



Education Amendment Act 2000

Public Act 2000 No 21
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 Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

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

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 28):

- (b) to abolish bulk funding agreements for the payment of teachers' salaries (see sections 7, 8, and 29):
- (c) to strengthen the arrangements for governance of schools (see sections 6, and 11 to 23):
- (d) to simplify the rules about tertiary students associations (see sections 24 and 25):
- (e) to amend provisions in order to make them consistent with the Human Rights Act 1993 (see sections 5, and 31 to 33).

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—

- “(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.
- “(2) The procedures described in subsection (1)(b) must be consistent with section 11F and any relevant instructions issued by the Secretary under section 11G.

“11D Effect of home zone

- “(1) 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.

“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 any applicant who is a child of an employee of the Board of the school:
 - “(e) fifth priority must be given to all other applicants.
- “(2) If there are more applicants in the second, third, fourth, or fifth 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.
- “(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
 - “(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, in recognition of family obligations, 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.
- “(2) A Board may not begin developing an enrolment scheme unless it has received a written notice of the type referred to in subsection (1).
- “(3) 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.

- “(4) In addition to the consultation required by subsection (3),—
- “(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.
- “(5) If the Secretary approves a proposed enrolment scheme for a state school, the school’s Board must pass a resolution adopting the scheme 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

- “(1) 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.
- “(2) A Board may not resolve to abandon an enrolment scheme unless it has received written notice from the Secretary authorising it to do so.
- “(3) 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.
- “(4) 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.

“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.
- “(3) 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.
- “(4) 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 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 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.
- “(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

- “(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 annulled under this section.

- “(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 11O.
- “(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 is not living in the school’s home zone, but in fact the applicant is living in the school’s home zone; 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
 - “(c) 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) subsection (3)(b) does not apply; and

- “(d) in the case of a Kura Kaupapa Maori, the application of the sections must not result in inconsistency with section 155; and
 - “(e) 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
 - “(f) 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.

9 Limitations on appointment and employment of regular teachers at payrolled schools

- (1) Section 91H(1) of the principal Act is amended by omitting all the words after the word “prescribe”, and substituting the words “limitations on the number of regular teachers who may be employed at payrolled schools during the next year.”
- (2) Section 91H of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
“(2) An order under subsection (1) may do any 1 or more of the following:
“(a) apply different limitations to different types of school, or to particular schools:
“(b) impose limitations on the numbers of particular types of teachers who may be employed:
“(c) set out 1 or more mechanisms by which the applicable limitations are calculated:
“(d) specify circumstances in which the Secretary may exempt any school or type of school from a limitation, and any conditions applying to such an exemption.”

10 Secretary may grant exemptions in individual cases

Section 91I of the principal Act is amended by omitting the words “in accordance with criteria”, and substituting the words “in the circumstances and in accordance with any conditions”.

*Provisions relating to school governance***11 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”.

12 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”.

13 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”.

14 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).”

15 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.

“(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.
- “(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 forms 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 the 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.”

16 Term of office

- (1) 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”.
- (2) 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.”
- (3) Section 102 of the principal Act is amended—
- (a) by omitting from subsection (7) the words “(in the year following the year of election)”;
 - (b) by omitting from subsection (8) the words “, appointed, and co-opted”;
 - (c) by inserting in subsection (9), after the expression “subsection (8)”, the expression “or subsection (8A)”;
 - (d) by omitting from subsection (10) the expression “subsection (8)”, and substituting the expression “subsection (8A)”;
 - (e) by omitting from subsection (11) the expression “section 104”, and substituting the expression “sections 101A and 104”.

17 Certain persons ineligible to be trustees

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

18 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.
- “(2) 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).
- “(3) A constitution approved under this section applies instead of a constitution under section 94.
- “(4) 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.
- “(5) 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.

- “(6) 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.”

19 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 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.”

20 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 exceed the number of other trustees on the Board; and”.

21 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).

22 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.”

23 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***24 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:

- “(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).

25 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 at which membership of students association is compulsory

- “(1) This section applies to every institution at which membership of a students association is compulsory.
- “(2) The students association that, at the commencement of this section, is recognised by the Council of the institution as 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.

“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 institution 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, any 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

26 Consequential amendments to principal Act

- (1) 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”.
- (2) 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”.
- (3) Section 11Q(2) of the principal Act is consequentially amended by omitting the expression “section 11G(6)”, and substituting the expression “section 11J”.
- (4) 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.”
- (5) Section 156(8) of the principal Act is consequentially amended by omitting the expression “section 11P”, and substituting the expression “section 11PB”.
- (6) Section 159(1) of the principal Act is amended by repealing the definition of **association of students**.
- (7) 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”.

27 Repeal

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

Transitional provisions

28 Enrolment schemes applying to 2001 school year

- (1) Subsections (2) to (5) 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 of that Act apply, with any necessary modifications, to the enrolment scheme; and
 - (d) sections 11A to 11P of that Act 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.
- (4) A school to which subsection (2) applies must, in 2000, 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.
- (5) 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.
- (6) 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.
- (7) 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.

29 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.

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

- (1) A Board of Trustees that is affected by section 29 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 29 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 29; 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 in subsection (4) are those applicable as at the date of the cancellation of the agreement concerned.

Related amendments

31 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).

32 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.

33 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".

Legislative history

28 March 2000	Introduction (Bill 12–1)
4 April 2000	First reading and referral to Education and Science Committee
19 June 2000	Reported from Education and Science Committee (Bill 12–2)
29 June 2000	Second reading
4 July 2000	Committee of the whole House (Bill 12–3)
6 July 2000	Recommittal, third reading
7 July 2000	Royal assent

This Act is administered in the Ministry of Education.
