

Privacy Commissioner's submission to the Education and Workforce Committee on the Education and Training Amendment Bill (66-1)

1. I am pleased to make a submission on the Education and Training Amendment Bill (the Bill).
2. The Bill has been introduced to, among other things, allow charter schools to be created and state schools to convert to charter schools.
3. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
4. I support the proposal in the Bill for many of the protections for students that exist under the Education and Training Act 2020 (the Act), including protections that help to safeguard student privacy, to apply to charter schools. I also note that charter schools will be covered by the Privacy Act, and, therefore, its privacy protections and obligations will apply. These protections are crucial to ensuring the privacy of individuals is maintained even during periods of uncertainty and transition.
5. If the Bill is passed, my Office can provide advice on operational issues relating to charter schools that may have privacy implications.

Drafting issue in the Bill

6. I recommend that one aspect of the Bill is reconsidered to better reflect its policy intent and ensure privacy protections are maintained.
7. Specifically, there is an issue about new clause 120 of Schedule 1 of the Act, which would be inserted by Schedule 1 of the Bill. This clause enables employee information to be transferred to charter schools that are converted from state schools. In my view, clause 120(1) achieves this outcome and allows charter schools to receive the information they need about their employees. This means that clause 120(2) is not necessary.
8. The current drafting of clause 120(2) states that the transfer of employee information does not constitute an interference with privacy under section 69 of the Privacy Act. This exemption from liability under the Privacy Act is too broad and goes beyond what is necessary to give effect to the policy intent. For example, under the current drafting, an employee whose information is subject to a security breach in the process of transferring the information would have no grounds to complain to the Privacy Commissioner. I can see no reason why this drafting is necessary to meet the aims of the Bill.

9. I **recommend** that clause 120(2) either be deleted or amended to provide an exemption from Privacy Act liability only in relation to Information Privacy Principle 11 of the Privacy Act, which deals with the disclosure of personal information.

Conclusion

10. I trust that my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



Michael Webster
Privacy Commissioner

29 July 2024