

# Education Amendment Bill

Government Bill

## Explanatory note

### *General policy statement*

This Bill amends the Education Act 1989. It makes 4 changes affecting schools, and 1 affecting the tertiary sector. Related minor changes are made to 3 other Acts in order to achieve consistency in compliance with the Human Rights Act 1993.

The changes affecting schools are as follows:

- enrolment schemes will be based on the principle that students have the right to attend their local school, and selection of out-of-zone students will be by ballot, on criteria defined in legislation:
- school governance will be more flexible, particularly when schools wish to combine their Boards of Trustees, or when communities want a form of governance that is tailor-made to their circumstances:
- the option to receive bulk funding will be removed, with the result that all schools will benefit from additional funding and have some of the flexibility in funds that only bulk funded schools have enjoyed:
- an age restriction is removed, for compliance with the Human Rights Act 1993.

The changes to the tertiary sector relate to students associations. They are intended to promote the collective organisation and representation of student interests within the tertiary sector. They protect the rights of students to exercise democratic choice over whether

membership of a students association should be compulsory or voluntary, while removing the current bias towards voluntary membership. The provisions should encourage and facilitate the involvement of students associations in the governance of tertiary institutions.

### *School enrolment schemes*

The Bill puts in place a fairer and more transparent system for determining enrolment of students in circumstances where a school has reached its capacity and needs to avoid overcrowding by putting in place an enrolment scheme.

The Bill will ensure the right of students to attend their local state school. This will be achieved by requiring schools at risk of overcrowding to have a home zone that is geographically defined. Students living in this zone will have an absolute right of enrolment.

First priority to out-of-zone students will be given to students enrolling for special programmes such as special education and Maori language immersion programmes. Siblings of currently enrolled students, then siblings of past students, will also have priority. Where there are more priority applications than out-of-zone places, selection will be by ballot. Selection of any other students seeking to enrol will also be determined by ballot.

Clarification of rights and obligations for students, parents, and schools is central to the Bill. Home zones will be determined by Boards of Trustees in consultation with their communities and other Boards in the area. The Secretary for Education must approve all zones, ensuring that they comply with the principles in the legislation. The network of school provision will be considered in giving approval. Schools will be required to provide information to students and parents about the operation of the school's enrolment scheme, and applicants for enrolment from outside the home zone must be informed about their rights and obligations. School Boards will be able to take action when false information is supplied by applicants at enrolment; conversely, applicants will be able to dispute decisions about whether an applicant lives within or outside a home zone. Information relating to a school's enrolment scheme, including the ballot and establishment of a waiting list, will be publicly available.

*School governance arrangements*

The Bill acknowledges the critical role that Boards of Trustees have in the effective administration of state schools and introduces a number of changes to current legislation to enable those Boards to function more effectively. Currently all trustees on all Boards go out of office together at the end of a 3-year term. This Bill allows Boards to elect to have half of their parent representatives decided at midterm elections. Additionally, the Bill facilitates the continuity of trustee skills by permitting Boards to determine that co-opted and appointed trustees do not need to go out of office at the same time as elected trustees, subject to a maximum term of 3 years.

A number of schools seek to strengthen trustee capability by combining school Boards or through the merger of their schools. The Bill makes it easier for Boards to combine by removing a previous restriction that prevented 1 Board from administering more than 4 schools. It also ensures that all schools are more adequately represented on the combined Board by removing the previous rule that only 1 of the school's principals would be a trustee. At the same time, the Bill removes an uncertainty from the Act by clarifying that a combined Board can appoint 1 person to be the principal of more than 1 of its schools.

Regarding school mergers, the Bill will ensure that in the lead up to the merger all school communities are represented on the Board of the school that will remain in operation following the merger. The Bill will then make sure that a new election promptly takes place following the merger.

To ensure that students are represented on the Boards of all secondary schools, the Bill removes a discretion that allows a Board not to have a student trustee.

The current constitution of school Boards of Trustees does not always ensure effective or suitable governance. The Bill gives the Minister of Education the power, in exceptional circumstances, to approve an alternative constitution to that currently defined by the Act. The Bill defines certain "triggers" that allow the Minister to consider an alternative constitution. These are: the recommendation of the Chief Review Officer, a request by more than 20% of the school's parents, or a request by the Board.

### *Abolition of bulk funding*

There are more than 2700 state and integrated schools in New Zealand. The Government pays the salaries of all teachers at those schools. There are 2 systems for the payment of those salaries: central resourcing and direct resourcing. Central resourcing is authorised under section 91C of the Education Act 1989. This means that the actual value of salaries of teachers employed at every such school is paid. Direct resourcing occurs when a school and the Minister of Education agree that central resourcing should not apply to that school. This agreement is authorised under section 91D. Direct resourcing is known as the fully funded option, or bulk funding. This means that the salaries of the teachers is calculated not on the actual value but on the value of the tops of the relevant scales. This means that the monetary value of the difference between the actual salary and the top of the relevant scale is retained by the teacher's employer, the Board of Trustees. The Board can then use that extra funding at its discretion for the school. There are 837 schools which have made bulk funding agreements with the Minister. The Government believes that the extra funding paid to bulk funded schools would be better used for all schools. It therefore proposes that section 91D be repealed so that no more schools can elect bulk funding.

Schools that have been in agreements for a minimum of 3 years, and those that entered a bulk funding agreement after 18 June 1998 (when the Government announced its policy to remove bulk funding), will have their agreements cancelled in January 2001. The few bulk funded schools that have not fulfilled 3 years and entered the agreement before 18 June 1998 will have the option to leave the scheme in July 2001, or with the other bulk funded schools at the beginning of the 2001 school year.

### *Tertiary students associations*

The current provisions of the Education Act 1989 relating to membership of students associations at tertiary institutions (Part 16A) were inserted in 1998 by the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998. Those provisions required voluntary membership of students associations unless compulsory membership was chosen by the students at each institution in a referendum held during 1999. Approximately half of the 38 institutions chose compulsory membership. While the Bill retains students' choice as to whether membership of a students association

at their institution is compulsory or voluntary, the bias towards voluntary membership is removed. The provisions about the appointment of student representatives, how to change between compulsory and voluntary membership, and the collection of students association fees have been simplified to engender a more cooperative environment of partnership between Councils of institutions and students associations.

### *Compliance with Human Rights Act 1993*

The Human Rights Amendment Act 1999 extended the exemption for compliance with the Human Rights Act 1993, which applies to government policies and practices, until 31 December 2001. Education legislation has therefore been reviewed for compliance and the amendments in *clauses 5, 26, 27, and 28* remove discriminatory provisions.

### *Clause by clause analysis*

*Clause 2* provides that the Act comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* gives the purpose of this Act as being to make changes relating to the following 5 areas:

- enrolment schemes:
- abolition of bulk funding:
- school governance:
- tertiary students associations:
- Human Rights Act 1993 compliance.

## **Part 1**

### **Substantive amendments to principal Act**

### *Enrolment schemes*

*Clause 4* repeals sections 11A to 11P (which were inserted in 1998), and substitutes the following new sections:

New *section 11A* sets out the purpose and principles of enrolment schemes. The purpose of the enrolment scheme of a state school is to avoid overcrowding at the school, ensure that selection of applicants for enrolment is fair and transparent, and to enable the Secretary to make reasonable use of existing networks of state schools. In

achieving its purpose, every enrolment scheme must, as far as possible, ensure that the scheme does not exclude local students, and ensure it does not exclude more students than is necessary to avoid overcrowding at the school.

New *section 11B* gives definitions of the terms **give notice**, **reasonably convenient school**, and **special programme**. The definition of **reasonably convenient school** is the same as in the present section 11C. The term **special programme** refers to programmes, or programmes of a type, identified by the Secretary by *Gazette* notice that offer specialised education to overcome educational disadvantage.

New *section 11C* describes what a school's enrolment scheme must contain. It must—

- define a home zone for the school:
- set out the pre-enrolment procedures for out-of-zone applicants, which must be consistent with the priority listings given in *section 11F* and with instructions issued by the Secretary:
- identify any special programmes offered by the school:
- make provision for population movements after the pre-enrolment period ends.

New *section 11D* sets out the effect of the home zone. An applicant who lives in a school's home zone has the right to be enrolled at the school. Applicants from outside the home zone can be enrolled only—

- if they have been selected under the balloting procedure set out in the enrolment scheme; or
- if the Secretary has directed the school to enrol the student under 1 of the Secretary's special powers.

New *section 11E* sets out how a school defines its home zone. A home zone must be defined geographically, and must describe an area for which the school is a reasonably convenient school for students in the area to attend. The zone may exclude areas—

- for which another school is also a reasonably convenient school for students in the area to attend; and
- that it is desirable to exclude for the purpose of allowing the Secretary to make best use of the network of state schools in the area.

New *section 11F* sets out which applicants have priority among out-of-zone applicants. Selection within each priority group must be by ballot. The order of priority is—

- first, applicants for any special programme:
- second, siblings of existing students:
- third, siblings of former students:
- fourth, all other applicants.

New *section 11G* gives the Secretary power to issue binding instructions to state schools about ballots, waiting lists, information to be given to out-of-zone applicants, and other matters the Secretary considers necessary for ensuring the fair, transparent, and efficient operation of enrolment schemes. Instructions must be notified in the *Gazette*. *Subsection (3)* gives the Secretary the power to issue non-binding guidelines about how he or she will exercise the Secretary's powers. The power to determine whether a particular student was "living within the home zone" on the date of application is specifically mentioned, to draw attention to this particular power (contained in *section 11P(2)(a)*).

New *section 11H* sets out the process Boards must follow for developing and adopting an enrolment scheme. A Board must develop a proposed scheme if the Secretary gives notice that there is, or is likely to be, overcrowding at the school. *Subsections (2) and (3)* set out some consultation requirements. *Subsection (4)* provides that if the Secretary approves a proposed enrolment scheme, the Board must adopt it.

New *section 11I* sets out the matters on which the Secretary must be satisfied before he or she approves a proposed enrolment scheme. They are that—

- the scheme complies, as far as possible, with the purpose and principles of enrolment schemes; and
- the definition of the school's home zone ensures that students can attend a reasonably convenient school; and
- the boundaries of the school's home zone overlap or are contiguous with any neighbouring home zones; and
- the scheme promotes the best use of the network of state schools in the area; and
- the procedures for out-of-zone applicants comply with the legislation and any instructions; and

- the Board has carried out adequate consultation.

If the Board and the Secretary cannot agree on the content of a scheme, the Secretary has the power to direct a Board to amend any scheme or proposed scheme in the manner specified by the Secretary.

New *section 11J* deals with information that schools must provide about their enrolment schemes. Boards of schools with enrolment schemes must give notice of when they adopt an enrolment scheme and must give notice annually about pre-enrolment procedures. They must also have certain information available for inspection at the school at all reasonable times.

New *section 11K* provides for the commencement of enrolment schemes. As is the case at present, enrolment schemes for primary schools commence 3 months after the date on which they are adopted, and enrolment schemes for secondary or composite schools start on 1 January following adoption. There is provision for early commencement by approval of the Secretary.

New *sections 11L and 11M* provide, respectively, for when enrolment schemes end, and how they are amended. They repeat the current provisions on this.

New *section 11N* provides for pre-enrolment procedures to apply even if an enrolment scheme has not yet commenced. It sets out the information about the balloting procedures that must be given to applicants who live outside the home zone.

New *section 11O* provides Boards with a new power to “annul” the enrolment of a student if the Board believes on reasonable grounds that the student’s application for enrolment—

- falsely claimed that the student was living within the school’s home zone at the date of application; or
- falsely claimed that the student was entitled to a particular priority in the ballot for places.

If a student’s enrolment is annulled, the principal of the school must try to find an alternative school for the student. If he or she is unable to after 10 school days, the principal must tell the Secretary what steps he or she has taken.

New *section 11P* sets out 3 circumstances in which the Secretary may direct a school to enrol a student, overriding any enrolment scheme the school may have. The circumstances are—

- the student's enrolment at a school has been annulled and the principal of the school has not found a suitable alternative:
- a Board has declined an application on the ground that the applicant was living outside the school's home zone when the application was made, but the Secretary has determined that the student was in fact living within the home zone:
- the consequences of not giving the direction would be so disadvantageous to the applicant that overriding the enrolment scheme is justified in this case.

New *section 11PA* repeats the current section 11O. It requires state schools with enrolment schemes to undertake an annual review of the scheme and the need for it, unless the Secretary exempts the school from this requirement.

New *section 11PB* modifies the application of the enrolment scheme provisions in relation to Kura Kaupapa Maori, designated character schools, integrated schools, and special schools. The enrolment schemes for these schools do not have to define home zones for the schools, nor do they have to provide for balloting for out-of-zone places. However, the schemes must comply with the other provisions about enrolment schemes, particularly the purpose and principles. The Secretary may exempt certain types of state school from the application of the enrolment scheme provisions.

#### *Age discrimination removed*

*Clause 5* amends section 18A(1) of the principal Act, which provides that the Secretary may, on the recommendation of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, direct the Board of a state school to enrol at the school any person under 18. This clause removes the age limit so that section 18A will apply generally.

#### *Annual reports*

*Clause 6* amends section 87 of the principal Act to require a Board's annual report to the Secretary to include—

- the name of each trustee; and
- the date on which he or she goes out of office.

*Removal of bulk funding for payment of teacher salaries*

*Clause 7* repeals section 91B(b) of the principal Act, which provides that the central payment provisions of section 91C of the Act do not apply to the payment of salaries under a section 91D agreement (a bulk funding agreement). This clause is consequential on the repeal of section 91D by *clause 8*.

*Clause 8* repeals section 91D of the principal Act. Section 91D provides that the Minister and a Board may agree in writing that section 91C (which establishes the central payment system) should not apply to a school or schools the Board administers while the agreement is in force.

*Clauses 7 and 8* should be read in conjunction with *clause 25*, which contains transitional provisions relating to the cancellation of bulk funding agreements.

*Provisions relating to school governance*

*Clause 9* amends section 94 of the principal Act, which relates to the constitution of Boards of state schools. The clause substitutes a new *subsection (1)(b)* to provide that the principal of each school administered by a Board of a state school is a trustee. Presently, in the case of a combined Board that governs 2 or more schools, only the principal of 1 of those schools can be a trustee under section 94(1)(b).

*Clause 10* amends section 94B of the principal Act, which relates to the power of a Board to alter its constitution.

*Subclause (1)* repeals provisions relating to the inclusion on a Board of a student representative. Subsection (1)(g) (which allows a Board to decide not to have a student representative) and subsection (7) (which deems the sitting student representative to have resigned when the Board makes such a decision) are the provisions repealed.

*Subclause (2)* contains a consequential repeal.

*Subclause (3)* makes a consequential amendment necessitated by the repeals made by *subclause (1)*.

*Clause 11* amends section 97(2) of the principal Act, which relates to the election of a student representative. The amendment enables persons enrolled full-time in a class in form III to vote at the election. Presently, only persons enrolled full-time in a class above form III can vote.

*Clause 12* amends section 101 of the principal Act, which relates to the election of school trustees for—

- the Board of a state school that has students enrolled full-time in classes in form III or above; and
- the Board of a special institution that is required to have a student representative.

*Subclause (1)* substitutes new *section 101(1) and (2)* to require elections for student representatives to be held every September. Presently, student representatives are elected between the fourth Monday in February and the close of the second Monday in March.

*Subclause (2)* adds a new *subsection (10)*, which makes section 101 subject to the new provision relating to staggered elections for some parent representatives (as set out in *clause 13*).

*Clause 13* inserts into the principal Act new *sections 101A and 101B*.

New *section 101A* provides for the staggered election of some parent representatives.

*Subsection (1)* provides that this section and *section 101B* apply to the election of parent representatives.

*Subsection (2)* empowers a Board to stagger the election of half the number of its parent representatives. Their term will be 3 years (the same as for other parent representatives), but their term will begin 18 months after the other trustees take office. This will ensure there is a continuity of experience among parent representatives, which is sometimes lacking at present because they all go out of office at the same time.

*Subsection (3)* defines **half the number of its parent representatives**. If there is an odd number of parent representatives on the Board, half the number is taken as the highest whole number less than half of the total number of parent representatives. For example, if there are 5 parent representatives, half the number is 2 for this purpose.

*Subsection (4)* requires the Board to—

- determine which parent representatives are to be succeeded by persons elected under *subsection (2)*; and
- notify the affected representatives in writing.

*Subsection (5)* ends the term of each trustee who is replaced by a person elected under this section. The outgoing trustee leaves office

at the close of the day before the day the incoming trustee takes office.

*Subsection (6)* provides that the provisions of the principal Act and the regulations relating to trustee elections apply to elections under this section. Once the first election is held, an election must be held under this section every 3rd year after the date of the first election.

New *section 101B* sets out the consultation requirements for staggered elections of parent representatives. These provisions are similar to those set out in *section 94B* of the principal Act, which relate to decisions by a Board to alter its own constitution.

*Subsection (1)* requires a decision under *section 101A(2)* to be made by the Board by resolution passed at a meeting of the Board open to all parents of students enrolled at the school or schools administered by the Board.

*Subsection (2)* sets out the consultative steps the Board must take before making a decision under *section 101A(2)*. The Board must take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the Board have reasonable notice of—

- the time, day, and place of the meeting of the Board at which the decision is to be made; and
- the nature of the decision; and
- the fact that they have a right to attend the meeting.

*Clause 14* amends *section 102* of the principal Act, which relates to the term of office of trustees.

*Subclause (1)* inserts a new *section 102(8A)* providing that appointed and co-opted trustees hold office for up to 3 years. Presently, they go out of office when elected trustees go out of office and this new provision allows better succession planning. This is a companion measure to that in *clause 13* allowing staggered elections for some parent representatives.

*Subclause (2)* contains consequential amendments.

*Clause 15* inserts into the principal Act a new *section 105A*, which empowers the Minister to approve an alternative constitution for a Board of a state school or a combined Board of state schools.

*Subsection (1)* provides for the Minister to approve an alternative constitution by notice in the *Gazette*. The preconditions are that—

- the Minister has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the Board; and
- the Chief Review Officer recommends the Minister devise an alternative constitution, or an alternative constitution is requested by 20% or more of the parents of children enrolled at the school or schools, or by the Board; and
- the Minister has consulted such persons or organisations as the Minister considers appropriate about whether an alternative constitution is in the best interests of the school or schools.

*Subsection (2)* states that an alternative constitution approved under this section applies instead of the standard constitution established under section 94.

*Subsection (3)* relates to the content of a notice under this section. The notice must establish a Board comprising 1 or more persons who are to be elected or appointed as trustees in a manner specified in the notice. The notice may also contain procedural and ancillary provisions about the election, appointment, or co-option of trustees.

*Subsection (4)* provides that sections 94, 94A, 94B, 95, 96, 97, 98, 99, 101, 102, 104, and 105 of the principal Act do not apply to the Board and the schools concerned while an alternative constitution is in place under this section.

*Subsection (5)* requires other provisions of the principal Act relating to Boards to be read subject to this section and subject also to all modifications necessary to give effect to this section.

*Clause 16* amends section 110(1) of the principal Act, which provides for Boards to combine. This clause inserts a new *section 110(1)(ba)* that requires the Minister to maintain a parent representative majority when considering whether to establish a combined Board.

*Clause 17* repeals section 111(2) of the principal Act, which prevents the establishment of a combined Board where the Boards together administer more than 4 schools or institutions.

*Clause 18* inserts into the principal Act a new *section 116A*, which allows 1 person to be the principal of 2 or more schools administered by the same Board.

*Clause 19* amends section 156A of the principal Act, which relates to the merger of schools. This clause substitutes new *section 156A(4) and (4A)*, which provides as follows:

- new *subsection (4)* requires the Board of the continuing school to hold an election for a new Board within 3 months after the day the merger takes effect. Presently, the election must be held within 6 months after the merger:
- new *subsection (4A)* requires the Board of the merging schools to be represented on the Board of the continuing school by a co-opted trustee for the balance of that Board's term of office. The co-opted trustee—
  - (a) must join the Board within 28 days after notice of the merger is published; and
  - (b) holds office until the trustees elected at the next election take office, and then goes out of office.

#### *Tertiary students associations*

*Clause 20* amends section 171 of the principal Act, which lists the members on the Council of an institution. Subsections (2)(e), (8), and (8A) of section 171 presently provide for up to 3 student representatives, and sets out how they are appointed. The amendments retain the provision for up to 3 student representatives, but the way in which they are appointed is set out in *sections 229A(2) and 229B(2)*.

*Clause 21* repeals Part 16A of the principal Act (inserted by the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998), and substitutes 4 new sections.

New *section 229A* provides for institutions at which membership of an association of students is compulsory. It sets out how the student representative or representatives on the Council are appointed, and further provides—

- that the Council must collect the membership fees of students associations that provide the Council with a current copy of their constitution and an up-to-date set of audited accounts:
- that any fees collected must be paid to the relevant association in a timely manner, and without charge:
- for the continuation of exemption from payment of fees on the grounds of hardship:

- for the continuation of exemption from membership on the grounds of conscientious objection, with any fees payable to be paid to a charity:
- for students associations to administer the latter 2 exemptions.

New *section 229B* provides for institutions at which membership of an association of students is voluntary. It describes how the student representative or representatives on the Council are appointed, and provides for the collection and payment of membership fees on the same basis as applies to institutions where membership of an association of students is compulsory.

New *section 229C* sets out how an institution changes from being one where membership of a students association is voluntary to one where membership is compulsory, and vice versa. The same process is used for a change either way. The Council must conduct a vote of all students on the issue if requested to do so by a petition signed by 10% of the students enrolled at the institution, or by a resolution of a students association that has a membership of at least 50% of the students. The Council of the institution must make statutes, in consultation with any students associations at the institution, for running a vote under this section.

New *section 229D* applies *sections 229A to 229C* to private training establishments, with all necessary modifications.

## **Part 2**

### **Amendments, repeals, and transitional provisions**

#### *Consequential amendments and repeal*

*Clause 22* makes amendments to various sections that are consequential upon the changes made to provisions about enrolment schemes and students associations.

*Clause 23* repeals the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998.

#### *Transitional provisions*

*Clause 24* provides transitional provisions about enrolment schemes applying to the 2001 school year. *Subclause (2)* provides that an ordinary state school that uses a geographic boundary in its existing enrolment scheme to identify students who may enrol at the school can continue to use that enrolment scheme for the 2001 year, as if the

area defined was the school's home zone. Selection of out-of-zone students must be done in accordance with *section 11F* and any instructions issued by the Secretary. *Sections 11A, 11B, 11D, 11G, 11J, 11N, and 11P* will also apply.

*Subclause (3)* provides for the Secretary to issue a notice to schools to which *subclause (2)* would otherwise apply, saying that their scheme is not to apply. This is necessary in order to provide for those schemes that describe a geographic area that is not appropriate as a definition of a home zone.

*Subclause (4)* provides that enrolment schemes without a defined geographic area cannot be used. Schools with such schemes must develop a new scheme, in accordance with the new provisions, for 2001.

*Subclause (5)* relates to schools that do not have an enrolment scheme for 2000, but will for 2001.

*Subclause (6)* allows Kura Kaupapa Maori, designated character schools, integrated schools, and special schools, to continue to apply any existing enrolment scheme in 2001.

*Clause 25* contains transitional provisions relating to bulk funding agreements under section 91D of the principal Act. The effect of this clause is as follows:

- agreements in force for 3 years or more at the close of 23 January 2001 (the day before the start of the 2001 school year) are cancelled at the close of that date;
- agreements entered into on or after 18 June 1998 and in force at the close of 23 January 2001 are cancelled at the close of 23 January 2001;
- agreements entered into before 18 June 1998 and in force for less than 3 years as at the close of 23 January 2001 are subject to the following provisions:
  - (a) the Board may cancel the agreement with effect at the close of 23 January 2001; but
  - (b) if that does not happen, the agreement is automatically cancelled at the close of 10 July 2001 (if still in force immediately before the close of that date):
- on the cancellation of an agreement by or under this section, the following provisions apply:

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- (a) if any provision of the agreement remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further:
  - (b) no party to be divested of any money paid under the agreement, merely because the agreement is cancelled:
  - (c) section 91C of the principal Act (the central payment system) applies.

*Related amendments*

*Clauses 26 to 28* amend the Royal New Zealand Foundation for the Blind Act 1963, the Private Schools Conditional Integration Act 1975, and the Music Teachers Act 1981 to ensure compliance with the Human Rights Act 1993.

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*Hon Trevor Mallard*

# Education Amendment Bill

## Government Bill

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## The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the Education Amendment Act **2000**.
- (2) In this Act, the Education Act 1989<sup>1</sup> is called “the principal Act”.

<sup>1</sup> RS Vol 34 p 17

Amendments: 1996 No 98; 1998 Nos 21, 90, 118; 1999 Nos 79, 107

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### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

### 3 Purpose

The purpose of this Act is—

- (a) to change the rules relating to enrolment schemes for schools, in particular by requiring that the enrolment scheme of every ordinary state school must identify a home zone for the school (see **sections 4 and 24**): 10
- (b) to abolish bulk funding agreements for the payment of teachers’ salaries (see **sections 7, 8, and 25**): 15
- (c) to strengthen the arrangements for governance of schools (see **sections 6, and 9 to 19**):

- (d) to simplify the rules about tertiary students associations (see **sections 20 and 21**);
- (e) to amend provisions in order to make them consistent with the Human Rights Act 1993 (see **sections 5, and 26 to 28**).

5

## Part 1 Substantive amendments to principal Act

### *Enrolment schemes*

#### 4 New sections 11A–11PB substituted

The principal Act is amended by repealing sections 11A to 11P, and substituting the following sections: 10

##### “11A Purpose and principles

“(1) The purpose of the enrolment scheme of a state school is—

“(a) to avoid overcrowding, or the likelihood of overcrowding, at the school; and 15

“(b) to ensure that the selection of applicants for enrolment at the school is carried out in a fair and transparent manner; and

“(c) to enable the Secretary to make the best use of existing networks of state schools. 20

“(2) In achieving its purpose, the enrolment scheme of every state school must, as far as possible, ensure that—

“(a) the scheme does not exclude local students; and

“(b) no more students are excluded from the school than is necessary to avoid overcrowding at the school. 25

##### “11B Interpretation

In **sections 11C to 11PB**, unless the context otherwise requires,—

“**give notice** means to publish a notice in a daily or community newspaper circulating in the area served by the school

“**reasonably convenient school** means a state school that a reasonable person living in the area in which the school is situated would judge to be reasonably convenient for a particular student, taking into account such factors as the age of the student, the distance to be travelled, the time likely to be spent in travel, the reasonably available modes of travel, common public transport routes, and relevant traffic hazards. The meaning may vary as between different schools depending on such matters as— 30  
35

- “(a) whether the school is a single sex or co-educational school:
- “(b) whether the school is an ordinary state school, a Kura Kaupapa Maori, a designated character school, an integrated school, or a special school: 5
- “(c) whether the school is a primary, intermediate, secondary, composite, or area school
- “**special programme** means a programme, or a programme of a type, that the Secretary has, by notice in the *Gazette*, approved as a special programme, and that provides— 10
- “(a) special education; or
- “(b) Maori language immersion classes; or
- “(c) any other type of specialised education to overcome educational disadvantage.
- “11C **Content of enrolment scheme** 15
- “(1) A school’s enrolment scheme must—
- “(a) define a home zone for the school; and
- “(b) set out the pre-enrolment procedures for selecting applicants who live outside the home zone; and
- “(c) identify any special programmes offered by the school and the criteria on which students will be accepted onto any special programme; and 20
- “(d) make provision for likely population movements in the general area served by the school that occur during the school year or after the end of the pre-enrolment period. 25
- “(2) The procedures described in **subsection (1)(b)** must be consistent with **section 11F** and any relevant instructions issued by the Secretary under **section 11G**.
- “11D **Effect of home zone**
- “(1) An applicant for enrolment at a school that has an enrolment scheme is entitled to enrol at the school if he or she lives within the school’s home zone. 30
- “(2) An applicant for enrolment at a school with an enrolment scheme who lives outside the school’s home zone is entitled to enrol at the school only— 35
- “(a) if he or she is offered a place at the school in accordance with the procedure set out in the enrolment scheme; or

- “(b) if the Secretary has agreed or directed under section 9, or directed under **section 11P**, section 16, section 17D, or section 18A, that the student be enrolled at the school.
- “(3) **Subsection (1)** does not apply to a student who has been expelled from the school. 5
- “11E **How a school defines its home zone**
- “(1) A state school’s home zone must be defined by geographic boundaries, and must be described in such a way that any given address is either within or outside the home zone.
- “(2) A school’s home zone— 10
- “(a) must be an area for which the school is a reasonably convenient school for a student living in that area to attend; and
- “(b) may exclude any area for which another school is also a reasonably convenient school for a student living in that area to attend; and 15
- “(c) may exclude any area which it is desirable to exclude for the purpose of allowing the Secretary to make best use of the existing network of state schools in the area.
- “11F **How to select applicants who live outside home zone** 20
- “(1) The order of priority in which applicants who live outside a school’s home zone are to be offered places at the school is as follows:
- “(a) first priority must be given to any applicant who is accepted for enrolment in a special programme run by the school: 25
- “(b) second priority must be given to any applicant who is the sibling of a current student of the school:
- “(c) third priority must be given to any student who is the sibling of a former student of the school: 30
- “(d) fourth priority must be given to all other applicants.
- “(2) If there are more applicants in the second, third, or fourth priority groups than there are places available, selection within the priority group must be by ballot conducted in accordance with instructions issued by the Secretary under **section 11G**. 35

- “11G Instructions and guidelines on operation of enrolment schemes**
- “(1) The Secretary may issue instructions to state schools that have enrolment schemes about the following matters:
- “(a) the procedures for holding ballots: 5
  - “(b) the dates on which ballots are to be held:
  - “(c) the establishment and maintenance of waiting lists:
  - “(d) the information to be given to applicants who live outside the school’s home zone:
  - “(e) any other matter that the Secretary considers necessary for ensuring the fair, transparent, and efficient operation of enrolment schemes. 10
- “(2) Instructions issued under **subsection (1)**—
- “(a) must be complied with by schools; and
  - “(b) may apply to all or specified schools or classes of school; and 15
  - “(c) must be notified in the *Gazette*, either in full, or by a notice outlining the content of the instructions and saying where a copy can be obtained, and the date on which the instructions take effect; and 20
  - “(d) may be amended or revoked, in which case notice of the amendment or revocation must be given in the *Gazette*, as described in **paragraph (c)**.
- “(3) The Secretary may issue guidelines describing the basis on which the Secretary’s powers in relation to enrolment schemes may be exercised (including, in particular, the power in **section 11P(2)(a)** relating to the determination of whether an applicant lives within a home zone or outside it). 25
- “11H Process for developing and adopting enrolment scheme**
- “(1) If the Secretary gives a written notice to a state school that there is, or is likely to be, overcrowding at the school, the Board of the school must develop an enrolment scheme for the school. 30
- “(2) When developing a proposed enrolment scheme, a Board must consult with whatever persons and organisations it considers appropriate, and, in particular, must take all reasonable steps to discover and consider the views of—
- “(a) the parents of students at the school; and
  - “(b) the people living in the area for which the school is a reasonably convenient school; and 40

- “(c) the students and prospective students of the school (depending on their age and maturity); and
- “(d) the Boards of other schools that could be affected by the proposed enrolment scheme.
- “(3) In addition to the consultation required by **subsection (2)**,— 5
- “(a) the Board of a Kura Kaupapa Maori must consult with the persons and organisations that the Board believes have an interest in fostering the school’s adherence to Te Aho Matua and any special characteristics set out in the school’s charter: 10
- “(b) the Board of a designated character school must consult with those persons and organisations that the Board believes have an interest in fostering the aims, purposes, and objectives that constitute the school’s different character: 15
- “(c) the Board of an integrated school must consult with the school’s proprietors.
- “(4) If the Secretary approves a proposed enrolment scheme for a state school, the school’s Board must pass a resolution adopting the scheme at its next meeting. 20
- “11I Proposed enrolment schemes to be approved by Secretary**
- “(1) The Secretary may approve the proposed enrolment scheme of a state school only if he or she is satisfied that—
- “(a) the scheme complies, as far as possible, with the purpose and principles of enrolment schemes as set out in **section 11A**; and 25
- “(b) the definition of the school’s home zone in the enrolment scheme ensures that students can attend a reasonably convenient school; and 30
- “(c) the boundaries of the school’s home zone overlap or are contiguous with the boundaries of the home zone of any adjacent state school that has an enrolment scheme; and
- “(d) the scheme promotes the best use of the network of state schools in the area; and 35
- “(e) the procedures for determining which applicants who live outside the home zone will be offered places at the school comply with **section 11F** and any instructions issued under **section 11G**; and

- “(f) the Board has carried out adequate consultation under **section 11H**.
- “(2) If a Board and the Secretary are unable to reach agreement about the content of the school’s enrolment scheme or proposed enrolment scheme, the Secretary may require the Board to amend the scheme or proposed scheme in the manner required by the Secretary. 5
- “(3) A Board that receives a requirement under **subsection (2)** must, as soon as practicable, change its enrolment scheme or proposed enrolment scheme to give effect to the Secretary’s requirement, and the Board need not obtain separate approval from the Secretary for the change. 10
- “11J **Information about school’s enrolment scheme**
- “(1) When the Board of a state school adopts an enrolment scheme, it must give notice of the fact that it has adopted an enrolment scheme, and the notice must include— 15
- “(a) a general description of the school’s home zone; and
- “(b) information about where copies of the enrolment scheme may be viewed and obtained.
- “(2) Each year, the Board of a school that has an enrolment scheme must give notice of— 20
- “(a) the likely number of out-of-zone places; and
- “(b) the significant pre-enrolment dates and procedures; and
- “(c) the date or dates on which any ballot will be held.
- “(3) The following must be available for inspection at the school at all reasonable times: 25
- “(a) a copy of the school’s current enrolment scheme:
- “(b) a copy of the results of the most recent ballot for places at the school:
- “(c) a copy of the waiting list for places at the school: 30
- “(d) if it is available, information about the matters listed in **subsection (2)**.
- “11K **Commencement of enrolment scheme**
- “(1) An enrolment scheme for a primary school commences on the date 3 months after the day of its adoption, or on a later date specified in the scheme. 35
- “(2) An enrolment scheme for a secondary or composite school commences on 1 January in the year following the year in

which it was adopted, or on a later date specified in the scheme and agreed to by the Secretary.

- “(3) Despite **subsections (1) and (2)**, the Secretary may, on application by a Board, authorise the early commencement of an enrolment scheme if he or she considers that early commencement is appropriate. 5
- “(4) If the Secretary gives authorisation for early commencement after the Board has given notice of the enrolment scheme, the Board must give notice showing the revised date on which the scheme will commence. 10

“11L **End of enrolment scheme**

- “(1) The Secretary may at any time, by notice in writing, require the Board of a state school to abandon its enrolment scheme on the grounds that the Secretary is satisfied that there is not, or is not likely to be, overcrowding at the school if the enrolment scheme is abandoned; and the Board must resolve at its next meeting to abandon the scheme. 15
- “(2) A Board may at any time, by resolution, abandon an enrolment scheme, in which case the scheme ends on the day specified in the resolution. 20
- “(3) When a Board abandons an enrolment scheme, it must—  
“(a) notify the Secretary of the date on which the enrolment scheme ended or will end; and  
“(b) give notice of the date on which the scheme ended or will end. 25
- “(4) If a Board replaces an enrolment scheme, the existing scheme ends on the date the new scheme commences.

“11M **Amendment of enrolment scheme**

- “(1) The Board of a state school that has adopted an enrolment scheme may amend it. 30
- “(2) A Board must not amend a scheme unless it is satisfied that an enrolment scheme is still necessary in order to avoid overcrowding, or the likelihood of overcrowding, at the school.
- “(3) **Sections 11A to 11L** apply to an amendment and a proposed amendment to an enrolment scheme as if it were an enrolment scheme or a proposed enrolment scheme (as the case may be). 35

- “11N Pre-enrolment and operation of enrolment schemes**
- “(1) The Board of a state school may apply the pre-enrolment procedures of an enrolment scheme at any time after notice has been given of the scheme under **section 11J(1)**, even if the scheme has not yet commenced. 5
- “(2) In the case of applications by applicants who live outside the home zone, the Board must notify each applicant of—
- “(a) when and how the ballot will be held; and
- “(b) when and how applicants will be advised of the results of the ballot; and 10
- “(c) the rights and responsibilities of applicants after the ballot.
- “(3) After any ballot has been held, the Board must advise every applicant whose name was included in the ballot of the outcome of the ballot and must give every applicant who was unsuccessful at the ballot information about the Secretary’s power in **section 11P(2)(a)** to determine whether a student was living within or outside the school’s home zone on the date of application. 15
- “11O Enrolment may be annulled if based on false information** 20
- “(1) The Board of a state school that has an enrolment scheme may annul the enrolment of a student enrolled at the school if the Board believes on reasonable grounds that the student’s application for enrolment— 25
- “(a) falsely claimed that the student was living within the school’s home zone at the date of application; or
- “(b) falsely claimed that the student was entitled to a particular priority in the ballot for places (for example, by falsely claiming the applicant to be the sibling of an existing student). 30
- “(2) If a Board annuls the enrolment of a student who is under the age of 16, the principal of the school must try to arrange for the student to attend another school that is suitable for the student and is a reasonably convenient school for the student to attend. 35
- “(3) If the principal is unable, by the 10th school day after the date of annulment, to arrange for the student to attend another school, the principal must tell the Secretary what steps he or she has taken in trying to do so. 40

**“11P Secretary may direct Board to enrol applicant**

“(1) The Secretary may direct the Board of any state school (including the Board of the school at which the student was enrolled) to enrol a student whose enrolment has been annulled under **section 110**. 5

“(2) The Secretary may direct the Board of any state school to enrol an applicant whose application for enrolment it has declined if the Secretary is satisfied that—

“(a) the Board has declined the application on the ground that the applicant was living outside the school’s home zone on the date of the application, but in fact the student was living within the home zone on that date; or 10

“(b) the consequences of not giving the direction would be so disadvantageous to the applicant that overriding the enrolment scheme in this case is justified. 15

“(3) The Secretary must not give a direction about a person under **subsection (1)** or **subsection (2)(b)** unless he or she has taken all reasonable steps to consult the person’s parents, the Board of the proposed school, and (if appropriate, having regard to the age and maturity of the person) the person. 20

“(4) The Secretary may not direct the Board of a Kura Kaupapa Maori, a designated character school, or an integrated school to enrol a person under this section unless the person’s parents agree, and accept the special character of that school.

“(5) A Board must comply with a direction under this section, and the direction overrides the provisions of any enrolment scheme the school may have in place. 25

**“11PA Annual review of enrolment scheme**

“(1) The Board of a state school that has an enrolment scheme in place on 1 February in any year must, before 1 May of that year,— 30

“(a) review the operation of the enrolment scheme, having regard to the purpose and principles of enrolment schemes; and

“(b) ask the Secretary whether he or she agrees with the Board’s view about the continuing need for a scheme to prevent overcrowding, or the likelihood of overcrowding, at the school. 35

- “(2) The Secretary may exempt a Board for any period not exceeding 3 years from the obligation to conduct an annual review if the Secretary considers that compliance is unnecessary.
- “(3) The Secretary may at any time rescind an exemption given under **subsection (2)**, and may require the Board to conduct a review of its enrolment scheme within a period specified by the Secretary. 5
- “11PB **Enrolment schemes of certain state schools**
- “(1) **Sections 11A to 11PA** apply to Kura Kaupapa Maori, designated character schools, integrated schools, and special schools, and to their enrolment schemes, subject to the following modifications: 10
- “(a) All references to overcrowding or the likelihood of overcrowding must be read as if they were references to there being, or being likely to be, more applicants for enrolments at the school than there are places available; and 15
- “(b) the enrolment scheme need not define a home zone for the school, nor provide for balloting of applicants who live outside any home zone; and 20
- “(c) in the case of a Kura Kaupapa Maori, the application of the sections must not result in inconsistency with section 155; and
- “(d) in the case of a designated character school, the application of the sections must not result in inconsistency with the school’s charter or section 156; and 25
- “(e) in the case of an integrated school, the application of the sections must not result in inconsistency with the school’s integration agreement or the Private Schools Conditional Integration Act 1975. 30
- “(2) **Sections 11A to 11PA** do not apply to any state school of a type specified by the Secretary by notice in the *Gazette*.”

*Age discrimination removed*

- 5 **Recommendation that student should attend particular school** 35
- Section 18A(1) of the principal Act is amended by omitting the expression “under 18”.

*Annual reports***6 Annual reports**

Section 87 of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) A report given under subsection (1) must include— 5  
 “(a) the names of all the Board’s elected trustees, appointed trustees, and co-opted trustees; and  
 “(b) the date on which each trustee goes out of office.”

*Removal of bulk funding for payment of teacher salaries***7 Application 10**

Section 91B of the principal Act is amended by repealing paragraph (b) (which relates to bulk funding agreements).

**8 Repeal of section 91D**

Section 91D of the principal Act (which relates to bulk funding agreements) is repealed. 15

*Provisions relating to school governance***9 Constitution of Boards of state schools**

Section 94(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) the principal of the school or, in the case of a combined Board, the principals of the schools administered by the Board; and”. 20

**10 Boards may alter their own constitutions**

- (1) Section 94B of the principal Act is amended by repealing subsections (1)(g) and (7) (which provide that a Board may alter its constitution to preclude or remove a student representative). 25
- (2) Section 94B(1)(h) of the principal Act is consequentially repealed.
- (3) Section 94B(8) is consequentially amended by omitting the words “to have a member who is a student representative or”. 30

**11 Staff and student representatives**

Section 97(2) of the principal Act is amended by omitting the expression “above form III” in both places where it appears,

and substituting in each case the expression “in form III or above”.

## **12 Elections of trustees**

- (1) Section 101 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections: 5
- “(1) Before 1 September in every year, the Board of a state school or of a special institution, that is required to have a student representative, must fix a day in September in that year for the holding of an election for a student representative. 10
- “(2) The Board of a school or institution to which **subsection (1)** applies must hold an election of any student representative on the day fixed for that purpose under **subsection (1)**.”
- (2) Section 101 of the principal Act is amended by adding the following subsection: 15
- “(10) This section is subject to **section 101A** (which provides for the election of some parent representatives at the mid-point of an election cycle under this section).”

## **13 New sections 101A and 101B inserted**

The principal Act is amended by inserting, after section 101, the following sections: 20

- “**101A Staggered elections for parent representatives**
- “(1) This section and **section 101B** apply to the election of trustees who are parent representatives.
- “(2) A Board may determine, in accordance with this section and **section 101B**, that half the number of its parent representatives are to be elected for a term of 3 years beginning 18 months after the date trustees take office under section 102. 25
- “(3) For the purposes of **subsection (2)**, if there is an odd number of parent representatives on the Board, **half the number of its parent representatives** means the highest whole number less than half the total number of parent representatives. 30
- “(4) When it decides to hold an election under **subsection (2)**, the Board must—
- “(a) determine which trustees are to be succeeded by a person elected under that subsection; and 35

- “(b) notify each trustee in writing of that fact and the date the trustee goes out of office under **subsection (5)**.
- “(5) Despite anything in section 102, an elected trustee who is to be succeeded by a person elected under **subsection (2)** goes out of office at the close of the day before the day on which the successor takes office under that subsection. 5
- “(6) If the Board decides to hold an election under this section,—
- “(a) the first election must be held in accordance with the provisions of this Part and any regulations under this Act relating to the election of trustees; and 10
- “(b) the Board must hold, in accordance with those election provisions, a subsequent election on the anniversary of the date of the first election in every 3rd year after that date; and
- “(c) those election provisions apply with all modifications necessary to give effect to this section and **section 101B**. 15

**“101B Consultation requirements for staggered elections of parent representatives**

- “(1) Every decision under **section 101A(2)** must be made by the Board by resolution passed at a meeting of the Board open to all parents of students enrolled at the school or schools administered by the Board. 20
- “(2) Before making a decision under **section 101A(2)**, a Board must take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the Board have reasonable notice of— 25
- “(a) the time, day, and place of the meeting of the Board at which the decision is to be made; and
- “(b) the nature of the decision; and
- “(c) the fact that they have a right to attend the meeting.” 30

**14 Term of office**

- (1) Section 102 of the principal Act is amended by inserting, after subsection (8), the following subsection:
- “(8A) Subject to subsection (9), the appointment or co-option of a trustee may be for a term not exceeding 3 years.” 35
- (2) Section 102 of the principal Act is amended—
- (a) by omitting from subsection (8) the words “, appointed, and co-opted”:

- (b) by inserting in subsection (9), after the expression “subsection (8)”, the expression “or **subsection (8A)**”:
- (c) by omitting from subsection (10) the expression “subsection (8)”, and substituting the expression “**subsection (8A)**”:
- (d) by omitting from subsection (11) the expression “section 104”, and substituting the expression “**sections 101A and 104**”.

### 15 **New section 105A inserted**

The principal Act is amended by inserting, after section 105, the following section: 10

#### “105A **Minister may approve alternative constitution in certain cases**

- “(1) The Minister may from time to time, by notice in the *Gazette*, approve an alternative constitution under this section for the Board of a state school, or the combined Board of state schools, if— 15
  - “(a) the Minister has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the Board, and— 20
    - “(i) the Chief Review Officer, in a written report, recommends the Minister consider devising an alternative constitution; or
    - “(ii) 20% or more of the parents of children enrolled at the school or schools have requested an alternative constitution; or 25
    - “(iii) the Board has requested an alternative constitution; and
  - “(b) the Minister has consulted such persons or organisations as the Minister considers appropriate about whether an alternative constitution is in the best interests of the school or schools. 30
- “(2) A constitution approved under this section applies instead of a constitution under section 94.
- “(3) A notice under this section must establish a Board comprising 1 or more persons who are to be elected or appointed as trustees in the manner specified in the notice; and the notice may (without limitation)— 35
  - “(a) set out a procedure for any election, appointment, or co-option of trustees: 40

- “(b) set out the manner in which vacancies are to be filled:  
“(c) provide for the appointment of returning officers and set out their functions:  
“(d) set out other formal and procedural provisions for the purposes of any election, appointment, or co-option of trustees. 5
- “(4) While a notice that approves an alternative constitution under this section is in force, sections 94, 94A, 94B, 95, 96, 97, 98, 99, 101, 102, 104, and 105 do not apply in respect of the Board concerned and the schools governed by it. 10
- “(5) In their application to a Board that has an alternative constitution under this section, the other sections and any schedules of this Act relating to Boards must be read subject to this section and subject also to all modifications necessary to give effect to this section.” 15
- 16 Boards may combine**  
Section 110(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:  
“(ba) the number of trustees on the Board who are parent representatives will continue to exceed the number of other trustees on the Board; and”. 20
- 17 Restrictions on combining**  
Section 111 of the principal Act is amended by repealing subsection (2) (which prevents Boards combining if all the Boards together administer more than 4 schools). 25
- 18 New section 116A inserted**  
The principal Act is amended by inserting, after section 116, the following section:  
**“116A Appointment of principal of combined Board**  
The powers conferred on a combined Board by section 65 include the power to appoint 1 person to be the principal of 2 or more schools administered by the Board.” 30
- 19 Minister may merge schools**  
Section 156A of the principal Act is amended by repealing subsection (4), and substituting the following subsections: 35

- “(4) Unless it was (immediately before the merger took effect) a combined Board established under section 110, then, subject to subsection (6), the Board of the continuing school must hold elections for a new Board on a day that is not later than 3 months after the day the merger took effect. 5
- “(4A) Each Board of the merging schools must be represented on the Board of the continuing school by a co-opted trustee for the balance of that Board’s term of office, and—
- “(a) the Board of the continuing school must co-opt the trustee within 28 days after notice of the merger is published under subsection (1); and 10
- “(b) each co-opted trustee holds office until the trustees elected at the next election take office, and then the co-opted trustee goes out of office; and
- “(c) section 94C (which limits the co-option and appointment of trustees) does not apply while this subsection applies.” 15

*Tertiary students associations*

**20 Requirements as to constitutions of Councils**

- (1) Section 171(2) of the principal Act is amended by repealing paragraphs (e) and (ea), and substituting the following paragraph: 20
- “(e) Up to 3 student representatives, appointed in accordance with **section 229A(2)** or **section 229B(2)**, as the case requires:” 25
- (2) Section 171 of the principal Act is amended by repealing subsections (8) and (8A).

**21 New sections 229A–229D substituted**

The principal Act is amended by repealing sections 229A to 229R and the Part heading above section 229A, and substituting the following sections: 30

**“229A Institutions where membership of students associations is compulsory**

- “(1) This section applies to every institution at which membership of a students association is compulsory. 35
- “(2) The student representative or representatives on the Council of the institution must be appointed,—

- “(a) if there is 1 students association at the institution and its constitution requires that the association appoint student representatives, in accordance with the constitution or rules of the association; or
- “(b) if there is 1 students association at the institution and its constitution does not require that the association appoint student representatives, following election (conducted in accordance with statutes made by the Council) by the students of the institution; or 5
- “(c) if there is more than 1 students association at the institution, in the manner agreed between the associations and the Council. 10
- “(3) The Council must, if asked to by any students association at the institution, collect the membership fees of the association, but only if the association provides the Council with— 15
- “(a) a copy of its current constitution; and
- “(b) an independently audited set of financial accounts of the association for the last financial year.
- “(4) The Council must pay all membership fees collected on behalf of a students association to the association in a timely manner, and without charge. 20
- “(5) A students association may, on the grounds of hardship, exempt any student from the obligation to pay the membership fee of the association; and a student so exempted may nonetheless be a member of the association. 25
- “(6) A students association may exempt any student from membership of the association on the grounds of conscientious objection; and, if exempted, the association must pay the student’s membership fee to a charity of its choice.
- “(7) Every students association must ensure that information about the rights in **subsections (5) and (6)** is available to students before enrolment, and must make rules for dealing in a fair, timely, and consistent way with applications for exemption under either subsection. 30
- “229B **Institutions where membership of students association is voluntary** 35
- “(1) This section applies to every institution at which membership of a students association is voluntary.

- “(2) The student representative or representatives on the Council of the institution must be appointed following election (conducted in accordance with statutes made by the Council) by the students of the institution.
- “(3) The Council must, if asked to by any students association at the institution, collect the membership fees of the association, but only if the association—
- “(a) is a body incorporated in New Zealand; and
  - “(b) provides the Council with a copy of its current constitution; and
  - “(c) provides the Council with an independently audited set of financial accounts of the association for the last financial year.
- “(4) The Council must pay all membership fees collected on behalf of a students association to the association in a timely manner, and without charge.
- “229C Changing between compulsory and voluntary membership of students associations**
- “(1) Students at an institution may request the Council to conduct a vote of all students enrolled at the institution on whether membership of any 1 or more specified associations at the institution is to be voluntary or compulsory.
- “(2) A request under **subsection (1)** is not effective unless it is accompanied by 1 of the following:
- “(a) a petition requesting a vote, signed by at least 10% (as calculated according to figures provided by the Ministry) of all students currently enrolled at the institution; or
  - “(b) a resolution requesting a vote, passed at a general meeting of a students association that has a membership of at least 50% of the students currently enrolled at the institution.
- “(3) A Council that receives a request for a vote must conduct (and pay for) the vote as soon as practicable after receiving the request, but may not hold more than 1 vote in any calendar year.
- “(4) The Council must, in consultation with the students associations at the institution, make statutes setting out the procedures for conducting a vote under this section.

**“229D Sections 229A–229C apply to private training establishments**

**Sections 229A to 229C** apply to private training establishments; and, for the purpose of those sections,—

- “(a) every reference to an institution includes a reference to a private training establishment; and 5  
 “(b) every reference to a Council includes a reference to the governing body of the private training establishment.”

**Part 2**

**Amendments, repeals, and transitional provisions** 10

*Consequential amendments and repeal*

**22 Consequential amendments to principal Act**

- (1) Section 9(2) of the principal Act is consequentially amended by omitting the words “section 11M of this Act (which relates to enrolment schemes)”, and substituting the words “this Act that relates to enrolment schemes, or in the enrolment scheme of any school”. 15
- (2) Section 11Q(2) of the principal Act is consequentially amended by omitting the expression “section 11G(6)”, and substituting the expression “**section 11J**”. 20
- (3) Section 18A of the principal Act is consequentially amended by repealing subsection (3), and substituting the following subsection:
- “(3) A Board must comply with a direction under subsection (1), and the direction overrides the provisions of any enrolment scheme the school may have in place.” 25
- (4) Section 156(8) of the principal Act is consequentially amended by omitting the expression “section 11P”, and substituting the expression “**section 11PB**”.
- (5) Section 236A(1)(a)(i) of the principal Act is amended by omitting the words “fees as provided in Part 16A for students who become members of associations of students”, and substituting the words “students association membership fees”. 30

**23 Repeal**

The Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998 (1998 No 90) is repealed. 35

*Transitional provisions*

- 24 Enrolment schemes applying to 2001 school year**
- (1) **Subsections (2) to (4)** apply to every state school that is not a Kura Kaupapa Maori, a designated character school, an integrated school, or a special school, and that has an enrolment scheme that is— 5
- (a) in force on the date that this section comes into force; and
- (b) intended to apply to the 2001 school year.
- (2) If a school's enrolment scheme identifies applicants who may enrol at the school by reference to whether or not they live within a defined geographic area, the school may, unless **subsection (3)** applies, apply its enrolment scheme to applications for the 2001 school year, subject to the following: 10
- (a) the defined geographic area is to be treated as the school's home zone; and 15
- (b) **section 11F** of the Education Act 1989, and any instructions relating to balloting procedures issued under **section 11G** of that Act, apply in place of any provisions in the enrolment scheme about how to select applicants who live outside the home zone; and 20
- (c) **sections 11A, 11B, 11D, 11G, 11J, 11N, and 11P** apply, with any necessary modifications, to the enrolment scheme; and
- (d) **sections 11A to 11P** apply after this Act comes into force to any amendment to the scheme. 25
- (3) A school may not apply an enrolment scheme to which **subsection (2)** applies if, within 28 days of this section coming into force, the Board of the school receives a notice from the Secretary that the scheme is not to apply. 30
- (4) If a school's enrolment scheme does not identify students who may enrol by reference to a defined geographical area, then the school may not apply its enrolment scheme to applications for the 2001 school year, and if it wants an enrolment scheme to apply to the 2001 school year, it must prepare a new enrolment scheme in accordance with **sections 11A to 11P** of the Education Act 1989. 35
- (5) Any state school that did not have an enrolment scheme in force for the 2000 school year, but will have one in place for

the 2001 school year, must prepare its enrolment scheme in accordance with **sections 11A to 11P** of the Education Act 1989.

- (6) Any Kura Kaupapa Maori, designated character school, integrated school, or special school that has an enrolment scheme in place when this section comes into force may apply that enrolment scheme to the 2001 school year, but any enrolment scheme to apply after that year must comply with **sections 11A to 11PB** of the Education Act 1989. 5

## **25 Transitional provisions relating to bulk funding agreements** 10

- (1) All agreements under section 91D of the principal Act that have been in force for 3 years or more at the close of 23 January 2001 are cancelled at the close of that date.
- (2) All agreements under section 91D of the principal Act that were entered into on or after 18 June 1998 and are in force at the close of 23 January 2001 are cancelled at the close of 23 January 2001. 15
- (3) The following provisions apply to agreements under section 91D of the principal Act that were entered into before 18 June 1998 and have been in force for less than 3 years as at the close of 23 January 2001: 20
- (a) the Board may cancel the agreement with effect at the close of 23 January 2001; but
- (b) if the Board does not cancel the agreement with effect at the close of 23 January 2001, the agreement is cancelled at the close of 10 July 2001 (if still in force immediately before the close of that date). 25
- (4) On the cancellation of an agreement by or under this section, the following provisions apply: 30
- (a) so far as the agreement remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further: 35
- (b) so far as the agreement has been performed at the time of the cancellation, no party is, merely because of the cancellation, to be divested of any money paid under the agreement:
- (c) section 91C of the principal Act (which relates to the payment of salaries of all regular teachers at payrolled schools) applies.

*Related amendments*

- 26 Amendments to Royal New Zealand Foundation for the Blind Act 1963** 5  
Section 4 of the Royal New Zealand Foundation for the Blind Act 1963 is amended by repealing subsection (2), and substituting the following subsection:
- “(2) The Minister may direct the Foundation to admit any student to, and to be maintained in, an institution, establishment, or accommodation provided by the Foundation for its purposes; and every such student must be so admitted and maintained.” 10
- 27 Amendment to Private Schools Conditional Integration Act 1975**  
Section 77 of the Private Schools Conditional Integration Act 1975 (which relates to the retirement of teachers) is repealed.
- 28 Amendment to Music Teachers Act 1981** 15  
Section 18(1) of the Music Teachers Act 1981 is amended by omitting the words “has attained the age of 20 years, and”.