



MANAAKITIA Ā TĀTOU TAMARIKI

Children's
Commissioner

Education and Training Amendment Bill (No 3) 239-1 (2023)

OCC Submission on the Education and Training Amendment Bill

1 May 2023



Introduction

**“To ensure all children have equal opportunities to get quality education”
(18-year-old Māori girl)¹**

1. I welcome this opportunity to submit on the Education and Training Amendment Bill (No 3) 293-1 2023 (the Bill).
2. In making this submission I recognise and respect the Crown’s responsibility to give effect to te Tiriti o Waitangi/the Treaty of Waitangi, and to improve the wellbeing of mokopuna within the context of their whānau, hapū, iwi and communities.
3. As the Children’s Commissioner, I have a statutory responsibility to advocate for the interests, rights and welfare of mokopuna in Aotearoa New Zealand.² This includes advancing and monitoring the application of the United Nations Convention on the Rights of the Child (Children’s Convention) by departments of State and other Crown instruments.³
4. The right of every mokopuna to education is central to the realization of all mokopuna rights. At school, through education, mokopuna both learn about and experience their rights. The aims of education set out in article 29(1) of the United Nations Convention on the Rights of the Child (Children’s Convention) highlight the need for an education system and educational processes that reflect and uphold the rights and inherent dignity, the mana, of each mokopuna.⁴
5. My office has previously made submissions related to education system change and the legal and policy implications for mokopuna. This includes, but is not limited to, the update to the Education Act 1989, the Education (Update) Amendment Bill 2015, the Education and Training Bill 2016 and the Education (National Education and Learning Priorities) Amendment Bill 2018.
6. This submission is limited to the Bill’s proposed amendments to the Education and Training Act 2020 (the Act) as follows:
 - 6.1. The classification of Kura Kaupapa Māori (KKM) as a distinct type of state school.
 - 6.2. Board member requirements.

¹ Children’s Commissioner (2019) [What Makes a good life?](#) at 18.

² Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people aged under 18 years of age. This acknowledges the special status held by mokopuna in their whānau, hapū and iwi and reflects that in all we do. Referring to the people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from matters, at every stage of their life.

³ Children’s Commissioner Act 2003, s 12(1)(f).

⁴ United Nations Committee on the Rights of the Child, General Comment No. 1, Article 29(1), The aims of Education.

What the Bill proposes

Kura Kaupapa Māori

7. The Bill proposes amending the Act to change the establishment provisions of KKM.⁵ At present, s 204 provides the establishment provisions of KKM as designated character schools (the position since 2017). Prior to this, KKM were a distinct type of state school with separate establishment provisions. The Bill will restore KKM to their previous position.

Board member requirements

8. The Bill proposes amending the Act's ineligibility requirements for school board members, based on child health and safety, to align with s 38(1) of the Children's Act 2014.⁶ The new ineligibility requirement will bar a person who has been charged and convicted of a specified offence in Schedule 2 of the Children's Act from becoming an elected, appointed, or co-opted board member, unless the person has been pardoned or granted an exemption by the Secretary for Education. The amendment is designed with child safety as the paramount consideration, whilst also providing an exemption mechanism to recognize that individual circumstances may warrant exception.

Te Tiriti o Waitangi and the Treaty of Waitangi

9. A child right's approach in Aotearoa requires the simultaneous realisation of tangata whenua rights as embodied and affirmed in Te Tiriti o Waitangi (Te Tiriti) and the Treaty of Waitangi (the Treaty). Adopting a Te-Tiriti centric approach is essential to improving the educational rights and wellbeing of mokopuna, particularly mokopuna Māori, within the context of their whānau, hapū, iwi and communities.
10. The provision of kāwanatanga under article 1 of Te Tiriti translates to a Crown obligation to uphold good governance, including in education and, more specifically, the establishment provisions of KKM.
11. The provision of tino rangatiratanga under article 2 of Te Tiriti affirms and guarantees Māori self-determination and agency over their taonga (material and non-material). Taonga captures mokopuna and their learning in an environment that promotes, and is guided by, mātauranga Māori and kaupapa Māori frameworks. This includes the educational pedagogy of Te Aho Matua in KKM.
12. The provision of ngā tikanga katoa rite tahi under article 3 of Te Tiriti affirms the equal enjoyment of all rights and privileges for all peoples. This principle is expressed through the values of participation, access, options, equality, and equity. These rights are supported by

⁵ Education and Training Amendment Bill (No 3) 239-1 2023, cls 17-18 and cls 21-24. See also Ministry of Education (March 2023) [Departmental Disclosure Statement](#).

⁶ Education and Training Amendment Bill (No 3) 239-1 2023, cl 38.

the Children's Convention, which provides mokopuna (and their whānau) with specific rights that must be upheld and implemented by the government.

13. The provision of te ritenga Māori under article 4 of Te Tiriti affirms and upholds the right of all individuals to practice Māori spiritual customs and religious beliefs without hindrance. It is essential that Crown systems acknowledge and respect this freedom of spiritual expression, particularly in the education system, ensuring that Māori spiritual customs and beliefs are valued, respected and protected in the education system for all mokopuna.

Recommendations of the United Nations Committee on the Rights of the Child

14. The New Zealand Government ratified the Children's Convention in 1993 and, in doing so, agreed to bring domestic laws and policies in line with its provisions and principles.⁷ The Children's Convention provides a framework upon which policy and legislation that affects children and young people (aged 0-17 inclusive) ought to be built. Periodic reviews undertaken by the United Nations Committee on the Rights of the Child (the Committee) provide an opportunity to assess and strengthen implementation of children's rights in Aotearoa New Zealand.
15. In the recent Concluding Observations (COBs), the Committee welcomed the government's consultative efforts with children in the reform of the education system and the introduction of the Education and Training Act 2020, noting Government's obligation under the Act to actively promote and protect the rights of mokopuna Māori and guarantee the same rights to education for disabled mokopuna.⁸ The Committee's education-specific recommendations included:
- Assess the implementation of legislative amendments mandating consultation with children, including under the Education and Training Act 2020.⁹
 - Strengthen the ability of children to have meaningful input and consultation into decisions that affect them at school.¹⁰
 - Take steps to incorporate the right to an inclusive education, that reflects that all children are entitled to access high-quality education and that the curriculum reflects the diversity of New Zealand society.¹¹
 - Specifically address racism, discrimination, stigma and bias experienced by Māori and Pasifika children in school by strengthening efforts to promote te reo Māori, cultural identity and history in education.¹²

⁷ Article 4, United Nations Convention on the Rights of the Child

⁸ CRC/C/NZL/CO/6 at paragraph 37.

⁹ CRC/C/NZL/CO/6 at paragraph 19(b). See Education and Training Act 2020, s 5(6), s 100(3), s 101(3), and s 617(2).

¹⁰ CRC/C/NZL/CO/6 at paragraph 37(a).

¹¹ CRC/C/NZL/CO/6 at paragraph 37(b).

¹² CRC/C/NZL/CO/6 at paragraph 37(c).

Recommendations

Kura Kaupapa Māori

16. I support the provisions of the Bill that will restore the previous classification and establishment provisions of KKM as a distinct type of state school. This amendment responds to the outcry of whānau Māori, dissatisfied with the discriminatory KKM establishment provision changes in 2017.¹³ The changes not only diminished the mana of KKM but also failed to align the status of KKM with other provisions in the Act. This reflects the importance of getting legislative change right the first time – and that can only be done in partnership and consultation with KKM and under the guidance of Te Tiriti.
17. It should be noted that Te Rūnanga Nui o Ngā Kura Kaupapa Māori has lodged an urgent claim to the Waitangi Tribunal, outlining acts and omissions by the Crown in relation to the exercise of tino rangatiratanga by whānau of KKM operating within the broader education system. The claim will also address funding inequities that negatively and disproportionately impact upon mokopuna and whānau Māori in KKM compared to mokopuna in mainstream English-medium schools.¹⁴ Upon the Waitangi Tribunal releasing its report and key findings, it will be crucial for the government to respond to and work with Māori in achieving an inclusive education system that serves mokopuna Māori in KKM.
18. I strongly encourage the government to be transformational in its approach to educational system change for KKM as it has been with Wānanga in the tertiary sector. The Bill proposes a tertiary education overhaul by establishing a new framework for constituting Wānanga. Changes also include a change to Wānanga reporting requirements founded on, and giving full realisation to, tino rangatiratanga and kāwanantanga. I recommend the same approach can be, and should be, achieved at the primary and secondary education levels in respect of KKM.
19. I also recommend stronger government efforts to respond to inequity issues faced by mokopuna in the education system, particularly mokopuna Māori as a priority population. The restoration of KKM as a distinct type of state school is only one step in the right direction.
20. Educational performance levels and change also requires sufficient resource allocation to successfully implement targeted responses and to measure the performance and well-being of mokopuna Māori. This is of particular concern given funding for school property and teacher development in Māori-medium and/or KKM have not been sufficiently prioritized. Funding inequity is one of the matters the Waitangi Tribunal will deliberate on in its inquiry.
21. The efficacy of KKM for educational achievement of mokopuna Māori is considerable compared to the educational achievement of mokopuna Māori in mainstream English-medium schools, highlighting disparate outcomes and disadvantage.¹⁵ It is hoped that these disparities can start to be addressed by Te Mātaiaho, the proposed New Zealand Curriculum Refresh Framework.

¹³ See also Ministry of Education (March 2023) [Departmental Disclosure Statement](#).

¹⁴ Waitangi Tribunal (WAI 1718) [Kura Kaupapa Urgent Inquiry](#).

¹⁵ At 30. See also Ministry of Education (2017) [Briefing to Incoming Ministers: Māori Education Overview](#).

Board member requirements

22. I note the proposed amendment to widen the ineligibility criteria for membership of a school Board of Trustees. The amendment would prohibit a person who has been convicted of a specified offence committed against a child becoming a board member unless an exemption is granted by the Secretary of Education.
23. I appreciate the concerns for mokopuna safety that sit behind the proposed amendment. I also note that this proposed amendment is consistent with the Children's Act 2014 outlines situations, where "children's workers" are required to be police checked and not have a record of offending (violence, abuse or neglect) against mokopuna.
24. A holistic approach is required when applying mokopuna rights, recognising the indivisibility and interdependence of those rights. Mokopuna have the right to be safe. They also have the right to be guided by their whānau and communities in the exercise of their rights, including their education rights.¹⁶ All mokopuna are entitled to experience their rights free from discrimination.¹⁷ The best interests of mokopuna should be a primary consideration of the legislation that supports their education.¹⁸
25. The proposed amendment risks mokopuna having their parents or whānau members automatically prohibited from being a Board of Trustee member and guiding their education, unless an exemption was sought.
26. The proposed amendments will bring board members' safety checks in line with principals, teachers and other staff in school with access to, or who work directly with, mokopuna. However, board members rarely work directly with mokopuna. Their role is one of governance, and their contact with schools is generally through the Principal and staff. Although it may be indicative, a previous conviction does not automatically equate to a current risk to mokopuna safety and, where necessary, consideration could be given to other ways to manage any potential risk. For example, when board members are required at short notice to meet with mokopuna with or without their caregivers. It is also important to acknowledge that the justice system disproportionately prosecutes and convicts Māori.
27. In my view this amendment should only proceed if justified. That is, it should only proceed if there is evidence that the safety gains of a blanket prohibition on those with a relevant conviction being board members outweigh the rights of their mokopuna to have their whānau member involved in the governance of their school, guiding their education.
28. Should, on balance, the decision be taken to proceed with the amendment, I strongly support the inclusion of an exemption mechanism when the Secretary of Education is satisfied that the person would not pose an undue risk to the safety of mokopuna. The process of seeking an exemption should not, in itself, be an undue barrier to board membership.

¹⁶ Article 5, United Nations Convention on the Rights of the Child.

¹⁷ Article 2, United Nations Convention on the Rights of the Child.

¹⁸ Article 3, United Nations Convention on the Rights of the Child.

Conclusion

29. The Education and Training Bill (No. 3) is an important opportunity to ensure greater adherence to the provisions of Te Tiriti and the Children's Convention, affording mokopuna the rights to be educated to their fullest potential, including expressing their own identity and language, and to be safe from harm. Thank you for considering my submission.

Nāku noa, nā
Judge Frances Eivers

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