

7 April 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Education and Training Amendment Bill

Purpose

1. We have considered whether the Education and Training 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). We have prepared the advice on the final version of the Bill received (v 8.0).
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 9 (right not to be subject to torture or cruel treatment). Our analysis is set out below.

The Bill

3. The Bill Amends the Education and Training Act 2020 (the principal Act) to:
 - a. ensure provisions that are best suited to parliamentary enactment remain in the principal Act, rather than being repealed and moved to regulations;
 - b. clarify that education workers who meet the definition of a children's worker in the Children's Act 2014 must be safety checked under that Act rather than Police vetted under the principal Act, and that all other early childhood centre or school employees must meet the relevant Police vetting requirements in the principal Act;
 - c. ensure that a section relating to interventions in State schools by the Secretary for Education mirrors the corresponding provision of the Education Act 1989, to address an inadvertent change in the effect of the provision;
 - d. extend the timeframe in a transitional provision, for one year, that prohibits tertiary education providers from charging trainees a compulsory student services fee;
 - e. ensure that former teachers are not automatically enabled to use physical restraint in schools, but must first be approved to use physical restraint by the school that employs them;
 - f. clarify early childhood regulation-making powers to ensure that regulations can be made in relation to applications for approval to apply for a licence and applications for a new licence in order to reflect the new licencing framework introduced by the principal Act;
 - g. specify the agencies to which any Ministerial statement of expectations could apply.

Consistency of the Bill with the Bill of Rights Act

Section 9 – Torture or cruel, degrading or disproportionately severe treatment or punishment

4. Section 9 of the Bill of Rights Act affirms that everyone has the right to not be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
5. The principal Act contains provisions allowing, in some circumstances, the use of physical restraint in schools. These provisions were considered in previous advice not to engage s 9 of the Bill of Rights Act.¹ The Bill amends the existing provisions by narrowing the class of persons who are empowered to use physical restraint in schools under the principal Act.
6. In these circumstances, we do not consider that the Bill engages s 9 of the Bill of Rights Act. Rather, we consider the Bill will improve consistency with the rights and freedoms affirmed in the Bill of Rights Act, including s 9.

Conclusion

7. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



Jeff Orr
Chief Legal Counsel
Office of Legal Counsel

¹ See the Ministry of Justice's advice to the Attorney-General dated 21 November 2019 – 'Consistency with the New Zealand Bill of Rights Act 1990: Education and Training Bill', publicly available at <https://www.justice.govt.nz/assets/Documents/Publications/Education-and-Training-Bill.pdf>