
Education and Training Amendment Bill (No 2)

17/02/2022

Education and Training Amendment Bill (No 2) 2021

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Education and Training Amendment Bill (No 2) (**Bill**).
- 1.2 The Bill seeks to amend the Education and Training Act 2020 (**Act**) to implement a number of policy changes and to make various other minor and technical changes.
- 1.3 The Government also introduced a Supplementary Order Paper (**SOP**)¹ during the first reading of the Bill. This submission addresses some issues which relate to the provisions in that SOP.
- 1.4 This submission has been prepared with input from the Law Society's Public and Administrative Law Committee.²
- 1.5 The Law Society does not wish to be heard.

2 Ministerial approval for licence applications (clause 5A)

- 2.1 Clause 5A of the SOP provides that Ministerial approval is required to apply for a licence to operate a licensed early childhood service (**ECS**).
- 2.2 The Bill and the SOP do not provide a right to appeal a decision made by the Minister to decline an application for Ministerial approval (noting that applicants can appeal a sub-finding by the Secretary of Education as to whether the applicants are fit and proper persons, and in relation to the financial viability of the proposed ECS, to the District Court). In the absence of such a provision, applicants would need to seek judicial review of the Minister's decision in the High Court, with the attendant cost and expense and limited grounds of challenge.
- 2.3 We invite the select committee to consider if it would be appropriate to provide a similar right of appeal for decisions to grant or decline Ministerial approval, or whether the committee is satisfied that judicial review is a sufficient and/or more appropriate pathway for an applicant to challenge such decisions.

3 Conditions on approval to apply for licence (clause 5B)

- 3.1 Clause 5B of the SOP inserts new section 17A, which would allow the Minister to impose conditions on the approval to apply for a licence. Subsection 17A(2) would allow the Minister to impose new conditions, or amend or revoke any existing conditions, at any time.

¹ Supplementary Order Paper No 118.

² More information about the Committee is available here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-and-administrative-law-committee/>.

3.2 We consider this power should be subject to an explicit requirement to notify the applicant of any proposed new conditions, or any proposed changes or revocations, and seek their response before the power is used. This would ensure applicants have the opportunity to respond to any changes or revocations. Otherwise, the first notice applicants could have of these changes would be when they are made. If there were disagreement with the changes, they may have to seek judicial review of the conditions when the matter could have been resolved through a simpler consultation process.

A handwritten signature in black ink that reads "Frazer Barton". The signature is written in a cursive, flowing style.

Frazer Barton
Vice-President