



NZEI Te Riu Roa Submission on Education and Training Amendment Bill 2024

To: Education and Workforce Select Committee

Introduction

1. NZEI Te Riu Roa (NZEI) is a professional organisation and union representing the interests and issues of 50,000 members employed as teachers and leaders in the early childhood education (including Kōhanga Reo), and primary sectors (including Kura Kaupapa Māori, Kura a Iwi, and Wharekura), support staff in the early childhood, primary, intermediate, and secondary education sectors, school advisers employed by universities, and Learning Support staff employed by the Ministry of Education.
2. The main objective of NZEI Te Riu Roa is to advance the cause of quality public education generally while upholding and maintaining the just claims of its members individually and collectively.
3. NZEI Te Riu Roa is one of the largest unions and professional bodies in Aotearoa New Zealand and has a long history of playing a positive role in the education sector and on wider social issues affecting our members and the tamariki and whānau they serve.
4. NZEI Te Riu Roa is a values-led, te Tiriti o Waitangi-based organisation. This means that in all areas of work mokopuna Māori are considered first. We believe that an education system based on rangatiratanga and whakamana would result in a society that benefits all. We call this Mōku te Ao.
5. This submission focuses on aspects of the Education and Training Amendment Bill that concern the reintroduction of charter schools to Aotearoa. NZEI Te Riu Roa are making a separate submission on the aspects of the Bill concerned with the removal of network approval requirements for Early Childhood Education. The separate submissions reflect the significance of each part of the Bill.

6. This submission begins with a general comment on the contents of the Bill, followed by comments on the legislative process surrounding its introduction. A summary of recommendations follows, after which more detailed analysis of specific parts of the Bill complete the submission.

General Comment

7. NZEI Te Riu Roa oppose this Bill in the strongest possible terms. The reintroduction of charter schools is an ideological experiment based on spurious evidence that offers little to no benefit to New Zealand's education system. The \$153m Budget appropriation for the policy is frivolous spending at a time when cuts are being made across the education portfolio. Particularly pernicious in this iteration of the failed policy is the inclusion of a one-way/no-exit pathway – forced or voluntary – for the privatisation of public schools. These assets have been built with public money alongside the support of local communities, often over many decades. Community control of local schools is a key feature of Aotearoa's highly devolved education system. To take these schools away from their communities, with no recourse for return, and put them permanently into the hands of private entities is an insult to the generations of whānau and ākongā who have contributed to them.

Legislative and regulatory process

8. This Bill was introduced to the House under urgency (without good reason) and has allowed only a short window for submissions to Select Committee. This window includes a public holiday weekend, the last week of the school term, and part of the term break, making it very difficult for educators to submit on the Bill.
9. For such a significant shift in public policy, the Bill does not meet the test of fair and reasonable consultation; indeed, the Government has already established the public agency and temporary authorising panel, and applications for new and converting charter schools opened on the 11th of July¹ during the Select Committee submission period. Given the implementation of the policy was taking place both before and during committee stage, and

¹ David Seymour, 'Media Release: Huge opportunity for educators and students as charter school applications open', Wellington: Beehive, 11 July 2024. Accessed 12 July 2024: <https://www.beehive.govt.nz/release/huge-opportunity-educators-and-students-charter-school-applications-open> ; Charter School Agency, Call for Applications: <https://www.gets.govt.nz/CSA/ExternalTenderDetails.htm?id=29754744>

before the Select Committee was able to hear relevant information from stakeholders, it appears that the Minister has predetermined the issue.²

10. The lack of reason given by the Minister for pursuing this Bill under urgency, alongside the narrow window given for submissions, suggests that the process has been designed to limit public consultation and scrutiny. Rushing through major legislation such as this at pace and with extremely limited consultation is not only undemocratic; it is irresponsible and likely to result in mistakes being made that are otherwise avoidable.
11. Both the charter school policy and the removal of network approval are being pursued without the regulatory due diligence that should be expected of such potentially wide-reaching policy. Regulatory Impact Statements for these parts of the Bill note ‘condensed’ or ‘limited’ time frames for analysis, and limited consideration of alternatives.
12. Converting public schools into charter schools was not a policy included in the National party manifesto. This aspect of the policy was not campaigned on and therefore the result of the 2023 General Election cannot be claimed to reflect public support for the policy.
13. It should be noted that ‘the context of strong political objective to open [charter] schools prior to the 2014 General Election’ was a constraint on policy development for the former charter school policy, as noted in several of the ‘Charter schools close out reports’ prepared by the Ministry in 2019 following disestablishment in 2018.
14. Moreover, according to advice provided to Minister Stanford in December 2023 on ‘lessons learnt’ from the last experiment with charter schools, ‘Short time frames, from the opening of application rounds to signature to the opening and operation of partnership schools, may have impacted the Ministry’s ability to select and ensure sponsors were well-positioned to operate a school’.³ The government’s stated intention is to have charter schools open in early 2025. It appears that lessons have not been learnt, and that political pressure has again

² See: Office of the Auditor General, Principles of Administrative Law, 222 ‘Apparent Bias’; 224 ‘Predetermination’, Wellington: Office of the Auditor General, 1998. Accessed 15 July 2024: <https://oag.parliament.nz/1998/public-consultation/part2.htm>

³ Ministry of Education, ‘Briefing Note: Lessons Learnt and International Evidence on Partnership Schools’, Wellington: Ministry of Education, December 2023, p.5. Accessed 15 July, 2024: https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/December-2023/1319868-Lessons-Learnt-and-International-Evidence_Redacted.pdf. The report further states (p.5): ‘The approximately three-month timeframe for securing property and then opening the partnership school likely impacted on the quality of the school property and possibly on curricula development and the financial position of the schools. Ideally, a new school should be given at least 12 months to open after being established (meaning about 24 months in total). ERO also found that the timeframes meant partnership schools started operating before readiness reviews were completed and lack of readiness was linked to later problems’.

taken priority over considered and evidenced decision making. It is likely that this will again result in mistakes that will be paid for by ākonga in our education system, and taxpayers in general.

15. It is concerning that the Regulatory Impact Statement for the charter school policy notes that analysis was constrained by ‘the Minister’s preference for a specific option’. Furthermore, the Regulatory Impact Statement was assessed as only partially meeting the Cabinet’s quality assurance criteria. This is poor regulatory practice, reflects badly on New Zealand’s Regulatory Management System, and undermines public confidence in New Zealand’s regulatory governance regime.
16. If regulatory quality assurance processes can be ‘side stepped’ by the preference of a single Minister, as appears to be the case with a major component of this Bill, then the efficacy of regulatory management and quality assurance is itself called into question. Indeed, this Bill is an object lesson in poor regulatory practice which is surprising given the Bill’s author is Minister for Regulation, and one would expect therefore best practice standards for regulation in this case. However, this Bill falls far short of such best practice standards.⁴

Summary of recommendations

17. **Recommendation 1:** Omit the pathway the Bill creates for state schools converting to charter schools. Remove Part 1, subpart 6.A, clauses 212f & 212 G from the Bill. This would remove the pathway for converting public schools into charter schools.
18. **Recommendation 2:** Unless recommendation 1 is adopted to fully remove the pathway for converting public schools into charter schools, a clause should be added to the Bill allowing for communities to apply to reintegrate a charter school into the public system, set at the same bar as provisions allowing public schools to be converted into charter schools.

⁴ Best practice standards for regulatory policy are well developed and codified both locally and internationally. The OECD, for example, have 7 best practice principles for the governance of regulators: (1) Role Clarity, (2) Preventing undue influence and maintaining trust, (3) Decision making and governing body structure for independent regulators, (4) Accountability and transparency, (5) Engagement, (6) Funding, (7) Performance evaluation. The current Bill falls short of best practice standards across several of these areas, in particular (1), (2), (4) and (5). See: The New Zealand Government’s *Government expectations for good regulatory practice*, Wellington: Treasury, 2017. Accessed 15 July 2024: <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf> ; OECD, *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators*, Paris: OECD Publishing, 2014. Accessed 15 July 2024: https://www.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en ; OECD, *OECD Best Practice Principles for Regulatory Policy: Regulatory Impact Statements*, Paris: OECD Publishing, 2020. Accessed 15 July 2024: https://www.oecd-ilibrary.org/governance/regulatory-impact-assessment_7a9638cb-en

19. **Recommendation 3:** Community consultation requirements need to be included and clearly articulated in the Bill. The bar for allowing conversions must demonstrate substantial community engagement and high levels of community support, for example a certain percentage of parents/whānau in the school community. If there is clear community opposition to converting a public school into a charter, then the Authorisation Board should be obliged to reject applications for conversion.
20. **Recommendation 4:** Remove Part 1, subpart 6.A, clause 212G from the Bill. This would remove the Minister's power of absolute discretion to direct a school to convert to a charter school.
21. **Recommendation 5:** Section 127 (1) (d) of the Education and Training Act, which outlines the responsibility of school boards to give effect to Te Tiriti o Waitangi, should be extended to apply to charter school sponsors.
22. **Recommendation 6:** Part 1, clause 70, schedule 1, clause 119 should be amended to state that employees of state school converting to charter schools that do not wish to take up employment in the charter school may deem their employment to be ended and be entitled to any compensation afforded by their collective agreement or the Employment Relations Act.
23. **Recommendation 7:** Amend the Bill so that the registered teacher obligations of public schools, set out in Part 3, subpart 2, clause 92-96 of the Education and Training Act to apply to charter schools, and retain competency oversight of people with limited authority to teach by omitting Part 1, clause 46 from the Amendment Bill.
24. **Recommendation 8:** To avoid profit seeking taking precedence over quality education a requirement in Part 1, subpart 6.A, clause 212I of the Amendment Bill should be added stating that sponsors be not-for-profit organisations. Alongside Recommendation 11, regular financial reporting should be assessed against guidelines that are developed to prevent financial benefits accruing to private individuals through the charter school system.
25. **Recommendation 9:** Remove 'if permitted under the relevant charter school contract' from Section 212ZD (2), to read: 'The Authorisation Board may apply an intervention described in subsection (1)(a), (b), (c).'
26. **Recommendation 10:** Clearly state specific intervention frameworks in legislation, including provision to allow for ERO recommendations for intervention, and pathways for

interventions to be triggered by communities. Charter school contracts, as well as reporting against performance outcomes, need to be publicly available for community scrutiny.

27. **Recommendation 11:** Charter schools should be subject to quarterly financial reporting, as recommended by the Ministry. All financial reports should be made available to the public on the Ministry's website.

The reintroduction of charter schools

Lack of evidence to justify the policy

28. NZEI Te Riu Roa oppose the reintroduction of charter schools to New Zealand's education system. New Zealand has already experimented with charter schools between 2014 and 2018. This experiment saw eleven schools open, and a further six enter into agreements without opening before the model was disestablished in 2018. Evidence from this first experiment does not reflect well on the policy. At best, charter schools performed on par with comparable public schools, however this came at a higher cost per student. This reflects international evidence on the efficacy of such schools, which is mixed. \$153m is a large investment in a policy that has proven to be ineffective both locally and internationally.
29. The problem definition and proposed solution outlined in the Regulatory Impact Statement is unconvincing.⁵ While there is no denying Aotearoa's education system faces challenges in the form of declining trends in overall achievement and issues with attendance and engagement, it is not clear why or how charter schools offer a solution to these issues.
30. A key aim of the policy is 'to increase flexibility to stimulate innovation in the schooling sector and create more choice for students', yet the Regulatory Impact Statement, alongside other advice provided to Ministers, does not demonstrate how increasing innovation and school choice might improve achievement, attendance, and engagement.
31. Not only is it unclear whether charter schools offer a solution to pressing problems in New Zealand's education system; there is also little evidence that they meet their own criteria as a solution. There is, for example, little evidence to suggest that charter schools are more innovative than public schools, especially within the context of New Zealand's already highly devolved system.

⁵ Ministry of Education, 'Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools', Wellington: Ministry of Education, 20 March 2024. Accessed 15 July 2024: https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/2024/April-2024/RIS-A-new-framework-for-charter-schools_Redacted.pdf

32. Existing local evidence does not reflect well on the policy, nor does it justify its high cost. The Regulatory Impact Statement itself admits, 'There is a potential risk that a charter school model will not add the expected benefits in the New Zealand education context compared to other jurisdictions, given our existing devolution. The evidence on the efficacy of school choice policies and the success of charter schools is mixed and relied on strong implementation and leadership'.⁶
33. The lack of innovation found in New Zealand based charter schools has been identified across several reports, for example:
- a. 'Treasury considers one of the benefits of this model is innovation. However, the Ministry has noted that currently existing partnership schools have been conservative in their approach to the freedoms offered, all use the New Zealand curriculum; and innovation, diversity of sponsors and the quality of applications have been limited'.⁷
 - b. In a multi-year report looking at the 2013-2018 New Zealand charter school experiment, Martin Jenkins did not find substantial innovation in terms of pedagogy and curricula design beyond what was available in the state system.⁸
 - c. According to the Ministry of Education: 'Whilst good practice was evident, little real innovation was reported as being evident in terms of curriculum or engagement with community and parents/family/whānau'.⁹
34. In the previous experiment with charter schools there were instances of sponsors falling below performance standards even within the small group of schools that opened. The partnership school Advisory Group's 2017 performance report shows that out of ten schools open at the time, student achievement was satisfactory in only four, while achievement was

⁶ Ibid., p.3.

⁷ Treasury, *Aide Memoire: Partnership schools Ministers' meeting*, Wellington: Treasury, 24 April 2015.

⁸ Martin Jenkins, 'Multi-year Evaluation of Partnership Schools | Kura Hourua Policy, Summary of Findings Across Years', Report prepared for Ministry of Education, Wellington: Martin Jenkins, March 2018. Accessed 15 July 2024: https://www.educationcounts.govt.nz/_data/assets/pdf_file/0008/184841/Multi-Year-Evaluation-of-Partnership-Schools-Kura-Hourua-Policy-Final-Evaluation-Report.pdf

⁹ Ministry of Education, *Charter schools close out report: Evaluation*, Wellington: Ministry of Education, April 2019, p.8.

‘almost satisfactory’ in three and ‘not satisfactory’ in three.¹⁰ In other words, out of the ten partnership schools open in 2017, only 40% demonstrated satisfactory student achievement.

35. Advice offered to Minister Stanford in December 2023 on the international evidence behind charter schools, presumably to support policy development, is flimsy (about three pages) and appears to cherry pick evidence.¹¹ For example, advice considering the experience of charter schools in the United States leans heavily on a single 2023 research report produced by the Centre for Research on Education Outcomes (CREDO), an organisation funded by pro-privatisation lobby groups such as the Walton Family Foundation, The City Fund, and Pearson Learning Systems. CREDO charter school research, including the report cited by the Ministry and frequently referred to by the Associate Minister, has been criticised by reviewers as not meeting standards of academic credibility and overstating findings.¹² Such research has no place in official advice, especially when it is being used to justify substantial public spending. A review of the 2023 CREDO report states that the ‘report should be approached with caution by policymakers’ and that it is ‘potentially misleading’.¹³
36. The same piece of advice from the Ministry offered a mere two paragraphs on Sweden’s for-profit *friskolor*, or ‘free school’ system, citing a single 2008 study. Had this advice looked further, it might have encountered a 2010 study concluding that ‘The Swedish experiment (using for-profit private providers) has proved expensive and has not led to significant learning gains overall’.¹⁴ A more fulsome consideration of the evidence might also have

¹⁰ Advisory Group on Charter Schools, ‘Report to the Minister of Education on Charter Schools’ 2017 Performance’, Wellington: Ministry of Education, September 2018. Accessed 15 July, 2024 (document from p.189): https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/December-2023/1319868-Lessons-Learnt-and-International-Evidence_Redacted.pdf .

¹¹ Lessons Learnt and International Evidence, pp.7-10.

¹² Andrew Maul, ‘Problems with CREDO’s Charter School Research: Understanding the Issues’, *Review of Urban Charter School Study 2015*, Boulder, CO: National Education Policy Center, 2015. Accessed 4 July 2024: <https://nepc.colorado.edu/%20thinktank/review-urban-charter-school>

¹³ Joseph J. Ferrare, *EPC review: As a matter of fact: National charter school study III 2023*. Boulder, CO: National Education Policy Center, 2023. Accessed 5 July 2024: <http://nepc.colorado.edu/review/charter-study> . Ferrare warns that the ‘**report should be approached with caution by policymakers** given the nonexperimental design that renders it unable to fully account for the factors that drive families to choose charter schools. In addition, the report presents its findings using an unconventional metric that makes it difficult to understand the policy implications, **potentially misleading policymakers. The magnitude of the main findings fails to meet the minimum threshold experts consider to be a meaningful educational intervention**’.

¹⁴ Susanne Wiborg, ‘Swedish Free Schools: Do they work?’, *LLAKES Research Paper 18*, published by the Centre for Learning and Life Chances in Knowledge Economies and Societies, 2010 p.19: <https://www.llakes.org/wp-content/uploads/2010/09/Wiborg-online.pdf> ; Also see: Susanne Wiborg, ‘Privatizing education: Free school policy in Sweden and England’, *Comparative Education Review*, 59(3), 2015, pp. 473-497.

discovered that Sweden’s market-based education reforms of the 1990s have been blamed for declining PISA results from 2000 onward, and for the increasing inequity of educational outcomes in what was previously a highly equitable system.¹⁵ Indeed, the Swedish experiment with for-profit charter schools has proven so disastrous that the current Swedish Minister for Education Lotta Edholm declared the schools a ‘system failure’ and launched an investigation into them in November 2023.¹⁶

High cost, little benefit

37. The last experiment had an average annual cost of \$18,297, per charter school student, nearly triple the public school student average of about \$6600 during the same period. The highest per student annual cost of a charter school was \$48,421 – around \$60,000 in today’s money. The entire experiment cost about \$125m, with nearly \$35m being departmental, back-office spending – around 30% of the entire cost.
38. Policy advice suggests bureaucratic costs will be higher this time around. According to advice provided to Minister Stanford, during the policies previous iteration, ‘Some sponsors lacked the understanding and capability needed to meet contractual requirements’ and ‘lacked the resources and experience to effectively participate in the tender process or fully understand their contractual obligations’.¹⁷ As such, the Ministry suggests ‘A stronger focus on supporting the capability of sponsors during the tendering process and on contractual reporting will be a focus of implementation of the model this time’.¹⁸ This means greater levels of centralised support for sponsors and therefore higher bureaucratic cost. As detailed below, according to advice supplied to the Associate Minister in April 2024¹⁹, a support entity for charter schools made necessary by the model has been costed at \$4.735m over four years.
39. This consultation is going ahead in the absence of clear information about the funding model for charter schools. This is deeply problematic because it limits the ability for stakeholders to fully assess the financial implications of the policy. While the government claims that charter

¹⁵ Per Kornhall, ‘Sweden: A Failure in Market-Based Education’, *Save our Schools Australia*, 2020. Accessed 5 July 2024: https://saveourschools.com.au/choice-and-competition/sweden-a-failure-in-market-based-education/?utm_source=substack&utm_medium=email

¹⁶ The Guardian, ‘Sweden’s schools minister declares free school “system failure”’, 10 November 2023. Accessed 2 July 2024: <https://www.theguardian.com/world/2023/nov/10/swedens-schools-minister-declares-free-school-system-failure>

¹⁷ Lessons Learnt and International Evidence, p.3.

¹⁸ Ibid.

¹⁹ Ministry of Education, ‘Education Report: Support Entity for charter schools | kura hourua’, Wellington: Ministry of Education, April 2024.

schools will be funded at the equivalent rate to public schools, according to advice provided to Minister Stanford on lessons learnt from the last experiment, 'Achieving the policy intent of equivalent funding as a state school was challenging to achieve in practice'.²⁰ To date, no further information has been made available to the public detailing the funding model for charter schools.

40. The Regulatory Impact Statement provides a marginal cost and benefit analysis that appears confused and inconsistent with other analyses contained in the Statement. For example, while the Regulatory Impact Statement clearly states that 'The evidence on the efficacy of school choice policies and the success of charter schools is mixed',²¹ the cost and benefit analysis states that 'the value of the benefits per student is considered based on the estimated maximum benefit'.²² This assumption is analytically weak, unjustified, and would void subsequent conclusions under any serious academic scrutiny. Nevertheless, even on the acceptance of such spurious assumptions the Ministry considers it 'unlikely that changing to a charter school model could improve efficiency by more than about 10 percent'.²³ Considering the relatively small number of students likely to be enrolled in charter schools, the potential benefits of the model (in the uncertain event they were realised) are far outweighed by the policy's huge \$153m cost.

41. If the government were seriously looking at areas to save money and, in the words of Prime Minister Christopher Luxon, 'stop the dumb stuff',²⁴ then they should immediately put an end to the charter school policy.

42. Aotearoa is currently in the grip of a learning support crisis. The \$153m being wasted on the failed charter school policy could be much better spent. Analysis by NZEI Te Riu Roa suggests the funding could alternatively be used to fund 705 Teacher Aides full-time (40 hours per week, 52 weeks per year) at step 4, or 361 Psychologists working in schools at step F8, more than doubling the current Ministry of Education workforce, or 350 Speech Language Therapists on the average salary (again doubling the current Ministry of Education workforce), or 413 Kaiārahi I te Reo at grade 1, step 5 of the pay scale. Any of these proven

²⁰ Lessons Learnt and International Evidence, p.3.

²¹ Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools, p.3.

²² Ibid., p.25

²³ Ibid., p.26.

²⁴ Radio New Zealand, 'Watch: Christopher Luxon faces questions at post-Cabinet briefing', Wellington: RNZ, 8 April 2024. Accessed 15 July 2024: <https://www.rnz.co.nz/news/political/513734/watch-christopher-luxon-faces-questions-at-post-cabinet-briefing>

interventions would be more impactful for ākonga in New Zealand's schools than the failed charter school model.

Conversion of public schools into charter schools

43. A key feature differentiating this policy from the previous charter school policy is the inclusion of provisions for the conversion of public schools to charter schools. This process can be initiated by a school board and a proposed charter school operator (sponsor) or by any individual in the school community with the support of a sponsor (Part 1, subpart 6.A, clause 212F).
44. NZEI Te Riu Roa opposes this provision in the strongest possible terms. Such provision constitutes the 'one-way' or 'no-exit' privatisation of public educational assets. Public schools are at the heart of their communities and both schools and communities thrive from their mutual connection. The establishment of parent elected school boards and the requirements of schools to consult with parents is a key feature of the *Tomorrow's Schools* model and helps to ensure schools meet local needs. The Amendment Bill threatens this by allowing the process of approving conversion of schools to the charter model to be instigated by '1 or more community members' and sponsor, or by the Minister.
45. **Recommendation 1:** Omit the pathway the Bill creates for state schools converting to charter schools. Remove Part 1, subpart 6.A, clauses 212f & 212 G from the Bill. This would remove the pathway for converting public schools into charter schools.
46. As it is currently worded, the Bill does not set a high enough bar for the conversion of public schools into charter schools. This, alongside weak consultation requirements discussed below, makes it far too easy for public schools to be stolen from their communities. As the Bill is currently worded, an individual from a school community, alongside a sponsor (who could be the same person), can apply to the Authorisation Board for conversion. This exposes public schools, and by extension our public education system, to the risk of exploitation by business interests seeking to profit from education.
47. In its current form, the Bill does not offer a pathway for schools to be returned to the community after being converted into a charter. Minimally, if the Bill is going to offer highly liberal settings for the conversion of public schools into charter schools by community nomination, then it should be equally liberal in allowing the communities to instigate the reintegration of charter schools into the public system.

48. **Recommendation 2:** Unless recommendation 1 is adopted to fully remove the pathway for converting public schools into charter schools, a clause should be added to the Bill allowing for communities to apply to reintegrate a charter school into the public system, set at the same bar as provisions allowing public schools to be converted into charter schools.
49. The Bill states as ‘additional criteria for converting schools’ that the charter school Authorisation Board and proposed sponsor ‘must take into account the level of support from the school community’.²⁵ This clause is vaguely worded. There is no requirement to do anything beyond ‘take into account’ such levels of support, for example by consulting widely with the community or seeking local iwi approval. As the Bill is currently worded, the Authorisation Board, alongside a potential sponsor, could feasibly go ahead with the conversion of a public school with minimal community consultation and/or strong opposition to conversion that has nevertheless been ‘taken into account’.
50. **Recommendation 3:** Community consultation requirements need to be included and clearly articulated in the Bill. The bar for allowing conversions must demonstrate substantial community engagement and high levels of community support, for example a certain percentage of parents/whānau in the school community. If there is clear community opposition to converting a public school into a charter, then the Authorisation Board should be obliged to reject applications for conversion.

Forced conversion of public schools into charter schools

51. State schools can also be compelled to apply to become a charter school at the ‘absolute discretion’ of the Minister (Part 1, subpart 6.A, clause 212G). This is an undemocratic and authoritarian provision and should be removed. A key principle of the *Tomorrow’s Schools* system is local control over schooling. For a Minister to have the absolute power to direct a school to convert to a charter completely overrides the interests of a community.
52. The provision of forced conversion has already had a chilling effect on public opposition to the Bill. NZEI Te Riu Roa has been contacted by several principals who are concerned that voicing their opposition to the policy, or any government policy for that matter, would see them become a target for forced conversion. Educators should not have to fear repercussions for publicly voicing their expert opinion on educational matters, especially if they are

²⁵ Education and Training Amendment Bill, 212I (4) (c). Accessed 15 July 2024:
https://www.parliament.nz/en/pb/sc/make-a-submission/document/545CEDUW_SCF_2B463D34-CC8A-4B02-D10E-08DC93DD1B2F/education-and-training-amendment-bill

contrary to the view of the government of the day. This is deeply undemocratic and against the spirit of open debate that is essential to a free society.

53. **Recommendation 4:** Remove Part 1, subpart 6.A, clause 212G from the Bill. This would remove the Minister’s power of absolute discretion to direct a school to convert to a charter school.

Te Tiriti o Waitangi

54. The last time the policy was in place, charter schools were supported by some tikanga based Māori organisations who saw the flexibility afforded by the model as a potential vehicle for realising tino rangatiratanga and mana motuhake in education. Schools that are run by Māori for Māori, such as Kura Kaupapa or Kura ā Iwi, have proven capability to deliver impressive results for ākonga Māori.
55. Unlike legislation covering mainstream public schools, however, the proposed charter school legislation includes no specific Te Tiriti obligation. According to the Ministry of Education, ‘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’.²⁶ Because of this the Regulatory Impact Statement states that ‘charter schools could also reinforce existing inequities experienced by ākonga Māori, particularly if a schools leadership lacks the skills needed to address Māori concerns and inequities’.²⁷
56. Public schools must give effect to Te Tiriti o Waitangi by working to ensure their plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and achieving equitable outcomes for Māori students. Sponsors of charter schools do not hold these same responsibilities and tamariki Māori could find their school converts to a charter school that does not give effect to Te Tiriti.
57. The current public education system needs to shift to a Te Tiriti based model that explicitly recognises mana motuhake and tino rangatiratanga and iwi-led decision making that applies

²⁶ Ministry of Education, ‘Departmental Disclosure Statement: Education and Training Amendment Bill’, 12 June 2024, p.10. Accessed 15 July 2024:
https://disclosure.legislation.govt.nz/assets/disclosures/bill_government_2024_66.pdf

²⁷ Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools, p.3.

to all schools. In its current form, the proposed legislation appears to do more to undermine rather than support this objective.

58. **Recommendation 5:** Section 127 (1) d of the Education and Training Act, which outlines the responsibility of school boards to give effect to Te Tiriti o Waitangi, should be extended to apply to charter school sponsors.

Employment rights

59. The legislation strips principals, teachers and support staff currently working for the public education in a public school, employed under their relevant collective agreements, of significant employment rights. Charter schools that result from the conversion of public schools become new employers, outside of the public service. The Bill proposes that employees covered by collective employment agreements would lose this coverage when their school becomes a charter school. While the Bill states that employees transferred to a new entity would become employees of the sponsor 'on terms and conditions of employment that are no less favourable overall' to their previous position, they do not have the right to redundancy should they no longer wish to continue their employment as a result of the school being converted into a charter.
60. Instead of being employed centrally on transparent pay and conditions, teachers and principals will be on individual agreements funded by bulk payments to sponsors. This creates a significantly different dynamic in the workplace.
61. Working for a charter school offers a fundamentally different set of experiences and expectations for teachers, principals and support staff formerly employed in the public system. By belonging to the public education system, these educators are integrated into a comprehensive professional network. Educators may rightly see the transfer of their employment to a sponsor as severing them from such networks, and therefore constituting a fundamental change in the professional conditions of their work. Employees of public schools converting to charter schools must have the right to deem that their employment has been ended, and therefore the compensation and protections afforded by their collective agreement.
62. Advice provided to Minister Stanford on international evidence for charter schools states that a 2015 USA research survey found that 'teachers in charter schools tend to be younger, have less experience, less training and lower rates of certification than their public school colleagues', that there is 'higher teacher turnover in charter schools compared to public schools' and that, on average, 'teachers in charter schools earn less than their public school

colleagues'. Alarming, the advice states that: 'This is generally tied to teachers being required to work longer teaching hours without pay compensation, rather than pay cuts'.²⁸ The same is true of academies in the UK, where 'there is higher teacher turnover in free schools compared to public schools; unionisation is lower; and teachers are paid less on average with a percentage of teacher earnings often tied to student performance'.²⁹

63. New Zealand has obligations in relation to the ILO in its free trade agreements, in particular with the EU and the UK. In the recently ratified Free Trade Agreement between New Zealand and the European Union (NZ-EU FTA), New Zealand has obligations to 'effectively implement' ILO Conventions, and to 'respect, promote and realise' fundamental rights at work, including the right to freedom of association and the effective recognition of the right to collective bargaining. Where a domestic policy conflicts with ILO commitments, there is a risk New Zealand will also not be compliant with our NZ-EU FTA obligations.³⁰ By stripping the rights of educators in converting schools, New Zealand's compliance with such obligations comes into question.

64. **Recommendation 6:** Part 1, clause 70, schedule 1, clause 119 should be amended to state that employees of state school converting to charter schools that do not wish to take up employment in the charter school may deem their employment to be ended and be entitled to any compensation afforded by their collective agreement or the Employment Relations Act.

Quality of Education

65. NZEI Te Riu Ria has major concerns about the potential quality of education in charter schools. Charter schools are not required to have a principal, nor do they need to employ qualified and registered teachers in all teaching roles. Unqualified and unregistered people may be permanently employed as teachers in charter schools. Charter schools are also exempt from the New Zealand Curriculum and other regulations imposed on state schools that aim to ensure a consistent quality of education across New Zealand.

66. NZEI Te Riu Roa share the belief of the Teaching Council | Matatū Aotearoa that 'a quality education system requires qualified teaching professionals in every kura, schools and Early Childhood Education (ECE) service', and that 'Teaching is a highly skilled profession, requiring

²⁸ Lessons Learnt and International Evidence, p.8.

²⁹ Lessons Learnt and International Evidence, p.9.

³⁰ Departmental Disclosure Document: Education and Training Amendment Bill, p.9.

considerable expert knowledge (including subject knowledge and how the brain learns), and skills (such as how to apply different learning or pedagogical approaches and use a variety of assessment techniques and tools) so that each ākonga | learner is supported to learn in ways best suited to them'.³¹

67. As currently stated, the Bill would exempt unqualified, unregistered, and uncertificated individuals working in charter schools from the Teaching Council's competency processes, while still being subject to disciplinary processes. This sets a dangerous and irresponsible precedent for teaching and presents serious risks not only to the education of ākonga, but to their safety and wellbeing. Competency can be seen as the 'fence at the top of the cliff' corresponding to the disciplinary 'ambulance' at the bottom. By the time disciplinary procedures come into play, the damage may have already been done. Ensuring that teachers meet competency standards helps to ensure that disciplinary procedures are not needed in the first place.

68. **Recommendation 7:** Amend the Bill so that the registered teacher obligations of public schools, set out in Part 3, subpart 2, clause 92-96 of the Education and Training Act are to apply to charter schools, and retain competency oversight of people with limited authority to teach by omitting Part 1, clause 46 from the Amendment Bill.

Profit seeking has no place in education

69. The Ministry of Education's Departmental Disclosure for the Amendment Bill states that a charter school sponsor could be a body corporate, corporation sole, limited partnership, or institution. This would allow for-profit operators to be sponsors of charter schools and mean that public funding for schooling could be pocketed as private profit, rather than being spent on education.

70. NZEI Te Riu Roa firmly believe that profit seeking has no place in education. Education is about empowering ākonga to reach their potential, supporting them to understand their whakapapa and place in their community and the world, nurturing them to be confident citizens that contribute to the day-to-day life of our society, and many other honourable ideals. Allowing for-profit organisations to run charter schools places the goal of turning a profit before such ideals.

³¹ Teaching Council | Matatū Aotearoa, Briefing to the Incoming Minister, 2023. Accessed 15 July 2024: <https://teachingcouncil.nz/assets/TC-BIM-2023-v2.pdf>

71. The connection between schools and their communities is critical in supporting a system where schools meet local educational needs. Beyond school boards, this happens for example through connection to local iwi and hapū, local cultural institutions, sports clubs, businesses, philanthropic organisations, and more. This serves more than just an educational purpose. For example, local schools consistently prove to be vital community infrastructure in disaster contexts, a phenomenon seen worldwide. This was witnessed following the 2011-2013 Canterbury earthquakes or Cyclone Gabrielle in 2023.³² Schools provide critical ‘anchoring points’ for communities in such disasters, supporting them from the immediate disaster response right through the ‘long tail’ of disaster recovery. Existing as part of a coherent and connected public system is critical in allowing this to happen. Charter schools, on the other hand, have no legislated responsibility to the communities they are situated within and, particularly in the case of those being run for-profit, might decide to put their own financial wellbeing ahead of the needs of the community.
72. Even with ostensibly not-for-profit entities there are still pathways for the extraction of financial benefit. This is seen, for example, in Early Childhood Education in Aotearoa, with largest provider Best Start, that while being designated as a charitable trust, owners can benefit financially through the extraction of property rents.
73. Section 131 of the Companies Act states that a company director ‘must act in the best interests of the company’. That is, the interests of a company must come before the interests of stakeholders, communities and indeed, in the case of for-profit charter schools, ākongā. When the Companies (Directors Duties) Amendment Bill came through the House in 2023, parties responsible for the present Bill strongly opposed the suggestion that directors may be required to consider additional obligations beyond those to shareholders.³³
74. **Recommendation 8:** To avoid profit seeking taking precedence over quality education a requirement in Part 1, subpart 6.A, clause 212I of the Amendment Bill should be added stating that sponsors be not-for-profit organisations. Alongside Recommendation 11, regular

³² NZEI Te Riu Roa, *We Are Still Here: How educators in Te Matau-a-Māui have supported their communities in the aftermath of Cyclone Gabrielle*. Wellington: NZEI Te Riu Roa, 2023. Accessed 15 July 2024: <https://www.nzeiteriuroa.org.nz/assets/downloads/We-Are-Still-Here-full-report.pdf> ; Carol Mutch, ‘Quiet heroes: Teachers and the Canterbury, New Zealand, earthquakes,’ *Australasian Journal of Disaster and Trauma Studies*, 19 (2), 2015.

³³ The author of the Bill under consideration has spoken passionately about importance of upholding the principle of shareholder primacy against the imposition of other goals (See Hansard, Wednesday, 14 April 2021 - Volume 751, Urgent Debate: Air New Zealand—Minister of Finance's Letter of Expectation’. Accessed 4 July 2024: https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansD_20210414_20210414).

financial reporting should be assessed against guidelines that are developed to prevent financial benefits accruing to private individuals through the charter school system.

Performance management, auditing, and intervention frameworks

75. According to advice provided to the Associate Minister in February 2024 on performance management, auditing, and intervention frameworks for charter schools, 'The charter school model is designed to maximise flexibility, innovation and choice, but with this comes a higher degree of risk, including to the safety and wellbeing of learners'.³⁴ The Ministry further state that 'Clarity about the interventions available, and their triggers, will assist school functioning and assist in mitigating risk that exists in a more flexible model'.³⁵ As such, it is vital that performance management, auditing, and intervention frameworks are fit for purpose and clearly stated in legislation in order to protect learners. The seriousness of this issue is underlined by the Ministry referring to the Royal Commission into Abuse in Care in the same report.
76. According to the Associate Minister, charter schools 'will be subject to a high level of monitoring and accountability and could be shut down if they do not achieve the outcomes they were funded to achieve'. However, there appear to be weaknesses in the performance management and intervention frameworks, due to (1) an overreliance on sponsor self-reporting, and (2) the fact that performance outcomes and aspects of the intervention regime are solely a matter of contract negotiation. Concerning the latter, the Ministry notes that the Minister's preferred option for leaving performance outcomes to be detailed in contracts comes with 'a risk that performance outcomes could be negotiated by sponsors'.³⁶
77. Interventions that can be made against underperforming or unsafe charter schools range from requiring the Chief Review Officer to review the governance and management of the charter school by the sponsor; a requirement for the sponsor to provide the Authorisation Board with information, or to carry out specified actions and report on these (Section 212ZD (1) (a),(b),(c)). Such 'less serious interventions', however, are only permitted if included in the

³⁴ Ministry of Education, 'Education Report: Performance management, auditing and intervention frameworks for Charter Schools | Kura Hourua, February 2024, p.12. Accessed 15 July 2024: https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/February-2024/ER-1319872-Signed-Seymour-Performance-management_Redacted.pdf

³⁵ Ibid., p.14.

³⁶ Ibid., p.10.

charter school contract. Intervention powers need to be clearly specified in legislation and not left up to the vagaries of negotiation.

78. **Recommendation 9:** Remove ‘if permitted under the relevant charter school contract’ from Section 212ZD (2), to read: ‘The Authorisation Board may apply an intervention described in subsection (1)(a), (b), (c).’
79. In situations where the Authorisation Board considers ‘less serious interventions’ insufficient to deal with the matter, or presumably when such interventions are prohibited in charter school contracts, interventions can be applied to terminate the charter school contract and to replace the sponsor with another sponsor. With such interventions, the Authorisation Board must have reasonable grounds to believe that the sponsor has failed to comply with any of its contractual or legislative obligations and have not remedied the failures within a reasonable timeframe, or the Authorisation Board must have reasonable grounds to believe that significant risks exist that such failures will occur.
80. In advice dated 23 February 2024, the Associate Minister decided against including Education Review Office recommendation as an intervention trigger, despite this being recommended by the Ministry.³⁷
81. Apart from stating that interventions are the responsibility of the Authorisation Board, the legislation does not outline specific triggers that would cause the intervention framework to come into effect. This leaves questions as to what information the Authorisation Board may rely on to make decisions to intervene in a charter schools operation.
82. According to advice dated 23 February 2024, the sole informational trigger for an intervention supported by the Associate Minister were ‘Regular reporting against performance outcomes or the annual audit’.³⁸ There is substantial risk involved in the case that the regular reporting of sponsor, as stipulated in contracts, is the sole source of information that may trigger an intervention, as appears to be the case. As described by the Ministry, a self-audit approach ‘in isolation carries risk, as it relies on the accuracy of self-reported information from sponsors’.³⁹ Not only does this fail to meet the expected high level of accountability the charter school model apparently aspires to, it poses significant risks to student safety and wellbeing.

³⁷ Ibid., p.14.

³⁸ Ibid.

³⁹ Ibid., p.12.

83. Self-reporting and annual financial reporting do not equate to ‘a high level of monitoring and accountability’, especially given the risks and former experience with charter schools. The frequency of performance reporting information, also specified through contract, lacks transparency and risks schools being left to flounder for some time before an intervention takes place.

84. **Recommendation 10:** Clearly state specific intervention frameworks in legislation, including provision to allow for ERO recommendations for intervention, and pathways for interventions to be triggered by communities. Charter school contracts, as well as reporting against performance outcomes, need to be publicly available for community scrutiny.

Financial probity

85. There are concerns that monitoring for financial probity is not robust enough to ensure responsible management of public funds by sponsors. The Ministry states that, ‘Feedback on the previous model of financial monitoring and reporting found that the Ministry received financial information that was below the standard and comprehensiveness it needed to carry out effective oversight, even though it was audited’.⁴⁰

86. In advice given to the Associate Minister in February 2024, the Ministry recommends that ‘the Ministry is mandated in the legislation to require quarterly financial statements of charter schools as part of our performance management. Where standards of financial information, or a school’s financial position, are a cause for concern, this would trigger the intervention framework’. This advice, however, was rejected by the Associate Minister, in favour of the minimum requirement for annual financial reporting.

87. **Recommendation 11:** Charter schools should be subject to quarterly financial reporting, as recommended by the Ministry. All financial reports should be made available to the public on the Ministry's website.

Support entity

88. Advice provided to the Associate Minister in April 2024 outlines the need for a support entity to be contracted to support charter schools through their establishment and ongoing operation.⁴¹ The support entity has been costed at \$4.735m over four years.

⁴⁰ Ibid., p.11.

⁴¹ Ministry of Education: ‘Education Report: Support Entity for charter schools | kura hourua’, April 2024. Accessed 15 July 2024: <https://assets.education.govt.nz/public/Documents/our-work/information->

89. That there is an identified need for a support entity itself indicates a flaw in the thinking behind the charter school model. By implicitly recognising the importance of having an integrated education system, the supposed benefits that the individuality and independence of charter schools are supposed to deliver come into question. It is telling, therefore, that the Ministry uses the state school model as an example of why such integration is beneficial: ‘State schools have access to a wide range of support services, such as for school governance, finance, and property matters. We anticipate that prospective and new sponsors for charter schools would benefit from similar support services from their initial application process through to their establishment, and ongoing running of school operations’.⁴²
90. Another piece of advice provided to the Minister of Education in January 2024 considers the ‘Multi-Academy Trust’ model from England as a potential model for future support entities.⁴³ It considers the roll out of charter schools in a ‘phased approach’, with phase one involving the initial establishment of the model, while ‘phase 2’ would ‘continue to develop a partnership school model for converted schools. This would provide time to develop policy and legislation (if needed) that could enable partnership schools to benefit from operating together under a governance structure similar to the Multi-Academy Trust structure used for academies in England’.
91. The Ministry is currently refusing to release advice provided to Minister Stanford in December 2023 on ‘Lessons learnt from Academy Schools in England’. This refusal is currently the subject of a complaint to the Ombudsman’s office and reflects poor legislative process outlined above. It is possible that this advice might involve the following insights on England’s Multi-Academy Trust system:
- a. Because there are no limits on MAT leadership pay, senior management pay has skyrocketed. The highest paid person in the UK education system is the CEO of Multi-

[releases/Advice-Seen-by-our-Ministers/2024/April-2024/1325602-Support-entity-for-charter-schools-kura-hourua_Redacted.pdf](#)

⁴² Ibid., p.1.

⁴³ Ministry of Education, ‘Education Report: Partnership schools kura hourua: Advice on timeframes for legislation, advisory group and other support’, January 2024, p.10. Accessed 15 July 2024: <https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/2024/January-2024/1320875-Advice-on-timeframes-for-legislation-advisory-group-and-other-support.pdf>

Academy Trust 'Harris Federation', Dan Moynihan, whose annual salary is between £485-495,000, excluding pension contributions.⁴⁴

- b. A comparison of MAT and local authority finances for 2021-22 found that the largest MATs are spending eight times more per pupil on salaries of £130,000 and above than are England's largest local authorities.⁴⁵
- c. A systematic study of MAT finances found that academies spend more on back-office costs and less on teacher salaries and educational support than maintained schools.⁴⁶
- d. Analysis of 'middle tier' oversight functions found that the overall cost of the middle tier for academies in 2016/17 was £687.4m and for LA schools was £525.4m. In per-pupil terms, this is £167.05 for academies and £115.17 for LA schools.⁴⁷
- e. Recent analysis of workforce trends (academic years 2016/17 to 2019/20) found that 'Amongst secondary schools, multi-academy trusts have, on average, significantly higher annual turnover of classroom teachers than local authorities (16.9% in the median MAT, 14.4% in the median LA), and annual turnover is even higher in larger MATs (19.5% on average).⁴⁸

⁴⁴ Jack Dyson, 'Highest-earning academy chief's annual pay nears £500k', *Schools Week*, 2 February 2024. Accessed 17 July 2024: <https://schoolsweek.co.uk/highest-earning-academy-chiefs-annual-pay-nears-500k/#:~:text=Harris%20Federation%20CEO%20Sir%20Dan,wellbeing%20of%20the%20lowest%20paid%E2%80%9D> ; Also see: Jack Dyson, 'Rise in £200k academy trust CEOs as pay "stagnation" ends', *Schools Week*, 22 March 2024. Accessed 17 July 2024: <https://schoolsweek.co.uk/rise-in-200k-academy-trust-ceos-as-pay-stagnation-ends/#:~:text=Audits%20of%20the%20trusts'%20accounts,plus%20earners%20oversaw%2026%20schools>

⁴⁵ Warwick Mansell, 'Systems matter: the cost to classrooms of the academies programme', *Campaign for State Education*, May 2023. Accessed 17 July 2024: <https://drive.google.com/file/d/1FurSFw87DWO-JfoZQh-7ENTKEVjIH6m0/view?usp=sharing>

⁴⁶ Peter Davies, Colin Diamond, and Thomas Perry, 'Implications of autonomy and networks for costs and inclusion: Comparing patterns of school spending under different governance systems', *Educational Management Administration & Leadership*, 49(1), 2019, pp.128-144. Accessed 17 July 2024: <https://doi.org/10.1177/1741143219888738>

⁴⁷ Sara Bubb et al., *Understanding the Middle Tier: Comparative Costs of Academy and LA-maintained School Systems*, Sara Bubb Associates, July 2019. Accessed 17 July 2024: <https://discovery.ucl.ac.uk/id/eprint/10079272/1/Understanding%20the%20Middle%20Tier%20-%20Comparative%20Costs%20of%20Academy%20and%20LA-maintained%20School%20Systems%20-%20Sara%20Bubb%20Associates%2016%20July%202019.pdf>

⁴⁸ Louis Hodge et al., *The Features of Effective School Groups*, Educaiton Policy Institute, April 2024. Accessed 17 July 2024: https://epi.org.uk/wp-content/uploads/2024/04/Effective_school_groups_final-240404-2.pdf

Oral submission

92. NZEI Te Riu Roa welcomes the opportunity meet with the Select Committee to discuss this submission

A handwritten signature in black ink, appearing to read 'Stephanie Mills', written in a cursive style.

Stephanie Mills

Korīmako Tangiata | National Secretary

July 2024