Education Amendment Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation

The Education and Science Committee has examined the Education Amendment Bill and reports the bill with recommended amendments, but could not agree that the bill be passed as amended.

Introduction

The Education Amendment Bill (the bill) amends the Education Act 1989 (the Act). The bill repeals sections 11A to 11P of the Act, inserted in 1998, and substitutes new sections 11A to 11PB relating to school enrolment schemes. Flexibility for school governance is provided for in clauses 9 to 19. Clauses 7, 8 and 25 remove the option to receive bulk funding of teachers' salaries. Clauses 20 and 21 relate to tertiary students associations and repeal sections 229A to 229R of the Act and substitute proposed new sections 229A to 229D. Age restrictions are removed for compliance with the Human Rights Act 1993.

Enrolment schemes

Clause 4 of the bill repeals sections 11A to 11P of the Act, inserted in 1998, and substitutes proposed new sections 11A to 11PB relating to enrolment schemes. One hundred and fifty submissions commented on clause 4.

Price Code: K

Currently only 18 percent of schools have an enrolment scheme. The bill would require that schools with an enrolment scheme must identify a home zone for the school, and students living in the home zone would have a right to attend the school. A school's home zone must be an area for which the school is a "reasonably convenient" school for a student living in the area to attend.

A number of submitters supported the right of children to attend a local state school if they live in its home zone as they regard it as an automatic entitlement. They consider that competition between schools for enrolments undermines equitable delivery of public education as resources move with students so that resource rich schools advance as they continue to attract more students and more resources. They consider it will assist in reducing discrimination faced by families attempting to enrol students.

Those who opposed a defined home zone considered that it might cause discrimination, promote overcrowding and leave school choice to the property market. Opposition members commented that several real estate advertisements are already advertising homes as qualifying for a certain school's home zone. Some submitters expressed concern that the bill is too prescriptive and one solution may not be suitable for all schools.

We have differing views on enrolment schemes. Government members support the enrolment scheme provisions in the bill and support amendments to make the provisions more workable.

Balloting of students who live out of zone

The bill provides for selection of students who live outside a school's home zone. New section 11F sets out an order for priority of places to be offered. If there are more applicants in the second, third or fourth priority groups than there are places available, selection within the priority groups specified in the bill must be by ballot.

Submitters expressed both support for, and opposition to, a system of balloting places for out of zone students. Currently selection of out of zone students is at the school's discretion.

Submitters against balloting considered that it removed parental choice. They said that the ballot system would not result in a fair selection of applicants. If implemented, selection will depend on wealth to buy into an area or a lottery with no matching of pupils' needs to programmes. Others oppose the proposed system on the grounds that it is unfair on individual students and families who

work hard to achieve certain standards and currently have the choice of attending out of zone schools that suit them. Another argument opposing the ballot system is that the bill will remove the capacity of schools to exercise self-government and contradicts the aims of the Act as a whole.

Submitters in favour of balloting out of zone students claim that it is common practice for schools to use their enrolment schemes to select students who may enhance the school's reputation. Submitters argue that enrolment schemes have been used to exclude students with special needs and to enrol selectively academically able students or able sportspeople. Submitters claimed that schools use their enrolment schemes to discriminate against students who are perceived to be troublemakers and those of lower socio-economic status or from non-European backgrounds. The result of this can be that some schools are perceived as being very desirable and can handpick the students they accept, while excluding others who may live closer to those schools. At the same time, other schools nearby may be seen as the dumping ground for students who are not good enough to get into the "desirable" schools, and suffer from falling rolls, decreasing funding and an inevitable drop in staff and morale. Submitters in favour of the ballot system welcome the fairness and equity it provides. They consider it is a fairer and more transparent system of selecting students who live outside the home zone of a school.

New Zealand First believes that, because of the reality facing primary schools of enrolling children throughout the year as they turn five years of age, the requirement to ballot for out of zone places will be unworkable. Therefore New Zealand First believes that the requirements of balloting should not apply to schools which enrol children at five years of age. In the case of area schools, balloting requirements should apply to students from Year 7 and above.

Creating and administering an enrolment scheme

Several submissions commented on potential administrative problems in administering the new enrolment scheme and a ballot system. Several schools commented that it might be impossible for schools to estimate the likely number of enrolments in the following year. Some primary schools felt that it would be particularly difficult to estimate the number of Year 1 enrolments. Another question arose as to when Year 1 enrolments would be balloted and questioned how many Year 1 ballots would have to be held in any one

year. Where students enter several ballots, ballot results would need to be available at similar times.

A waiting list would also be established for out of zone students who missed out on entry through the ballot but might still gain a place if those successful in the ballot did not enrol at the school. Out of zone students with priority, for example siblings, would have priority over students on the general waiting list. There may be waiting lists for priority students if more apply than there are places available at the school.

A number of schools do not agree that the transitional requirement that enrolment schemes should apply to the 2001 school year. They consider the timeframe is insufficient given the administrative and consultation requirements on schools. They asked that the transition be extended to the 2002 school year.

Special programmes

Forty-three submissions argue for the definition of special programmes (proposed new section 11B) to be expanded to include other programmes that might be at risk if out of zone applicants could not be selected against entry criteria. Thirty submissions are in support of a specialist music programme at Westburn School and Burnside High School in Christchurch.

We consider that the definition of special programmes should be retained and expanded. It is currently limited to those programmes specified in the bill as special education, Māori language immersion classes and those that address educational disadvantage. However, we consider that there is a case to recognise some special programmes that take a significantly different approach to address particular student needs. We consider that there should be limitations on these including, that the programme would not be viable without a broader catchment, and there should be a mechanism for entry to the programme that is independent of the school. We recommend accordingly.

Definition of siblings

A number of submitters commented that although a lot of emphasis is placed on the word sibling, there is no definition of sibling in the bill. If this word is not defined, use of it could revert to a definition contained in a dictionary, which is narrower and may not take into account blended families or whanau. There needs to be a definition

of the word "sibling" in the bill and we recommend a new section 11F(3) that incorporates the following in the definition:

- children who share a common parent; or
- a parent of one of those children is married to the parent of the other; or
- a parent of one child was married to a parent of the other child at the time that the other child's parent died; or
- a parent of one child is living in a relationship in the nature of marriage with the parent of the other child; or
- children living in the same household and are treated by the adults in that household as if they were siblings.

We also recommend that the Secretary have discretion to deal with any other situation.

Siblings who live out of zone and want to enter a school at the same level

We queried how two or more siblings who live out of zone and want to enter a school at the same level apply for enrolment. If one is selected, does that mean that the others have immediate entry or would they have to wait until the next ballot? This could be the following year when they would qualify under the second priority and they may still have to win a place in a ballot.

We recommend an amendment to provide that, if more than one sibling from out of zone enters at the same level, all names will be put on the one application. If the application is selected then all applicants qualify for entry at the same level.

Other priorities

Submitters argued that there should be priority for a number of other groups of students before the fourth category of all other applicants is considered, as currently contained in new section 11F(1). It was argued that the category should include students who win scholarships, brothers and sisters of former students, or students of families with a significant association with the school.

Some submitters believed that consideration must be given to the family of former students on the grounds that parental association with a school fosters family links and has a positive effect on student learning. These families often donate considerable time and money to a school.

However, other submitters considered that the above argument is balanced against whether the state school system should give statutory recognition to hereditary rights.

Several submitters considered that children of staff who live out of zone should also be included in the order of priority to be offered places at a school before all other applicants. However, other submitters did not agree that teachers' children should have priority, as this would give priority to one group of workers on the basis of where they work while not allowing access to the children of other groups of workers either in the school or in the same area.

New Zealand First believes that children of teachers should be a priority enrolment reflecting the time commitment that teachers make to the activities of a school. Section 11F should be amended so that the fourth priority for applicants who live outside a school's home zone should be "students who have a parent who is in an employment contract of at least a year's duration with the Board of that school for the delivery of teaching services to the students of that school". This would have the subsequent effect of making all other applicants a fifth priority.

Effect of home zone

We recommend an amendment to strengthen new section 11D to provide that, if a child moves into a home zone for a school at any time during the year, the child may enrol at that school.

Administration and operation of enrolment schemes

We recommend an amendment to new section 11H(1) to clarify that a school needs permission from the Secretary before it can develop an enrolment scheme.

New section 11H(4) currently provides that a board must adopt a scheme approved by the Secretary at the board's next meeting. We consider this is not practical, as the next meeting may be scheduled for the day after the Secretary's decision. Therefore, we recommend that schools be required to adopt the scheme as soon as practicable. This will provide greater flexibility for school boards.

End of enrolment scheme

Currently a board can decide to abandon its enrolment scheme. We are recommending an amendment to new section 11L to provide

that, if a school wishes to abandon its enrolment scheme, it must seek the approval of the Secretary.

Amendment of enrolment scheme

The bill proposes contiguous home zones for schools. If a school amends its enrolment scheme, this may result in home zones in an area becoming non-contiguous. We recommend that a new power be given to the Secretary to require boards of nearby schools to prepare proposed amendments to their enrolment schemes in this situation. The consultation provisions would apply as for any amendment to a scheme.

Pre-enrolment and operation of enrolment schemes

The bill as currently written provides that only out of zone applicants subject to the ballot are provided with information about their right to seek intervention by the Secretary. We consider it is important that boards be required to explain in writing the effect of pre-enrolment to all out of zone applicants in the information provided. We recommend an amendment to new section 11N(3) accordingly.

Enrolment may be annulled if based on false information

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 application for enrolment was based on a false claim of eligibility. It currently applies only to students who claimed that, at the time of application, they were living in the home zone or were entitled to a particular priority in the ballot for places. This section should apply to the date of enrolment. Therefore, we recommend an amendment to section 11O(1)(a) so that a student's enrolment may be annulled if false information was given in order to secure enrolment.

We considered whether there should be a limitation on the time period if it were discovered that the student's application was falsely completed. We recommend an amendment that the board may annul an enrolment only at the end of a school year. We also recommend an amendment to provide that the board may annul the application of, or refuse an application for enrolment by, a person who claims or has claimed priority in a ballot as a sibling of a student whose enrolment the board has resolved to annul.

Enrolment schemes of certain state schools

We recommend amendments to clarify that schools with exemptions from having a home zone or ballots under new section 11PB should not be subject to the notice requirements under new section 11J relating to matters from which they are exempt. Such schools should, however, be subject to other notice requirements such as a general description of the enrolment scheme and significant processes and dates that may apply. We also recommend an amendment to ensure that Kura Kaupapa Māori, special character schools, integrated schools and special schools, that are exempt from particular requirements of the bill, accord priority to applicants for whom the school is a reasonably convenient school.

New Zealand First believes that the same rules which are to be applied to state schools for selection of applicants when there are more applicants than places available should also apply to integrated schools and that subsequent changes should be made to the bill to reflect such consistency.

Government members argue that it was not the intention to apply zoning and balloting to integrated schools which, according to their integration agreement, select students on the basis of their special character. Government members consider that it would not be fair to recommend an amendment to apply the balloting of students to these schools when they did not have an opportunity to submit on this particular issue.

Clause 24 transitional provisions enrolment schemes applying to 2001 school year

We recommend amendments to provide that the transitional provisions include reference to new sections 11L, 11M and 11O, which were not included in the bill as introduced.

Clause 24 should be further amended to provide that the changes effected to a school's enrolment scheme by clause 24 should be notified by the school to the school community.

Removal of bulk funding for payment of teachers' salaries

We received 378 full submissions and 6722 form submissions on the removal of bulk funding of teachers' salaries. Twenty-five of the full submissions were in support of the removal of bulk funding and 353 were against it. Of the form submissions, 419 were in support and

6303 opposed the removal of bulk funding. The issues raised in submissions against the removal included:

- loss of flexibility
- loss of additional funding
- removal of choice to opt out of centrally resourced system
- breach of contract relating to the cancellation of bulk funding agreements.

Bulk funded schools argue that it gives them two major benefits: extra funds and a greater degree of flexibility than centrally resourced schools. These include the ability to employ additional teaching or support staff and to adopt additional organisational and management structures that best fit the needs of their schools. Additional funds mean schools can purchase additional resources for the schools and enhance teachers' salaries and professional development. Schools can expand the curriculum through expansion in sports programmes, te reo, music, improve teacher to student ratios or ease teacher workload. The employment of more support staff has been used to release teachers from the classroom. Schools have used bulk funding for information technology and systems initiatives and capital improvements. Bulk funding has also provided certainty that staffing-related funding will not decrease in a school year regardless of roll decreases.

One argument that was put forward in support of the removal of bulk funding was that bulk funding would encourage boards of trustees to hire "cheaper", less well-qualified and less-experienced teachers. Almost every bulk funded school that appeared before us was asked whether it had or whether there was any incentive to employ younger, inexperienced or "cheaper" teachers. Virtually all said that the boards of trustees and parents wanted the best teacher for the position, and they were accountable to the board for the decisions made. Some hard-to-staff schools used their bulk funding premium to employ additional staff. Some submitters said that new teachers often ended up being no cheaper than experienced staff because of the requirement for teacher release.

Submitters in favour of the removal of bulk funding noted that savings from the removal of the scheme will be distributed to all schools through their operational funding on a decile-weighted basis. Submitters in favour argued that bulk funding of teachers' salaries has proved to be a divisive and unfair method of allocating government resources and obscures the link between staffing

required to deliver the needs of schools and the Crown's responsibility to fund the actual costs of that staffing. They argued that all schools should have access to additional resources. The national allocation of the money reserved for bulk funded schools is welcomed as foreshadowing a return to a fair method of allocating additional resources.

Given the absence of any detailed information on the formula upon which the Government plans to resource schools from 2001 onwards, Opposition members believe it would be irresponsible for a select committee to report back to the House favourably on the intention of the bill to repeal section 91D of the Education Act 1989. At the very least, directly resourced schools should be able to work through their current contracts. This would enable them the necessary time to reconstruct their current staffing structure.

Staffing entitlement

Bulk funding allows schools to use their staffing entitlement as they choose. If the staffing entitlement for a centrally resourced school is 11.5, it must use the entitlement as generated during the year on a "use it or lose it"principle. Bulk funded schools can use their staffing entitlement to employ more staff when most required during the year. Bulk funded primary schools may choose to employ more teachers towards the end of the year when rolls are largest. Secondary schools may choose to employ more teachers for a specific period when rolls are higher. Boards retain the funding regardless of whether they have used it or not in the same year.

The Minister of Education has signalled an intention to enable schools to bank their staffing entitlement within the school year, which would provide some flexibility under central resourcing.

Management structures

The ability to adopt a flat management structure is available to all schools regardless of whether they are bulk funded or centrally resourced. It has been available to all schools with the introduction of the units system in the mid- to late-1990s and the subsequent removal of the 'M' (management) and 'R' (recruitment and retention) units distinction. Some submitters were unaware this distinction had already been removed.

Bulk funded schools have discretion to allocate units to create their own management structures subject to the guidelines of respective

collective employment contracts. Funding for units not used for positions of responsibility may be used for other purposes at the board's discretion. Centrally resourced schools can also allocate units subject to the guidelines of respective collective employment contracts. However, the Crown retains unutilised units of centrally resourced schools.

Use of teacher resource

Bulk funded schools are currently able to choose how they use their teacher resource allocation. Some special schools have employed support staff, nurses or social workers instead of entitlement staff.

Employment of teaching staff above entitlement

Bulk funded schools may employ permanent or temporary staff above their entitlement. Centrally resourced schools cannot employ permanently above their entitlement. Currently both bulk funded schools and centrally resourced schools employ teaching staff above entitlement. The Minister has signalled an intention to further enhance the flexibility of schools to employ teaching staff above entitlement.

Opposition members have a serious concern that a board of a bulk funded school, within resources, must meet any liability resulting from the employment of additional permanent staff. They consider that a board should not be liable when, for instance, the contract has been broken because of a legislative change. They agree that, if a school acts irresponsibly, it should be liable. They do not agree with the suggestion that schools may be provided with an advance from their operational funding as this money is appropriated for educational needs, not for teachers' salaries or redundancies. They argue that schools do not know what the funding formula will be or the rate of attrition at any school.

Government members note there has not been any evidence to say that this will be an issue. The Government will not allow a school not to meet its contractual obligations. We recommend an amendment to provide for where a school is in financial difficulty and may have ongoing responsibility to staff. The amendment is intended to enable a school to apply to the Minister of Education for funding, albeit there was a difference in view as to the date from which it should take effect. The amendment will however provide assistance where a school meets the criteria outlined in new clause 25A.

Timetable

Opposition members query how the committee can report back to the House by the due date when neither the committee nor schools will know what the staffing entitlements will be for the 2001 year nor the formula for calculation until late August. Many submissions and Opposition members consider the timetable for considering the bill and for bulk funded schools to manage the transition from bulk funding back to central resourcing is too short. Government members consider the bill provides adequate time for schools to manage the transition.

School governance

Student representatives on boards of trustees

Clauses 10, 11 and 12 require all boards with students in form 3 or above to have a student trustee. Several submissions are opposed to boards being required to have student trustees for reasons of lack of competence and conflict of interest. Other submissions commented that the date of election for the student trustee should be in February. Some submitters argue that there should be more than one student trustee. Some schools provide for the head boy/girl to be a trustee on the board, as well as having an elected student representative.

We agree that boards should be given the discretion to allow for a second student trustee. Removing the age restriction to co-option of board members so those students can be co-opted onto the board will allow for this and we recommend an amendment to provide for it.

Staggered board elections and continuity of board membership

Clause 13 provides for boards to elect to have half of their parent representatives decided at mid-term elections. We consider there should be provision for a board that has adopted a staggered election to revert to election of trustees every three years. This process will mirror the process for deciding to have staggered elections.

Currently the bill provides for the board to determine which trustees will continue if a board decides to have staggered elections and which will be succeeded after 18 months, but it does not provide for how this resolution may be reached. We recommend an amendment to new section 101A(4) to determine how the board should resolve which members should continue. We consider that this resolution

should be passed by consensus, or otherwise, a ballot of parent representatives should make the determination.

A further issue arose that boards may decide to begin staggered elections after the bill is enacted and may want to hold the next triennial election (due in March 2001) on the basis that half the elected board will stand down after 18 months. We consider that a board should be able to hold a triennial election on the basis that candidates stand for an 18-month term or a three-year term and recommend accordingly.

Staggered elections following appointment of commissioner

The electoral arrangements for a board that decided to have staggered board elections but subsequently had a commissioner appointed also became an issue. Amendments are recommended to provide for the first election of a board after a commissioner has been appointed and the board was operating a staggered election cycle.

Approval of alternative constitutions in certain cases

Clause 15 provides the Minister of Education with the power, in exceptional circumstances, to approve an alternative constitution to that currently defined in the Act. There are certain triggers that allow the Minister to consider an alternative constitution. One submission commented that, if an alternative constitution of an integrated school lacked proprietor representation, the proprietor could not protect the special character of the school. The submitter asked that the Minister have the agreement of the proprietor to any alternative constitution. We consider that requiring the agreement of the proprietor to any change to the constitution is too high a barrier to the Minister's need to act in some extreme circumstances. However, we do consider that the Minister should consult with the proprietor about an alternative constitution prior to making a decision about an alternative constitution. We recommend an amendment to provide for this.

Boards may combine

Clause 17 makes it easier for boards to combine by removing the restriction that prevented one board from administering more than four schools. Clause 16 ensures all schools are more adequately represented on the combined board by removing the previous rule that only one of the schools' principals would be a trustee. Clause 18

removes an uncertainty from the Act by clarifying that a combined board can appoint one person to be the principal of more than one of its schools.

One submitter opposed allowing combined boards to appoint one principal to be the principal of two or more schools as it might limit career opportunities for some teachers. We consider that in practice there are likely to be very few combined boards.

One submitter argued that the words "continue to" should be removed from section 110(1)(ba) because it implied that parents always formed a majority on existing boards, which is not always the case for integrated schools. We agree that these words should be deleted, as the deletion does not interfere with the intent to ensure a parent majority on future combined boards.

Tertiary students associations

Student representatives on councils

The current wording of clause 20, which provides that up to three student representatives could be appointed to a council of an institution could, in the extreme, be interpreted that no student representative could be appointed to the council. This is not intended. Accordingly, we recommend an amendment to clarify that there must be at least one, but not more than three student representatives on council.

Clause 21 repeals sections 229A to 229R dealing with membership of associations of tertiary students and substitutes four new sections, 229A to 229D.

There was considerable discussion about whether these clauses should include a definition of the term "students association", and if so, what it should be. The definition of the term "association of students" in the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998 permitted more than one association at an institution. This was intended to apply only to institutions at which there were only voluntary associations. However, following that Act, more than one association now exists at single institutions, and at least one institution, Massey University, has both compulsory and voluntary associations. It has five students associations in different geographical locations. The council deals with a single federation of associations to overcome practical difficulties. As the intent of this bill is to remove the bias in favour of voluntary membership, we recommend that the compulsory association which is recognised by the institution's council at the time the bill is

enacted continues to be the association for the purpose of student representation on council.

Collection of fees

A number of submissions from tertiary institutions and students associations commented on the collection of students association fees. Collecting fees for all students associations could involve administrative and compliance costs for a council for which the council cannot directly charge. To avoid the possibility of councils recovering compliance costs by increased fees, and to support the general policy intent, councils should still be required to collect fees for compulsory associations but have discretion over the collection of fees where membership of a students association is not compulsory. There was considerable discussion over whether councils should be allowed to charge for actual and reasonable costs incurred in the collection of the students association fees. We consider that councils should be allowed to charge for actual and reasonable costs when collecting fees for compulsory students associations and recommend accordingly.

Because of this recognition and the obligation of the council to collect fees if the statutory criteria are satisfied, no purpose would be achieved by defining "students association". We recommend that the definition of "association of students" in section 159 of the Act be repealed.

Changing between compulsory and voluntary membership of students associations

A number of submissions are concerned that proposed section 229C(2)(b) could mean that only a few students, at a general meeting, could require a vote to be taken to change the status of the students association. This would be inconsistent with the other vote threshold of ten percent of all enrolled students. While the intention was to have a more flexible requirement for the holding of a vote, it was not intended that there be a lesser threshold. Therefore, we recommend the deletion of the provisions allowing a vote to be called following a general meeting. A petition with ten percent of signatures of students will be required in all cases.

It was suggested in one submission that the frequency and cost of administering a vote on an annual basis could mean that the cost could be passed on in increased fees. A longer minimum period for

the ability to change between compulsory and voluntary membership was requested. We agree that a longer period would reduce compliance costs and recommend that a minimum period of two years would be more reasonable with an exception for 2000.

We also recommend that the result of a vote would take effect at the beginning of the next calendar year.

Human rights

Clauses 26 to 28 amend a number of Acts including the Royal New Zealand Foundation for the Blind Act 1963 to ensure compliance with the Human Rights Act 1993 by removing age references.

One submitter, a former Chairperson of the Foundation for the Blind's Board of Trustees, argued that clause 26 should be deleted for a number of reasons. These include that the 1963 Act is out of step with today's expectations and the Foundation now runs programmes and services and does not support institutions. The Homai Vision Education Centre will become a state school on 1 July 2000. Enrolment at the school will be determined under the Education Act 1989. We recommend that clause 26 be replaced by a provision that repeals section 4(2) of the Royal New Zealand Foundation for the Blind Act 1963. The Foundation confirmed its agreement to delete the subsection from the Royal New Zealand Foundation for the Blind Act 1963.

The submitter also asked for a full repeal of the Royal New Zealand Foundation for the Blind Act 1963. This would give all parties an incentive to agree on the final details of a new governing instrument for the Foundation. This is more in keeping with progressive views of disability and public policy. While we consider there is merit in reviewing the legislation governing the Foundation, this is clearly outside the scope of the bill. There will be a need for the Foundation to agree on and set up an alternative form of incorporation before its Act can be repealed, as transfer arrangements would have to be put into the legislation.

Appendix

Conduct of the examination

The Education Amendment Bill was referred to the Education and Science Committee on Tuesday, 4 April 2000. The closing date for submissions was Monday, 8 May 2000, although we extended the closing date for written submissions to Monday, 22 May. We received and considered 507 submissions from schools, boards of trustees, principals, teachers, parents, teacher unions, the Royal Foundation for the Blind, the Human Rights Commission, other interested groups and individuals. In addition to these substantive submissions, 6722 form submissions were received on the bill. Of those, 419 were in support and 6303 opposed the bill. Most of the form submissions related to one issue only, the removal of bulk funding. We heard 124 submissions orally. Hearing evidence took 38 hours and 24 minutes and consideration took 15 hours and 43 minutes.

We received advice from the Ministry of Education.

Committee membership

Donna Awatere Huata
Hon Brian Donnelly
Helen Duncan
Liz Gordon
Nanaia Mahuta
Mark Peck
Hon Dr Nick Smith
Hon Maurice Williamson

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act, — Text struck out unanimously

New (unanimous)

Subject to this Act, — Text inserted unanimously

Struck out (majority)

Subject to this Act, — Text struck out by a majority

New (majority)

Subject to this Act, — Text inserted by a majority

(Subject to this Act,) — Words struck out unanimously

Subject to this Act, — Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

Hon Trevor Mallard

Education Amendment Bill

Government Bill

Contents

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[1] is called "the principal Act".

[1] 1989 No 80

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**):

(b) to abolish bulk funding agreements for the payment of teachers' salaries (see **sections 7, 8, and 25**):

(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**).

Part 1
Substantive amendments to principal Act

Enrolment schemes

4 New sections 11A to 11PB substituted

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

"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

"(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.

"(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.

"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—

"(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:

"(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*)—

Struck out (unanimous)

"(a) special education; or
"(b) Maori language immersion classes; or
"(c) any other type of specialised education to overcome educational disadvantage.

New (unanimous)

"(a) that provides—
  "(i) special education; or
  "(ii) Maori language immersion classes; or
  "(iii) any other type of specialised education to overcome educational disadvantage; or
"(b) that is a programme—
  "(i) that takes a significantly different approach in order to address particular student needs; and
  "(ii) that would not be viable unless it could draw from a catchment area beyond the school's home zone; and
  "(iii) to which entry is determined by an organisation or process that is independent of the school.

"11C **Content of enrolment scheme**

"(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.

Struck out (unanimous)

"(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.

"(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

Struck out (unanimous)

"(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.

New (unanimous)

"(1) Subject to the provisions of this Act, a person who lives in the home zone of a school that has an enrolment scheme is entitled at any time to enrol at that school.

"(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—

"(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.

Struck out (unanimous)

"(3) **Subsection (1)** does not apply to a student who has been expelled from the school.

"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—

"(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

"(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**

"(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:

"(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:

"(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**.

New (unanimous)

"(3) For the purposes of this section, child A is the sibling of child B if—

"(a) both children share a common parent; or

"(b) a parent of child A is married to a parent of child B; or

"(c) a parent of child A was married to a parent of child B at the time when child B's parent died; or

New (unanimous)

"(d) a parent of child A is living in a relationship in the nature of marriage with a parent of child B; or

"(e) both children live in the same household, and are treated by the adults of that household as if they were siblings; or

"(f) the Secretary, by written notice to the school, advises that child A is to be treated as the sibling of child B.

"(4) If 2 or more siblings apply for places at a school at the same level, the applications of those siblings must be dealt with as a single application for the purpose of the ballot.

"(5) Every application for enrolment at a school with an enrolment scheme must be processed by the school in accordance with the enrolment scheme, and may not be declined on technical grounds or on any other ground that would be inconsistent with the purpose and principles set out in **section 11A**.

"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:

"(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.

"(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

"(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

"(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).

"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.

New (unanimous)

"(1A) A Board may not begin developing an enrolment scheme unless it has received a written notice of the type referred to in **subsection (1)**.

"(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

"(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)**,—

"(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:

"(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:

"(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*) as soon as practicable.

"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

"(b) the definition of the school's home zone in the enrolment scheme ensures that students can attend a reasonably convenient school; and

"(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

"(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.

"(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.

"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—

"(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—

"(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:

"(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:

"(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.

"(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.

"(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.

"11L **End of enrolment scheme**

New (unanimous)

"(1AA) The Board of a school may by resolution, in accordance with this section, abandon an enrolment scheme, in which case the scheme ends on the date specified in the resolution.

"(1AB) A Board may not resolve to abandon an enrolment scheme unless it has received written notice from the Secretary authorising it to do so.

"(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.

Struck out (unanimous)

"(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.

"(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.

Struck out (unanimous)

"(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.

"(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.

New (unanimous)

"(2A) If the Board of a state school (school A) adopts or amends an enrolment scheme, the Secretary may require the Board of any nearby state school that also has an enrolment scheme to develop a proposed amendment to its enrolment scheme, in order to take into account the effect of school A's scheme.

"(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).

"11N **Pre-enrolment (*and operation of*) in schools with 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.

"(2) In the case of applications by applicants who (*live outside the home zone*) will be subject to a ballot, the Board must notify each applicant, in writing, 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

"(c) the rights and responsibilities of applicants after the ballot.

Struck out (unanimous)

"(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.

New (unanimous)

"(3) The Board must give written notice to every applicant whose application is declined of—

"(a) the reason why the application has been declined; and

"(b) the Secretary's powers under **section 11P(2)**.

"(4) The Board must give written notice to every applicant whose name was included in a ballot of the outcome of the ballot as it relates to the applicant.

"11O **Enrolment may be annulled if based on false information**

Struck out (unanimous)

"(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—

"(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).

"(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.

"(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.

New (unanimous)

"(1) The Board of a state school that has an enrolment scheme may, subject to **subsection (4)**, annul the enrolment of a student if the Board believes on reasonable grounds that the student's enrolment or pre-enrolment form falsely claimed, for the purpose of securing enrolment, that—

"(a) the student was living in the school's home zone when the student enrolled at the school; or

"(b) the student was entitled to a particular priority in the ballot for places (for example, by falsely claiming the applicant to be the sibling (as defined in **section 11F(3)**) of an existing student).

"(2) The address given in a student's pre-enrolment form as the address where the student lives will be taken to be the address at which the student is living on enrolment, unless the Board is notified otherwise.

"(3) The Board may annul the enrolment of any student, or may refuse an application for enrolment by any person, who claimed or claims priority in a ballot as a sibling of a student whose enrolment the Board has, or has resolved to, annul under **subsection (1)**.

"(4) If the Board annuls an enrolment under **subsection (1)** or **subsection (3)**, the annulment takes effect at the end of the school year.

"(5) A Board that annuls the enrolment of a student must immediately advise the Secretary of the name of the student and the date of annulment.

"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.**

"(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

"(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.

"(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.

"(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.

"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,—

"(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.

"(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.

"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:

"(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

"(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, but must accord priority to applicants for whom the school is a reasonably convenient school; and

New (unanimous)

"(ba) **section 11J** is modified as follows:

"(i) **subsection (1)** applies as if **paragraph (a)** read "a general description of the enrolment scheme"; and

"(ii) **subsection (2)** applies as if **paragraphs (a) to (c)** were replaced with the words "the likely number of places available and the significant pre-enrolment dates and procedures that will apply"; and

"(iii) **paragraphs (b) and (d) of subsection (3)** do not apply; and

"(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

"(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.

"(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

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—

"(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

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.

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".

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).

(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".

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:

"(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.

"(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:

"(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:

"101A **Staggered elections for parent representatives**

"(1) This section and **section 101B** apply to the election of trustees who are parent representatives.

Struck out (unanimous)

"(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.

New (unanimous)

"(2) A Board may decide, in accordance with this section, to adopt a staggered election cycle in which half the number of its parent representatives are elected at an election held at a mid-term election, and the remainder are elected at an election held in an election year.

"(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.

Struck out (unanimous)

"(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

"(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.

"(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

"(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**.

New (unanimous)

"(4) A Board that has decided to adopt a staggered election cycle must—

"(a) hold a mid-term election in the month that is 18 months after the month in which the election in the preceding election year was held; and

"(b) conduct every mid-term election in accordance with the provisions of this Part and any regulations under this Act relating to the election of trustees (modified as necessary to give effect to this section and **section 101B**).

"(5) If the Board's decision under **subsection (2)** is made at a time when the next election due to be held is in an election year, the Board must ensure that at that election the nomination form and voting papers indicate which nominees are standing for 18 months and which are standing for 3 years.

"(6) If the Board's decision under **subsection (2)** is made within 18 months after an election in an election year, the Board must decide which of its parent representatives will stand down at the mid-term election; and that decision must be by consensus of the parent representatives or, if consensus cannot be reached, by ballot of all parent representatives.

"(7) Every parent representative who, in accordance with **subsection (6)**, is to stand down at a mid-term election, goes out of office at the close of the day before the day on which the successor takes office following the election.

"(8) A Board that has a staggered election cycle may decide to revert to holding elections only in election years. In that case, at the next election held in an election year, all the parent representatives go out of office in accordance with section 102(8).

"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.

"(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—

"(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."

14 Term of office

New (unanimous)

(1AA) Section 102(6) of the principal Act is amended by omitting the words "the third Tuesday in May in an election year, the person or body by whom or which any trustee then holding office was appointed", and substituting the words "an appointed trustee's term of office expires, the person or body by whom or which the trustee was appointed".

(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."

(2) Section 102 of the principal Act is amended—

New (unanimous)

(aa) by omitting from subsection (7) the words "(in the year following the year of election)":

(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".

New (unanimous)

14A Certain persons ineligible to be trustees

Section 103 of the principal Act is amended by repealing subsections (1)(a) and (2).

15 New section 105A inserted

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

"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—

"(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—

"(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

"(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.

New (unanimous)

"(1A) In the case of an integrated school, the Minister must consult with the proprietor of the school when conducting the consultation required under **subsection (1)(b)**.

"(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)—

"(a) set out a procedure for any election, appointment, or co-option of trustees:

"(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.

"(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.

"(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."

New (unanimous)

15A New section 109A inserted

The principal Act is amended by inserting, after section 109, the following section:

"109A **Provisions relating to Board with staggered election cycle where commissioner appointed**

"(1) This section applies if a commissioner has been appointed in place of a Board that has, or had decided to have, a staggered election cycle, and the commissioner has appointed a date under section 109(5) for the holding of elections of trustees for a new Board.

"(2) Despite anything in section 102, the nomination forms and voting forms for the election must show which nominees are standing only until the next election, and which are standing until the election after the next election.

"(3) Despite anything in section 102, trustees who are elected only until the next election go out of office at the close of the day

New (unanimous)

before the day on which the successor takes office following the election.

"(4) If the date that the commissioner has appointed under section 109(5) is a date that is within 6 months before the date on which an election is due to be held, the Board does not have to hold an election on that date and this section applies as if that election were not due to be held."

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".

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).

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."

19 Minister may merge schools

Section 156A of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

"(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.

"(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

"(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."

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:

Struck out (unanimous)

"(e) Up to 3 student representatives, appointed in accordance with **section 229A(2)** or **section 229B(2)**, as the case requires:".

New (unanimous)

"(e) at least 1, but not more than 3, persons who must be appointed,—

"(i) in the case of an institution at which membership of a students association is compulsory, in accordance with the constitution or rules of the association; or

"(ii) in any other case, following an election (conducted in accordance with statutes made by the Council) by the students at the institution:".

(2) Section 171 of the principal Act is amended by repealing subsections (8) and (8A).

21 New sections 229A to 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:

"229A ***(Institutions where membership of students associations is compulsory)*** **Institutions at which membership of students association is compulsory**

"(1) This section applies to every institution at which membership of a students association is compulsory.

Struck out (majority)

"(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

"(c) if there is more than 1 students association at the institution, in the manner agreed between the associations and the Council.

"(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—

"(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.

New (majority)

"(2) The students association that, at the commencement of this section, is recognised by the Council of the institution as

New (majority)

being the institution's students association for the purpose of representation on the Council, is the students association at that institution for the purposes of **section 171(2)(e)**, this section, and **sections 229B and 229C**.

"(3) The Council must, if asked to by the institution's student association, collect the membership fees of the association, but only if the association provides the Council with—

"(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 the students association to the association in a timely manner, but may charge the association for the actual and reasonable costs incurred by the Council in collecting the fees.

"(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.

"(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.

Struck out (majority)

"229B **Institutions where membership of students association is voluntary**

"(1) This section applies to every institution at which membership of a students association is voluntary.

Struck out (majority)

"(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.

Struck out (majority)

"(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.

New (majority)

"229B **Initiating change relating to compulsory membership of students association**

"(1) The students of an institution at which membership of a students association is compulsory may request the Council to conduct a vote of all students at the institution on whether membership of the students association should continue to be compulsory.

"(2) The students of an institution at which membership of a students association is not compulsory may request the Council to conduct a vote of all students at the institution on whether membership of a specified students association at the institution should become compulsory.

"(3) A request under **subsection (1)** or **subsection (2)** is not effective unless it is accompanied by a petition requesting the vote, signed by at least 10% (as calculated according to figures provided by the Ministry) of all students currently enrolled at the institution.

"229C **Council to conduct vote on issue of compulsory membership of students association**

"(1) A Council that receives an effective request under **section 229B** must conduct (and pay for) a vote of all students at the institutions as soon as practicable after receiving the request, but may not hold a vote more than once every 2 years.

"(2) The Council must make statutes setting out the procedures for conducting a vote under this section in consultation with,—

"(a) in the case of an institution at which membership of a students association is compulsory, the institution's students association; or

"(b) in the case of an institution at which membership of a students association is not compulsory, with any

New (majority)

associations that represent students and that the Council considers should be consulted.

"(3) The result of a vote of students held under this section determines whether, in and after the following year, membership of the association referred to in the vote is compulsory or not.

"(4) Despite **subsection (1)**, a vote may be held in 2000 under this section.

"229D **Sections 229A to 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

"(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

Consequential amendments and repeal

22 Consequential amendments to principal Act

New (majority)

(1AA) Section 2(1) of the principal Act is consequentially amended by omitting from the definition of **enrolment scheme** the words "section 11G", and substituting the words "**section 11H**", and by omitting the words "section 11K", and substituting the words "**section 11M**".

(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".

(2) Section 11Q(2) of the principal Act is consequentially amended by omitting the expression "section 11G(6)", and substituting the expression "**section 11J**".

(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."

(4) Section 156(8) of the principal Act is consequentially amended by omitting the expression "section 11P", and substituting the expression "**section 11PB**".

New (majority)

(4A) Section 159(1) of the principal Act is amended by repealing the definition of **association of students**.

(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".

23 Repeal

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

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—

(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:

(a) the defined geographic area is to be treated as the school's home zone; and

(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

(c) **sections 11A, 11B, 11D, 11G, 11J, 11L, 11M, 11N, 11O, 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.

(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.

New (majority)

(3A) A school to which **subsection (2)** applies must, in 2001, advise the Secretary of any special programmes offered by the school and, in giving notice as required by **section 11J**, also give notice of—

(a) the fact that students living in the home zone are entitled to enrol at the school; and

(b) the order of priority for balloting, as provided in **section 11F**; and

(c) any special programmes offered by the school.

(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.

(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.

25 Transitional provisions relating to bulk funding agreements

(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.

(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:

(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).

(4) On the cancellation of an agreement by or under this section, the following provisions apply:

(a) so far as the agreement remains unperformed at the time of the cancellation, no party is obliged or entitled to perform it further:

(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.

New (unanimous)

25A Crown to provide financial assistance to schools unable to meet liability under employment contract

(1) A Board of Trustees that is affected by **section 25** and is, or will be likely to be, financially disadvantaged by its liabilities under an employment contract may request the Minister to provide financial assistance from the Crown to enable the Board to meet those liabilities.

(2) The Crown must provide an amount of financial assistance determined by the Minister if the Minister is satisfied that—

(a) the employment contract relates to a permanent or fixed-term appointment to a teaching position at the school made before 18 June 1998; and

(b) the Board's financial disadvantage is solely and directly attributable to the cancellation by or under **section 25** of an agreement to which that section applies.

(3) The Governor-General may, by Order in Council, specify the criteria and methods of assessment that must be applied by the Minister in dealing with a request for financial assistance under **subsection (1)**.

(4) A Board is financially disadvantaged if a is greater than b:

where—

a is the sum of the grant under section 79 of the principal Act plus the sum of the value of the salaries of teachers employed by the Board as a consequence of an agreement cancelled by or under **section 25**; and

b is the sum of the grant under section 79 of the principal Act plus the sum of the value of the salaries of teachers paid by the Secretary under section 91C of that Act.

(5) The sums under **subsection (4)** are those applicable as at the date of the cancellation of the agreement concerned.

Related amendments

Struck out (unanimous)

26 Amendments to Royal New Zealand Foundation for the Blind Act 1963

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."

New (unanimous)

26 Amendment to Royal New Zealand Foundation for the Blind Act 1963

Section 4 of the Royal New Zealand Foundation for the Blind Act 1963 is amended by repealing subsection (2) (which relates to the admission of blind persons of certain ages to an institution, establishment, or accommodation provided by the Foundation).

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

Section 18(1) of the Music Teachers Act 1981 is amended by omitting the words "has attained the age of 20 years, and".

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