherwise doing and suffering all that bodies corporate may do and suffer.

212B Membership of Authorisation Board

- (1) The Authorisation Board consists of at least 5, but not more than 9, members appointed by the Minister by notice in the *Gazette*. 20
- (2) In appointing members, the Minister must have regard to the knowledge, skills, and experience necessary to carry out the Authorisation Board’s functions, including in the following areas:
- (a) education:
 - (b) governance: 25
 - (c) leadership:
 - (d) financial management:
 - (e) audit and performance management:
 - (f) legal and property management:
 - (g) procurement and contracting: 30
 - (h) engagement with Māori, Pacific people, and other stakeholders.

212C Functions and powers of Authorisation Board

- (1) The functions of the Authorisation Board are to—
- (a) decide on applications by proposed sponsors to operate charter schools:

<p>(b) oversee the performance of charter schools:</p> <p>(c) provide strategic policy advice to the Minister and Ministry relating to <u>on the operation</u> of the charter school model:</p> <p>(d) provide any other advice or oversight that the Minister requests in writing:</p> <p>(e) decide whether to apply an intervention referred to in section 212ZD to a sponsor:</p> <p>(f) perform any other functions conferred on it by this Act or any other legislation.</p> <p>(2) The Authorisation Board may exercise its powers only for the purpose of performing its functions.</p> <p>(3) Schedule 6A sets out further provisions relating to the Authorisation Board.</p> <p>212D Application of Public Service Act 2020 to Authorisation Board</p> <p>Sections 12, 13, and 16 to 20 of the Public Service Act 2020 apply to the Authorisation Board as if it were a Crown agent.</p> <p><u>Sections 12 and 17 to 20 of the Public Service Act 2020 apply, with any necessary modifications, to the Authorisation Board as if it were a Crown agent.</u></p> <p>212E Application of Crown Entities Act 2004 to Authorisation Board</p> <p>The provisions <u>of the Crown Entities Act 2004</u> set out in Schedule 6B apply, <u>with any necessary modifications</u>, to the Authorisation Board as if it were a Crown entity within the meaning of section 7(1) of the Crown Entities Act 2004 <u>Crown agent</u>.</p> <p style="text-align: center;"><i>Application to operate charter school</i></p> <p>212F Application for approval to operate charter schools</p> <p>(1) The following may apply to the Authorisation Board for approval to operate a charter school:</p> <p>(a) a body corporate, corporation sole, limited partnership, institution, or related entity (a proposed sponsor); or</p> <p>(b) in the case of a converting school,—</p> <p style="padding-left: 20px;">(i) the school’s board with the support of the proposed sponsor; or</p> <p style="padding-left: 20px;">(ii) 1 or more members of the school community with the support of the proposed sponsor.</p> <p>(2) The application must—</p> <p>(a) be in the approved form (if any); and</p> <p>(b) be accompanied by—</p> <p style="padding-left: 20px;">(i) evidence or information specified in the approved form; and</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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(ii)	the prescribed fee (if any).	
(3)	The Authorisation Board may require the applicant to provide further information to support the application.	
(4)	The chief executive of the Agency may approve forms for the purposes of this section.	5
212G Minister may direct board to apply to convert State school to charter school		
(1)	The Minister may, in the Minister's absolute discretion and after considering whether it is appropriate in all the circumstances, direct the board of a State school to make an application to the Authorisation Board to convert the State school to a charter school.	10
(2)	Before issuing a direction under subsection (1) , the Minister must first seek the views of the Authorisation Board about whether the State school would be appropriate to convert to a charter school.	
(3)	A direction issued by the Minister must specify the proposed sponsor of the charter school.	15
(4)	The board must make an application to the Authorisation Board with the support of the proposed sponsor named in the direction as soon as practicable after receiving the direction.	
(5)	Sections 212F, 212I, 212J, and 212K apply, with any necessary modifications, to an application made under this section.	20
212H Restriction on applications and directions		
(1)	A specialist school may not apply under section 212F for approval to operate a charter school.	
(2)	The Minister may not issue a direction under section 212G to the board of any of the following State schools:	25
(a)	a specialist school:	
(b)	a State integrated school:	
(c)	a distance school:	
(d)	a Kura Kaupapa Māori:	30
(e)	a designated character school.	
<i>Approval of sponsor</i>		
212I Authorisation Board may approve sponsor		
<i>General criteria</i>		
(1)	The Authorisation Board may approve a sponsor to operate a charter school if satisfied that the proposed sponsor and every governing member of the pro-	35

- posed sponsor are fit and proper persons (after considering the criteria set out in **section 212J**).
- (2) When deciding whether to approve a proposed sponsor, the Authorisation Board must take into account the following matters:
- (a) the focus of the proposed charter school: 5
 - (b) the capability of the proposed sponsor, including—
 - (i) its experience and knowledge of the New Zealand schooling system; and
 - (ii) its financial and governance capability:
 - (c) the standard of tuition to be provided by the proposed charter school, including— 10
 - (i) the mode of curriculum delivery; and
 - (ii) the regularity of instruction:
 - (d) the financial implications for the Crown if the proposed charter school is established: 15
 - (e) whether the purpose in section 32(e) would be achieved if the proposed charter school is established:
 - (f) the level of support for the proposed charter school from the community in which it is proposed to be established:
 - (g) any other matters the Authorisation Board considers relevant. 20
- (3) The Authorisation Board must seek the views of the Secretary and the Chief Review Officer on the matters set out in **subsections (1) and (2)**.
- Additional criteria for converting schools*
- (4) In the case of a converting school, the Authorisation Board must also take into account the following matters: 25
- (a) the performance of the State school:
 - (b) the level of support from the school community, school staff, and students for the proposed sponsor:
 - (c) the level of support from the school community, school staff, and students for the proposed conversion of the school to a charter school. 30
- (5) For the purpose of ascertaining the matters in **subsection (4)**, the Authorisation Board—
- (a) must consult the school board, school community, school staff, and students; and
 - (b) may consult any other person it thinks fit. 35

212J Criteria for assessing whether proposed sponsor and governing members are fit and proper persons

Assessment of proposed sponsor

- (1) In assessing whether a proposed sponsor is a fit and proper person to operate a charter school, the Authorisation Board must take into account the following matters: 5
- (a) whether the proposed sponsor has been convicted of any offence involving fraud or any crime involving dishonesty: 5
 - (b) whether the proposed sponsor owes or has owed money to the Crown, including in respect of bodies the proposed sponsor has been involved in managing: 10
 - (c) whether an intervention has been applied in relation to another charter school which the proposed sponsor is or was operating: 10
 - (d) whether the proposed sponsor committed a serious or repeated breach of the sponsor's statutory duties in relation to another charter school: 15
 - (e) any other matters that the Authorisation Board considers relevant. 15

Assessment of governing members

- (2) In assessing whether a governing member of a proposed sponsor is a fit and proper person to operate a charter school, the Authorisation Board must take into account the following matters: 20
- (a) whether the person has been convicted of serious criminal activity (as defined in section 10(1)): 20
 - (b) whether the person has been—
 - (i) adjudicated bankrupt under the Insolvency Act 2006: 25
 - (ii) prohibited from being a director or promoter of, or being concerned or taking part in the management of,— 25
 - (A) a company under the Companies Act 1993; or
 - (B) any other body corporate: 25
 - (c) whether an intervention has been applied in relation to another charter school of which the person is or was a governing member of the sponsor: 30
 - (d) whether the person committed a serious or repeated breach of the person's statutory duties as a governing member of the sponsor: 30
 - (e) any other matters that the Authorisation Board considers relevant. 30
- (3) For the purposes of **subsection (2)**, if the proposed sponsor is— 35
- (a) a company, the assessment applies to its directors: 35
 - (b) an incorporated society or an incorporated trust board, the assessment applies to its governing members: 35

<ul style="list-style-type: none"> (c) another body corporate, corporation sole, institution, or its related entity, the assessment applies to its governing members: (d) a limited partnership, the assessment applies to its partners as defined in the Limited Partnerships Act 2008. 	5
212K Conditions on approval	
<ul style="list-style-type: none"> (1) If the school to which an approval relates is a converting school, the following conditions apply to the approval: <ul style="list-style-type: none"> (a) all students currently enrolled at the State school who wish to attend the charter school must be allowed to do so: (b) 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: (c) <u>if the State school is an ordinary State school, it must not provide education with a special character or that is different from the character of ordinary State schools.</u> (2) When granting an approval of a sponsor, the Authorisation Board may impose any other conditions on the approval as it thinks fit, including conditions relating to the maximum number of international students that may be enrolled at the charter school. (3) The Authorisation Board may— <ul style="list-style-type: none"> (a) impose new conditions on the approval; or (b) amend or revoke any existing conditions. (4) However, the Authorisation Board may not amend or remove the conditions specified in subsection (1). 	10 15 20
<i>Charter school contracts</i>	
212L Charter school contracts	
<ul style="list-style-type: none"> (1) The Agency may, in the name and on behalf of the Crown, enter into a contract with a sponsor that allows the sponsor to operate a charter school. (2) If the Agency is unable to conclude a contract with the sponsor within a reasonable time, it must refer the matter back to the Authorisation Board for further consideration. (3) When negotiating a charter school contract, the Agency must have regard to the available budget for charter schools. (4) The charter school contract must be for a fixed term. (5) The charter school contract must set out, or provide for, the following matters: <ul style="list-style-type: none"> (a) the physical capacity of the school premises: 	30 35

- (b) the conditions that apply to the approval of the sponsor under **section 212J** **section 212K**:
- (ba) whether the sponsor intends to operate the charter school for profit or not-for-profit:
- (c) the performance targets and outcomes that the sponsor must meet in relation to the operation of the school: 5
- (d) the specific measures to be used to determine if the performance targets and outcomes referred to in **paragraph (c)** have been met or achieved:
- (e) the time period to which annual financial statements referred to in **section 212R** must relate: 10
- (f) an annual self-audit report to be provided by the sponsor to the chief executive of the Agency by a specified date that includes—
- (i) a report on the performance targets and outcomes of the sponsor under the contract:
- (ii) a report on the sponsor’s compliance with contractual and legislative obligations in relation to the charter school: 15
- (iii) the annual financial statements referred to in **section 212R**:
- (g) the number or percentage of teaching positions at the charter school that—
- (i) must be filled by persons holding a practising certificate; and 20
- (ii) may be filled by persons holding a limited authority to teach:
- (h) the curriculum to be taught at the charter school and its mode of delivery:
- (i) the qualifications to be offered by the charter school (if it is a secondary or composite school): 25
- (j) the renewal and termination of the contract:
- (k) the obligations of the sponsor to comply with any instructions issued by the Agency if the contract expires or is terminated to ensure the orderly and efficient transfer of the operation of the school:
- (l) the charter school to have a complaints policy, including a procedure for the independent review of complaints: 30
- (m) the grounds for the Authorisation Board to apply an intervention under **section 212ZD(1)(a), (b), or (c)**:
- (n) the process that the Authorisation Board must follow in applying an intervention under **section 212ZD**: 35
- (o) in the case of a converting school, the conversion date for the school.

Additional requirements for charter schools that offer or provide distance learning

(5A) The charter school contract for a charter school that offers or provides distance learning must also set out, or provide for, the following matters:

- (a) how student engagement and attendance will be measured and ensured: 5
- (b) pastoral care, including the online safety of students and adequate supervision arrangements for students aged under 16 years.

(6) The charter school contract may contain other provisions as agreed between the Agency and the sponsor that are not inconsistent with this Act, any other legislation, or the general law of New Zealand. 10

Notification of charter school

212M Notification of charter school

(1) The Minister must, by notice in the *Gazette*, notify the establishment of a charter school as soon as practicable after the date on which the Agency and the sponsor enter into a charter school contract for the school. 15

(2) A notice under **subsection (1)** must specify—

- (a) the name and location of the charter school to which the contract relates; and
- (b) the name of the sponsor; and
- (c) whether the charter school is to be a primary, secondary, or composite school; and 20

(ca) if the charter school will offer or provide distance learning and, if so, whether the school's main mode of curriculum delivery will be distance learning; and

- (d) the year levels for which education may be given at the school; and 25
- (e) any religious, philosophical, or other distinguishing characteristics of the school; and
- (f) whether all or any (and if so, which) year levels are to be single-sex.

(3) A notice under **subsection (1)** may provide for different year levels to be phased in over a specified period. 30

212N Prohibition on operating charter school without approval

(1) A person that has not been approved as a sponsor under **section 212I** may not operate, or purport to operate, a charter school.

(2) A sponsor may not operate a charter school unless the sponsor has entered into a charter school contract with the Agency to operate the school. 35

*Duties and powers of sponsors***2120 Duties of sponsors**

A sponsor must—

- (a) govern the school so as to ensure that every student is able to attain the highest possible standard of educational achievement; and 5
- (b) ensure that every governing member of the sponsor remains a fit and proper person to operate the school; and
- (c) ensure that a safe physical and emotional environment is provided for students and staff; and
- (d) appoint— 10
 - (i) a chief executive to be responsible for the day-to-day management of the school:
 - (ii) a person to be the person responsible overall for teaching and learning at the school who is appropriately qualified and holds a current practising certificate; and 15
- (e) ensure that teachers employed in the school have the necessary qualifications and skills to teach; and
- (f) ensure that the school's chief executive and staff develop and deliver a curriculum for teaching, learning, and assessment— 20
 - (i) having regard to any statement of national education and learning priorities; and
 - (ii) that meets tuition standards at least equivalent to those at State schools of the same year levels; and
- (g) in operating the school, have regard to any statement of national education and learning priorities; and 25
- (h) ensure that students have access to a nationally and internationally recognised qualification system; and
- (i) inform parents of the progress of their children at school, and any barriers to progress, at intervals specified in the charter school contract; and
- (j) make details of the curriculum and its mode of delivery available to parents; and 30
- (k) have policies relating to the following matters:
 - (i) internal disputes management:
 - (ii) engagement with the school community; and
- (l) ensure that any complaints against the school are responded to promptly. 35

212P Sponsor to control management of charter school

- (1) A sponsor has complete discretion to control the management of the school as the sponsor thinks fit.
- (2) A sponsor may make any bylaws that the sponsor thinks necessary or desirable for the control and management of the school. 5
- (3) **Subsections (1) and (2)** are subject to this Act, any other legislation, the general law of New Zealand, and the charter school contract.
- (4) Before making a bylaw, the sponsor must consult its staff, its students (to the extent that the sponsor considers appropriate), and the school community regarding the proposed bylaw. 10

212Q Sponsor's power to delegate

- (1) A sponsor may, either generally or specifically, delegate any of its functions, duties, or powers under this Act to any person.
- (2) A delegation— 15
- (a) must be in writing; and
 - (b) may be revoked at will in writing; and
 - (c) may be subject to instructions or conditions.
- (3) Despite **subsection (1)**, a sponsor must not delegate— 20
- (a) the general power of delegation:
 - (b) its power to make bylaws set out in **section 212P**:
 - (c) its functions, duties, or powers relating to the standing-down, suspension, exclusion, or expulsion of students set out in rules made under this Act.
- (4) The person to whom any functions, duties, or powers are delegated under this section may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act (subject to any general or special instructions given or conditions imposed by the sponsor). 25
- (5) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of that delegation. 30
- Subdelegation*
- (6) If the sponsor has delegated any functions, duties, or powers to a person, that person may, with the written approval of the sponsor, subdelegate those functions, duties, or powers to another person.
- (7) **Subsection (2)** applies to a subdelegation under **subsection (6)**. 35

212QA Charter schools situated on land owned by, or leased to, the Crown

(1) The operation of a charter school on land owned by, or leased to, the Crown, and the occupation by a charter school of any building on that land, may be governed by—

- (a) a lease, tenancy, or licence between the Crown and the sponsor; or 5
 (b) a lease between a third party (to whom a lease has been granted by the Crown) and the sponsor.

(2) In this section, lease includes a sublease.

Compare: 1989 No 80 s 319J(1), (4)

212R Annual financial statements

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(1) A sponsor must ensure the preparation of annual financial statements relating to the charter school for a year ending on a date specified in the charter school contract.

(2) The financial statements must be audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013). 15

212S Charter school may participate in school risk management scheme

(1) A sponsor may, with the consent of the Secretary, participate in a school risk management scheme established under section 576.

(2) Sections 576 and 577, any regulations made under section 642, and any legal instrument by which a school risk management scheme is established apply to a sponsor that participates in the scheme as if it were a participating school board. 20

Compare: 1989 No 80 s 158L

*Enrolment, conditions of enrolment, and instruction of students***212T Enrolment in charter schools**

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(1) A charter school must enrol all domestic students entitled to free enrolment and free education under section 33 who apply to the school (up to the physical capacity of the school premises as stated in the charter school contract).

(2) However, a charter school may refuse to enrol a student if a parent, or other person who has accepted responsibility for the education of the student, refuses to accept that the school operates in accordance with any religious, philosophical, or other distinguishing characteristics ~~a character~~ approved by the Authorisation Board and notified in the Gazette under section 212M(2)(e). 30

(3) **Subsections (4) and (5)** apply if a charter school receives more applications than there are places at the school. 35

(4) If the charter school was previously a State school that had an enrolment scheme in place before its conversion to a charter school, the order of priority is as follows:

- (a) first priority must be given to any applicant who lives in the area of the converting school's previous home zone:
- (b) second priority must be given to any student accepted for enrolment in a special programme run by the school, if applicable:
- (c) third priority must be given to any applicant who is the sibling of a current student of the school: 5
- (d) fourth priority must be given to any applicant who is the sibling of a former student of the school:
- (e) fifth priority must be given to any applicant who is a child of a former student of the school: 10
- (f) sixth priority must be given to any applicant who is a child of an employee of the sponsor or a child of a member of the sponsor:
- (g) seventh priority must be given to all other applicants.
- (5) For all other charter schools, the order of priority is as follows:
- (a) first priority must be given to any applicant who is the sibling of a current student of the school: 15
- (b) second priority must be given to any applicant who is the sibling of a former student of the school:
- (c) third priority must be given to all other applicants. 20
- (6) For the purposes of **subsections (4) and (5)**,—
- (a) if there are more applicants within a priority group than there are places available, applicants must be selected by ballot; and
- (b) if 2 or more siblings apply at the same time, their applications must be treated as a single application for the purpose of the ballot.
- (7) In this section, **sibling** has the same meaning as in section 75(3). 25
- 212U Students at charter school may be given tuition by State school or another charter school**
- (1) Students enrolled at a charter school may, by agreement between the sponsor of a charter school and the board of a State school, receive tuition at or from a State school. 30
- (2) Students enrolled at a charter school may, by agreement between the sponsors concerned, receive tuition at or from another charter school.
- (3) The sponsor of a charter school at which the students are enrolled may pay the board of the State school or the sponsor of the other charter school giving the tuition. 35
- (4) Tuition provided under this section may be delivered through any medium, including digital technology.

212V Property maintenance fee

- (1) ~~This section applies if—~~
- ~~(a) the sponsor owns the premises used by the charter school; or~~
- ~~(b) the relevant integration agreement for a converting school in force immediately before the date of conversion allowed the proprietor of the State integrated school to charge attendance dues.~~ 5
- (1) This section applies if an integration agreement that was in force immediately before a State integrated school became a charter school allowed the proprietor to charge attendance dues.
- (2) The sponsor may, if the charter school contract for the school provides, require a parent or other person who has accepted the responsibility for the education of a student at the charter school to pay a property maintenance fee as a condition of the student's enrolment at the school. 10
- (3) The fee must be paid at the rate, and subject to any conditions, specified in the charter school contract. 15
- (4) Revenue that the sponsor receives from the property maintenance fee must be used solely for the following:
- (a) paying for improvements to the charter school's buildings and associated facilities as specified or provided for in the charter school contract;
- (b) any capital works as specified or provided for in the charter school contract; 20
- (c) meeting debts, mortgages, liens, or other charges associated with the land and the buildings that constitute the premises of the charter school.
- (5) No revenue that the sponsor receives from property maintenance fees may be used to provide or improve the charter school's buildings and associated facilities to a standard higher than that appropriate for a comparable State school. 25
- Compare: 1989 No 80 s 447

212W Failure to pay property maintenance fee

- (1) If a parent, or other person who has accepted the responsibility for the education of a student at a charter school, has entered into an agreement to pay a property maintenance fee and fails to make a payment, the payment is recoverable from the parent or other person in any court of competent jurisdiction as a debt due to the sponsor. 30
- (2) In addition, any failure to make payment constitutes grounds for the sponsor of the charter school to suspend the student's attendance at that school and to remove the student's name from the school register. 35
- (3) However, no student may be suspended and have the student's name removed from the school register until arrangements have been made to the satisfaction of the Secretary for the student to be enrolled at another registered school. 40
- Compare: 1989 No 80 s 449

212X Accounts for property maintenance fees

- (1) A sponsor who is permitted to charge property maintenance fees must keep accounts in a manner approved by the chief executive of the Agency, showing—
- (a) the total amount of fees received; and 5
 - (b) how the fees have been spent.
- (2) The accounts must be—
- (a) balanced at a date each year approved by the chief executive; and
 - (b) audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013). 10
- (3) The sponsor must send a copy of the accounts, together with the auditor's report on them, to the chief executive by a date to be approved by the chief executive.

Compare: 1989 No 80 s 450

212Y Religious instruction and observances

- (1) A charter school may provide religious instruction and observances only if permitted under its charter school contract. 15
- (2) If religious instruction and observances form part of the education with a special character provided by a charter school, these may continue to form part of the general school programme in accordance with the terms and conditions set out in the charter school contract relating to that school. 20
- (3) If religious instruction and observances form part of the education with a special character provided by a charter school, that school—
- (a) must be responsive to the sensitivities of students and parents of different religious or philosophical affiliations; and 25
 - (b) may not require a student of a different religious or philosophical affiliation to participate in religious observances and religious instruction concerned with particular observances if a parent of the student states that they do not wish that student to participate.

*Multiple timetable arrangements***212Z Multiple timetable arrangements at charter schools**

- (1) A sponsor may run a multiple timetable arrangement at a charter school for a specified period if the sponsor is satisfied that the arrangement is appropriate in the circumstances.
- (2) A sponsor must take all reasonable steps to notify every affected student and the student's parents in writing of— 35
- (a) the multiple timetable arrangement; and

- (b) the time periods for each day during which the affected student's timetable will run.

Compare: 1989 No 80 s 158Q

Employment and appointment of teachers

212ZA Religious instruction: appointments to special positions relating to character of charter school 5

If religious instruction forms part of the special character of a charter school, advertisements for the position of ~~a~~ the chief executive and ~~a~~ the person responsible for teaching and learning at the school may state that a willingness and an ability to take part in religious instruction appropriate to that school are conditions of appointment. 10

212ZB Effect of religious instruction requirements in advertisements

If, in accordance with **section 212ZA**, an advertisement for a position states a requirement that a willingness and an ability to take part in religious instruction are conditions of appointment, any person appointed to that position must accept that requirement as a condition of appointment. 15

212ZC Restrictions on requirement for teacher to take part in religious instruction

- (1) The appointment of a teacher to a position in a charter school may not be conditional on the willingness and ability of that teacher to take part in religious instruction, and no appointed teacher may be required to take part. 20
- (2) **Subsection (1)** is subject to **section 212ZA**.

212ZCA Restriction on initiating bargaining for multi-employer collective agreement involving sponsor

- (1) This section applies to a union whose members include employees of a sponsor. 25
- (2) The union may not initiate bargaining under the Employment Relations Act 2000 for a multi-employer collective agreement (as defined in section 33(5) of that Act) with—
- (a) 2 or more sponsors; or 30
- (b) 1 or more sponsors and any 1 or more other employers.

Interventions

212ZD Interventions in charter schools by Authorisation Board

Types of interventions

- (1) The Authorisation Board may apply 1 or more of the following interventions in relation to a sponsor: 35

(a)	require the Chief Review Officer to review the governance and management of the charter school by the sponsor:	
(b)	require a sponsor to provide the Authorisation Board (or any other person authorised by the Authorisation Board) with the following at a given time, at specified intervals, or both:	5
(i)	specified information:	
(ii)	an analysis of the specified information to be provided:	
(c)	require a sponsor to do the following at a given time, at specified intervals, or both:	
(i)	carry out a specified action:	10
(ii)	provide the chief executive of the Agency with a report (for example, a progress report and a final report) on the action taken:	
(d)	terminate the charter school contract with a sponsor:	
(e)	terminate the charter school contract with a sponsor and replace the sponsor with another sponsor.	15
	<i>Grounds for intervention</i>	
(2)	The Authorisation Board may apply an intervention described in subsection (1)(a), (b), or (c) if permitted under the relevant charter school contract.	
(3)	The Authorisation Board may apply an intervention described in subsection (1)(d) or (e) only if it considers that a less serious intervention is not sufficient to deal with the matter, and either of the following circumstances applies:	20
(a)	the Authorisation Board has reasonable grounds to believe that the sponsor—	
(i)	has failed to comply with any of its contractual or legislative obligations in respect of the charter school; and	25
(ii)	has not remedied the failure within a reasonable time or the failure cannot be remedied:	
(b)	the Authorisation Board has reasonable grounds to believe that—	
(i)	a significant risk exists that the sponsor will fail to comply with any of its contractual or legislative obligations in respect of the charter school; and	30
(ii)	the sponsor is unlikely to mitigate that risk within a reasonable time.	
	<i>General process for applying interventions</i>	
(4)	The Authorisation Board must ensure that any interventions in subsection (1) are applied in accordance with relevant provisions of the charter school contract.	35

Process for applying specified interventions

- (5) The Authorisation Board's written notice to the sponsor terminating the charter school contract must contain the following information:
- (a) details of the contractual or legislative obligation the sponsor has failed to comply with; and 5
 - (b) the grounds for the Authorisation Board's belief that the sponsor is at risk of failing to comply with specified contractual or legislative obligations; and
 - (c) whether the sponsor will be replaced by another sponsor; and if so, the reasons for the replacement. 10
- (6) If the Authorisation Board proposes to replace a sponsor, it—
- (a) must consult the sponsor, school community, school staff, and students; and
 - (b) may consult any other person it thinks fit.

212ZE Obligations of sponsor subject to intervention 15

- (1) A sponsor subject to an intervention under **section 212ZD** must give the Authorisation Board or any person acting on its behalf—
- (a) reasonable access to the school on request; and
 - (b) any reasonable assistance on request.
- (2) If a sponsor is required to provide information under **section 212ZD(1)(b)**, it must do so— 20
- (a) within the time, or at the intervals, or both, specified by the Authorisation Board; and
 - (b) in the form (if any) required by the Authorisation Board.
- (3) If a sponsor is required to carry out a specified action or provide a report to the Authorisation Board under **section 212ZD(1)(c)**, it must do so— 25
- (a) within the time, or at the intervals, or both, specified by the Authorisation Board; and
 - (b) in the form (if any) required by the Authorisation Board.

212ZF Process relating to replacement of sponsor 30

- (1) The Authorisation Board may, without receiving an application under **section 212F**, approve—
- (a) a replacement sponsor to operate the charter school; or
 - (b) a temporary sponsor to operate the charter school before replacing the sponsor under **subsection (1)(a)**. 35
- (2) A replacement sponsor or temporary replacement sponsor must be a body corporate, corporation sole, limited partnership, institution, or related entity.

- (3) **Sections 212I, 212J, and 212K** apply, with any necessary modifications, to the approval of a replacement sponsor or temporary replacement sponsor under this section.
- (4) **Section 212L** applies, with any necessary modifications, to a replacement sponsor or temporary replacement sponsor.

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Application of other legislation to charter schools

212ZG Application of New Zealand Bill of Rights Act 1990

Section 3(b) of the New Zealand Bill of Rights Act 1990 applies to the following persons when performing functions under this Act or in relation to a charter school contract:

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- (a) a sponsor:
- (b) a person employed or engaged to work in the school by a sponsor.

Compare: 1989 No 80 s 158W

212ZH Application of Official Information Act 1982 to sponsor

- (1) The Official Information Act 1982 does not apply to a sponsor if the sponsor is performing or exercising its functions, duties, or powers under this Act or the relevant charter school contract.
- (2) However, if the sponsor is an institution, the Official Information Act 1982 applies unless the institution is performing its functions as a sponsor under this Act or a charter school contract.

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Compare: 1989 No 80 s 158Y

212ZI Application of Public Service Act 2020 to sponsor that is institution

The Public Service Act 2020 does not apply to an institution that is a sponsor if the institution is performing or exercising its functions, duties, or powers as a sponsor under this Act or the relevant charter school contract.

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Compare: 1989 No 80 s 158Z

41 Section 237 amended (Enrolment records)

- (1) ~~In section 237(1) and (2), after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place.~~
- (2) ~~In section 237(4), after “principal”, insert “or person responsible for teaching and learning in a charter school”.~~

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(1) Replace section 237(1) with:

- (1) The following persons must ensure that an enrolment record in the form and containing the information that may be specified in rules made under subsection (3) is kept for each student who is enrolled at the school:

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- (a) the principal of a State school;
- (b) the person responsible for teaching and learning in a charter school;

- (c) a manager of a private school.
- (2) In section 237(2), after “principal”, insert “, or person responsible for teaching and learning, or manager” in each place.
- (3) In section 237(3)(a) and (b), after “principals”, insert “, persons responsible for teaching and learning, and managers”. 5
- (4) In section 237(4), replace “A principal of a registered school” with “The persons referred to in **subsection (1)**”.
- 42 New section 237A inserted (Attendance records)**
After section 237, insert:
- 237A Attendance records** 10
- (1) The principal of a State school must ensure that an attendance record is kept for each student who is enrolled at the school.
- (2) The attendance record must be in the form and contain the information specified in rules made under **subsection (3)**.
- (3) The Secretary may make rules setting out administrative and procedural requirements relating to attendance records, including (without limitation) rules— 15
- (a) specifying the form and content of attendance records:
- (b) relating to the collection, storage, and disclosure of information contained in attendance records: 20
- (c) specifying the circumstances in which any exceptions to any general requirements for specific school types may be made.
- (4) A principal of a State school must comply with rules made under **subsection (3)**.
- (5) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25
- 43 Section 248 amended (Fines to be paid to board)**
- (1) Replace the heading to section 248 with “**Fines to be paid to board or sponsor**”.
- (2) In section 248, after “board”, insert “or sponsor”. 30
- 43A Section 490 amended (Mandatory reporting of complaints received about former employees)**
- After section 490(2), insert:
- (3) This section does not apply to a complaint received by a sponsor in relation to the competence of a former employee who held a limited authority to teach. 35

43B Section 492 amended (Mandatory reporting of failure to reach required level of competence)

After section 492(2), insert:

- (3) This section does not apply to a sponsor in relation to an employee who holds a limited authority to teach.

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44 Section 497 amended (Powers of Complaints Assessment Committee)

After section 497(2), insert:

- (2A) Subsection (2)(b) ~~and (c)~~ does not apply to an employee in a charter school who holds persons employed in charter schools who hold a limited authority to teach.

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45 Section 500 amended (Powers of Disciplinary Tribunal)

After section 500(1), insert:

- (1A) ~~However, in respect of persons employed in charter schools who hold a limited authority to teach, the Disciplinary Tribunal may under subsection (1)(a) only resolve to take the matter no further.~~

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- (1A) Despite subsection (1)(a), the Disciplinary Tribunal may not refer an employee in a charter school who holds a limited authority to teach to a competency review.

46 New section 504A inserted (Application of competence provisions to holders of limited authority to teach in charter schools)

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After section 504, insert:

504A Application of competence provisions to holders of limited authority to teach in charter schools

Sections 506 to 509 ~~The following provisions of this Act~~ do not apply to persons employed in charter schools who hold a limited authority to teach.†

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~~(a) section 506;~~

~~(b) section 507;~~

~~(c) section 508;~~

~~(d) section 509.~~

47 Section 519 amended (Enrolment of international students)

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- (1) In section 519(1) and (2), after “State school”, insert “or a charter school”.

- (1A) In section 519(1), after “board’s”, insert “or sponsor’s”.

- (2) In section 519(3), after “board”, insert “or sponsor”.

- (3) In section 519(5) and (6), after “State school”, insert “or a charter school”.

- (4) In section 519(7),—

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- (a) after “State school”, insert “or charter school” in each place; and
- (b) after “board”, insert “or sponsor”.
- (5) In section 519(8) and (9),—
- (a) after “State school”, insert “or charter school”; and
- (b) after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- (6) In section 519(9)(a), after “board”, insert “or the sponsor”.
- 48 Section 520 amended (Certain international students may enrol at State schools as of right)**
- (1) In the heading to section 520, after “**State schools**”, insert “**or charter schools**”.
- (2) In section 520(1), after “State schools”, insert “or charter schools”.
- 49 Section 521 amended (Fees for international students)**
- (1) In section 521(1) and (2),—
- (a) after “State school”, insert “or a charter school” in each place; and
- (b) after “board”, insert “or the sponsor” in each place; and
- (c) after “board’s”, insert “or the sponsor’s” in each place.
- (2) In section 521(3),—
- (a) after “State school”, insert “or charter school”; and
- (b) after “board”, insert “or sponsor” in each place.
- (3) In section 521(4), after “board’s”, insert “or sponsor’s”.
- (4) In section 521 (5), after “board”, insert “or sponsor”.
- (5) In section 521(6),—
- (a) after “board”, insert “or sponsor” in each place; and
- (b) after “board’s”, insert “or sponsor’s” in each place.
- (6) In section 521(7),—
- (a) after “State school”, insert “or charter school” in each place; and
- (b) after “board”, insert “or sponsor” in each place; and
- (c) after “board’s”, insert “or sponsor’s” in each place.
- 50 Section 523 amended (Board must reimburse the Crown for expenditure relating to international students)**
- (1) In the heading to section 523, after “**Board**”, insert “**or sponsor**”.
- (2) Replace section 523(1) with:
- (1) The Minister must, by notice, set fees to be paid by the following:

<ul style="list-style-type: none"> (a) boards in respect of international students enrolled at State schools: (b) sponsors in respect of international students enrolled at charter schools. 	
<ul style="list-style-type: none"> (3) After section 523(2)(a), insert: <ul style="list-style-type: none"> (aa) all charter schools, charter schools of a specified kind or description, or specified charter schools: 	5
<ul style="list-style-type: none"> (4) In section 523(3),— <ul style="list-style-type: none"> (a) after “State school”, insert “or charter school”; and (b) after “board”, insert “or sponsor”. 	
51 Section 524 amended (Courses for international students)	
<ul style="list-style-type: none"> In section 524(1), after “board of a State school”, insert “, the sponsor,”. 	10
52 Section 524A amended (Withdrawal of approval of course for international students)	
<ul style="list-style-type: none"> (1) In section 524A(1),— <ul style="list-style-type: none"> (a) after “board of a State school”, insert “, the sponsor,” (b) after “giving the board”, insert “, the sponsor,”. (2) In section 524(3) and (4), after “board”, insert “, the sponsor,”. 	15
53 Section 548A replaced (Data accessed by Ministry under Data and Statistics Act 2022)	
<ul style="list-style-type: none"> Replace section 548A with: 	
548A Data accessed by Ministry under Data and Statistics Act 2022	20
<ul style="list-style-type: none"> (1) This section applies despite section 54(1)(c) of the Data and Statistics Act 2022. (2) The Ministry may, if the criteria specified in this section are met, publish or otherwise disclose the following data accessed under Part 5 of the Data and Statistics Act 2022 in a form that may identify an individual or an organisation: <ul style="list-style-type: none"> <i>Early childhood services</i> (a) data relating to the socio-economic status of children attending early childhood services and their families, but only if— <ul style="list-style-type: none"> (i) the data is published or disclosed at the level of an early childhood service; and (ii) the publication or other disclosure is for the purpose of assisting the Ministry to develop or use tools relating to the provision of funding to early childhood services under this Act; and (iii) the data does not include personal information, unless the service provider of the early childhood service, who is an individual, has 	25
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consented to the publication or disclosure of information regarding the service they operate:

Charter schools

- (b) data relating to the socio-economic status of children attending the charter school and their families, but only if— 5
- (i) the data is published or disclosed at the level of a charter school; and
- (ii) the publication or other disclosure is for the purpose of assisting the Ministry to develop or use tools relating to the provision of funding to charter schools or to enable performance measurement of charter schools under this Act. 10
- (3) In this section,—
- organisation** has the same meaning as in section 6 of the Data and Statistics Act 2022
- personal information** has the same meaning as in section 7(1) of the Privacy Act 2020. 15

53A New section 601A inserted (Lawful instruction regarding charter school services)

After section 601, insert:

601A Lawful instruction regarding charter school services 20

- (1) The board of a State school may require a person employed by the board at the school to provide services to a charter school (a recipient school) or a charter school student if that requirement would be a lawful and reasonable instruction but for the recipient school being a charter school, or the student being enrolled at a charter school. 25
- (2) This section overrides anything to the contrary in—
- (a) the Employment Relations Act 2000; and
- (b) a relevant employment agreement.

54 Section 619 amended (Secretary may require information for administration of Act) 30

After section 619(1)(a), insert:

- (aa) the sponsor:

55 Section 636 amended (Regulations relating to early childhood services)

Repeal section 636(1)(a).

56 Section 638 amended (Regulations relating to how schools must be run) 35

- (1) Replace section 638(2)(b) with:

- (b) give powers to, or impose duties on the following:
- (i) boards or principals (or both):
 - (ii) sponsors or persons responsible for teaching and learning in charter schools (or both):
- (2) In section 638(2)(c), after “boards”, insert “or sponsors”. 5
- (3) In section 638(2)(e), after “schools”, insert “(other than charter schools)”.
- 57 New section 651A inserted (Regulations relating to applications to operate charter schools)**
- After section 651, insert:
- 651A Regulations relating to applications to operate charter schools** 10
- (1) The Governor-General may, by Order in Council, make regulations prescribing, or providing for the fixing of, the fee payable for an application made under **section 212F** to operate a charter school.
 - (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- 58 Section 659 amended (Power of boards to close schools)**
- (1) In the heading to section 659, after “boards”, insert “and sponsors”.
 - (2) In section 659(1), (3), and (4), after “board”, insert “or a sponsor” in each place.
- 59 Schedule 1 amended** 20
- (1) In Schedule 1, Part 1, repeal subpart 2.
 - (2) In Schedule 1,—
 - (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
 - (b) make all necessary consequential amendments.
- 60 Schedule 3 amended** 25
- (1) In Schedule 3, clause 14, insert as subclause (2):
 - (2) Despite subclause (1), a sponsor may employ a person ~~with a limited authority to teach~~ in a charter school who has been granted a limited authority to teach under even if the person’s skills are not in short supply and are not specialist skills **clause 16(1A)**. 30
 - (2) In Schedule 3, after clause 16(1), insert:
 - (1A) Despite subclause (1), the The Teaching Council must grant a limited authority to teach if—
 - (a) the application ~~limited authority to teach~~ relates to ~~a charter school~~ teaching in 1 or more charter schools; and 35

- (b) the Teaching Council considers that the applicant—
- (i) is of a suitable disposition: and
 - (ii) has the skills and experience appropriate to advance the learning of a student or group of students.
- (3) In Schedule 3, clause 17(1), after “clause 16(1)”, insert “or **(1A)**”. 5
- 61 Schedule 4 amended**
- (1) In Schedule 4, clause 9(1),—
- (a) after “board of a State school”, insert “, the sponsor,”; and
 - (b) replace “whom the board or the managers appoints”, with “whom the board, the sponsor, or the managers appoint”. 10
- (2) In Schedule 4, clause 9(2) and (3), after “board”, insert “, the sponsor,”.
- (3) In Schedule 4, clause 10(1), after “board of a State school”, insert “, the sponsor,”.
- (4) In Schedule 4, clause 10(1A) and (1B), after “board”, insert “, the sponsor,”.
- (5) In Schedule 4, clauses 12(1) and 13, after “board of a State school”, insert “, the sponsor,”. 15
- 61A Schedule 5 amended**
- In Schedule 5, after clause 1(2)(c), insert:
- (d) charter schools.
- 62 New Schedules 6A and 6B inserted** 20
- After Schedule 6, insert the **Schedules 6A and 6B** set out in **Schedules 2 and 3** of this Act.
- 62A Schedule 8 amended**
- (1) In Schedule 8, after clause 1(1)(a)(i), insert:
- (ia) a sponsor of a secondary school or a composite school: 25
- (2) In Schedule 8, after clause 5(a), insert:
- (aa) a sponsor of a secondary school or a composite school:
- (3) In Schedule 8, after clause 6(2)(a), insert:
- (aa) a sponsor of a secondary school or a composite school:

Part 2
Amendments to other legislation and revocation

Amendment to Local Government (Rating) Act 2002

63AAA Principal Act

Section 63AAB amends the Local Government (Rating) Act 2002. 5

63AAB Schedule 1 amended

In Schedule 1, Part 1, after clause 6(f), insert:

(fa) a charter school, except a charter school that operates for profit:

Amendment to Ombudsmen Act 1975

63 Principal Act 10

Section 64 amends the Ombudsmen Act 1975.

64 Schedule 1 amended

In Schedule 1, Part 2, insert in their appropriate alphabetical order:

Charter Schools Authorisation Board established under **section 212A** of the Education and Training Act 2020 15

Sponsor as defined in section 10(1) of the Education and Training Act 2020

Amendment to Public Audit Act 2001

65 Principal Act

Section 66 amends the Public Audit Act 2001.

66 Schedule 1 amended 20

In Schedule 1, insert in its appropriate alphabetical order:

Charter Schools Authorisation Board established under **section 212A** of the Education and Training Act 2020

Amendment to Public Records Act 2005

67 Principal Act 25

Section 68 amends the Public Records Act 2005.

68 Section 4 amended (Interpretation)

In section 4, definition of **public office**, after paragraph (c)(xa), insert:

(xb) the Charter Schools Authorisation Board established under **section 212A** of the Education and Training Act 2020; and 30

Consequential amendments and revocation

69 Consequential amendments

Amend the legislation specified in **Schedule 4** as set out in that schedule.

70 Revocation

The Education (Early Childhood Services Network Approval) Regulations 2022 (SL 2022/269) are revoked. 5

Schedule 1
New Part 6 inserted into Schedule 1

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Part 6

Provisions relating to Education and Training Amendment Act 2024 5

Subpart 1—Transitional provisions relating to repeal of network approval requirements

110 Interpretation

In this subpart,—

amendment Act means the Education and Training Amendment Act **2024** 10

commencement means the date on which the amendment Act comes into force.

111 Approval conditions need not be met

(1) This clause applies to an approval to apply for a licence granted under section 17 to which conditions imposed under section 17A apply (as those provisions read immediately before commencement). 15

(2) The conditions no longer apply in relation to the approval on and after commencement.

112 Licence no longer subject to certain special conditions

(1) This clause applies to a licence for an early childhood service to which 1 or more of the following special conditions imposed by the Secretary under regulation 22(5) of the Education (Early Childhood Services) Regulations 2008 apply (as it read immediately before commencement): 20

(a) conditions that are a continuation of any conditions on the approval to apply for a licence imposed under section 17A: 25

(b) conditions that are consistent with the approval to apply for a licence granted under section 17:

(c) conditions imposed on an excluded early childhood service that relate to the type of excluded early childhood service.

(2) The special conditions are treated as revoked on and after commencement. 30

113 Pending applications for approval

(1) This clause applies to an application for approval to apply for a licence under section 17 made, but not determined, before commencement.

(2) The Secretary must—

- (a) treat the application as if it had been withdrawn; and
- (b) refund to the applicant the prescribed fee paid in respect of the application.

Subpart 2—Transitional provisions relating to converted schools

114 Interpretation	5
In this subpart,—	
conversion date , in relation to a converted school, means the date on which the State school became a charter school	
converted school means a former State school that has become a charter school in accordance with an approval granted to a sponsor under section 212I	
sponsor has the meaning given in section 10(1).	
115 Board dissolved	
(1)	On the conversion date, the board of the converted school is dissolved.
(2)	Every member of the board of the converted school that is holding office immediately before the conversion date goes out of office on the close of the day before that date.
116 Integration agreement for State integrated school cancelled	
(1)	This clause applies if a converted school was a State integrated school immediately before its conversion date.
(2)	On the conversion date, the integration agreement between the proprietor and the Crown relating to the State integrated school must be treated as if it were cancelled under clause 11 of Schedule 6.
<i>Rights, assets, and liabilities of converted school</i>	
117 Rights, assets, and liabilities of converted school	25
(1)	This clause applies to all rights, assets, and liabilities that belong to a converted school immediately before its conversion date.
(2)	On the conversion date, all rights, assets, and liabilities of the converted school vest in the Minister on behalf of the Crown.
(3)	Subclause (2) is subject to clauses 121 to 123 .
(4)	In this clause, assets , liabilities , and rights have the same meanings as in section 10(6).
118 Property held in trust	
(1)	This section applies to any property of a converted school that, immediately before the conversion date, was held in trust—
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- (a) by the board of the State school; or
- (b) by any other person or body for the benefit of—
- (i) the converted school; or
- (ii) the students or former students of the converted school.
- (2) The property continues to be subject to the trust concerned, but the person or body in whom it is vested may apply to Public Trust to devise a scheme to modify the trust in light of the conversion of the State school concerned. 5
- (3) If satisfied that adequate arrangements have been made to meet the costs of doing so, Public Trust must, in consultation with the sponsor concerned, devise a scheme to modify any trust in respect of which Public Trust has received an application under this clause and notify the Solicitor-General of the scheme. 10
- (4) If Public Trust notifies the Solicitor-General of a scheme, the Solicitor-General may, by written notice to Public Trust,—
- (a) approve the scheme (as originally notified or with any amendments agreed by Public Trust after consultation with the board concerned); or 15
- (b) suggest amendments to it; or
- (c) direct that it should not proceed.
- (5) If the Solicitor-General directs that it should not proceed, the matter may be dealt with under the Charitable Trusts Act 1957.
- (6) If, within 90 days of being notified of a scheme, the Solicitor-General does not suggest amendments to it or direct that it should not proceed, the Solicitor-General is to be treated as having approved the scheme. 20
- (7) If the Solicitor-General approves a scheme notified under this clause, the trust concerned has effect accordingly.
- (8) The Solicitor-General may not approve a scheme under this clause unless satisfied that— 25
- (a) it modifies the trust concerned so as best to give effect to the intentions of the testator, settlor, or other person or body by whom or which the trust was established; and
- (b) subject to **paragraph (a)**, it effects the minimum change necessary to enable the trust to operate successfully in light of conversion of the school concerned. 30

Compare: 1989 No 80 s 156C

Transfer of employees of converted school

- 119 Transfer of employees of converted school to charter school** 35
- (1) On the conversion date, every employee of a converted school becomes an employee of the sponsor (a **transferred employee**)—

- (a) on terms and conditions of employment that are no less favourable overall to those that applied to the person immediately before they became an employee of the sponsor; and
- (b) as if those terms and conditions of employment were contained in an individual employment agreement agreed between the transferred employee and the sponsor. 5
- (2) The terms and conditions of employment referred to in **subclause (1)(a)** continue to apply in relation to the transferred employee until—
- (a) they are varied by agreement between the transferred employee and the sponsor; or 10
- (b) the transferred employee becomes bound by a collective agreement agreed between the sponsor and the union of which the transferred employee is a member.
- (3) A transferred employee is not entitled to receive any contractual notice or any payment, benefit, or compensation from the board of the converted school on the grounds that— 15
- (a) the person's position in the converted school has ceased to exist; or
- (b) the person has ceased to be an employee of the board as a result of the person's transfer to the charter school.
- ~~(4) To avoid doubt, the employment of a transferred employee by the sponsor does not constitute new employment, including for the purposes of any service-related benefits or entitlements (whether legislative or otherwise).~~ 20
- (4) To avoid doubt, the employment of a transferred employee by the sponsor does not—
- (a) constitute new employment, including for the purposes of the Holidays Act 2003 or the KiwiSaver Act 2006 or any service-related entitlements or benefits (whether legislative or otherwise); or 25
- (b) treat that employee as a new employee for the purposes of the Employment Relations Act 2000.
- (5) In this clause, **terms and conditions of employment that are no less favourable overall**, in relation to the transferred employee's employment at the converted school, is employment at a charter school that— 30
- (a) is in substantially the same position; and
- (b) is in the same general locality; and
- (c) is on terms that treat the period of service with the converted school (and any other period of service recognised by the converted school as continuous service) as if it were continuous service with the charter school; and 35
- (d) is on terms and conditions of employment that are no less favourable overall than those that applied to the transferred employee immediately 40

	before the person became an employee of the sponsor, including (without limitation) in relation to the employee's overall remuneration and any service-related, redundancy, or superannuation conditions; and	
(e)	is subject to any other modifications that are necessary to reflect—	
	(i) the transferred employee's terms and conditions of employment being treated as if they were contained in an individual employment agreement; and	5
	(ii) the transfer of employment from a State school to a charter school, for example, in relation to—	
	(A) funding and payment of the transferred employee's remuneration <u>remuneration</u> ;	10
	(B) the eligibility of a transferred employee who holds a teaching position for any awards, grants, or associated leave; <u>and</u>	
	(C) <u>a sponsor not being required to advertise any vacancy at the charter school in the <i>Education Gazette</i>.</u>	15
(6)	This clause overrides—	
	(a) Part 6A of the Employment Relations Act 2000; and	
	(b) any employment protection provision in any relevant employment agreement.	20
120	Transfer of employment information	
(1)	On and after the conversion date, all information held by the board of a converted school, the Ministry, or Education Payroll Limited relating to a transferred employee's employment is to be treated as being held by the sponsor.	
<u>(1)</u>	<u>This clause applies to information held by the board of a converted school, the Ministry, or Education Payroll Limited relating to a transferred employee's employment with the converted school.</u>	25
<u>(1A)</u>	<u>The information is to be treated as if it were held by the sponsor on and from the later of the following dates:</u>	
	<u>(a) the date on which the charter school contract is entered into under section 212L; and</u>	30
	<u>(b) the date that is 3 months before the conversion date.</u>	
(2)	The transfer of information under subclause (1) <u>subclause (1A)</u> does not constitute an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.	35

121	Transfer of rights, duties, and obligations relating to existing pay equity claims and settlements	
(1)	This clause applies to any rights, duties, or obligations of the Secretary (acting under delegation from the Public Service Commissioner) or the board of a converted school in relation to—	5
	(a) any pay equity claims relating to the work of a transferred employee raised before the conversion date but not settled before that date:	
	(b) any existing pay equity claim settlements entered into before the conversion date.	
(2)	On and after the conversion date,—	10
	(a) the rights, duties, and obligations referred to in subclause (1) vest in the sponsor; and	
	(b) the existing pay equity claim settlement in respect of teachers aides recorded in the Teacher Aide Pay Equity Settlement Agreement dated 12 February 2020 is to be treated as binding on the sponsor as if—	15
	(i) the sponsor were a party to the agreement; and	
	(ii) all references in the agreement to the Secretary were references to the sponsor; and	
	(c) every other existing pay equity claim settlement to which the board of the converted school was a party before the conversion date is to be treated as binding on the sponsor as if—	20
	(i) the sponsor were a party to the agreement; and	
	(ii) all references in the agreement to the board were references to the sponsor.	
(3)	In this clause, pay equity claim and pay equity claim settlement have the same meanings as in section 2(1) of the Equal Pay Act 1972.	25
122	Transfer of liabilities for holidays and leave taken before conversion date	
(1)	This clause applies in relation to any holiday, sick leave, bereavement leave, or family violence leave—	
	(a) provided under the Holidays Act 2003; and	30
	(b) taken by a transferred employee before the conversion date.	
(2)	On and after the conversion date, any liabilities of the board of the converted school for holiday pay or leave pay in relation to the holidays and leave referred to in subclause (1) vest in the Minister on behalf of the Crown.	
(3)	In this clause, holiday , holiday pay , and leave pay have the same meanings as in section 5(1) of the Holidays Act 2003.	35

123 Transfer of other rights, duties, liabilities, or obligations of board relating to transferred employees

- (1) This clause applies to any other rights, duties, liabilities, or obligations of the board of a converted school relating to a transferred employee that were in existence immediately before the conversion date. 5
- (2) On the conversion date, those rights, duties, liabilities, and obligations vest in the sponsor.

*Superannuation***124 Government superannuation fund**

- (1) Any person who, immediately before becoming an employee of a sponsor, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service as long as the person continues to be an employee at a charter school. 10
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the sponsor were Government service. 15
- (3) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the sponsor is the controlling authority. 20

*Shared education services***125 Arrangements between State schools for shared education services**

- (1) This clause applies if the board of a converted school was, before its conversion, a party to a written arrangement (for example, a memorandum of understanding), whether legally binding or not, with the boards of 1 or more other State schools regarding the sharing of education services, employees, or students. 25
- (2) On and after the conversion date,—
- (a) the sponsor is to be treated as if it were a party to the arrangement; and 30
- (b) all references in the arrangement to the board of the converted school must be treated as if they were references to the sponsor.

Schedule 2
New Schedule 6A inserted

s 62

Schedule 6A		
Further provisions applying to Authorisation Board		5
		s 212C(3)
1	Resignation or discharge of members	
(1)	A member of the Authorisation Board may resign by giving written notice to the Minister and to the Authorisation Board.	
(2)	The Minister may, at the Minister's discretion, discharge the member by giving written notice to the member and to the Authorisation Board.	10
2	Actions of Authorisation Board not affected by informality in membership	
	The powers of the Authorisation Board are not affected by—	
	(a) any vacancy in its membership; or	
	(b) the discovery of any error or defect in appointment of a member; or	15
	(c) the fact that a person continued to act as a board member after the person's office as a member became vacant.	
3	Delegations	
(1)	The Authorisation Board may, either generally or specifically, delegate any of its functions, duties, or powers under this Act to a public service chief executive.	20
(2)	A delegation—	
	(a) must be in writing; and	
	(b) may be revoked at will in writing; and	
	(c) may be subject to instructions or conditions.	25
(3)	Despite subclause (1) , the Authorisation Board must not delegate the general power of delegation.	
(4)	A public service chief executive to whom any functions, duties, or powers are delegated under this clause may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act (subject to any general or special instructions given or conditions imposed by the Authorisation Board).	30
(5)	A public service chief executive purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of that delegation.	35

(6)	A delegation continues in force until revoked. <i>Subdelegation</i>	
(7)	If the Authorisation Board has delegated any functions, duties, or powers to a public service chief executive, that public service chief executive may, with the written approval of the Authorisation Board, subdelegate those functions, duties, or powers in accordance with clause 2 of Schedule 6 of the Public Service Act 2020.	5
(8)	In this clause, public service chief executive has the meaning given in section 5 of the Public Service Act 2020.	
4	Personal liability of members	10
	A member of the Authorisation Board is not personally liable for an act the member has done or omitted to do, or for any loss arising from that act or omission, if the member was acting—	
	(a) in good faith; and	
	(b) in the course of performing or exercising the member’s functions, duties, or powers.	15
4A	<u>Annual report</u>	
(1)	<u>As soon as practicable after the end of each financial year, the Authorisation Board must prepare and provide the Minister with an annual report on its operations during that year.</u>	20
(2)	<u>The annual report must include information on the number of new and converted charter schools approved by the Authorisation Board in that year.</u>	
(3)	<u>The Minister must present the annual report to the House of Representatives within 5 working days after receiving the report or, if Parliament is not in session, as soon as practicable after the commencement of the next session of Parliament.</u>	25
5	Procedures	
	The Authorisation Board may determine its own procedures.	

Schedule 3

New Schedule 6B inserted

s 62

Schedule 6B

Provisions of Crown Entities Act 2004 that apply to Authorisation Board

5

s 212E

Section	Brief description
Section 26	Accountability of members to responsible Minister
Section 28	Method of appointment of members
Section 30	Qualifications of members
Section 31	Requirements before appointment
Section 32	Term of office of members
Section 34	Validity of members' acts
Section 35	Validity of appointments
Section 36	Removal of members of Crown agents
Section 41	Process for removal
Section 43	No compensation for loss of office
Section 44	Resignation of members
<u>Sections 47–48</u>	<u>Remuneration and expenses</u>
Section 49	Entity must act consistently with objectives, functions, statement of intent, and statement of performance expectations
Section 50	Manner in which functions must be performed
Section 53	Duty to comply with this Act and entity's Act
Section 54	Duty to act with honesty and integrity
Section 55	Duty to act in good faith and not at expense of entity's interests
Section 56	Duty to act with reasonable care, diligence, and skill
Section 57	Duty not to disclose information
<u>Sections 62–67</u>	<u>Conflict of interest disclosure rules</u>
Section 103	Power to direct Crown agents to give effect to government policy
Section 113	Safeguarding independence of Crown entities
Section 115	Procedure for ministerial directions on government policy
<u>Section 135</u>	<u>Members, office holders, and employees are officials</u>
Sections 138–149A	Statement of intent
Section 150	Obligation to prepare, present, and publish annual report
Section 152	Disclosure of payments in respect of members, committee members, and employees

Schedule 4 Consequential amendments

s 69

Part 1 Amendments to Act

5

Children's Act 2014 (2014 No 40)

In section 15, definition of **school board**, after paragraph (b), insert:

- (c) a sponsor as defined in section 10(1) of the Education and Training Act 2020:

After section 24(1)(c), insert:

10

- (d) a sponsor as defined in section 10(1) of the Education and Training Act 2020

Part 2 Amendments to secondary legislation

Education (Early Childhood Services) Regulations 2008 (SR 2008/204)

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In regulation 3, replace the definition of **applicant** with:

applicant, in relation to an application for a licence to operate a licensed early childhood service, means,—

- (a) in the case of a service provider who is an individual, that individual; or
(b) in the case of a service provider who is a body corporate or body of persons, an individual acting on behalf of the service provider

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In regulation 3, revoke the definition of **excluded early childhood service**.

Revoke regulation 6(3)(aaa).

Revoke regulation 22(5)(e), (f), and (g).

Revoke regulation 33(5), (6), and 7(c).

25

Education (School Boards) Regulations 2020 (LI 2020/193)

Replace regulation 6 with:

6 Students enrolled at State school may be given tuition by another State school or charter school

- (1) Students enrolled at a State school may, by agreement between the boards concerned, receive tuition at or from another State school.

30

- (2) Students enrolled at a State school may, by agreement between the board and the sponsor, receive tuition at or from a charter school.

Education (School Boards) Regulations 2020 (LI 2020/193)—continued

- (3) The board of the State school at which the students are enrolled may pay the board of the other State school or the charter school giving the tuition.
- (4) Tuition provided under this regulation may be delivered through any medium, including digital technology.

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (SR 1999/202) 5

In rule 2(1), definition of **the Act**, delete “**the**”.

Replace rule 5 with:

- 5 Purpose of rules**
- These rules regulate the practice and procedure to be followed under sections 80 to 88 of the Act,— 10
- (a) in relation to State schools, by boards, principals, students, parents of students, and other persons:
- (b) in relation to charter schools, by sponsors, persons responsible for teaching and learning at the school, students, parents of students, and other persons. 15

In rule 7(e), after “board”, insert “or sponsor”.

In rules 8, 9, and 10, after “principal”, insert “or person responsible for teaching and learning in a charter school”.

In rules 11 and 12, after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place. 20

In rule 13, after “principal”, insert “or person responsible for teaching and learning in a charter school”.

Replace the heading to rule 14 with “**Suspension report**”.

In rule 14, after “principal”, insert “or person responsible for teaching and learning in a charter school”. 25

In rule 14, after “board”, insert “or sponsor (as the case may be)”.

In rule 15, after “board”, insert “or sponsor” in each place.

In rule 15(2)(c), after “board’s”, insert “or sponsor’s”.

In rule 15(2)(c)(i), replace “the principal’s report” with “the report of the principal or person responsible for teaching and learning in a charter school”. 30

In rule 15(2)(c)(ii), after “principal”, insert “or person responsible for teaching and learning in a charter school”.

Replace rule 16(1) with:

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (SR 1999/202)—*continued*

- (1) The board or sponsor must allow an adjournment in a suspension meeting if any of the following asks the board or sponsor to do so because the person making the request needs time to consider new information:
- (a) the student or a parent of the student:
 - (b) any board member or governing member of the sponsor. 5
- In rule 16(3), replace “board must have regard to the amount of time that the person making the request needs, in his or her” with “board or sponsor must have regard to the amount of time that the person making the request needs, in the person’s”.
- Replace the heading to rule 17 with “**Board’s or sponsor’s decision**”.
- In rule 17, after “board”, insert “or sponsor” in each place. 10
- In rule 17(2), after “principal”, insert “or person responsible for teaching and learning in a charter school” in each place.
- In rule 18(1), after “board”, insert “or sponsor”.
- In rule 18(2), after “the board”, insert “or sponsor”.
- In rule 18(2), after “board meeting”, insert “or meeting of the sponsor”. 15
- In rule 18(3), after “principal”, insert “or person responsible for teaching and learning in a charter school”.
- In rule 19, after “board”, insert “or sponsor” in each place.
- In rule 19(1), after “principal”, insert “or person responsible for teaching and learning in a charter school”. 20
- In rule 20, after “board”, insert “or sponsor” in each place.
- In rule 20(2)(c), after “board’s”, insert “or sponsor’s”.
- In rule 20(2)(c)(i), replace “the principal’s report” with “the report of the principal or person responsible for teaching and learning in a charter school”.
- In rule 20(2)(c)(ii), after “principal”, insert “or person responsible for teaching and learning in a charter school”. 25
- In rule 21, after “board”, insert “or sponsor”.
- In rule 21, after “principal”, insert “or person responsible for teaching and learning in a charter school”.

Legislative history

24 June 2024
25 June 2024

Introduction (Bill 66–1)
First reading and referral to Education and Workforce
Committee