



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990
on the Holidays (Parent-Teacher Interview
Leave) Amendment Bill

Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990
and Standing Order 269 of the Standing Orders of the
House of Representatives

1. I have considered whether the Holidays (Parent-Teacher Interview Leave) Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). I have concluded the Bill is inconsistent with the right to freedom from discrimination affirmed in s 19 of the Bill of Rights Act.
2. As required by s 7 of the Bill of Rights Act and Standing Order 269, I draw this to the attention of the House of Representatives.

The Bill

3. The Bill amends the Holidays Act 2003 with the purpose of entitling workers with children at school to additional leave in which to attend parent-teacher interviews.
4. The amendments entitle an employee who is a parent to up to 4 hours' parent-teacher interview leave in each 12-month period of current continuous employment. Such leave may not be carried forward. Employers must be notified at least 3 working days before the leave is to be taken and may not unreasonably withhold consent to an employee's request for this leave.
5. As currently drafted, the Bill refers to legislative provisions and definitions from the now-repealed Education Act 1989. Where appropriate I have taken a purposive approach to this advice, instead referring to the current Education and Training Act 2020. However, the Bill's reliance on the age ranges and other definitions set out in the 1989 Act have given rise to the issues I have identified in the Bill. The resulting gaps in the Bill's coverage appear to be inadvertent rather than a result of deliberate policy choices.

Section 19 of the Bill of Rights Act (freedom from discrimination)

6. Section 19(1) of the Bill of Rights Act affirms the right to be free from discrimination on the prohibited grounds of discrimination in the Human Rights Act 1993. Age (commencing at the age of 16 years) and disability are two of those prohibited grounds.¹
7. Under the Education and Training Act 2020, domestic students are entitled to free enrolment and education at any State school until 1 January after the student's 19th birthday.² Students needing special education may, via an arrangement between their parents and the Secretary for Education, remain enrolled at a State or specialist school until the age of 21.³
8. Under the Bill, parent-teacher interview leave is only available for employees who need to attend a parent-teacher interview, which is defined as a meeting between a parent and

¹ Human Rights Act 1993, s 21(i) and 21(h), respectively.

² Education and Training Act 2020, s 33.

³ Section 37.

a teacher about a child’s learning progress. The Bill uses the following definition for “child”:

child means a person who –

- (a) attends or participates in an early childhood service and is under the age of 6 years; or
- (b) is enrolled at a registered school and is under the age of 19 years; or
- (c) is enrolled in a special school and is under the age of 22 years

9. Setting aside special schools, the eligibility for parent-teacher interview leave under the Bill therefore ends immediately when a student turns 19 and is no longer a “child”. This is inconsistent with the timeframes in the Education and Training Act 2020, which entitle the student to free enrolment until the end of the year in which they turn 19. Under the Bill, parents of a student who turns 19 while still enrolled at school would no longer have the benefit of these leave entitlements, due to the child’s age. The child over 19 would suffer a material disadvantage as a result, and so this is prima facie discriminatory on the basis of age.
10. The Bill’s definition of “child” also results in indirect discrimination on the basis of disability. Students who are aged 19-21 and require special education may be enrolled at a particular State school or specialist school. Assuming that “special school” in the definition of child is the equivalent to “specialist school” in the Education and Training Act 2020, only parents of children who enrolled at a specialist school would be entitled to leave. This would exclude parents of children aged 19-21 who are considered to be in need of special education, but are enrolled at a State school. Therefore, the age limit of 19 for all of those attending a State school would have a greater impact on those who need special education (which may be due to a disability as defined in the Human Rights Act 1993), as they are more likely to remain at a State school for up to 2 years beyond their 19th birthday.
11. This appears to be inadvertent, as subclause (c) above shows an intention to cover students who have special educational needs and are “enrolled in a special school” until age 22,⁴ but does not account for the fact that these students may also be enrolled at a regular State school.
12. The rights and freedoms in the Bill of Rights Act may be subject to such reasonable limits as can be demonstrably justified in a free and democratic society.⁵ I consider that ensuring parents have the opportunity to participate in their children’s education is an important objective, and that some lines need to be drawn around the practical operation of the Bill. However, the age limit identified here does not appear to serve

⁴ Using the now repealed definition in the Education Act 1989. The current Education and Training Act 2020 does not contain a definition for “special school” and refers instead to a “specialist school”, which is not entirely equivalent.

⁵ Bill of Rights Act, s 5.

this objective and, indeed, appears to be the result of drafting errors which are inconsistent with the Bill's stated purpose and other legislation in the sector. Accordingly, the discriminatory effect of this provision is not rationally connected to the Bill's objective and has no clear justification.

13. I wish to emphasise that it is likely the Bill can achieve its purpose without discriminatory effect. This would require the wording of the Bill to be updated in light of the new Education and Training Act 2020, taking particular care in ensuring equal and equitable treatment for parents of children of different ages and abilities. However, because the current wording of the Bill appears to discriminate on the basis of age and disability without any clear justification, I am bringing it to the attention of the House of Representatives in accordance with s 7 of the Bill of Rights Act.

Conclusion

14. I have concluded the Bill appears to limit section 19 of the Bill of Rights Act and the limitation cannot be justified under s 5 of that Act.



Hon David Parker
Attorney-General