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Nikki Kaye  
Education and Science Committee  
Parliament Buildings  
**WELLINGTON**

Dear Ms Kaye

**Education Amendment Bill 2012**

**Introduction**

1. The Legislation Advisory Committee (LAC) was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. It has produced, and updates, Guidelines on the Process and Content of Legislation as appropriate benchmarks for legislation, which have been adopted by Cabinet.
2. The terms of reference of the LAC include:
  - to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
  - to help improve the quality of law making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with LAC Guidelines, and discouraging the promotion of unnecessary legislation.

**Submissions relating to partnership schools kura hourua**

***Application of Official Information Act 1982 and Ombudsmen Act 1975***

3. The Bill expressly excludes the application of the Official Information Act (OIA) and the Ombudsmen Act to a sponsor of a partnership school when it is performing functions under the Act or under its contract (new section 158X).

The LAC is of the view that making sponsors subject to these two Acts would significantly strengthen the Bill by promoting accountability of those who run these schools and making the Bill more compliant with LAC Guidelines.

4. While it is true that sponsors themselves are not “public” bodies in the nature of a Crown entity, they fulfil many of the criteria in LAC Guidelines used to determine whether the OIA should apply. They rely on central government funding, they are answerable to the Minister for the performance of their contract and they may be subject to ministerial intervention, and as a result seem to us to go beyond a purely private institution that might be contracted by the Government to provide certain services. Moreover the schools are stated as serving a public purpose, namely the provision of free education.
5. The Ombudsmen Act and OIA would provide a measure of accountability as to matters which are not addressed through contractual obligations to the Minister or through direct contractual accountability to parents and students (unlike that which exists for private schools). Making partnership schools subject to the Ombudsmen Act, for example, provides a remedy for breaches of the Bill of Rights Act 1990 (BORA) in a cheap and accessible forum.
6. The LAC notes that the Bill provides for BORA to apply to sponsors of partnership schools. This secures important protections for students and parents of these schools and adds a measure of public accountability. The benefits of that would be further increased by also making sponsors subject to the OIA and the Ombudsmen Act.
7. The RIS contains no compelling arguments for why the OIA and the Ombudsmen Act should not apply.
8. The LAC submits that sponsors, insofar as they are engaged in the running of partnership schools, ought to be covered by both Acts.

#### ***Secretary’s powers to intervene in an emergency***

9. New section 158L provides that the Secretary may take over the management of a partnership school if s/he has reasonable grounds to believe:
  - (a) that—
    - (i) there exists in respect of a partnership school kura hourua an emergency affecting the education or welfare of its students, or
    - (ii) there is an imminent threat of such an emergency; and
  - (b) that the sponsor is unwilling or unable to deal with the emergency or, as the case requires, that threat to the satisfaction of the Secretary.
10. The provision applies despite anything in the partnership school contract (new section 158L(4)).
11. The current wording and scheme of the Bill suggest that an “emergency” is something more than a sudden or unforeseen event requiring immediate action, in the nature of a civil defence emergency. It is also something that is not dealt with through the sponsor’s contractual obligations. Between these

two possibilities a number of other events could reasonably fall within the scope of the provision. An emergency might, for instance, be interpreted to include a case where students' ongoing educational or health needs are not being met.

12. The provision's current wording means the extent of the Secretary's powers of intervention is unclear. The Bill could be made more compliant with LAC Guidelines by including a definition of emergency or by way of an amendment to new section 158L, giving more detail about the kind of events it is designed to target. It might be something more in the nature of a "significant problem" as that term is used in Part 10 of the Local Government Act 2002.

## **Submissions relating to schools generally**

### ***New duty on school boards and sponsors***

13. The Bill imposes a new duty on school boards and sponsors of partnership schools to "perform [their] functions and exercise [their] powers in such a way as to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement". (New sections 75 and 158G).
14. The intention of this provision, as evidenced by the RIS, is to ensure that the primary focus of boards and sponsors is on raising educational achievement. However, the RIS notes that the policies and practices of most boards will remain unchanged. No specific, formal review process is planned to accompany the amendment.
15. The main purpose of the provision is to provide increased clarity to students and parents. But it imposes a duty on school boards and sponsors to demonstrate that a particular outcome has been reached for every individual child (ie, his or her "highest possible standard" in educational achievement). It is likely to be very difficult for school boards to demonstrate they have fulfilled this obligation in all instances. The RIS notes that the intention is not to create an enforceable right for students to achieve a specific level of achievement. Yet that is exactly what the creation of such a legal duty might entail.
16. The LAC's view is that the current wording poses a possible litigation risk.
17. If the intention is that boards and sponsors have a duty to focus on providing a particular environment, rather than on the results achieved by particular children, that should be communicated more clearly. Alternatively if the aim of the section is to require a focus on the attainment of each individual child, then it could also be more clearly drafted.

### ***Teachers' surrender and retention powers***

18. The Bill confers new powers on teachers to require a student to produce an item, whether hidden on their person or in clear view, which the teacher believes is likely to endanger the safety of any person or detrimentally affect the learning environment. New section 139AAA(3) provides that:

- (3) If the item is stored on a computer or other electronic device, the teacher may require the student–
    - (a) to reveal the item:
    - (b) to surrender the computer or other electronic device on which the item is stored.
  - (4) A teacher may do either or both of the following to an item surrendered under this section:
    - (a) retain the item for a reasonable period:
    - (b) dispose of the item (if appropriate).
19. New section 139AAF provides for the Secretary to make rules regulating how these powers must be exercised, such as when teachers may dispose of items retained. Given the broad nature of the powers it would be preferable for the rules to be in force before the surrender and retention provisions of the Bill come into effect. The Bill could also require the Secretary to engage in consultation, such as with youth justice advocates, prior to making the rules.
20. Requiring a student to relinquish an electronic device, which holds information unrelated to the item in question, is a broad power. It gives potential access to a student’s private information. The LAC submits that the Bill should be strengthened by making a minor amendment to clarify the limits on this power. The provision ought to make it clear that teachers are limited to viewing the specific item on the electronic device which it is thought will endanger safety or detrimentally affect the learning environment.

**Conclusion**

21. Thank you for taking the time to consider the LAC’s submission. The LAC does not wish to be heard on this submission.

Yours sincerely



Hon Sir Grant Hammond  
Chair