



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 8 December 1998

EDUCATION LEGISLATION AMENDMENT

Proposed Amendments

Hon WYATT CREECH, in Committee, to move the following amendments:

Clause 2A: To omit this clause (pages 3 and 4), and substitute the following clauses:

2A. Interpretation—Section 2 (1) of the principal Act is amended by repealing the definition of the term “enrolment scheme”, and substituting the following definition:

“‘Enrolment scheme’ means a scheme adopted (and not since abandoned) under **section 11G**; and includes any amendments to the scheme that have been adopted under **section 11K**.”

2AA. Special education—Section 9 (2) of the principal Act is amended by omitting the expression “section 11j”, and substituting the expression “**section 11M**”.

Clauses 3 to 12: To omit these clauses (pages 4 to 9), and substitute the following clauses:

3. New heading and sections substituted—The principal Act is amended by repealing sections 11A to 11K, and section 12B, and substituting the following heading and sections:

“Enrolment Schemes

“11A. Purpose of enrolment scheme—The purpose of an enrolment scheme is—

- “(a) To avoid overcrowding, or the likelihood of overcrowding, at the school to which it applies; and
- “(b) To enable the Secretary to make reasonable use of the existing network of schools.

“11B. Principles governing content and implementation of enrolment schemes—(1) When developing, adopting, amending, and implementing an enrolment scheme, a Board must, as far as it can, ensure that the enrolment scheme—

“(a) Excludes from the school no more prospective students than is necessary to avoid overcrowding or the likelihood of overcrowding at the school:

“(b) Reflects the desirability of students being able to attend a reasonably convenient school:

“(c) Enables the Secretary to make reasonable use of the existing network of schools, by taking into account the location and capacity of other schools that are reasonably convenient schools for students in the general area served by the school.

“(2) When developing, adopting, amending, and implementing an enrolment scheme, a Board must, to the extent that it is reasonable and practicable to do so without derogating from the principles in **subsection (1)**, ensure that students can attend a school of their choice.

“**11C. Meaning of ‘reasonably convenient school’—**

(1) In **section 11B**, the term ‘reasonably convenient school’ means a 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—

“(a) The distance, time likely to be spent in travel, reasonably available modes of travel, common public transport routes, and relevant traffic hazards; and

“(b) The age of the student.

“(2) The meaning of ‘reasonably convenient school’ may vary as between different schools, depending on such matters as—

“(a) Whether the school is a single sex or co-educational school; and

“(b) Whether the school is an ordinary state school, a Kura Kaupapa Maori, a designated character school, a special school, or an integrated school; and

“(c) Whether the school is a primary, intermediate, secondary, composite, or area school.

“**11D. Secretary to issue guidelines—**The Secretary must from time to time issue guidelines to Boards that—

“(a) Will assist Boards in the development and implementation of enrolment schemes; and

“(b) Describe the basis on which the Secretary’s powers in relation to enrolment schemes will be exercised.

“**11E. Secretary’s powers in relation to adoption of enrolment scheme—**(1) A Board must not start developing an enrolment scheme until the Secretary has given written notice that there is, or is likely to be, overcrowding at the school unless an enrolment scheme applies.

“(2) A Board must not adopt an enrolment scheme unless the Secretary has given written approval of the enrolment scheme.

“(3) Before approving an enrolment scheme, the Secretary must be satisfied that—

“(a) The scheme complies with the purpose of enrolment schemes as set out in **section 11A** and with the principles governing the content and implementation of enrolment schemes as set out in **section 11B**; and

“(b) The Board has complied with the consultation requirements in **section 11G (2)**.

“(4) The Secretary may at any time, by notice in writing, require a Board 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.

“**11F. Secretary’s powers in relation to dispute resolution**—(1) If the Secretary becomes aware of a dispute between 2 or more Boards over an enrolment scheme or proposed enrolment scheme the Secretary may appoint a facilitator to assist in resolving the dispute.

“(2) If the facilitator reports to the Secretary that the parties appear unable to reach an agreement, the Secretary may require one or more of the Boards in dispute to amend its enrolment scheme or proposed enrolment scheme in the manner required by the Secretary.

“(3) If a Board and the Secretary are unable to reach agreement about the content of an 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.

“(4) A Board that receives a requirement under **subsection (2) or subsection (3)** must comply with it by giving effect to the Secretary’s requirements in its enrolment scheme or proposed enrolment scheme as soon as practicable.

“(5) **Sections 11E and 11G** do not apply to an amendment to an enrolment scheme or proposed enrolment scheme that is made as a result of a requirement by the Secretary under this section.

“**11G. Board develops and adopts proposed enrolment scheme**—(1) A notice given by the Secretary under **section 11E (1)** (stating that there is, or is likely to be, overcrowding at the school unless an enrolment scheme applies) lapses if the Board to which it is addressed does not begin developing an enrolment scheme within 2 months of receiving the notice.

“(2) When developing a proposed enrolment scheme, Boards must take all reasonable steps to discover and consider the views of whatever persons and organisations it considers appropriate, and, in particular, must discover and consider the views of—

“(a) The parents of students at the school; and

“(b) The community in the general area served by the school; and

“(c) The Boards of other schools that could be affected by the proposed enrolment scheme.

“(3) When developing a proposed enrolment scheme, Boards must 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.

“(4) An approval by the Secretary under **section 11E (2)** of a proposed enrolment scheme lapses if the Board to which it is addressed does not adopt the approved scheme within 2 months of the date of the approval.

“(5) A proposed enrolment scheme is adopted by a resolution of the Board to that effect.

“(6) As soon as practicable after adopting an enrolment scheme the Board must publish, in a daily or community

newspaper that circulates in the area served by the school, a notice of the nature and effect of the enrolment scheme.

“11H. **Availability of enrolment scheme**—A Board that has adopted an enrolment scheme must ensure that a copy of the enrolment scheme is available for inspection at the school at all reasonable times.

“11I. **Commencement of enrolment scheme**—(1) Unless subsection (3) applies, an enrolment scheme for a primary school commences on the day 3 months after the day of its adoption, or on a later day specified in the scheme.

“(2) Unless subsection (3) applies, 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 day specified in the scheme and agreed to by the Secretary.

“(3) 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 authorisation for early commencement is given after the enrolment scheme has been notified under section 11G (6), the Board must publish, in a daily or community newspaper that circulates in the area served by the school, a notice of the date on which the scheme will commence.

“11J. **End of enrolment scheme**—(1) An enrolment scheme may be abandoned by resolution of the Board, and the scheme ends on the day specified in the resolution as the end of the scheme.

“(2) When a Board abandons an enrolment scheme under subsection (1), it must—

“(a) Notify the Secretary of the date on which the enrolment scheme ended or will end; and

“(b) Publish in a daily or community newspaper that circulates in the area served by the school, a notice of the date on which the scheme ended or will end.

“(3) If a Board replaces an enrolment scheme, the existing scheme ends on the day the new scheme commences.

“11K. **Amendment of enrolment scheme**—(1) A Board that has adopted an enrolment scheme may from time to time 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) Sections 11A to 11J 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).

“11L. **Pre-enrolment**—A Board may apply the pre-enrolment procedures contained in an enrolment scheme at any time after the scheme has been notified in accordance with section 11G (6), even if the scheme has not yet commenced.

“11M. **Effect of enrolment schemes**—(1) Despite section 3 (which provides that domestic students of certain ages have the right to free enrolment and attendance at any state school), a person may be denied enrolment and attendance at a particular school if the school has an enrolment scheme and the person's application for enrolment is declined in accordance with that scheme.

“(2) A Board may reject an application for pre-enrolment only in accordance with an enrolment scheme that is notified in accordance with **section 11G (6)** before the date of receipt of the pre-enrolment application.

“(3) A Board may reject an application for enrolment at the school only in accordance with an enrolment scheme that commenced on or before the date of receipt of the application.

“(4) If a Board declines an application for enrolment or pre-enrolment, the Board must give written notice of the decision to the parents of the applicant, and (if appropriate, having regard to the age and maturity of the applicant) to the applicant.

“**11N. Exemption from enrolment scheme**—(1) Where the interests of a particular student justify such action, the Secretary may direct a Board to enrol a person to whom this section applies in accordance with this section, and the Board must comply with that direction.

“(2) This section applies to a person whose application for enrolment at a school where an enrolment scheme is in place has been declined.

“(3) The Secretary must not give a direction under **subsection (1)** unless he or she is satisfied that the consequences of not giving the direction (or a similar direction to another Board)—

“(a) Would be that the person would not be able to attend any reasonably convenient school of the appropriate class; or

“(b) Would be so disadvantageous to the person that overriding the enrolment scheme in this case is justified.

“(4) The Secretary must not give a direction under this section unless he or she has taken all reasonable steps to consult the person’s parents, the relevant Board and (if appropriate, having regard to the age and maturity of the person), the person.

“(5) 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 parents of the person agree, and the person is suitable for enrolment at a school with the special character of that school.

“**11O. Annual review of enrolment scheme**—(1) The Board of a 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 need to comply, as far as the Board can, with the purpose of enrolment schemes as set out in **section 11A** and with the principles governing the content and implementation of enrolment schemes as set out in **section 11B**; 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.

“**11P. Application of sections relating to enrolment schemes**—(1) **Sections 11A to 110** apply to enrolment schemes and proposed enrolment schemes adopted or developed (as the case may be) by the Board of any state school (including an integrated school), other than a state school of a type specified from time to time by the Secretary by notice in the *Gazette*.

“(2) In applying **sections 11A to 110** to Kura Kaupapa Maori, designated character schools, and integrated schools, those sections must be read subject to the following modifications:

“(a) All references (except in **section 11A**) to overcrowding, or the likelihood of overcrowding, must be read as if they were references to a demand for places at the school which exceeds the number of places available under the school’s maximum roll:

“(b) Nothing in **sections 11B** (relating to the principles governing the content and implementation of enrolment schemes), or **sections 11E and 11F** (relating to the Secretary’s powers) may be applied in a way that results in an enrolment scheme being inconsistent with,—

“(i) In the case of a Kura Kaupapa Maori, its charter and **section 155**; and

“(ii) In the case of a designated character school, its charter and **section 156**; and

“(iii) In the case of an integrated school, its integration agreement and the Private Schools Conditional Integration Act 1975.

“(3) In addition to the consultation required by **section 11G (2)**,—

“(a) The Board of a Kura Kaupapa Maori must consult with those persons and organisations whom the Board believes have an interest in fostering the aims, purposes, and objectives that constitute the Kura Kaupapa Maori’s different character:

“(b) The Board of a designated character school must consult with those persons and organisations whom 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.

“**11Q. Obligation to report to Parliament on enrolment schemes**—(1) The annual report on the schools sector which is laid before the House of Representatives by the Minister of Education in accordance with **section 44B** of the Public Finance Act 1989 must include a statement signed by the Secretary that—

“(a) Lists the schools that have an enrolment scheme in place; and

“(b) States the period for which each scheme has been in place; and

“(c) Notes the schools where adjacent schools have schemes in place; and

“(d) Outlines any plans included in the Ministry’s property development or other programmes to address the pressures on capacity in areas where a number of adjacent schools have enrolment schemes in place, including development plans to manage school population changes to maximise (to the extent it is reasonable and practicable to do so) the opportunity for students to attend a reasonably convenient state school.

“(2) In this section, an enrolment scheme is ‘in place’ once it has been notified in accordance with **section 11G (6)**.”

4. Consequential amendments and repeals—(1) Section 18A (2) of the principal Act is consequentially amended by omitting the expression “section 11j”, and substituting the expression “**section 11m**”.

(2) Section 155 of the principal Act is consequentially amended by—

(a) Omitting from subsection (9) the words “A Kura Kaupapa Maori shall not”, and substituting the words “A Kura Kaupapa Maori may”; and

(b) Inserting in subsection (11), after the words “in this section”, the words “**and section 11p**”.

(3) Section 156 of the principal Act is consequentially amended by—

(a) Repealing subsection (7), and substituting the following subsection:

“(7) The Secretary must from time to time, by written notice to the designated character school, fix a maximum roll of the school, and—

“(a) The Board must ensure that the number of students enrolled at the school is not more than the maximum roll; and

“(b) The Board may refuse the enrolments of people whose parents do not accept the aims, purposes, and objectives that constitute the school’s designated character.”; and

(b) Inserting in subsection (8), after the words “in this section”, the words “**and section 11p**”.

(4) Sections 3 (2) and 5 of the Education Amendment Act 1991 are consequentially repealed.

EXPLANATORY NOTE

This SOP amends the provisions relating to enrolment schemes in the Education Legislation Amendment Bill as reported back by the Education and Science Committee.

The main changes effected by this SOP, as compared with the Bill as reported back, are:

- All the sections in the Education Act 1989 relating to enrolment schemes have been replaced. The machinery provisions have been simplified, and the sections now deal in a comprehensive way with enrolment schemes (*new sections 11A to 11Q*):
- The purpose of enrolment schemes, the principles guiding their development, adoption, amendment, and implementation, and the meaning of the key term “reasonably convenient school” are clearly set out (*new sections 11A to 11C*):
- The provisions relating to enrolment schemes are extended to cover Kura Kaupapa Maori, designated character schools, and integrated schools (*new section 11P*):

- An obligation is imposed on the Secretary to issue guidelines to assist Boards develop and implement schemes, and to describe the basis on which the Secretary's powers will be exercised (*new section 11D*):
- The Secretary is given power to appoint a facilitator if there is a dispute between Boards over an enrolment scheme, and to make binding decisions in the case of an impasse either between Boards, or between a Board and the Secretary (*new section 11F*):
- Boards must advise parents (and children where appropriate) of their decisions (*new section 11M (4)*):
- Pre-enrolment procedures are provided for (*new section 11L*):
- The Minister is obliged to report annually to the House of Representatives on which schools have enrolment schemes, and what plans the Ministry has to address pressures on capacity in areas where a number of adjacent schools have enrolment schemes (*new section 11Q*).