

Education (School Donations) Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education (School Donations) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to support the implementation of a school donations scheme whereby certain schools would be paid a nominal amount per student if the school agreed to comply with certain conditions. The bill is intended to reduce the expectation that parents should pay voluntary contributions to schools for their child's education.

The current situation

Section 79 of the Education Act 1989 authorises the Minister of Education to pay grants and supplementary grants to school boards of trustees. Grants are used for schools' operational funding. Supplementary grants are paid to boards with the condition that they are used for specific purposes.

A new category of grants

The bill as introduced would insert new section 79A into the Act to create another category of grants called discretionary grants. Discretionary grants would be paid to school boards of trustees that have opted to not solicit voluntary payments from parents (commonly referred to as school donations). There may also be other conditions applied, as determined by the Minister.

The difference between supplementary grants and discretionary grants would be that the former have conditions about what the funding can be used for, whereas the latter

would have conditions about eligibility for the funding (and not the purpose it can be used for).

Recouping funds if there is a breach of conditions

The bill would also establish, under new section 79B, a mechanism by which discretionary grant money could be recovered if boards did not comply with the conditions under which the grant was made.

When determining future grants (whether a grant, supplementary grant, or discretionary grant), the Minister would need to have regard to any failure to comply with discretionary grant conditions in previous years. When doing so, the Minister would be required to consult with the board before reducing future grants by all or some of the discretionary grant that had been breached.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Publishing extra conditions in the *Gazette*

Clause 4, new section 79A(5)(b), would allow the Minister to impose extra conditions on discretionary grants (in addition to the condition that boards do not seek or receive any solicited voluntary payments from parents).

We consider that any extra conditions determined by the Minister should only apply if those extra conditions have been communicated to school boards in the *Gazette*.

We recommend amending proposed new section 79A(5)(b) so that any extra conditions must be published in the *Gazette*, either in their entirety or as a general description with an indication of where the full text can be found.

Clarifying that school boards can decide whether to opt in to receive discretionary grants

We think it should be clarified that school boards are not required to receive discretionary grants. We also think that the way in which a school board decides to opt in to receive a discretionary grant should be made clear.

Therefore, we recommend amending clause 4 to insert new section 79A(5A). This would clarify that a school board may receive a discretionary grant only if it has decided by resolution to do so.

Clarifying the amount that can be deducted from future grants for non-compliance

As discussed above, new section 79B would enable the Minister to recoup funds from a school board if it had breached the conditions attached to a discretionary grant. The amount being recouped would be determined by the Minister in consultation with the school board.

We think it should be clarified that the maximum amount that could be recouped (because of non-compliance with an earlier discretionary grant) should be no more than the earlier discretionary grant.

To do this, we recommend amending clause 4 to insert new section 79B(2) and to amend proposed new section 79B(1)(b).

Other matters

Potential exemptions from the condition not to seek or receive “solicited voluntary payments from parents”

What constitutes “solicited voluntary payments from parents”?

During our consideration of the bill, we queried what payments from parents to schools would be considered “solicited voluntary payments from parents”. This term is defined in clause 4, proposed new section 79A(7), of the bill. We note that the definition is intended to cover general school donations. However, we are concerned that some donations for activities, such as to cover the cost of a school camp, would fall within that ambit as well.

Under current law, school boards cannot lawfully charge or compel payments for activities or items that are part of the curriculum. This includes payments for workbooks, field trips, camps, or swimming lessons. Boards currently seek donations for these, but are not able to exclude a student from taking part if they do not pay the requested donation.

The bill as introduced does not give the Minister the ability to allow school boards to solicit voluntary payments from parents for activity costs.

The Minister of Education intends to amend the bill to include an exemptions provision

The Minister of Education wrote to us in July 2019 saying he intends to propose an amendment by way of a Supplementary Order Paper at the committee of the whole House stage of this bill.

He said the proposed amendment would insert a power into the bill to enable the Minister of Education to make exemptions to the conditions of a discretionary grant by placing a notice in the *Gazette*.

The Minister said he intends that this exemption would apply to costs associated with school camps. The exemption would, he told us, allow boards that receive a discretionary grant to continue requesting voluntary payments toward school camp costs.

The Minister told us he is planning to propose this amendment at the committee of the whole House stage rather than at select committee because it would enable the Ministry of Education to include the exemption in guidelines that will be issued to schools in early August, which is before we were due to report this bill back to the House.

We note that the Minister has signalled his intention to address this issue prior to the enactment of the bill.

The policy behind the bill

This bill creates the legislative means for the Government to implement its school donations policy, announced in Budget 2019. The policy proposes that boards of trustees of decile 1 to 7 state and state integrated schools would be able to choose each year to receive a \$150 payment per student instead of seeking donations from parents.

The funds would be paid to boards as a discretionary grant as created under this bill. The bill does not legislate the amount or the other conditions the Minister of Education may decide to attach to the grants.

We acknowledge that many of the submissions we received on this bill drew attention to the policy behind the bill. Those policy matters include whether schools in deciles 8 to 10 should be included in the scheme; whether the decile system is the correct basis for determining eligibility; and the amount of the discretionary grant

New Zealand National Party minority view

National opposes this bill. National supports reducing costs to parents where possible, which is why we supported this bill at a first reading to ensure parents' and schools' voices were heard. However, we believe that the submissions have demonstrated that the donations scheme that will be set up as a result of this bill will create greater inequity in funding to schools and there is real lack of certainty and clarity as to what the actual impact of the bill will be. We are also concerned about the truncated select committee process and the inability of the select committee to hear from schools and parents across New Zealand.

National's view is that the Government should have proceeded to scrap the decile system and replace it with a fairer system and additional funding to ensure there is less of a need to ask for donations. We are also concerned that the Government did not complete the funding review work which would again have ensured an opportunity for schools to be less likely to ask for additional funding from parents. National does believe that it is important for schools that do ask for donations to be absolutely clear that the payment is voluntary and that no parent or child must be penalised for not making the voluntary payment.

Inequity created by excluding decile 8-10 schools

We note that 95 out of 139 submissions requested that all schools should be eligible. National note that the Labour Party promised to "end" school donations for "all State and State Integrated schools" in their first budget through a \$150 incentive payment per student to schools who do not ask for donations. The Government are going to be a year and a half late in delivering on this promise. We note that they have scaled back on the promise and decided to only offer it to decile 1 to 7 schools. We heard that parents and schools are disappointed as they were led to believe donations would

be scrapped altogether. We believe that it is wrong and inequitable to exclude decile 8 to 10 schools from the donations scheme. We know that significant numbers of disadvantaged children attend these schools.

While no figure is given in the primary legislation for the discretionary grant schools will receive, National notes that the Government has publicly stated schools that participate in the scheme will receive \$150 per student which is funded in Budget 2019. A significant number of schools currently ask for donations higher than \$150 per student. It is therefore, in our view, highly unlikely that the bill will achieve the Government's promises. This is due to the fact some schools have signalled that they will continue to ask for donations because the \$150 per student payment will not be sufficient to incentivise them to take up the scheme.

Truncated select committee process

National are concerned that this bill was rushed through select committee unnecessarily, given that the Minister had months before this would need to be included in any operational funding decision for next year. Even though the submission period for the bill was around 13 days, we had 139 submissions on the legislation. It is our view that we would have had a lot more submissions if the bill had opened for a normal submission period.

Lack of clarity about what funds schools can ask for

We are also concerned that the Minister has signalled he is going to table a Supplementary Order Paper providing for exemptions around the donations scheme which has had no scrutiny by the select committee. We are concerned that the wide power of discretion by the Minister to exempt certain activities means that parents will still be asked for a number of activities such as school camps. The Minister's decision to bypass the select committee with the SOP is unnecessary and undemocratic. There are real concerns about other outdoor activities and other activities such as music lessons whereby there may be a debate as to whether they are core curriculum.

Issues with enforcement

The Minister has added in a clause which enables him wide discretion to cut the payments for schools he thinks may not have complied with the conditions of the scheme. National are concerned about the lack of detail around how compliance is monitored and what the process and repercussions will be if a school has not complied and asked for additional funding for parents. We were made aware by officials that the Ministry of Education is likely to have eight people involved in ensuring schools are adhering to the scheme in an enforcement type arrangement. We are concerned that this constitutes a "donation police".

Appendix

Committee process

The Education (School Donations) Amendment Bill was referred to the committee on 30 May 2019. The closing date for submissions was 16 June 2019. We received and considered 139 submissions from interested groups and individuals. We heard oral evidence from 4 submitters at hearings in Wellington.

We received advice from the Ministry of Education.

Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Clare Curran

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Mark Patterson

Chlöe Swarbrick

Jan Tinetti

Nicola Willis

Education (School Donations) Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Chris Hipkins

Education (School Donations) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Education (School Donations) Amendment Act **2019**.
- 2 Commencement**
This Act comes into force on the day after the date of Royal assent. 5
- 3 Principal Act**
This Act amends the Education Act 1989 (the **principal Act**).

Part 1

Main amendment

4 New sections 79A and 79B inserted

After section 79, insert:

| | |
|---|----|
| 79A Discretionary grants for boards | 5 |
| (1) The Minister may, in or for a financial year, make discretionary grants to boards out of public money appropriated by Parliament for the purpose. | |
| (2) Subsection (1) is subject to subsections (3) to (7) and section 79B . | |
| (3) The Minister must determine the amount of each discretionary grant made under subsection (1) . | 10 |
| (4) In determining the amount of a discretionary grant, the Minister must take no account of international students (other than students exempted under section 4A(1)) enrolled or likely to be enrolled at any school administered by the board concerned. | |
| (5) A discretionary grant made under subsection (1) — | 15 |
| (a) must be made subject to the condition that a board that receives it does not seek or receive any solicited voluntary payment from parents; and | |
| (b) may also be made subject to other conditions (except a condition that it will be used for the purposes set out in the grant) determined by the Minister <u>and published in the <i>Gazette</i> (in their entirety, or by way of a general description and an indication of where the full text can be obtained)</u> . | 20 |
| <u>(5A) A discretionary grant may be paid to a board only if the board has decided by resolution to receive the grant.</u> | |
| (6) A board that receives a discretionary grant must take all reasonable steps to ensure that all conditions of the grant are complied with. | 25 |
| (7) In this section,— | |
| parent , in relation to any student, means a person who is the student’s mother, father, or guardian | |
| solicited voluntary payment from parents , for a board, means a payment that is— | 30 |
| (a) to be made or made by or of <u>on</u> behalf of a parent, or parents, of any student, or students, likely to be enrolled or enrolled at any school administered by the board; and | |
| (b) a payment that the parent has, or that those parents have, no legal obligation to make; and | 35 |
| (c) sought in any way, directly or indirectly, from the parent or those parents, by or on behalf of the board. | |

79B Effect of non-compliance with earlier discretionary grants

- (1) In determining for the purposes of section 79 or **79A** the amount of any grant, supplementary grant, or discretionary grant payable to a board in respect of a school in or for a financial year, the Minister—
- (a) must have regard to the extent to which the board has, in any 1 or more earlier financial years, in respect of the school, failed to comply with all or any conditions of a discretionary grant paid to the board in respect of the school in or for those 1 or more earlier financial years; and 5
- (b) may, after consulting the board, determine for the grant, supplementary grant, or discretionary grant an amount that is ~~(to that extent or some lesser extent)~~ less than it would otherwise have been. 10
- (2) However, the total of all reductions (if any) made under **subsection (1)(b)** because of non-compliance with all or any conditions of a discretionary grant paid to the board in respect of the school in or for those 1 or more earlier financial years must not exceed the amount of that discretionary grant. 15

Part 2**Consequential amendments****5 Section 79 amended (Grants for boards)**

- (1) In the heading to section 79, after “**Grants**”, insert “**and supplementary grants**”. 20
- (2) In section 79(1), replace “Subject to subsection (2), in each” with “In or for a”.
- (3) After section 79(1), insert:
- (1A) Subsection (1) is subject to subsections (2) and (3) and **section 79B**.
- (4) In section 79(2),—
- (a) replace “foreign” with “international”; and 25
- (b) delete “or institution”.

Legislative history

30 May 2019

Introduction (Bill 147–1), first reading and referral to Education and Workforce Committee