



ANALYSIS

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1991, No. 43

An Act to amend the Education Act 1989

[20 June 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Education Amendment Act 1991, and shall be read together with and deemed part of the Education Act 1989 (hereinafter referred to as the principal Act).

PART I

RESTRICTION ON ATTENDANCE AT CERTAIN SCHOOLS

2. Restriction on attendance at certain schools—The principal Act is hereby amended by inserting, after section 3, the following section:

“3A. (1) Subject to subsection (2) of this section,—

“(a) No male student shall be or continue to be enrolled at a state school that, since—

“(i) Its establishment as a girls’ school; or

“(ii) The coming into effect of a declaration under section 146A (1) of this Act that it is a girls’ school,— (whichever is the later) has not been declared under that section to be a co-educational school or a boys’ school:

“(b) No female student shall be or continue to be enrolled at a state school that, since—

“(i) Its establishment as a boys’ school; or

“(ii) The coming into effect of a declaration under section 146A (1) of this Act that it is a boys’ school,— (whichever is the later) has not been declared under that section to be a co-educational school or a girls’ school.

“(2) Any person lawfully enrolled at a school immediately before a declaration under section 146A (1) of this Act that it is a boys’ or a girls’ school comes into effect may (subject to the other provisions of this Act) continue to be enrolled at the school.”

PART II

ENROLMENT SCHEMES

3. New sections substituted—(1) The principal Act is hereby amended by repealing sections 11 and 12 (as amended by section 7 of the Education Amendment Act 1990), and substituting the following sections:

“11A. **Boards may put enrolment schemes in place**—

(1) Subject to—

“(a) The Race Relations Act 1971; and

“(b) The Human Rights Commission Act 1977; and

“(c) Subsection (2) of this section,—

the Board of a State school that is not a correspondence school, an integrated school, or a special institution may put in place for the school a scheme governing enrolments at the school.

“(2) The Board shall not put the scheme in place unless—

“(a) It is satisfied that unless the scheme is put in place there is likely to be overcrowding at the school; and

“(b) It does so for the purpose of avoiding overcrowding at the school; and

“(c) The scheme will not have the effect of excluding from the school more prospective students than it is

necessary to exclude to avoid overcrowding at the school.

“(3) Subject to subsection (4) of this section and to section 11c of this Act, the Board shall put a scheme in place by—

“(a) Resolving to adopt it; and

“(b) Publishing in a daily newspaper circulating in the area in which the school is situated notice of its nature and effect.

“(4) The Board shall not resolve to adopt the scheme unless, within the 2 months before the day of the meeting at which it does so, the Secretary has given it written notice that the Secretary is satisfied that there is likely to be overcrowding at the school unless an enrolment scheme is put in place for it.

“11B. **Amendment of enrolment schemes**—(1) Subject to—

“(a) The Race Relations Act 1971; and

“(b) The Human Rights Commission Act 1977; and

“(c) Subsection (2) of this section,—

the Board of a school for which an enrolment scheme is in place may from time to time amend it.

“(2) The Board shall not amend the scheme unless—

“(a) It is satisfied that unless an enrolment scheme is in place there is likely to be overcrowding at the school; and

“(b) It does so for the purpose of—

“(i) Avoiding overcrowding at the school; or

“(ii) Attempting to ensure that the scheme does not have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school; and

“(c) The scheme as amended will not have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school.

“(3) Subject to subsection (4) of this section and to section 11c of this Act, the Board shall amend the scheme by—

“(a) Resolving to adopt an amendment to it; and

“(b) Publishing in a daily newspaper circulating in the area in which the school is situated notice of the amendment’s nature and effect.

“(4) The Board shall not resolve to adopt the amendment unless, within the 2 months before the day of the meeting at which it does so, the Secretary has given it written notice that the Secretary is satisfied that there is likely to be overcrowding at the school unless an enrolment scheme is in place for it.

“(5) Subject to section 11I of this Act,—

“(a) An amendment to a primary school’s enrolment scheme has effect on the day 3 months after the day on which notice of its nature and effect is published, or on a later day specified in the resolution adopting it; and

“(b) An amendment to a secondary or composite school’s enrolment scheme has effect on the day 5 months after the 1st day of August after it is put in place, or on a later day specified in the resolution adopting it.

“11c. **Notice**—A Board shall not resolve to adopt an enrolment scheme or amendment to an enrolment scheme unless, at least 14 days before the day on which it resolves to do so, it has—

“(a) Published in a daily newspaper circulating in the area in which the school is situated; and

“(b) Given in writing to the Board of each school it thinks may be affected by the scheme or amendment,—
a notice stating that it intends to adopt the scheme or amendment, specifying its nature and effect, and specifying the day, place, and time of the meeting.

“11D. **Abandonment of enrolment schemes**—The Board of a school for which an enrolment scheme has been put in place may abandon it by—

“(a) Resolving that the school should have no enrolment scheme; and

“(b) Publishing in a daily newspaper circulating in the area in which the school is situated notice that it has done so.

“11E. **Boards to notify Secretary**—(1) As soon as is practicable after putting in place or amending an enrolment scheme, a Board shall give the Secretary—

“(a) Written notice that it has done so; and

“(b) A copy of the scheme or amendment.

“(2) As soon as is practicable after abandoning an enrolment scheme, a Board shall give the Secretary written notice that it has done so.

“11F. **Schemes and amendments to be available for inspection**—Every Board shall take all reasonable steps to ensure that copies of all enrolment schemes, proposed enrolment schemes, amendments to enrolment schemes, and proposed amendments to enrolment schemes (other than schemes that have been abandoned or superseded, and

amendments to such schemes) for every school administered by the Board are available for inspection at all reasonable times at a place within the geographical area the school serves.

“11G. Duration of enrolment schemes for primary schools—(1) Subject to section 11I of this Act, an enrolment scheme for a primary school applies during the period—

“(a) Commencing on the day 3 months after the day it is put in place, or on a later day specified in the resolution adopting it; and

“(b) Ending immediately before the earlier of the following days:

“(i) The day on which the scheme’s abandonment takes effect:

“(ii) The first day of a period during which a later enrolment scheme for the school applies.

“(2) The abandonment of an enrolment scheme for a primary school takes effect on the last day of the next term to begin after the notice that the Board has resolved that the school should have no enrolment scheme is published, or on a later day specified in the resolution.

“11H. Duration of enrolment schemes for secondary and composite schools—(1) Subject to section 11I of this Act, an enrolment scheme for a secondary or composite school applies during the period—

“(a) Commencing on the day 5 months after the 1st day of August after it is put in place, or on a later day specified in the resolution adopting it; and

“(b) Ending immediately before the earlier of the following days:

“(i) The day on which the scheme’s abandonment takes effect:

“(ii) The first day of a period during which a later enrolment scheme for the school applies.

“(2) The abandonment of an enrolment scheme for a secondary or composite school takes effect on the day 5 months after the 1st day of August after the day on which the notice that the Board has resolved that the school should have no enrolment scheme is published, or on a later day specified in the resolution.

“11I. Secretary may authorise early commencement of enrolment scheme or amendment—(1) The Board of a State school may apply to the Secretary in writing for authority to—

- “(a) Put an enrolment scheme in place for the school with earlier effect than provided for in section 11G (1) (a) or section 11H (1) (a) (as the case may be) of this Act; or
- “(b) Adopt an amendment to an enrolment scheme for the school with earlier effect than provided for in section 11B (5) of this Act.
- “(2) The application shall be accompanied by—
- “(a) A copy of the proposed scheme or amendment; and
- “(b) In the case of a proposed amendment to a scheme, a copy of the scheme and all earlier amendments (if any); and
- “(c) Written notice of the day on which the Board would like the scheme or amendment to take effect; and
- “(d) Any other argument or evidence the Board thinks fit.
- “(3) Subject to subsection (4) of this section, the Secretary may, by written notice to the Board, give the Board authority to put the scheme in place, or amend the scheme, with effect on a day specified in the notice (which may be the day specified by the Board or any later day).
- “(4) The Secretary shall not give the Board authority unless satisfied that in all the circumstances it is appropriate for the scheme or amendment to have effect on the day specified in the authority, and—
- “(a) In the case of a proposed scheme, that there will be overcrowding at the school if the scheme does not have effect until the day provided in section 11G (1) (a) or section 11H (1) (a) of this Act (as the case may be);
- “(b) In the case of a proposed amendment to a scheme, that—
- “(i) There will be overcrowding at the school; or
- “(ii) The scheme will have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school,—
- if the amendment does not have effect until the day provided in section 11B (5) of this Act.
- “(5) Where, before the day specified in the authority and not later than 28 days after the Secretary gave it to the Board, the Board has—
- “(a) Resolved to adopt the scheme or amendment; and
- “(b) Published the required notice of its nature and effect; and

“(c) Specified in the resolution and notice the day specified by the Secretary,—
the scheme or amendment shall have effect accordingly.

“11j. **Effect of enrolment schemes**—(1) During a period during which an enrolment scheme for a State school applies, no person shall be enrolled at or begin attending the school unless the person or the person’s parents have first applied to the Board for the person’s enrolment.

“(2) An enrolment scheme for a school applies to every person whose application for enrolment at the school the Board receives after the scheme is put in place, other than a person who—

“(a) Lawfully begins attending the school before the period during which the scheme applies; or

“(b) Does not begin attending the school until after that period.

“(3) Subject to subsection (4) of this section, no person to whom an enrolment scheme for a school applies shall be enrolled at or begin attending the school, unless the scheme provides that the person is entitled to enrol at the school.

“(4) A Board or person exercising (directly or under delegation) a discretion given by an enrolment scheme to decide whether or not people should be enrolled at a school shall make all reasonable efforts to ensure that the discretion is so used that no more people are refused than it is necessary to refuse to ensure that there is no overcrowding at the school.

“11k. **Boards to reconsider threat of overcrowding**—(1) Where, on the 1st day of June in any year, an enrolment scheme for a school has been in force for more than 3 months, the Board shall, before the following 1st day of July, consider,—

“(a) Whether or not there is likely to be overcrowding at the school if the scheme is abandoned; and

“(b) If, in the Board’s opinion, there is likely to be overcrowding at the school if the scheme is abandoned, whether or not in its existing form the scheme is likely to have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school.

“(2) If not satisfied that there is likely to be overcrowding at the school if the scheme is abandoned, the Board shall abandon it.

“(3) If satisfied that—

“(a) There is likely to be overcrowding at the school if the scheme is abandoned; but

“(b) In its existing form the scheme is likely to have the effect of excluding from the school more prospective students than it is necessary to exclude to avoid overcrowding at the school,—

the Board shall amend the scheme or put a new one in place.”

(2) Notwithstanding section 11H (1) (a) of the principal Act (as substituted by subsection (1) of this section) an enrolment scheme for a secondary or composite school put in place before the 1st day of October 1991 applies during the period commencing on the 1st day of January 1992, or on any later day specified in the resolution adopting it.

4. Exemptions from enrolment schemes in exceptional cases—The principal Act is hereby amended by repealing section 12B (as inserted by section 7 of the Education Amendment Act 1990), and substituting the following section:

“12B. (1) Subject to sections 5 and 6 of this Act, and to subsection (2) of this section, where a person whose application for enrolment at a school has, by virtue of section 11J (3) of this Act, not been accepted, the Secretary may direct the Board to enrol the person at the school; and in that case the Board shall do so.

“(2) The Secretary shall not give the direction unless satisfied, after having taken all reasonable steps to consult the person’s parents, the Board, and (to the extent, if any, that the person’s age and maturity make consulting the person appropriate) the person, that in all the circumstances the consequences of not giving the direction (or a similar direction to another Board)—

“(a) Would be that the person would not be able reasonably practicably to attend any State school of the appropriate class (other than a correspondence school or an integrated school); or

“(b) Would be so disadvantageous to the person that giving the person preferential treatment is justified.

“(3) A direction under subsection (1) of this section overrides section 11J of this Act and section 5 of the Education Amendment Act 1991.”

5. Transitional effect of existing limitations and schemes—(1) Every limitation on enrolment at a primary school under—

(a) Section 129 of the Education Act 1964; or

(b) The former section 11 (1) of the principal Act,—

that was in force immediately before the commencement of this Act shall continue in force as if it is an enrolment scheme; and may be abandoned, amended, or superseded, accordingly.

(2) Every scheme for a secondary or composite school under subsection (3) of the former section 12 of the principal Act that was in force immediately before the commencement of this Act shall, until the close of the 31st day of December 1991, continue in force as if that section is still in force.

6. Consequential amendments—(1) Section 2 (1) of the principal Act is hereby consequentially amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Enrolment scheme’ means a scheme put in place under section 11A (1) of this Act:

“ ‘Overcrowding’, in relation to a school, means the attendance at the school of more students than its site or facilities can reasonably be expected to take:”.

(2) The principal Act is hereby further consequentially amended—

(a) By omitting from section 9 (2) the expression “section 12”, and substituting the expression “section 11j”; and

(b) By omitting from sections 16 (8), 18 (4), and 18A (2) (as substituted by section 9 of the Education Amendment Act 1990) the words “sections 11 and 12 of this Act, and every limitation or enrolment scheme put in place under either of them”, and substituting the words “section 11j of this Act and section 5 of the Education Amendment Act 1991”; and

(c) By repealing section 61 (2) (b).

7. Consequential repeals—The following enactments are hereby consequentially repealed:

(a) Sections 12A, 155 (9) (d), and 156 (7) (d) of the principal Act:

(b) Section 7 of the Education Amendment Act 1989:

(c) Sections 6 and 7 of the Education Amendment Act 1990.

PART III

OTHER AMENDMENTS TO PRINCIPAL ACT

8. Annual financial statements—Section 82 of the principal Act is hereby amended by inserting, after subsection (2B) (as inserted by section 21 (1) of the Education Amendment Act 1990), the following subsection:

“(2c) If satisfied that a Board has not, within 90 days of the end of any financial year, sent to the Audit Office annual financial statements for the year that comply with subsection (2) of this section, the Secretary may, by written notice to the Board, direct the Board to engage and pay a suitably qualified person to manage its financial management system; and in that case, until the Secretary gives the Board written notice that it may resume direct control of its financial management system, the Board shall ensure that either—

“(a) A chartered accountant (within the meaning of section 2 of the New Zealand Society of Accountants Act 1958) of the Board’s choice; or

“(b) Some other person approved by the Secretary,—
prepares its accounting records and keeps its accounts, and that no cheque drawn on the Board’s accounts is valid unless the person for the time being keeping the accounts countersigns it.”

9. Single sex schools—(1) The principal Act is hereby amended by inserting, after section 146, the following section:

“146A. (1) Subject to section 157 of this Act, the Minister may, by notice in the *Gazette*, declare any secondary school to be a boys’ school, a girls’ school, or a co-educational school.

“(2) The declaration shall come into effect on the day 5 months after the 1st day of August after the notice is published.”

(2) Section 146 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(ab) In the case of a secondary school, specifying whether it is a boys’ school, a girls’ school, or a co-educational school; and”.

(3) Section 145 of the principal Act is hereby consequentially amended by inserting, before paragraph (a), the following paragraph:

“(aa) Every school—

“(i) That was, or is deemed by this subsection to have been, established under section 146 of this Act; and

“(ii) That immediately before the commencement of the Education Amendment Act 1991 was a secondary school; and

“(iii) At which no male students (or female students) were enrolled in 1990,—
shall be deemed to have been established as a girls’

school (or a boys' school) under section 146 of this Act:".

(4) Section 157 (2) of the principal Act is hereby consequentially amended by inserting, before paragraph (a), the following paragraph:

"(aa) Declare a school to be a boys' school, a girls' school, or a co-educational school under section 146A (1) of this Act; or".

(5) Section 157 (3) of the principal Act is hereby consequentially amended by inserting, after paragraph (a), the following paragraph:

"(aa) Declare a school to be a boys' school, a girls' school, or a co-educational school under section 146A (1) of this Act; or".

10. Contributing schools—(1) Section 150 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the words "of every intermediate school and intermediate department, and every composite school whose provision of primary education is limited under section 151 of this Act"; and

(b) By omitting from subsection (2) the words "of any intermediate school or department, or any composite school".

(2) Section 157 (2) (e) of the principal Act is hereby consequentially amended by omitting the words "of an intermediate school or department, or a composite school".

(3) Section 157 (3) of the principal Act is hereby consequentially amended by repealing paragraph (c), and substituting the following paragraph:

"(c) Determine under section 150 (1) of this Act that a primary school is to be or cease to be a contributing school; or".

(4) The Intermediate Schools and Departments (Admission of Pupils) Regulations 1967 are hereby consequentially revoked.

11. Community education forums—(1) The principal Act is hereby amended by inserting, after section 157, the following section:

"157A. The Minister may at any time appoint a person to—

"(a) Convene within a specified area public meetings relating to any action the Minister proposes to consider taking under this Part of this Act; and

“(b) Advise the Minister on the views expressed at the meetings;—
and in that case the Minister may refuse to consider whether or not to take the action without—

“(c) Giving the person reasonable time to convene the meetings and advise the Minister; and

“(d) Considering any advice the person gives the Minister in that time.”

(2) Section 157 of the principal Act is hereby amended by repealing subsections (1) and (4).

(3) Section 145 (1) of the principal Act is hereby consequentially amended by repealing the definition of the term “community education convenor”.

This Act is administered in the Ministry of Education.
