

Submission to the Education and Workforce Committee on:

Education and Training Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

25 July 2024



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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

1. Summary of recommendations

- 1.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) welcomes the opportunity to submit to the Education and Workforce Committee on the Education and Training Amendment Bill (“the Bill”).
- 1.2. The NZCTU strongly opposes the Bill. The evidence base does not support the implementation of charter schools, and the machinery of the Bill in its current form is highly problematic regarding the protection of workers’ rights, educational quality, and community control of schools.
- 1.3. The NZCTU recommends that the Bill should not proceed and should be withdrawn by the government.
- 1.4. Should the Bill proceed, the NZCTU recommends that significant redrafting of the Bill is required. The following amendments are necessary:
- 1.5. Remove of the ability to enable state schools to be converted into charter schools from the Bill. Should this recommendation not be adopted in full, then:
 - 1.5.1. Amend the Bill to enable communities to apply to re-convert a charter school back into a state school.
 - 1.5.2. Amend the Bill to ensure rigorous and sufficient consultation requirements with the local community regarding the potential conversion of a state school into a charter school. Conversion should only be able to occur if the majority of the community is in favour of it.
 - 1.5.3. Amend the Bill to remove the Minister’s unilateral power to direct the board of a state school to make an application to the Authorisation Board to convert to a charter school.
- 1.6. Ensure that charter school sponsors are under the same legal obligation as state school boards to give effect to Te Tiriti o Waitangi.

- 1.7. Enable employees of state schools transferring to charter schools to access redundancy entitlements.
- 1.8. Remove the restriction on the ability of unions to initiate bargaining for multi-employer collective agreements involving a charter school.
- 1.9. Ensure that registered teacher obligations of state schools apply to charter schools.
- 1.10. Require that charter schools be run as not-for-profit organisations.
- 1.11. The NZCTU endorses the submissions of its affiliates, especially the submissions made by the NZEI and the PPTA on the Bill. Teachers and teachers' unions have expertise in educational policy. Their legitimate authority must be acknowledged by the select committee in its scrutiny of this Bill. This Bill is widely opposed by the teaching profession and education academics. We urge the select committee to heed the advice of these experts.

2. Comments and recommendations

- 2.1. This section sets out our substantive concerns with the Bill and the legislative process. It focuses on elements of the Bill that relate to the establishment and operation of charter schools.

The stated rationale for charter schools is flawed

- 2.2. The ostensible rationale for the establishment of charter schools provided in the Bill is: “The charter school model is aimed at helping to address the falling student achievement levels in New Zealand by giving charter schools greater autonomy and flexibility than State schools. In return for this increased flexibility, charter schools will be contracted to meet performance outcomes and other obligations.”
- 2.3. However, there is no evidence base to suggest that falling student achievement levels in New Zealand are linked to the levels of autonomy and flexibility in state schools. Indeed, New Zealand already has, according to the Ministry of Education, “one of the most devolved education systems in the world” – the Tomorrow’s Schools model, which devolves significant power to parent-elected school boards. There is thus no reason to believe that increasing the levels of autonomy and flexibility in schooling through the introduction of charter schools will do anything to materially improve student achievement levels.

- 2.4. Minister Seymour hypothesises that charter schools can be more “innovative” in addressing the needs of particular groups of learners. This isn’t backed up by evidence, however. An evaluative report from Martin Jenkins on the previous charter schools programme that ran from 2013–2018 found that “little real innovation” took place in charter schools regarding curriculum and engagement with the community and parents and whānau.¹ International studies have found at best inconclusive evidence on the ability of charter schools to lift educational achievement. As summarised by the Ministry of Education in its Regulatory Impact Statement (RIS) on the policy: “Evidence on the success of these types of schools is mixed” and “there has been little evidence to suggest long-term improvement in educational achievement”.²
- 2.5. The NZCTU agrees that falling student achievement levels in some areas of the curriculum and some sections of New Zealand’s student body are a cause for concern and that this requires a coherent and vigorous government response. But establishing charter schools is not the right solution, nor does it absolve the government of its duty to support all New Zealand students to achieve.
- 2.6. A far more productive avenue for government intervention would be to focus on the structural drivers of declining educational performance among some cohorts. Chief among these structural drivers is the material, often intergenerational, disadvantage that some New Zealand children experience. Unlike the dearth of evidence to support charter schools, there is a significant body of evidence that shows lower educational achievement is strongly linked to material disadvantage.³ As the Ministry of Education’s RIS notes, in 2022 “achievement of NCEA Level 2 or above for students in Decile 1 and 2 schools (69.98 per cent) was 23.8 percentage points lower than students in Decile 9 and 10 schools (93.7 per cent)”.⁴

The legislative process is being rushed

- 2.7. The faulty logic behind the charter school policy is compounded by the rushed legislative process that the government is pursuing, without good justification.

¹ Martin Jenkins, *Multi-Year Evaluation of Partnership Schools | Kura Hourua Policy, Summary of Findings Across Years*, 2018, p. 14.

² Ministry of Education, ‘Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools’, 2024, p. 7.

³ Machin, S. ‘Education and Inequality’. In W. Salverda, et al., *The Oxford Handbook of Economic Inequality* (New York: Oxford University Press, 2009). The Treasury, ‘The Distribution of Disadvantage in Aotearoa New Zealand: Exploring the Evidence’, 2022.

⁴ Ministry of Education, ‘Regulatory Impact Statement’, 2024, p. 7. See also The Treasury, *Te Tai Waiora: Wellbeing in Aotearoa New Zealand 2022*, 2022, p. 29.

- 2.8. This rushed process is limiting the ability for the public to engage on what is a significant and highly controversial reform to New Zealand's public education system. Notably, it is the policy of a junior coalition partner, meaning that no popular mandate for the policy was won at the 2023 election. In this context, the appropriate legislative process would be one of careful and thorough consultation with the public.
- 2.9. This rushed process also invites unforced errors in the policy development process. Indeed, the poorly thought-through nature of this policy is glaringly evident in the Ministry of Education's RIS. As the Ministry notes:
- There are some limitations and constraints to this analysis, including the Minister's preference for a specific option, the limited time available to complete the legislative work and the uncertainty in effectiveness of the policy solution.
- The Minister's preference is to open charter schools from the beginning of 2025. This has meant we have mainly looked at this specific solution and not considered all policy options of increasing flexibility and choice in detail. [...]
- Additionally, as the aim is to open the first charter schools in early 2025, there are limitations on the analysis due to the constrained timeframe available. [...] This requires a condensed legislative process with limited time to engage with impacted and interested people, including schools, communities, iwi, families, students, school boards, and staff.
- Additionally, there is uncertainty on the impact that the charter school model [sic] in achieving the suggested objectives. This creates limitations to the cost-benefit analysis particularly relating to the effectiveness and efficacy of the model. Evidence from other jurisdictions show mixed results on whether [sic] model will benefit achievement and engagement.⁵
- 2.10. Thus, the RIS makes clear that, due to the Minister's insistence on establishing charter schools in 2025, this legislation is being pushed through (i) without sufficient analysis of the drivers of the stated problem; (ii) without sufficient consideration of the different possible policy responses to the stated problem; (iii) without sufficient analysis of whether the preferred option – charter schools – will actually help to address the stated problem; and (iv) without adequate consultation with those who may be affected by the policy. This is poor policy process, and especially concerning given the significance of the reform that is being legislated.

⁵ Ministry of Education, 'Regulatory Impact Statement', 2024, pp. 3-4.

Teachers' employment rights are being undermined

- 2.11. The NZCTU is highly concerned by the significant restrictions the Bill places on teachers' employment rights.
- 2.12. Schedule 1, Part 6, section 119 prevents employees of a state school that has been converted to a charter school from being eligible for redundancy. This is despite the fact that all "transferred employees" who were previously on a collective agreement are to be shifted involuntarily onto individual employment agreements, will likely be working for a substantially different employer, may be expected to perform substantially different duties in their job, and will no longer have access to the extensive professional network that the state schooling system provides.
- 2.13. Transfer thus constitutes 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 therefore be entitled to any redundancy compensation provided by their employment agreement or the Employment Relations Act 2000.
- 2.14. The other significant cause for concern is the last-minute amendment to the Bill announced on 23 July that will restrict the right of workers at a charter school to be on a multi-employer collective agreement (MECA). This is a significant restriction on these workers' fundamental rights of freedom of association and collective bargaining.
- 2.15. Specifically, clause 40 of the Amendment Bill removes the right of a union to initiate bargaining for a MECA with 2 or more sponsors or with 1 or more sponsors and any 1 or more other employers. The right for unions to initiate bargaining for a MECA is provided in the section 40 of the Employment Relations Act and further regulated by section 45 of that Act. Section 45 requires an initiating union (or unions) to obtain a democratic mandate for initiating a MECA by balloting covered members and to provide evidence of the ballot results along with the required notice to covered employers. The Employment Relations Act also allows for opposition to concluding a MECA to be a genuine reason to not conclude collective bargaining, provided that the objections are based on reasonable grounds.
- 2.16. Carving out the ability for unions to pursue MECAs for employees of charter schools is unjustifiably discriminatory and sets a dangerous precedent.
- 2.17. The NZCTU considers this provision to also run counter to New Zealand's obligations as a signatory to ILO Convention 98 (Right to Organise and Collective Bargaining Convention, 1949). Article 1, paragraph 1 of this Convention obliges signatories to ensure that workers "enjoy adequate protection against acts of anti-union discrimination in

respect of their employment”. In his remarks to the press regarding the rationale for this Amendment Paper, Minister Seymour stated that “The government has had to assume the unions would encourage state school teachers to refuse to teach clustered services such as technology class to charter school children, and would initiate bargaining across the charter schools, thus undermining the employment flexibility critical to the model”.⁶ If this Bill is passed, employees at charter schools will be the only workers in New Zealand who are prevented from exercising the right to negotiate MECAs. This runs clearly counter to Convention 98.

- 2.18. We further note that this provision runs counter to New Zealand’s obligations as a signatory to the ILO Declaration on Fundamental Principles and Rights at Work (DFPRW) – specifically, the obligation to uphold principle 1: “freedom of association and the effective recognition of the right to collective bargaining”. As the Declaration states, “all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions”.
- 2.19. We note additionally that New Zealand is party to numerous trade agreements that reaffirm our commitment to the DFPRW – namely the CPTPP, the NZ–UK FTA, and the NZ–EU FTA. Article 23.5.3 of the NZ–UK FTA provides that “Each Party reaffirms its commitment to implement in its laws and regulations, and practices thereunder, in its territory, the ILO Conventions that each Party has ratified respectively”. Article 19.3.7 of the NZ–EU FTA provides that “Each Party shall effectively implement the ILO conventions that New Zealand and the Member States have respectively ratified and which have entered into force”. We would question whether the New Zealand government is effectively implementing Convention 98 in light of this move to revoke the ability of unions to negotiate MECAs involving charter schools.
- 2.20. The Amendment Paper containing the anti-MECA provision has been moved with the explicit intent of restricting the ability of workers to negotiate their terms and conditions of employment to enable, according to the Minister in his remarks to the press, “employment flexibility”. As has been proven time and again in New Zealand – and around the world – in practice “flexibility” means reduced protections for workers and poorer terms and conditions.

⁶ Gerritsen, J., ‘Govt announces changes to Education and Training Amendment Bill two days before submissions close’, RNZ, 23 July 2024: <https://www.rnz.co.nz/news/political/522887/govt-announces-changes-to-education-and-training-amendment-bill-two-days-before-submissions-close>

- 2.21. The NZCTU views the proposals in the Bill to prevent transferred employees from seeking redundancy and to prevent unions to negotiate MECAs as a deliberate attempt to undermine teachers' current employment terms and conditions and introduce employment conditions that the teacher unions have opposed. This will not only have an effect on the teachers whose terms and conditions are undercut; it will also reduce the quality of education received by students at charter schools.

A dangerously low bar is being set for conversion

- 2.22. The Bill sets a dangerously low bar for the conversion of a public school into a charter school. The current drafting of the Bill allows for a single member from a school community – although what constitutes the “school community” is not defined in the Bill – alongside a sponsor, to apply to the Authorisation Board for conversion.
- 2.23. Additionally, the Bill empowers the Minister to unilaterally direct the board of a state school to make an application to the Authorisation Board to convert the state school to a charter school, “after considering whether it is appropriate in all the circumstances”. Concerningly, the Bill does not define what would determine whether a conversion was to be deemed “appropriate”. Overall, this continues the concerning trend under the current government of concentrating significant power in the hands of individual Ministers.
- 2.24. Together, these provisions of the Bill put community control of public schools, which is a fundamental element of the New Zealand state school system, at risk.

Educational standards are being put at risk

- 2.25. Disturbingly, the Bill will allow unqualified people to work as teachers. We find it inexplicable that the government would remove teaching registration requirements when the evidence strongly shows that teacher quality makes a large difference to educational quality.
- 2.26. If the establishment of charter schools is really about lifting educational standards, then it simply doesn't make sense to enable non-qualified teachers to be permanently employed at charter schools.
- 2.27. As with some other aspects of the policy, the risks to educational standards posed by this aspect of the policy are not discussed in the Ministry of Education's RIS, which suggests little thought has been given to the issue of education quality.

Charter schools open the way for profit-seeking in education

- 2.28. Across New Zealand, public schools are linchpin institutions of the communities they are embedded in. Yet this legislation enables these institutions to be stolen from the communities they serve and enables private business providers, through charter schools, to seek a profit from the delivery of education services to children and students.
- 2.29. Quite apart from the moral implications of pursuing profit from the education of children, New Zealand now has 40 years of experience of the poor outcomes that are produced when essential public goods are turned over to profit-seeking entities.
- 2.30. Not only does the Bill enable profit-seeking from education, but it is also providing public money to enable this to occur. The government has committed \$153 million of public money to the establishment and operation of charter schools, and, in the conversion process, will be turning over school estate that has been paid for with public money. We question the value for money that will be gained from this investment, given the thin evidence base to support the charter school policy, and the lack of analytical rigour in the policy development process so far.

3. Conclusion

- 3.1. A coherent, evidence-based government policy is needed to improve the educational outcomes of those children who are not succeeding in New Zealand's education system. The establishment of charter schools is not the right approach.
- 3.2. The Bill impinges significantly on workers' rights and is setting an extremely concerning precedent by carving out particular workforces from core employment rights and protections.
- 3.3. The NZCTU reiterates its strong opposition to this Bill and urges the Committee to withdraw it. We also reiterate our endorsement of the submissions made by our affiliated unions, particularly those of the NZEI and the PPTA.
- 3.4. The NZCTU thanks the Committee for the opportunity to submit on this Bill.