



SUBMISSION

to the

Education and Science Select Committee

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Education Amendment Bill 2012

For more information please contact Bronwyn Cross, bcross@ppta.org.nz (04) 913 4222

The PPTA is the union representing around 17,000 teachers in state secondary, area, manual training and intermediate schools, as well as tutors in community education institutions and principals in secondary and area schools. PPTA represents the professional and industrial interests of its members, including those working in alternative education centres and activity centres. More than 95% of eligible teachers choose to belong to the union.

Introduction

PPTA will comment on three aspects of the Bill:

- 1 The surrender and retention of property
- 2 Charter schools
- 3 Multiple timetabling

Section 1: Surrender and Retention of Property Clause 28

1 Background

1.1 This section of the Education Amendment Bill attempts to balance the needs of teachers and school leaders to provide safe, productive learning environments and the rights of students to be free from unreasonable or intrusive searches. This is a difficult balance and unfortunately one that the Bill, as it is written, fails to achieve.

1.2 PPTA is concerned that the Bill neither provides the clarity for schools that was intended nor does it enable schools to provide safer learning environments. The unintended consequence of this Bill will be to increase suspensions, exclusions and expulsions which neither the government, nor the sector nor the general public want to occur.

2 Electronic Devices

2.1 PPTA believes that the clauses in the Bill that make it clear that an electronic device may be an item that “detrimentally affects the learning environment” and can therefore, when appropriate, be confiscated by the school are useful.

3 Areas of Concern

3.1 PPTA is concerned about three aspects of this part of the Bill: the power of teachers and school leaders to search students, the power to require drug tests and the capacity to use drug sniffer dogs. It is not that PPTA believes that schools should have more ‘police like’ powers. We are well aware of the point made in the regulatory impact statement that developing and maintaining positive relationships with students and their families is crucial for creating a positive learning environment. Nevertheless, schools reflect and are composed of society at large, and the problems of crime, drugs and other unsavoury behaviour cross all too readily into schools.

3.2 Vulnerable young people are a particular focus for this government, and the White Paper for Vulnerable Children makes it clear that one of the key actions is about government agencies working together and with consistency. The changes proposed in this Bill would undermine this goal, by making it more difficult for schools to live up to their responsibility of keeping young people safe and engaged in education.

4 Current practice

4.1 Searching students

4.1.1 Reasons for searching students

There are a number of scenarios in which a teacher (or more usually a senior manager such as a Deputy Principal) may need to take an item from a student for their own safety or to maintain a positive learning environment. These include when there is good reason to believe that the student has drugs, a weapon, offensive material such as pornography, inappropriate material, an electronic device, or stolen goods.

4.1.2 Ministry guidelines on searching students

The current (2011)¹ guidelines for searching students and confiscating items make it clear that teachers do have limited powers to search students and their belongings. When there is good cause to believe a student may have an item that poses an immediate or direct threat to their own or other's safety, a teacher may, following the correct process, search the bag or outer layers of clothing of a student.

4.1.3 Searches

Searching students for items is not common practice, as generally students comply when they are given specific instructions to produce an item, and are told the consequences of not doing so. If a student does not produce the item when required to, and the teacher chooses not to search, common practice is to call the police if the item is of an illegal nature or is stolen.

4.2 Drug testing

4.2.1 Reasons schools might drug test

The most common situation in which schools currently drug test students is when they have been caught at school either using or in possession of drugs. In this situation, the student may be given the opportunity to join a programme such as Rubicon instead of being suspended, excluded or expelled from school. Rubicon is a programme run in partnership with police and health-providers in which young people undertake drug counselling, stay in school and are drug tested regularly for a period of six months to one year. It has been evaluated and found to be highly successful for keeping young people engaged in their education. The drug testing is an essential component – one of the reasons for this is that it provides young people who are on the programme with an 'excuse' to opt out when their peers are taking drugs. The programme would not have fidelity if the drug testing was optional.

4.2.2 Extra-curricular activity

Sometimes schools may drug test students who are participating in an extra-curricular activity, such as being part of a sports team. This is not done randomly but following the agreement between the school and the student made when the student signs up for the activity.

¹ Searching students and confiscation. General Guidance on good practice. Ministry of Education 2011
<http://www.minedu.govt.nz/~media/MinEdu/Files/Boards/Support/SearchingStudentsAndConfiscation.pdf>

4.3 Sniffer Dogs

4.3.1 Currently a number of schools use contractors to bring sniffer dogs through schools in order to find drugs. This is often on a partnership basis with local businesses, as police now are not able to carry out random dog searches of schools.

4.3.2 To a large extent the use of drug sniffer dogs is a deterrent to keep students from bringing drugs to school and to keep the environment drug free. Some school leaders describe it as a 'piece of theatre', but one that gives an important message to students that they take the threat of drugs at school seriously.

5. Implications of the Bill's proposals

5.1 Search and Seizure

The limitations placed on searching under this Bill are much more restrictive than the current guidelines. Searches will be permitted of lockers, desks and other receptacles that the school provides, but not the student's own person or bags/receptacles. Any attempt to require a student to open their pocket, show what is under a jacket or in a sock is counted as a strip search in the Bill, and is prohibited. Similarly, school bags may not be opened by a teacher. The effect of this may be that students who have prohibited, illegal or stolen items on them at school will be less likely to hand them over, knowing that teachers are unable to search even their bags. It is easy to see scenarios where students will simply 'sit out' a request to empty their pockets, and then leave school at the end of the day.

All a school can do in this situation is stand down or suspend the student for continual disobedience, rather than actually dealing with the item itself. The alternative is to more rapidly involve the police, which may not always be achievable or desirable.

5.2 Drug testing

5.2.1 The Bill will prohibit schools (teachers and Boards of Trustees) from requiring students to give a "bodily sample". This means that there are **no** circumstances when the school can insist that a student undergoes a drug test.

5.2.2 The caveat to this is that schools will be able to request a student to have a drug test as part of the conditions established following a suspension meeting, provided these conditions are reasonable. However students can refuse this request. This may lead to a situation where whether or not a drug test falls under "reasonable conditions" is tested in court.

5.2.3 Students who currently would be required to provide bodily samples for drug testing as part of a Rubicon programme will, under the Bill as it stands, be able to refuse to provide samples. The Ministry of Education does not believe that this will constitute grounds for the school to expel or exclude the student, so they will have to be allowed to come back to school despite not being able to be guaranteed to be drug free. The fidelity of the Rubicon programme and other drug reduction programmes will be undermined if testing becomes a voluntary component.

5.2.4 The use of drug testing as part of a programme for reducing/eliminating drug use is widely recognised by schools to be a worthwhile power, and many teachers see it as vital for ensuring students' and teachers' safety. Around 10-15% of adolescents use cannabis heavily according to the Prime Minister's Science Advisor² and this group is heavily skewed towards boys and Maori, two groups which underachieve in education. Drug testing should not be used to further disadvantage these groups, by excluding them from school more regularly, but instead be part of an effective, strong and supported programme of intervention, such as that recommended by Gluckman.

5.3 Drug Dogs

5.3.1. These proposals will also outlaw searches using drug dogs – except for searches of “desks, lockers or receptacles” provided by the school. Schools will generally be unable to bring dogs to school to search the belongings of students, unless those belongings are left in lockers or desks. Of course this will not prohibit the police using their powers, but they do not conduct blanket or random searches of schools.

5.3.2. Without the capacity to bring drug dogs through schools while students are there at all, the risk that students may share/deal or consume drugs at school is increased. This is not about creating an atmosphere of ‘paranoia’ in school, as the Ministry of Education asserts, but it is about creating a justified concern that illegal activities may well be identified and dealt with – creating both a disincentive to engage in them and an excuse for students who may be feeling peer pressure to take drugs to or while at school.

Recommendation

PPTA recommends the removal of clauses 139AAB, (1) (2) and (5) and their replacement with guidelines for schools produced in close consultation with schools and the sector and disseminated and supported by the Ministry of Education to allow Boards of Trustees to establish policies that keep schools safe while respecting students' rights.

Section 2: Charter Schools

1 Background

It is not possible to comment on the legislative framework for setting up charter schools without also considering the deliberate by-passing of the democratic process.

1.1 What happened to Tomorrow's Schools?

One of the difficulties in commenting on the charter school elements of this Bill is that the public have been denied the opportunity to debate the merits of a policy that has the potential to completely overturn Tomorrow's Schools. The introduction of business-run charter schools signals that the key element of the 1989 changes – community-based schools under the control of parent-led Boards of Trustees - is either deliberately or inadvertently to be sidelined. Fundamentally, the charter school legislation is a vote of no confidence in the capacity of parents to be actively involved in their local school in a governance role. Instead they are to be reduced to the role of “customers” in the educational market-place and their children become commodities from whom the charter school sponsors may seek to profit.

² Gluckman, P. 2011 Improving the Transition Available from <http://www.pmcsa.org.nz/wp-content/uploads/Improving-the-Transition-report.pdf>

1.2 Experimenting on poor communities

It is a serious failure of political leadership that a policy with such widespread implications is being introduced without open and transparent discussion with all New Zealanders about whether they are ready to dispense with the Tomorrow's Schools model. If the goal is to operate a two-tiered education system with parent-run, community schools in wealthy areas and profit-making private companies running chains of schools in low socio-economic areas, this needs to be stated very clearly. The claim by Catherine Isaac of the Charter Schools Working Group to the effect that these schools will be "the R&D arm of the education system" is very revealing, firstly because the fatuous nature of the comment reveals her total ignorance of current educational research and secondly because it demonstrates that she sees nothing inappropriate in conducting experiments on other people's children.

1.3 What happened to responsible government?

The education of our children can never be left to the market because the state mandate that all children between the ages of 5 and 16 must attend school means there is no "free" market as such. The state uses its coercive powers to require that parents send their children to school because the consensus is that this is in the best interests of students. Such coercion is only acceptable while schools remain fully accountable to New Zealanders through the parliamentary process. The enthusiasm with which some Members of Parliament are embracing the prospect of offloading their parliamentary responsibilities to a faceless and unaccountable business entity does not engender confidence in our elected representatives. It would be more honest to abolish compulsory education rather than continue to require children to attend school while refusing to accept any political responsibility for the complex task of ensuring the system provides high-quality education for **all** students.

2 Undermining democracy

2.1 Why was the policy hidden from the voters?

There was no public demand or even interest in charter schools prior to the 2011 election. The initiative was sprung on the electorate after the election in a process that can only serve to undermine public faith in democracy.

2.2 The real goal: full privatisation

The policy's real origin seems to have been the 2009 report of the Inter-Party Working Group, "Step Change: Success the Only Option". The group operated under the stewardship of the Act Party member, Hon Heather Roy, but other representatives on the group were the current Minister of Education, Hon Hekia Parata, National Party members Chester Borrows and Jonathan Young and Te Ururoa Flavell of the Maori Party. This suggests that the intention to privatise the school sector was well advanced but, for reasons we can only speculate about, was not put before the electorate.

2.3 End goal: private educational subsidies for the middle class

It is important to note that the form of privatisation endorsed by the Inter-Party Working Group was vouchers, not charter schools, and that the initial proposal was not targeted solely at low socio-economic areas. This provides a clue to the real agenda behind this proposal and explains the conundrum of why the Act Party, notorious for being the political wing of the 1%, appears to have discovered poor communities. The short-term goals for the charter school proposal are the enhanced opportunities for profiting from marketing campaigns and the prospect of free access to taxpayer funding for the purposes of turning a profit, but the long-term goal is more insidious. It envisages the full provision of vouchers, ensuring that the taxpayer is fully funding private school education for the children of the wealthy elite that support the Act

Party. If this seems extreme we need simply to remind ourselves that the Act Party philosophy derives from economic theories that valorise selfishness as the key to economic and social well-being. The Act Party cannot object to being measured against its own values.

2.4 Democracy is so darned inconvenient

As Shakespeare observes in *Macbeth*: "Things bad begun make strong themselves by ill" (III.ii.55) and so it has been with the introduction of charter schools. The democratic process has been constantly twisted to accommodate the charter school agenda and continues to be so. Consider the following:

2.4.1 Past president of the Act Party, Catherine Isaac, was appointed to chair the Charter Schools Working Group without undergoing the normal State Services Commission scrutiny which is supposed to protect the public against cronyism. Papers obtained under the Official Information Act by blogger Idiot/Savant show that John Banks had, on the one hand, made the appropriate declaration to Cabinet that the proper process had been followed and that in terms of the SSC Appointment Guidelines, nominations had been sought from other agencies. On the other hand, an exception was made in the case of Isaac, for whom Banks simply declared that "The decision has already been made to nominate Catherine Isaac as the chair of the group".

2.4.2 The minutes of the Charter Schools Working Group of 25th of June record that the group reviewed the draft cabinet paper and "provided comment for inclusion by the Secretariat. Members commented that the cabinet paper lacked clarity around the case for charter schools, with more focus needed on charter schools being a new approach to working with the Government's identified target groups, and an opportunity for innovation. More meaningful context around the financial implications was also required." As cabinet papers are generally confidential it seems most irregular that the Charter Schools Working Group was allowed to ghost-write one. This raises the question of what other groups, if any, are afforded the same privilege. Isaac was number two on the ACT Party list and failed to get into Parliament because the party is so unpopular with voters, yet she appears to have been awarded covert representational status without the accountability that voters expect from politicians.

2.4.3 A paper obtained under the Official Information Act³ which sets out the process for establishing charter schools states that there will be "little consultation on the policy development stage". This comment is particularly insidious given the absence of any sort of public mandate for this initiative. Isaac has been reliably reported as saying that the Bill would be introduced into the House at the end of the year to make it particularly difficult for opponents to submit.

2.4.4 The Ministry of Education called for expressions of interest in establishing charter schools in November 2012, prior to any submissions being made on the Bill authorising their establishment. This suggests that the parliamentary process for public consultation is a mere bagatelle.

2.4.5 It appears that some effort has been made to avoid public scrutiny of the charter school proposal. PPTA wrote to the Education and Science Select Committee at the beginning of 2012 requesting that it hold a hearing into the research basis of charter schools. The Committee's decision not to proceed means the public is left arguing about the implementation when there should have been a full discussion about the evidence around charter schools and their applicability in New Zealand beforehand.

³ Education report: Initial Discussion on Charter Schools. 20th December 2011

2.4.6 It is not surprising that this contempt for the democratic process has been carried over into the Bill itself. For a start the general policy statement belies its origins in the world of public relations and marketing. The description of charter schools as a "new type of school" is completely misleading. It is a for-profit, private school with 100% state funding. The private school model is not new - what is new is the full state funding. The claim that these schools will "provide new opportunities for students to achieve education (sic) success" is pure spin as there is no reputable evidence that links charter schools with educational success.

2.4.7 The paper from the Associate Minister of Education, John Banks, on *Developing and Implementing a New Zealand model of charter school* (sic) claims "that there is an emerging body of longitudinal research from overseas that shows well-run, well-led charter schools can successfully lift achievement..." It is not surprising that this claim is not referenced. John Banks made a similar claim in the House and when PPTA wrote to him seeking details of this "research" he failed to respond. Any school that is well-run and well-led is likely to be effective so this claim on behalf of charter schools is completely meaningless.

2.4.8 The same paper also claims that charter schools will "lift achievement through innovative programmes" yet the Charter Schools Working Group has been unable to name a single example of "an innovation" that lifts achievement that isn't already operating in a New Zealand public school. If the charter school advocates have knowledge of "innovations" that have been shown to consistently raise achievement, why has this not been publicly announced so all schools may adopt the practice and all New Zealand children may benefit?

2.4.9 It is not sound policy to copy failed ideas from other countries. PPTA believes that the Select Committee should recommend this Bill be withdrawn and be replaced with a democratic investigation into the risks and merits (if there are any) of charter schools in the context of Tomorrow's Schools. The successes of our education system have come from thoughtful analysis and understanding of who we are as New Zealanders and careful identification of the unique problems and issues we have. Plucking ideologically-driven ideas from other countries that do less well educationally than New Zealand while ignoring the very significant contextual differences is not a recipe for successful educational reform.

2.4.10 Safeguarding children and protecting democracy should be priorities for education policy. If a majority of the Select Committee find themselves unable to put New Zealand children before party politics, then the very least that might be done is removal of some clauses and a major re-writing of others to limit the risk to the taxpayer, to maintain transparency and to preserve accountability to Parliament.

3 Clause by Clause analysis

3.1 158A Interpretation

3.1.1 The renaming of charter schools as "partnership schools kura hourua" is clearly an attempt at re-branding in response to the New Zealand public's rejection of the spin around charter schools. In choosing the term "partnership schools" the Charter Schools Working Group demonstrates how little it knows about New Zealand education. The Picot report (1988) which set up Tomorrow's Schools described our schools like this: "The running of the institution will be a partnership between the professionals and the

particular community in which it is located. The mechanism for such a partnership will be a Board of Trustees."⁴

3.1.2 In other words, New Zealand already has community-based partnership schools; charter schools are partnership schools only in a very narrow business sense.

3.1.3 The public should not be treated as fools

The Select Committee should be aware that the tactic of trying to make an unpalatable policy acceptable to the public by changing its name has been used before and has failed. The much-loathed bulk funding was variously renamed "salaries grant for management", "direct resourcing" and "fully-funded option" yet the public chose not to be fooled. The signs are that the public has chosen its preferred title and it is not "partnership kura hourua" schools. PPTA opposes this clause. The schools should be called charter schools to accurately reflect their provenance.

3.2 158B Sponsors

3.2.1 PPTA is opposed to this proposal which empowers "sponsors" to run schools. The effect of this clause is to hand community schools over to unaccountable private interests. John Banks confirms in the charter school cabinet paper that there will be no "requirement for parental/community representation". Community schools have been built up over years through multi-million dollar taxpayer investment, financial contributions from generations of parents and through community time expended in fundraising and working bees. It is now proposed to hand these institutions over to "sponsors" to make profits.

3.2.2 In USA, attempts to commandeer community-built assets in poor communities, in order to enhance the investment opportunities of the wealthy, have met with stern resistance from locals. We can expect that any charter schools imposed on New Zealand communities will be recognised as the divisive and unwelcome interlopers they are, and be treated accordingly.

3.2.3 It beggars belief that although a number of these proposed sponsors have such extreme views that they would not be acceptable candidates for a teacher education course or ever be approved for teacher registration, it is proposed they should be given public funding to conduct an educational experiment on the nation's children.

3.2.4 PPTA is aware that the ministerial sponsor of this Bill, Associate Minister John Banks, rejects not only evolution but also the scientific understandings about geological time and presumably all the physical laws about the origin of the universe. This gives implicit endorsement to the prospect that public money may be given to some charter school operators who believe that a framework of medieval beliefs is sufficient to prepare New Zealand children to take their place in the 21st century.

3.2.5 PPTA opposes the funnelling of public money and assets to private sponsors in order that they may conduct educational experiments on the nation's children. If individuals and corporations wish to establish schools for experimental purposes, the mechanism by which they may do this is via the provisions for the establishment of private schools. They ought not to be seeking to divert education funding, which is already severely stretched and relies more and more on parental donations, for their own private purposes.

⁴ Tomorrow's Schools. The Reform of Education Administration in New Zealand. 1989 Ministry of Education

3.3 Clause 23 Teacher Registration

3.3.1 PPTA is opposed to the proposal to exempt charter schools from the requirement to employ registered teachers. The notion expounded by charter school pushers that student learning will be enhanced if their teachers are completely ignorant about pedagogy, curriculum, adolescent development, the New Zealand educational context, neurological and cognitive development, the Tiriti o Waitangi and the impact of race, gender and socio-economic status on learning is a triumph of ideology over intelligence.

3.3.2 It is no surprise that that this proposal has been so widely panned. Observing how criminals and paedophiles are able to evade the current monitoring regime, parents will quite rightly wonder what logic entertains the conclusion that their children will be safer if the registration protections are stripped out entirely.

3.3.3 The creation of a "professional leader position" in charter schools reserved for someone who is not a trained and qualified teacher is a complete misuse of the word "professional." Judging from the scandals emerging in USA (examples attached as Appendix A) the appeal of this proposal is the prospect of "jobs for the boys" - the creation of generic manager positions, which, as has been ably demonstrated in the public service, are filled by individuals who are very adept at increasing their own salary, allowances and redundancy packages but are considerably less forthcoming when it comes to accepting accountability. Research from USA shows that charter schools systematically reduce the amount of money spent on instruction (ie in the classroom) while increasing the amount spent on administration and management.⁵

3.3.4 Another role the Teachers Council plays is monitoring the induction experience of beginning teachers, who are not always given the support they need to succeed in the profession. Charter schools have a reputation for exploiting and burning out young teachers. This is professionally reprehensible and morally unethical.

3.4 158C Advisory Group and 158D Contracts

3.4.1 Clauses 158C and 158D are the most egregious clauses in the whole act and must be struck out.

3.4.2 The proposed advisory group is simply a new name for the loathed quangos of the past which have been condemned by both the political right and the left because they are wasteful, bureaucratic unaccountable bodies that serve as vehicles for political patronage. The filtering of applications for charter schools can be done just as well by employees of the Ministry of Education, probably for less than half the cost and with the benefit that they will be better informed about the educational implications and the risks and will be less likely to have covert pecuniary interests in the outcomes.

3.4.3 This proposal is another attempt to create lucrative "jobs for the boys" (and girls). The members of the group will be looking at payments of up to \$2000 a meeting plus a range of other expenses. If New Zealand follows the American example, it may be expected that they will seek to expand into other areas of commercial interest such as bussing, professional development, and provision of buildings, facilities and services and perhaps school meals. The result is the creation of a corrupt web of political patronage and private profit which ceases to pay any regard for the learning needs of children.

⁵ Arsen, David *Is Administration leaner in Charter Schools?* March 2012 Michigan State University
Retrieved from: http://education.msu.edu/epc/library/documents/Arsen-Ni_2012_Charter_school_administration.pdf

3.4.4 PPTA is also opposed to the funding of charter schools via a commercial contract. There is only one reason for this method of funding and that is to avoid the light of public scrutiny. Any approach for details of spending will be hidden behind the fig leaf of "commercial sensitivity". There is no reason to preserve this clause; charter schools ought to be funded in the same way as public schools and subject to the same careful auditing. Anything else invites the development of corrupt practices.

3.4.5 Other points to note about clause 158D include:

3.4.5.1 158D(2) proposes that charter school funding be fixed-term, presumably because of the fallacy promoted by the charter school pushers that application of "market discipline" and threats of closure will lift achievement. As well as falling foul of the law of unintended effects because schools are more likely to cheat to get the desired results, this assumption shows a worrying lack of understanding of how damaging and disruptive for student learning school transitions are. Children are not commodities who may be shuffled from school to school in the way prefabricated classrooms are. School changes have profound consequences for children's learning and psychological well-being; they need certainty and stability and so do their parents. It is completely irresponsible to subject them to the chaos of school closure in pursuit of a fanciful commercial ideal.

3.4.5.2 158D(3)(c) establishes a maximum roll mechanism for charter schools. It is important to note that this is the device that gives the appearance that charter schools may be doing better than surrounding schools. Basically, while public schools must accept everyone in their geographical area, charter schools will have a much bigger group to choose from and publicly-funded buses to transport attendees. Consequently, the promotion of a ballot (158M) as an apparently neutral mechanism for student selection is misleading; the overall pool is bigger and it will comprise children of more motivated, and thus supportive, parents. There are no miracles in education; sharp improvements in results usually indicate significant changes in the student intake or inconsistent assessment practices. Under these circumstances the charter school trial is highly likely to show some improvement in results but these results will need to be taken with a grain of salt.

3.4.5.3 The risk analysis for this Bill fails to take account of the potential impact of the Trans Pacific Partnership Agreement. Should a future (and sovereign) New Zealand government determine, in accordance with public wishes, to dispense with the charter school experiment will it find itself subject to international legal action? New Zealanders are entitled to assurances on this point before any charter school is established.

3.4.5.4 The insistence that charter schools should not be required to deliver the New Zealand Curriculum is another example of the misunderstandings, confusions and prejudices that charter school pushers have about teaching and learning. The New Zealand Curriculum is considered to be a world-leading document that is already beginning to pay dividends. It is a permissive document that allows schools considerable flexibility of delivery but challenges them to think very carefully how to best use it to facilitate learning. It is the sum of all the best understandings and practice about teaching and learning that we have in New Zealand. It is simply arrogant for the Associate Minister and his hand-picked group of politically-appointed, educational novices to declare that they know better. It is inexplicable how they could reach the conclusion that a document that focuses on providing student-centred learning in a 21st century context could be beneficially replaced by the sort of "drill and kill" approaches that were used more than fifty years ago. The

hypocrisy of this proposal has been well summed up by Chris Lehmann in the Huffington Post:

*To me, when you ensure your own child has an arts-enriched, small-class size, deeply humanistic education and you advocate that those families who have fewer economic resources than you have should sit straight in their chairs and do what they are told while doubling and tripling up on rote memorization and test prep, you are guilty of educational colonialism. And it's time we start calling that what it is.*⁶

3.4.5.5 The removal of any requirement that charter schools should follow the NEGs and NAGs is another example of parliamentary reluctance to accept responsibility and accountability for the consequences of its decisions. At the same time as charter schools are given carte blanche to operate without the financial and educational oversight that children deserve, public schools are becoming increasingly enmeshed in regulations which attempt to address the deep-seated problem lack of coherence and cooperation that exists in our devolved school system.

3.4.5.6 Advice from the Ministry of Education to the Associate Minister, John Banks, dated 20th December 2011 contains a curious note that the contract should be excluded from the tendering requirements of the "Mandatory Rules for Procurement by Government Departments" (p5). These require, among other things, that when letting contracts, ministries should seek:

- best value for money over whole of life;
- open and effective competition;
- full and fair opportunity for domestic suppliers;
- to improve business capabilities, including e-commerce capability;
- recognition of New Zealand's international trade obligations and interests; and
- sustainably produced goods and services wherever possible, having regard to economic, environmental and social impacts over their life cycle.

It is in the public interest for the the Education and Science Select Committee to identify for the edification of Parliament and the public which aspects of these requirements are so repugnant to the charter advocates as to justify exempting charter school contractors from these rules.

3.5 158 J Exclusion of the scrutiny of the Office of the Auditor-General

3.5.1 PPTA opposes the proposal to exempt charter schools from the essential scrutiny of the Auditor-General. It rather appears as if the charter school proponents imagine that regulation, monitoring and scrutiny are designed with no other purpose than to inconvenience them, but the reality is that monitoring by bodies such as the Office of the Auditor-General and the Teachers Council is a response to past disasters and an important safeguard. These organisations are a product of what is often bitter experience. In a report in May 2012, the Auditor-General took a number of schools to task for unsatisfactory financial practices bordering on fraud. If these incidents occur despite the current monitoring regime, what confidence can the public have that removal of such monitoring will not result in abuse of taxpayer funding? It also raises the question

⁶ http://www.huffingtonpost.com/chris-lehmann/educational-colonialism_b_1704362.html?utm_hp_ref=fb&src=sp&comm_ref=false

of what charter schools are planning to do that makes them so chary about public investigation of their accounts.

3.5.2 The range of clauses in this Bill that are designed to circumvent proper auditing, investigation and monitoring of the use of public money in charter schools are clearly intended to prevent public scrutiny of the ever-increasing CEO salaries. These provisions along with the deliberate exclusion of unions from charter school sites will make it almost impossible to expose dubious and even corrupt practices. Given the recent evidence presented to the Pike River enquiry about the capacity of corporate interests to ignore their legal obligations and to compel employees to keep silent about dangerous practices, Parliament should wary about anything that restricts open enquiry.

3.6 158N Equal rights for special needs students

Clause 158N theoretically protects the right of students with special needs to enrol in charter schools. This is in contrast with overseas experience where they are excluded or "managed out" because they are considered to put the achievement gains at risk. It is, however, essentially cosmetic. According to Associate Minister John Banks' cabinet paper, the contract will determine the number of special needs students enrolled and presumably will ensure the school is adequately funded to meet their needs. This is completely the reverse from what happens in a public school which must take all comers and make the funding stretch as best it can. As with the maximum roll proposal, the much vaunted "innovation" that charter school pushers claim appears to be little more more than "cooking the books".

3.7 158X Exclusion of the application of the Official Information Act and the Ombudsman Act

3.7.1 The same concerns that apply to scrutiny by the Auditor-General and the Teachers Council apply in this case. In the accompanying cabinet paper, Associate Minister John Banks argues against full public scrutiny of charter schools because he thinks they might be subject to "costly and vexatious" requests. The ACT party has previously campaigned on transparency in relation to the spending of taxpayer money but expects its own pet projects to be treated as above suspicion. This is simply not tenable; if the ACT Party wishes to establish schools that do not have obligations deriving from the legislative requirements of compulsory education and are to be protected from investigation by public agencies and the media, then the mechanism is a private company. It is not acceptable to stake a claim to public money then imagine that will be given without the necessary public interest checks on its use.

3.7.2 Another reason these schools need to be able to be closely monitored is the belief, espoused by KIPP schools in particular, that disciplining of students through fear and public humiliation (called "shunning") is acceptable. Jim Horn, an American researcher, records abuse of students including confiscating a student's glasses, denying students access to school meals, making them stand in the sun in a circle, physically shaking students and yelling at them. According to the report, when the parent complained, she was told by the principal that it was a school of choice and if she were not happy she could remove her child and put her in a public school".⁷ Using this style of discipline with ethnic groups smacks of institutional racism as it would be considered totally unacceptable in the schools where white, middle-class parents send their children.

⁷ Retrieved from: <http://www.markgarrison.net/archives/62> KIPP Charter School: The violence of Bootstrap quoted in Mark Garrison. April 28 2009

Section 3: Clause 65DA Multiple Timetabling

Comment on this clause is included here following our comments on charter schools because "innovations" of dubious merit seem to be features of the charter school movement. Multiple timetabling was not generally regarded as successful in Christchurch and it is not honest to claim otherwise. It was accepted as a response to a disaster situation but no one living through it was under the illusion that it made a positive contribution to student learning. It was fraught with difficulties around the unsocial hours children had to leave or return home from school and the impossibility of running the cultural and sporting programmes New Zealand schools are famed for. "Double-bunking" as it was unflatteringly referred to, is an attack on our community-based schools. It completes the picture that charter school pushers seem to have of education as a type of factory where battery-hen students are confined and fed concentrated food supplements in order that they may produce learning eggs on a regular basis. PPTA opposes this clause because it is driven by a desire to increase profit to be made from school property and facilities and pays little regard to the needs of students and parents.

Section 4: Conclusion

- 4.1 There is no reliable evidence that says that charter schools will have a positive impact on educational achievement in New Zealand. They may give the appearance of lifting achievement but that can largely be explained by the initial selection processes and the removal of those students who prove more challenging or who lack ongoing parental support.
- 4.2 It was noticeable that when PPTA proposed to the Charter Schools Working Group that selection should be on the basis of nominations from surrounding schools of students who would most benefit from the enhanced resourcing charter schools are likely to have (because of the philanthropic contributions) they were very quick to reject it. This suggests the Group was fully cognisant of the importance of intake manipulation to charter school success and was determined to protect that process.
- 4.3 In USA, educationalist Diane Ravitch made a similar challenge to KIPP charter school CEO, Mike Feinberg: that he take over a whole district of schools and thereby demonstrate that KIPP could deliver improved results for **all** students. Not surprisingly he rejected it out of hand.
- 4.4 Most concerning of all, given the deliberate targeting of poor Maori and Pasifika communities as possible sites for charter schools, is the growing evidence that this policy increases ethnic and socio-economic segregation. It is obvious that selection process will have the effect of excluding the most difficult students, something acknowledged by Maori Party MP, Minister Sharples, when he said on 19th December 2011 that they would simply "draw off the best students from neighbouring schools". Since then the Maori Party has inexplicably determined to support the Bill.
- 4.5 One important, yet under-publicised, impact of charter schools, articulated by New Orleans parent Karran Harper Royal⁸ who visited New Zealand to speak to PPTA annual conference in October 2012, was that over time as charter schools expand, parents lose the established right to attend their nearest school. They remain obliged by the law to

⁸ Her presentation can be viewed at www.ppta.org.nz

send their children to school but may find that their nearest schools do not want them. The same thing happens when the local charter school is closed for "under-performance" - a not infrequent occurrence. Parents are left with the stress of seeking out a school that will enrol their child. Their sense of grievance about this state of affairs is simply disregarded and they are told to "choose" another school. Parents should be wary of exchanging the rights they currently have, to send their child to the nearest school and to stand for the Board of Trustees and to share responsibility for governing the school, for the narrow role of "client" or "consumer".

- 4.6 We have noted in this submission the abuse of the democratic process that has characterised the charter school campaign and the undermining of parliamentary accountability that is a strong feature of the proposed legislation. Charter schools are a travesty in both educational and democratic terms and have no place in this country.

Section 5: Recommendations

- 1 PPTA recommends that in the absence of an informed public debate about the worth or otherwise of charter schools, the charter school elements of this Bill be rejected and instead the Education and Science Select Committee provide the necessary leadership for a comprehensive review of the case made for charter schools in New Zealand. This should include an assessment of the strengths and weaknesses of Tomorrow's Schools.
- 2 Should it be determined that the charter school experiment on the nation's children continue, PPTA recommends the following changes and safeguards:
 - a) That in recognition of the provenance of these schools, and as a rejection of the cynical use of rebranding in an attempt to deceive the public, these schools continue to be called "charter schools".
 - b) That clause 158B which authorises private "sponsors" to run schools be removed allowing parents to retain their right to stand for and be elected to a Board of Trustees that has majority parent representation.
 - c) That clause 23 be removed and that charter schools be subject to the full range of protections and monitoring that teacher registration requires.
 - d) That clause 158C, which establishes an unaccountable advisory group to dispense taxpayer funds, be struck out.
 - e) That clause 158D be removed from the Bill and charter schools be funded in the same transparent way that public schools are funded.
 - f) That 158D(3)(c) be rejected along with 158M, and charter school rolls be made up from recommendations from surrounding schools of children who can best benefit from the additional resources that charter schools may be able to provide.
 - g) That the Select Committee seek to provide New Zealanders with assurances that a future sovereign government will not be prevented by the Trans Pacific Partnership Agreement from closing a charter school, should voters determine to end the experiment.
 - h) That charter schools be required to accept all special needs students who wish to enrol, consistent with the intention in 158N.
 - i) That charter schools be required to deliver the New Zealand Curriculum and abide by the National Administration Guidelines and the National Education Guidelines as do all other New Zealand schools.
 - j) That the Education and Science Select Committee seek an explanation from the Associate Minister of Education, John Banks, as to the reasons why charter

school contracts must not be subject to the “Mandatory Rules for the Procurement by Government Departments”.

- k) That clause 158J be amended to empower the Office of the Auditor-General to examine the finances of charter schools.
- l) That clause 158X be removed so the Official Information Act and the Ombudsman Act apply to charter schools.
- m) That clause 65DA, encouraging compressed education through multiple timetabling arrangements, be removed as not being in the best interests of New Zealand children.

APPENDIX A

The following are references to a few examples of financial and educational mismanagement resulting from the lack of scrutiny of charter school operations.

1 Insiders benefiting in charter deals

Board members, school officials did more than \$70 mill in business
By Anne Ryman. The Republic | azcentral.com Sat Nov 17, 2012 11:53 PM

Board members and administrators from more than a dozen state-funded charter schools are profiting from their affiliations by doing business with schools they oversee. The deals, worth more than \$70 million over the last five years, are legal, but critics of the arrangements say they can lead to conflicts of interest. Charter executives, on the other hand, say they are able to help the schools get better deals on services and goods ranging from air-conditioners to textbooks and thus save taxpayers money.
http://www.azcentral.com/news/articles/20121016insiders-benefiting-charter-deals.html?nclick_check=1

2 FL failed charter school did without computers, library or cafeteria. Principal got (US)\$824,000 <http://www.dailykos.com/story/2012/11/03/1154823/-FL-failed-charter-school-did-without-computers-library-or-cafeteria-Principal-got-824-000>

3 Yet Another Charter School Using Public Money To Enrich Its CEO

By Susie Madrak January 10, 2012 12:00 PM

For those of us who live in areas where charter schools flourish, we've seen some variation of this story over and over again - charter school CEOs who enrich themselves and their friends at the expense of the students and faculty. These schools are far too frequently vehicles for corruption:

A Monroe County charter school has violated the state charter school law by having "improper entanglements" with a church run by the school's founder, according to a preliminary report issued by the state auditor general's office.

The report, obtained by The Morning Call, says the Pocono Mountain Charter School in Tobyhanna also may have illegally diverted taxpayer money to adjacent Shawnee Tabernacle Church. It also may have improperly received \$87,101 from the state in rental reimbursements for its building lease agreement with the church.

...

Teachers earned \$20,000 annually while Bloom, as charter CEO, was paid **\$120,000 plus bonuses; his wife, Gricel, the "first lady" of Shawnee Tabernacle, earned \$76,000 and bonuses as assistant CEO**; and their children were on the taxpayer-funded payroll, too, in 2007-08.

<http://crooksandliars.com/susie-madrak/yet-another-charter-school-using-publ>

http://articles.mcall.com/2012-01-06/news/mc-pa-pocono-charter-school-20120106_1_charter-appeals-board-shawnee-tabernacle-church-pocono-mountain-charter-

4 **Charter School Founder Dorothy June Brown Charged in \$6 Million Fraud Scheme
Four School Executives Charged with Conspiring with Brown to Obstruct Justice**
U.S. Attorney's Office July 24, 2012

Eastern District of Pennsylvania (215) 861-8200

PHILADELPHIA—Dorothy June Brown, 75, of Haverford, Pennsylvania, was charged today by indictment with defrauding three charter schools of more than \$6.5 million between 2007 and April 2011. Charged with Brown in a 62-count indictment are four current and former charter school executives: Joan Woods Chalker, 74, of Springfield, Pennsylvania; Michael A. Slade, Jr., 31, of Philadelphia, Pennsylvania; Courteney L. Knight, 64, of King of Prussia, Pennsylvania; and Anthony Smoot, 49, of New Castle, Delaware. The four executives are charged with conspiring with Brown to obstruct justice. The indictment was announced by United States Attorney Zane David Memeger, FBI Special Agent in Charge George C. Venizelos, and Department of Education Special Agent in Charge Steven Anderson with the Office of Inspector General's Mid-Atlantic Regional Office.

The indictment alleges that Brown used her private management companies, Cynwyd and AcademicQuest, to defraud the Agora Cyber Charter School ("Agora") and the Planet Abacus Charter School ("Planet Abacus") soon after she founded the schools in 2005 and 2007, respectively. Brown is also charged with defrauding the Laboratory Charter School of Communication and Languages ("Laboratory"), a school she founded in 1997.

<http://www.fbi.gov/philadelphia/press-releases/2012/charter-school-founder-dorothy-june-brown-charged-in-6-million-fraud-scheme>

5 **Charter School Leader Paid \$553,000 Yearly**

July 28, 2012 //

The [Detroit Free Press ran a story about a candidate](#) for the U.S. Senate who will have to take a big pay cut if he wins. He currently is paid \$553,000 in total compensation to oversee and fundraise for three small charter schools, enrolling 1,500 students.

If legislators and business groups are really concerned about reining in the costs of education, they should require that charter school executives are paid salaries no greater than the local district superintendent. That is, if charter schools really are public schools. I await the day when some smart researcher compiles a list of the charter leaders of the national charter chains and their salaries. For public officials, that is a matter of public record. It should be a matter of public record for charter executives, if they are public schools. Of course, this particular executive was responsible for only three schools, not a national charter chain.

Eva Moskowitz, the head of the Success Academy chain in New York City is paid about \$400,000. Geoffrey Canada, who oversees the Harlem Children's Zone, is paid between \$400,000-500,000. Deborah Kenney of Harlem Village Academy is paid more than \$400,000. This is considerably more than the chancellor of the New York City public schools, who is paid \$250,000.

Public education has never attracted people by the compensation it offers. Neither should charter management. The lure should be the mission, not the money.

<http://dianeravitch.net/2012/07/28/charter-school-leader-paid-553000-yearly/>

6 \$500,000 payment to failed charter school principal sparks outrage

By Sevil Omer, NBC News

A Florida state senator is calling for an investigation into the payout of more than \$500,000 to the principal of a failed Orange County charter school.

A school board chairman blasted the payout of taxpayer money, which has sparked outrage in Orlando, as “immoral and unethical.”

Kelly Young, principal of NorthStar High School in Orlando, received a check for \$519,453.96 in June, about the same time the Orange County School Board accepted the school’s plan to close in lieu of being forced to shut down based on declining student achievement, The Orlando Sentinel reported.

<http://usnews.nbcnews.com/news/2012/10/25/14698079-500000-payment-to-failed-charter-school-principal-sparks-outrage?lite>

7 Follow the Money: Charter Schools and Financial Accountability

Author: Susan DeJarnatt, The Urban Lawyer, Vol. 44, No. 1, Winter 2012

When the government gives money to private entities to provide public services , it should make sure that the money is not spent on fraud and waste.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2084978