

Departmental Disclosure Statement

Education and Training Amendment Bill

The departmental disclosure statement for the Education and Training Amendment Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 June 2024

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Part One: General Policy Statement

The Education and Training Amendment Bill (the **Bill**) amends the Education and Training Act 2020 (the **principal Act**) to–

- repeal the early childhood education (**ECE**) network approval provisions; and
- provide for a new type of school, charter school/kura hourua, that provides increased flexibility and allows State schools to convert to charter schools; and
- enable the Secretary for Education (the **Secretary**) to make rules for the form and content of attendance data that schools are required to provide.

Charter schools/kura hourua

The New Zealand school system currently has two types of schools – State schools and private schools. The Bill establishes a third type of school to be known as a charter school/kura hourua (charter school). Charter schools will be publicly funded and part of the network of schools that offer free education and enrolment to students. The charter school model is aimed at helping with the falling student achievement levels in New Zealand through providing greater autonomy and flexibility than State schools have. In return for this increased flexibility, charter schools will be contracted to meet performance outcomes and other obligations.

Background

A similar partnership school model was established in legislation in 2013 for the purpose of lifting educational achievement within low socio-economic areas and disadvantaged communities by providing alternative and innovative education for learners. The legislation was repealed in 2018, and the partnership schools in operation were disestablished. The Bill gives effect to the Government's commitments as set out in the 2023 Coalition Agreement between the New Zealand National Party and ACT New Zealand to reintroduce charter schools and introduce a policy to allow State schools to convert to charter schools.

Framework for charter schools

The Bill proposes to establish a Charter School Authorisation Board (the **Authorisation Board**) which will be a statutory board with its terms and functions specified in the legislation. The Authorisation Board's key duties include approving new charter schools and using interventions against sponsors that are not complying with contractual or legislative obligations. A sponsor is the governing body of the school and could be a body corporate, corporation sole, limited partnership, or institution. For converting schools, the Bill has transition provisions for staffing, property, assets, liabilities, contracts and other obligations and commitments.

Under the Bill, a proposed sponsor of a new charter school would apply to the Authorisation Board for approval to operate a charter school. Any State school (apart from specialist schools) would be able to apply to convert to a charter school. The Minister would also be able to direct a State school (apart from State-integrated schools, distance schools, Kura Kaupapa Māori, specialist schools, and designated character schools) to enter the conversion process.

Once the sponsor is approved by the Authorisation Board, the Charter School Agency (established under the Public Service Act 2020) would enter into a charter school contract on behalf of the Crown with the approved sponsor to operate a charter school.

Operation of charter schools

The Bill outlines the content of charter school contracts which include detail on performance targets and outcomes, interventions, reporting requirements, the number

of teachers that must hold practising certificates, the curriculum and qualifications for the school, and a complaints policy.

Once a charter school is established, a sponsor would be obliged to comply with the legislation, as well as contractual requirements.

Charter schools will have more flexibility than State schools to make decisions about how they operate and use funding to deliver specified performance targets. They will have flexibility in the areas of governance, teachers, curriculum, qualifications, and operating hours, with some limitations specified in the legislation and contracts.

Similar to State schools, charter schools will have to accept all eligible domestic students who apply, unless oversubscribed. Charter schools will also be able to refuse enrolment if a parent refuses to accept the particular character of a school.

In other areas, such as special education, stand down, suspension, and exclusion, police vetting, and international students, the same provisions in the Act that apply to State schools will also apply to charter schools.

Network approval for early childhood education

The principal Act, which came into effect on 1 August 2020, introduced a requirement that those wanting to operate a new licensed ECE service would need to receive network approval from the Minister of Education (the **Minister**) before applying for a licence. The Bill proposes to remove the network approval requirements from legislation, meaning that anyone intending to establish and operate a new licensed ECE service will not need to apply for network approval from the Minister of Education before applying for a licence. Removing this barrier will reduce the regulatory burden and costs to business and the Ministry of Education and enable the market to respond more directly to the needs of parents and communities. Removing network approval requirements does not change the licensing requirements for new services.

Rules for the provision of school attendance data

On 6 May 2024, Cabinet agreed to revoke the Education (School Attendance) Regulations 1951 and replace them with regulations that increase the frequency at which State schools are required to provide attendance data to the Secretary for Education from once a term to daily. The new attendance regulations are proposed to come into effect in time for Term 1 2025.

To support the new attendance regulations, the Bill enables the Secretary to make enforceable rules related to attendance data. This would enable the Secretary to make rules about the collection and provision of attendance data and be responsive to any future changes to systems and data requirements. The intention is for these rules to be made by the Secretary in time for Term 1 2025, aligning with the new attendance regulations coming into effect.

Regulatory Impact Statements

The Ministry of Education produced regulatory impact statements for the charter school/kura hourua and ECE network policies in this Bill:

- 2 April 2024 for charter school/kura hourua
- 2 April 2024 for ECE network policy

The Treasury's Regulatory Impact Analysis team determined that the proposal to enable the Secretary for Education to make attendance data rules under the Education and Training Act 2020 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

A copy of the regulatory impact statements relating to this Bill can be found at –

- [Advice seen by our Ministers – Education in New Zealand](#)
- [Regulatory impact statements | The Treasury New Zealand](#)

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><u>Charter schools</u>: MartinJenkins did the following evaluation reports on the previous model for partnership schools/kura hourua. These were used to inform the policy for the Bill.</p> <ul style="list-style-type: none">• Martin, Jenkins & Associates Limited, “Innovations in Partnership Schools Kura Hourua: Report prepared for the Ministry of Education” (October 2015), available at: Innovations in Partnership Schools Kura Hourua Education Counts• Martin, Jenkins & Associates Limited, “Evaluation of Partnership Schools Kura Hourua Policy: Report prepared for the Ministry of Education” (May 2017), available at: Evaluation of Partnership Schools Kura Hourua Policy Education Counts• Martin, Jenkins & Associates Limited, “Multi-year Evaluation of Partnership Schools Kura Hourua Policy, Summary of Findings Across Years: Report prepared for the Ministry of Education” (April 2018), available at: Multi-year Evaluation of Partnership Schools Kura Hourua Policy, Summary of Findings Across Years Education Counts	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statements were prepared by the Ministry of Education for the following policy decisions:</p> <ul style="list-style-type: none">• Regulatory Impact Statement: Reinstating a New Zealand model of charter schools kura hourua (2 April 2024), available at Advice seen by our Ministers – Education in New Zealand• Regulatory Impact Statement: Repeal of network approval legislation (2 April 2024), available at Advice seen by our Ministers – Education in New Zealand <p>The Treasury's Regulatory Impact Analysis team determined that the proposal to enable the Secretary for Education to make attendance data rules under the Education and Training Act 2020 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no, or only minor, impacts on businesses, individuals, and not-for-profit entities.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p><u>Charter schools:</u> The charter schools Regulatory Impact Statement has some analysis on the marginal costs and benefits of the options. This is available at Advice seen by our Ministers – Education in New Zealand</p> <p>There is more information on the size of the potential costs and benefits in Appendix One.</p> <p><u>ECE:</u> The intention of this proposal is to reduce regulatory burden for anyone intending to establish a new ECE. This will result in benefit and costs savings for these providers. The network approval application fee is \$575 (including GST).</p> <p><u>Attendance:</u> Although this amendment is not required for the daily provision of attendance data, it will address a gap in the current regulatory framework which will allow the Secretary for Education to make attendance data rules. This will support good data which will help inform understanding the drivers of non-attendance and the development of future attendance interventions. The amendment will also enable the Ministry to be more responsive to any future changes to systems and data requirements.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

Charter schools:

The Bill provides the legislative framework for charter schools. Charter schools/kura hourua will have a contract with the Charter School Agency to operate a charter school. Charter schools will need to comply with both the legislation in the Education and Training Act 2020 and charter school contracts. Non-compliance with contract terms, including meeting performance targets, could result in termination of the contract or other interventions specified in the Bill.

The Charter School Agency will be a new departmental agency hosted by the Ministry of Education. The Bill also establishes the Authorisation Board which, among other functions, will approve new sponsors for charter schools and use interventions against charter schools when appropriate.

The level of effort made by the Authorisation Board and Charter School Agency to encourage and secure compliance will be relevant to the success of the charter school model. For example, if a charter school is failing to meet its contractual obligations, the Authorisation Board will be able to use an intervention to encourage or require the school to comply. This will help to ensure the schools are accountable for the education outcomes of the students.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Charter schools: [Legally privileged] [text has been redacted]

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Charter schools: The Ministry did a Treaty of Waitangi Analysis as part of the RIS process. The Ministry was also informed by the previous partnership school model that operated between 2014 and 2018 when some of the partnership schools had a Kaupapa Māori focus.

The Bill has some provisions that reflect the Crown's obligations under the Treaty of Waitangi. This includes having an adjusted application process for the conversion of any Kura Kaupapa Māori, Ngā Kura ā Iwi, and Kura Motuhake (unaffiliated kura), a requirement for the collective skills of the Authorisation Board to include the ability to engage with a range of stakeholders including Māori, and sponsors being required to give have regard to any statement of National Education Learning Priorities issued by the Minister which encourages all places of learning to incorporate te reo Māori and tikanga Māori into everyday activities .

The charter school model offers an increased level of flexibility which could support increased agency and authority of schools to operate in ways that are meaningful to whānau, hapū and iwi. However, in the absence of a specific Te Tiriti provision in the Bill for charter schools, there will be no formal requirement to ensure charter schools' plans, policies and curricula reflect local tikanga Māori, mātauranga Māori and te ao Māori, or to take reasonable steps to make instruction in tikanga Māori and te reo Māori

Due to short timeframes, there was not enough time to do full public consultation. The Associate Minister of Education and the Ministry responded to queries from schools, unions, Māori educational organisations, iwi and others interested people and groups.

Attendance: Efforts to increase student attendance will have a positive effect on Māori student's achievement and wellbeing. To progress the new attendance regulations in time for Term 1 2025, there is limited scope for formal engagement with Māori on the proposed changes in this paper. Cabinet agreed to a later commencement date of July 2025 for specified kura boards to allow time for engagement to consider regulatory and operational approaches to provision of attendance data. These engagements will also enable us to identify circumstances in which any exceptions to any general requirements for specific school types may be made, for example, attendance codes that are kura specific.

ECE network approval: The importance of growing the supply of early childhood services provided in te reo Māori resulted in Cabinet deciding to exclude kōhanga reo and other Māori immersion services from the requirement to seek network approval. However, removing the requirement to seek network approval makes the exclusion of these services unnecessary.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The proposals in this Bill have been vetted for consistency with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry consulted with the Ministry of Justice on the Cabinet paper and draft Bill but did not receive any feedback.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p><u>Charter schools:</u> Charter schools will have similar privacy issues and settings as for State schools and the Privacy Act 2020 will apply to them. Like all schools, charter schools will have information on staff and students which is personal. Charter schools will also report to the Charter School Agency and be reviewed by the Education Review Office. This will include on issues to do with attendance, achievement, and operation of the schools.</p> <p>In addition to these issues, the Bill will allow State schools to convert to become charter schools which will require a transfer of employees and a transfer of information.</p> <p>The Ministry considered ways to ensure charter schools and sponsors comply with the privacy principles in the Privacy Act. This will include through ensuring there is appropriate privacy training and support for new sponsors, staff at charter schools, and the Authorisation Board.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Ministry consulted with the Office of the Privacy Commissioner on the potential privacy impacts of the charter school and attendance policy proposals and received advice. Their feedback is reflected in the final design decisions.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Due to time constraints, the Ministry of Education has not been able to undertake formal consultation with the public on any of the proposals in the Bill.</p> <p><u>Charter schools:</u> For charter schools, the Associate Minister of Education and the Ministry of Education responded to queries from schools, Māori educational organisations, iwi and others interested people and groups.</p> <p><u>ECE:</u> There was significant public consultation before the ECE network approval legislation was introduced in February 2023. The consultation both supported and opposed the introduction of the network approval requirement. The Associate Minister of Education and the Ministry of Education heard directly from the ECE sector about the regulatory burden it faces. The proposal to repeal the network approval provisions is one way to reduce the regulatory burden the sector faces. The Associate Minister of Education announced the Government's intention to repeal the network provisions on 16 April 2024.</p> <p>The Associate Minister of Education undertook consultation with the ECE sector as part of the process to revoke the National Statement on the Network of Licensed Early Childhood Services (as a first step in reducing regulatory burden for those wanting to establish new early learning services) from 16 April to 5 May. While the majority of submissions disagreed with the proposal to revoke the National Statement, a significant portion of the feedback was focused on the broader implications of repealing network approval. The Ministry will work with sector bodies through the process to repeal the legislation to ensure proposed new services and existing services understand what the change means for them.</p> <p><u>Attendance:</u> For the attendance proposal, the Ministry will consult with specified kura boards in 2024 to understand if there are kura specific considerations that need to be reflected in the rules. The Ministry will work with representative Māori peak bodies to understand what their engagement preferences are and plan an approach.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p><u>Charter schools:</u> The Bill allows charter schools that own property to charge parents of enrolled students 'property maintenance fees'. This will also apply to sponsors of State integrated schools that convert where the proprietor owned, leased or held in trust property and their integration agreement provided for them to charge attendance dues.</p> <p><u>ECE:</u> The Bill removes the requirement to apply for network approval and therefore removes the \$575 (including GST) fees that applicants are required to pay.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p><u>Charter schools:</u> The Bill establishes the Authorisation Board which will be a statutory board with duties including:</p> <ul style="list-style-type: none"> to decide whether to approve applications by proposed sponsors to operate charter schools to decide whether to apply an intervention to a charter school. 	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><u>Charter schools:</u></p> <p>The Bill will:</p> <ul style="list-style-type: none"> empower the Governor-General, on the recommendation of the Minister, to make regulations to prescribe fees for applications for approval to operate charter schools; enable sponsors to make rules for the control and management of charter schools, subject to the general law of New Zealand. These rules would be similar to the bylaws State schools make on matters such as attendance, conduct, and safety of students; and empower the Charter School Agency to make rules and forms for use in the charter school model (for example the application form). <p>The powers to make regulations and rules by the Governor-General, sponsors, and the Agency are necessary for the effective operation of charter schools and the charter school model</p> <p><u>Attendance:</u> The attendance proposal seeks to amend the Act to create a power for the Secretary for Education to make rules for State schools about collecting, recording, and providing attendance data. The attendance rules are needed for the administrative and procedural requirements relating to attendance records under the new attendance regulations (intended to come into force from Term 1 2025).</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available – question 2.5(a)

The size of potential costs and benefits of the charter school proposals

Benefits

Estimating the likely benefits of the charter school proposals is challenging as it depends on the performance of new charter schools. Having a charter school model is ultimately aimed at improving outcomes for students.

Charter schools will be a new type of school in New Zealand that are publicly funded but give the schools a high level of independence and flexibility in areas such as use of funding, teachers, curriculum and governance. This reduction in regulatory controls provides an opportunity for new charter schools to improve the outcomes for all students, but particularly those who are underachieving or disengaged in the current State system. The flexibility is balanced by charter schools having a high level of performance accountability.

If sponsors of charter schools can significantly improve (compared to State schools) the rate at which they convert the Crown's investment in schooling into positive student outcomes, and sustain this improvement over several years, there will be a net benefit to New Zealand.

The charter school model is an innovative schooling model similar to models used in England, and the United States. Each model has unique elements, but all operate by contracting an education provider to meet specified educational outcomes in return for State funding and increased autonomy. Charter schools in the US have produced positive learning outcomes for students when compared to public schools. Academies were introduced in England in 2000 to drive up standards by replacing poorly performing secondary schools. Now, around 49% of all mainstream primary and secondary schools in England are academies, with many being governed by Multi-Academy Trusts.

Costs

Charter schools will be State funded at a broadly equivalent level to State schools, but the cost impacts are not fully predictable because of differences in the way State and charter schools are funded and uncertainty regarding the number, type, and size of charter schools, their property arrangements, and their impacts on the State school network.

Funding is paid under contract through per-student grants" to maximise flexibility. Sponsors may operate charter schools 'for profit' or 'not-for-profit'.

There will be establishment costs, and ongoing operating costs, for charter school property, staffing, learning resources, and administration. These are expected to be similar to those for State schools of a similar size and year range. Converting schools will see relatively little change in funding, but there are additional fixed costs to establish and operate new schools.

New charter schools will receive significant establishment funding similar to, but no more than, that for new State schools. Property for new schools is expected to cost over \$4,000 per student, based on average lease costs. In the long term, State school property costs may decline due to lower school rolls.

For converting schools there is much less initial investment as there is no need for additional property funding. The funding will follow the student for schools converting.

Funding for charter schools will be treated by the Crown as an operating expense, and expenditure by sponsors on new assets will not add to the Crown's balance sheet, as would expenditure by a State school board. Furthermore, the movement of students from State schools to charter schools through unmanaged network shifts may result in 'stranded' or underutilised assets in State schools.

Differences in the ways charter schools and State schools are funded mean there will be cases where increases in funding for charter schools are not matched by decreases in State school expenditure. For example, schools may be more likely to convert if the charter school funding formula provides more funding, and less likely to convert if the formula provides less funding.

Net budgeted funding to cover the additional costs of re-introducing and operating charter schools over four years from 2024/25 to 2027/28 is approximately \$153m.