

EDUCATION AMENDMENT BILL 2000

1.0 Introduction

- 1.1 This submission is made by the Education Forum, an independent group of people involved in education and in business organisations, formed to contribute to education policy through research and debate. Its statement of principles is provided at Appendix A and its current membership at Appendix B.

Amendments affecting schools

- 1.2 This submission first considers the provisions of the Bill directly affecting state schools, namely:

- the abolition of bulk funding (or the 'fully funded option') for the payment of school teachers' salaries;
- changes to school governance; and
- the 'tightening' of school enrolment schemes.

The abolition of the bulk funding of teacher salaries is by far the most important change and one for which no rational explanation is provided. We consider it to be a seriously retrograde step. The changes to enrolment provisions are also retrograde. We oppose both sets of changes. The proposed changes to school governance are generally supported but do not, in our view, go far enough. It is curious that changes to improve governance are being proposed while at the same time a school's ability to deploy its resources and to select pupils is being diminished.

- 1.3 It is also curious that no claim is being made that the bulk funding and enrolment changes will lead to more effective schooling. We consider effectiveness should be a very important consideration in the interests of all school children and that, if this were adopted as a general approach, very different policy prescriptions from those in the Bill would result. We therefore conclude the discussion of these schooling issues with a brief review of the literature on school effectiveness and on the related issues of choice and competition.

Amendments affecting tertiary institutions

- 1.4 The proposed amendments would, *inter alia*, change the way in which tertiary student associations may move between compulsory and voluntary membership, and how student association fees are collected. Our main concern is the continued statutory provision for compulsory membership of associations in state-owned institutions which enjoy a virtual monopoly status. We consider that requiring compulsory membership is oppressive and infringes individual liberty. Possible justifications for such provisions are examined and found wanting.

Compliance with the Human Rights Act

- 1.5 The proposed amendments end exemptions for various age restrictions in education legislation and raise very different issues from those in the rest of the Bill. The Bill's

Explanatory Note gives no reasons for their removal other than the need for compliance with the Human Rights Act. In the absence of information about the merits or otherwise of retaining the age restrictions we are unable to come to a view about them. We would, however, be concerned if there is an inference that any age restriction is discriminatory as, in our view, there can be no simplistic equation of age restriction with discrimination. Our preference would be to retain the exemptions pending a more detailed review of their merits and, preferably, of the Human Rights Act itself.

- 1.6 Our recommendations are summarised at section 8.

2.0 Bulk funding

- 2.1 The Bill removes from state schools the bulk funding method of paying teachers' salaries (also known as the 'fully funded option'). Bulk funded schools receive their funding direct from the ministry and are free to spend it according to priorities determined at the school level. Essentially, the funding of the salaries of teachers in bulk funded schools is administered along the same lines as the government funding of other parts of the education system. Preschools, private schools, and tertiary providers are funded by formulae-driven government grants, as are the operational expenses of state schools.
- 2.2 The bulk funding of teacher salaries was a key component of the *Tomorrow's Schools* reforms of the previous Labour government, though its introduction was long delayed because of teacher union opposition. These reforms were designed to address various problems identified by the 'Picot' taskforce including over-centralisation of decision making, too many layers of administration and insufficient sensitivity to Maori and other minorities. Bulk funding was introduced on a voluntary basis and, with the incentive of additional funding, 837 of the 2700 state schools opted for it, in many cases after "thorough, careful consultation and research"¹, and are now bulk funded.
- 2.3 Under central resourcing, schools comply with staffing orders which prescribe the number of teachers each school can employ and the number of management units it can use. If a school doesn't employ the staff or use the units it doesn't get the resource. Bulk funded schools are exempt from these orders except to the extent that they have to employ a principal and enough teachers to deliver the curriculum. They receive funds, not staffing and management entitlements, and have wide discretion about the use of those funds. They can, for example, flatten their management structure and give greater attention to programmes for children with learning or behavioural difficulties.²
- 2.4 Under the Bill's provisions, bulk funded schools will become centrally resourced during 2001. They overturn, without consultation, formal, written agreements between the minister of education and the 837 schools. The boards of bulk funded schools decided in favour of this form of funding in the best interests of the children at their schools and are in the best position to decide on such a matter.

¹ Education Review Office (1999), *Good Practice in Managing the Fully Funded Option*, Education Review Office, Wellington, October.

² A decile 6 Auckland primary school reports that bulk funding has freed up teaching staff from various auxiliary duties and thereby enabled them to concentrate on literacy. The percentage of Maori and Pacific Island children reading below their actual age fell from 81 percent in 1996 to zero in 1999. Other similar examples could be given.

- 2.5 There is no evidence that this method of funding has failed. The recent Education Review Office report (ERO, 1999) "found that the Fully Funded Option has given boards of trustees opportunities to manage their resources more flexibly and to make decisions in a flexible environment ... [Bulk funded] schools generally have applied the extra funding in diverse and innovative ways, for example to provide additional staff in order to introduce a wider range of programmes, for curriculum resources, or for property initiatives". It seems that bulk funding has done what it was expected to achieve, that is to provide flexibility in the deployment of resources in order to improve teaching and learning. It hasn't solved problems of poor financial management, and could hardly be expected to have done so. In some cases board/staff relationships suffered, though "there is evidence that boards had made efforts to accommodate staff concerns and over time, working relationships had improved" (ERO, 1999, p 23). It can reasonably be assumed that students' learning benefited since "most boards have seen fit to direct their efforts towards professional staffing to support students' learning" (ERO, 1999, p 24), though this would need very detailed achievement data to establish.

No rational explanations have been given for abolishing bulk funding

- 2.6 No rational explanations are advanced for the abolition of this method of funding. No reasons are given to explain why funding for state school teaching staff should be treated differently from the funding of the rest of the education sector (2.1). Nor is there any discussion about how the problems which led to, *inter alia*, bulk funding in the first place (2.2) will be avoided now that bulk funding is to be abolished. The reasons for abolishing bulk funding given in the Explanatory Note are "that the extra funding paid to bulk funded schools would be better used for all schools" and that a result of abolition will be "that all schools ... [will] have some of the flexibility in funds that only bulk funded schools have enjoyed". The second statement seems to be the reverse of what is intended: bulk funded schools are to lose the flexibility afforded by bulk funding even though flexibility is clearly seen as desirable. It may be that the government has other proposals in mind so that staffing entitlements can be treated flexibly in some way, but this isn't apparent from the Bill. It is hard to see how central resourcing can deliver anything like the degree of flexibility available under bulk funding (2.3).
- 2.7 The Explanatory Note appears to confuse two different things: the *amount* of funding and the *method of delivery*. Bulk funding is a method of funding and has nothing directly to do with the *amount* of funding made available. Moves to increase funding or to achieve more equal funding between schools could be made without abolishing bulk funding. But bulk funding can certainly assist in achieving funding equity since it applies a common formula to all schools of the same type and size: it is an equitable form of funding. It is under the centralised system that inequities in funding levels exist because of different seniority profiles among teaching staff.
- 2.8 It is true that current policy has favoured schools that opt for bulk funding. Prior to the 1998 changes, schools received average funding which meant that those that received above average funding had less incentive to switch to bulk funding. Under the 1998 changes all bulk funded schools became 'winners' in terms of funding levels. There was a clear inducement to schools to opt for bulk funding in terms of the quantum of funding made available, quite apart from the attractions of additional flexibility in their use. This muddled the waters by conflating amount and method of funding and seemed unfair in so far as it was seen to favour schools with stronger administrative capacities. Those schools which were previously penalised by the centralised system had a greater

incentive to switch. If every school were bulk funded, as the Picot committee recommended, then all schools would be funded on an equal basis, and funds could be better targeted to special needs. Under the centralised system schools with more experienced teacher profiles receive more funding, and abolition of bulk funding will tend to reinforce funding inequalities.

Union opposition as the real reason

- 2.9 We find no reason for abolishing bulk funding that makes any sense from a public policy perspective. The reason appears to be political and ideological: it would seem that the government is determined to do by legislation what the teacher unions could not do by applying industrial pressure on schools. As such, it puts teacher unions' power and influence above the interests of children's education.³
- 2.10 The opposition from the teacher unions to bulk funding illustrates two points about unions. First, the interests of those who run the unions may diverge from those of their members. Unions sell representational services. They have an interest in maintaining a centralised system to maintain their influence with the government and the demand for these services. Secondly, unions are political organisations and their members' interests are not always convergent. For example, non-performing staff may not gain from bulk funding and resent the advantages accruing to high-performing staff who may be junior to them. It may be the case that it is senior non-performing staff who have most influence in union affairs and can determine a union position at the expense of teachers who would gain from a move to bulk funding.
- 2.11 Arguments put forward against bulk funding have proved groundless. It has been argued, for example, that schools could not cope with the additional administrative burden, including employment issues. Another was that bulk funding was simply a device to enable governments to reduce funding to schools. In practice, schools have coped and funding has risen. Nor can it be argued that bulk funding has mainly benefited high SES students. Up to 1998 low decile schools were more likely to be bulk funded, now they are slightly less likely. In other words, the additional funding has been spread across all schools.

A pre-election commitment that must be honoured at all costs?

- 2.12 It may be argued that the abolition of bulk funding is a pre-election commitment which must be honoured. In general the keeping of commitments is certainly to be encouraged and applauded. However, there can be cases where not keeping a commitment is the lesser of two evils, and we think the commitment to abolish bulk funding is a case in point as the policy is wrong in principle and damaging to state schooling. In any case, commitments should follow careful analysis of the issue in question, and this doesn't

³ The unions have opposed bulk funding even though since the funding changes consequent on the 1998 budget all schools that took it up have received additional funding and have been able to pay teachers more and hire more teaching staff. However, it can reasonably be argued that the same employment effects might be obtained if bulk funding were abolished and the additional funding were spread across all schools. This would be true unless bulk funding schools are drawing on their operational grants to increase staffing, and we do not have information on this. The point would remain, however, that under bulk funding schools are using their funding in more efficient ways and according to local priorities – not according to standard national requirements determined by teacher unions and the ministry and applicable to all schools irrespective of circumstances.

appear to have been undertaken. We know of no government analysis of the costs and benefits of various ways of resourcing state schools, and which defends centralised resourcing against the other methods available including bulk funding. Indeed, the need to honour a commitment appears to be being used as an excuse for not investigating the issue thoroughly.

- 2.13 Moreover, even if electors vote after close examination of all party policies on offer, rather than simply on general impressions, they choose between 'baskets' of policies rather than endorse all in a particular 'basket'. In the case of bulk funding, schools representing over 40 percent of all school children and their parents endorsed this method of funding through the parent-elected boards. Other schools opposed this method of funding, but their opposition provides no rational ground for denying other schools the choice. The pre-election commitment would seem in large measure to have been directed at the teacher unions which, as discussed above (2.10), have strong organisational reasons for opposing bulk funding.

Conclusion

- 2.14 No credible reasons have been provided for the abolition of the bulk funding system which has been of significant benefit to the schools concerned and which was the subject of agreements entered into voluntarily by the schools in the interests of their own students. Arguments in terms of pre-election commitments and the interests of the teacher unions cannot be validly advanced against the educational interests of school students. We recommend the Bill's provisions on bulk funding do not proceed.
- 2.15 The issue of funding mechanisms should be discussed in the broader context of developing the best environment in which schools should operate. Substantial local autonomy in staffing, as in other matters, should be part of that environment. This issue is discussed in section 4 below.

3.0 Enrolment schemes

- 3.1 There have been several changes in legislation dealing with student enrolment over recent years. The present Bill will tighten current legislation in several ways, principally in:
- requiring schools that are in danger of physical overcrowding to have a geographically defined home zone to which in-zone students are to have an absolute right of enrolment throughout the year. At present there is the somewhat looser requirement that schools in danger of overcrowding must have enrolment schemes which take account of the desirability of students being able to attend "a reasonably convenient school"; and
 - setting out how out-of-zone students are to be selected. Schools will no longer have a role in student selection. Out-of-zone students are to be categorised in groups, which in order of priority are:
 - applicants for any special programmes,
 - siblings of existing students,
 - siblings of former students, and
 - all other applicants.

Selection within each group is to be by ballot. We note that children of former students are to be given no priority. It is claimed that this system is a fairer and more transparent way of determining enrolment where a school's capacity has been reached and to avoid overcrowding. We support fairness and transparency, but there are problems with enrolment schemes in general and with the provisions of the Bill in particular.

Fairness

- 3.2 'Fairness' in the sense of 'equality' of provision is extremely difficult to achieve because the distribution of such essential schooling 'resources' as educational leadership and high quality teaching cannot (even assuming measurement problems could be overcome) be equally distributed across schools or even within a single school.
- 3.3 Most schools with enrolment schemes already give priority to those within a defined geographical area.⁴ Thus the enrolment scheme proposals try to increase fairness between a small sub-group of the school student population – those applying to an out-of-zone school. They will have at best a marginal impact on the distribution of students *across all schools* and on *overall* 'fairness'. However, they will have serious consequences for *individuals* and *particular* schools. Enrolment schemes will make the system less fair in some respects.
- 3.4 Firstly, at present it is possible for students to apply to attend an out-of-zone school which may better cater for their particular learning needs and abilities. There are also cases where it is important that a child goes to an out-of-zone school for entirely understandable personal reasons. For example, it is better for some children that they do not attend a school which their siblings also attend or at which a parent is a teacher. At present such personal circumstances can be catered for, but under the Bill's provisions this will not be the case. Secondly, there may be adverse effects on students from ethnic minorities and low income families (see 3.7–3.10 below), some arising from changes in the property market (see 3.11–3.13 below).
- 3.5 It is important to note that the notion of fairness should focus on individuals and not on institutions. The concern should be particularly on low SES children and not on low SES schools. As Sowell points out:

... the very concept of 'fairness' applies to relationships between *human beings* – not institutions. Institutions are merely the means to an end, that end being to serve human beings. There are no moral obligations to institutions which do not serve human purposes as well as other institutions. The most important fairness is fairness to children.⁵

We recognise that the Bill seeks to make selection fairer. But it mandates broad categories which cannot take account of the multiplicity of personal situations affecting children and their families and which can at present be addressed on an individual basis by school principals. In addressing some issues of unfairness the Bill has introduced others.

⁴ See Wylie, C (1997), *Self-managing Schools Seven Years On: What Have We Learnt?*, NZCER, p 156.

⁵ Sowell, T (1993), *Inside American Education – The Decline, The Deception, The Dogmas*, The Free Press, New York, p 258.

- 3.6 It is notable that to the extent that the Explanatory Note provides reasons for the provisions affecting schools it mostly talks of 'fairness' in institutional terms – that is of schools at risk of overcrowding and, by inference, of schools at risk of losing students to more favoured schools. It does not discuss the school choice needs of the most disadvantaged students, in particular the problems facing children from ethnic minorities and low SES backgrounds. The opposition to bulk funding has some of this same mistaken logic – it is claimed to be 'unfair' to schools that are not bulk funded.

'Fairness' and students from ethnic minorities and low income families

- 3.7 There is some evidence that Maori parents and those from other minority groups make good use of whatever educational opportunities are available. For example, about 30 percent of this year's placements on the Targeted Individual Entitlement (TIE) scheme are Maori.⁶
- 3.8 Also the data on ethnic attendance patterns in the Smithfield Project⁷ Report number 1⁸ shows that the number of students exercising choice by attending adjacent schools when zoning was abolished "has grown, in particular for Maori and Pacific Island Polynesian students" (p 32). From 1990 to 1993 the proportion of Maori students attending an adjacent school rose from 12 to 25 percent, and of Pacific Islanders from 10 to 28 percent (table 7, p 32). Both groups go from less likely to exercise choice under zoning than Pakeha to more likely under dezoning. The proportion attending distant schools stays at about the same level as it did under zoning for each ethnic group, Pakeha being more than twice as likely to attend distant schools as other groups.
- 3.9 Likewise the Smithfield data show that most parents who took advantage of the extra choice offered by dezoning were from poorer than average backgrounds. The average student attending an adjacent school following dezoning was from a poorer family than those who did not exercise choice, a reversal of the position under zoning. The additional low income people exercising choice under dezoning swamped the relatively well off, many of whom were already exercising choice under zoning.⁹
- 3.10 We are not aware of any evidence which would suggest that letting schools choose their own students would lead to discrimination on racial grounds. It is the case that Report 3

⁶ As Maori are disproportionately represented among low income families, it can be expected that they would secure disproportionately more TIE places which are targeted at children from families where taxable income is less than \$25,000 per annum and who are not asset rich.

⁷ The Smithfield project was a longitudinal study tracking between 1992 and 1997 the impact of school choice policies on students, schools and their families in two urban areas of 11 schools each and in a rural area with one school. It was undertaken for the Ministry of Education. Several reports were prepared by various groups of authors which included Hugh Lauder (now University of Bath) and David Hughes (University of Canterbury).

⁸ Lauder, H, Hughes, D, Waslander, S, Thrupp, M, McGlenn, J, Newton, S and Dupuis, A (1994), *The Creation of Market Competition for Education in New Zealand*, First Report to the Ministry of Education, March,

⁹ The Smithfield authors in a list of findings concluded that minority and low SES students are the least likely to be able to exercise choice. This seems contrary to their own data. They note that those who attend adjacent and distant schools are of higher SES than the average SES in their neighbourhood, but this does not mean that the poor are least likely to exercise choice. The additional families exercising choice are relatively well off for the neighbourhood, but relatively badly off compared with the average New Zealand family. Their empirical evidence, rather than their conclusions, is quite supportive of dezoning. See also Gorard, S and Fitz, J (1998), "Under Starter's Orders: the established market, the Cardiff study and the Smithfield project", *International Studies in Sociology of Education*, Volume 8, Number 3, pp 299-314.

of the Smithfield Project¹⁰ claims to show discrimination against Maori in admission decisions by high status schools. The evidence presented does not apply to Pacific Island students (as applicants they were among the most likely to be accepted) and can reasonably be interpreted as a case against rather than for zoning. The reason Maori students were less likely to be admitted could be due to preference being given to home zone students.

The equity effects of changes in the property markets

- 3.11 The introduction of a geographically defined zone means that places at a highly desired school will be allocated through the property market. As the demand for in-zone places increases, property prices and rents will rise relative to those for out-of-zone accommodation. Families that are able to afford more expensive houses and higher rents will 'buy' their children's enrolment into the school of their choice. Attempts to circumvent zoning by deception will increase. The less well-off will be effectively priced out of such schools. What at first sight appears to be an objective and transparent rule will lead to the very inequities that free education was supposed to address.

- 3.12 The proposal would have other adverse equity and efficiency effects. First, it would confer a windfall gain on owners of houses located in the geographical zones of schools that face excess demand. Secondly, changes in zones will become a contentious issue because they would have the potential to impose unanticipated windfall gains and losses on house owners, including those without school-age children. Thirdly, restricted access to desired schools will tend to impede labour mobility, thus making people less willing to take jobs in other localities. Fourthly, upward pressure on house prices and rents in areas facing excess demand may increase residential segregation and reduce the valuable social mixing that takes place outside of school.

- 3.13 Thus such evidence as exists suggests that tightening enrolment provisions may disadvantage the already disadvantaged. If so, the enrolment provisions may run counter to the government's aim to 'close the gaps', which is presumably motivated by a concern for 'fairness' in the sense of greater equality of educational outcomes.

Effects on school effectiveness

- 3.14 The enrolment provisions may also have the effect of propping up failing schools with excess capacity as a result of 'pupil flight' by restricting movement out-of-zone and denying schools facing excess demand the resources with which to expand. This will be unfair on many children. We are concerned with the emphasis, for example in clauses 11A(1)(c) and 11E(2)(c) of the Bill, on making the best use of existing schools without any reference to the quality of schooling that takes place within them and the situation of educationally disadvantaged children. Again the interests of institutions are given priority over the interests of children.

- 3.15 The enrolment provisions may also have adverse effects on the operations of successful schools by removing control over school mix, which could be a factor in their success. A school may be hindered in developing a particular identity and school ethos and catering

¹⁰ Lauder, H, Hughes, D, Watson, S, Simiyu, I, Strathdee, R and Waslander, S (1995), *Trading in Futures: The Nature of Choice in Educational Markets in New Zealand*, Third Report to the Ministry of Education, December.

for students who will benefit most from what the school has to offer. It may force schools into expensive additional provision for students they would not normally cater for. The lack of any priority for their children in enrolment (3.1) will reduce the interest and enthusiasm of former students in supporting the school in governance and administration, in sports and cultural activities, and in fund raising. Over time the erosion of the loyalty and commitment of former students to the school may well change a school's ethos, reduce its morale, and be to the considerable disadvantage of the current students.

- 3.16 The provisions will also reduce the incentives on students to achieve selection at an out-of-zone school. If selection is by ballot there will be no point in working hard to gain admission at a school that places high importance on, say, music or academic standards because selection will be entirely random and not dependent on 'fit'.

School mix or 'peer' effects

- 3.17 Another possible objection to school selection is that if peer effects are important, it will lead to segregation by ability and those in low ability classes will lose. This may, of course, already occur through streaming within 'mixed ability' schools. It may also be argued that if ability is correlated with ethnicity and SES, selection by schools may result in segregation by race and SES. However, depending on how school mix works, it could make disadvantaged students worse off, for example by preventing a school from specialising.
- 3.18 The school mix (or peer) effect may result from effort put in by schools to develop a school ethos and to select appropriate students. If schools are denied the right to select students, they will be prevented from controlling their peer group and from gaining the externalities that result. Forced 'mixing' will reduce the incentives for schools to provide appropriate education. Peer effects depend on behaviour, and behaviour responds to incentives.
- 3.19 The evidence on school mix effects in New Zealand is, in fact, weak. The most careful study¹¹ on the question came to the conclusion that "the hypothesis that the ability or social class composition of a school has an independent effect on a school's performance is shown to be doubtful".
- 3.20 In spite of the lack of clear evidence about school mix effects, they have been the main focus of education provider interests in their attack on school choice, and there has been relative neglect of other school effects.¹² The following points might be made in summary:
- It is not clear whether peer effects exist (Harker and Nash *op. cit.*).
 - If peer effects do exist, it is not clear that the peer effects of dezoning are detrimental. The evidence is that SES mixing increases with dezoning and that

¹¹ Harker, R and Nash, R (1996), "Academic Outcomes and School Effectiveness: Type 'A' and Type 'B' Effects, *New Zealand Journal of Educational Studies*, Volume 32, Number 2, pp 143-70.

¹² See, for example, the Smithfield reports and Wylie, C (1998), *Can Vouchers Deliver Better Education: A Review of the Literature with Special Reference to New Zealand*, New Zealand Council of Educational Research, Wellington. An example of the hostility is the statement by Darrell Ward, the President of the New Zealand Educational Institute (the primary teachers' union), that flexibility and choice are the "F and C" words of the '90s (reported in the *NZ Education Review*, 24 September 1999, p 4)

many low SES and minority students gain. There is a concern that some students are left behind in declining schools, but there is little evidence that they are worse off. Greater specialisation may be beneficial.

- Even if there are detrimental peer effects from dezoning, they are not the only influence on academic achievement. The other effects of the changes, like improved incentives, better matching of student with school and greater parental involvement may more than outweigh any adverse peer effects. For example, dezoning permits students to move to preferred schools and bad schools have an incentive to improve. The problem may be that bad schools are kept open when they should be closed or have their management replaced.
- If there are detrimental peer effects, the solution is not necessarily zoning or regulation of enrolment schemes. There may be more effective and less costly ways to help those who are disadvantaged, for example by replacing poor-performing management and teachers.

The local state school as the preferred school

- 3.21 An underlying assumption in these provisions of the Bill is that the local state school is the preferred provider of schooling services. This would be reasonable if all schools are of the same high quality and all student learning needs were essentially similar. But, of course, this is not so. Although all state schools are subject to the same extensive regulatory controls, they differ widely in educational quality and hence in popularity among parents. School children differ widely in their learning needs and so do parental expectations of schools.
- 3.22 Thus, in our view, a fundamental concern of any reform should be 'diversity plus excellence' in the interests of all children and not 'homogeneity plus mediocrity'. The piecemeal pursuit of 'fairness' out of the context of this wider concern can be counterproductive and have perverse results. Children have different abilities and learning needs, and at the secondary stage a wide range of curricular options is required. The higher retention rate in the senior secondary school means that a much wider range of ability, attainment level and post-school aspiration is represented in it. To admit this is not to be elitist but is the first necessary step towards building a more effective school system that is fairer to all.

Conclusion

- 3.23 Enrolment schemes may sound fair and reasonable but can in fact have inequitable results, not least for the most disadvantaged. As in the case of bulk funding, we know of no government analysis which reviews enrolment arrangements, identifies their advantages and disadvantages, evaluates them against possible alternatives, and defends the proposed arrangements against those alternatives. Our analysis indicates that the proposed changes will be retrograde and we consider that they should not proceed.
- 3.24 Policy should aim at creating an environment in which all schools have clear incentives to improve. This requires less external control on schools and more local discretion, including over student selection. This broader approach points to funding mechanisms to promote greater institutional autonomy with schools more directly accountable to

parents through school choice. Pending the development of such policies, present enrolment provisions should remain.

- 3.25 The main policy concern should be the government's control over the supply of schooling, that is over the number, location and capacity of schools. Dezoning does not result in a genuine 'market' outcome because of these very considerable constraints. From this perspective, enrolment provisions are a second-order issue, though of considerable importance to particular schools and particular students. We turn to some of these wider issues in the following section.

4.0 Effective schooling, choice and competition

The state as a monopoly supplier of schooling

- 4.1 Several of the basic problems facing the state school system arise from the fact that it is a virtual monopoly. The private schools sector accounts for less than 4 percent of all school children compared with about 30 percent in Australia. Most private schools, including the large Catholic school systems, have integrated into the state system while being allowed to maintain their religious or other distinctive ethos and ownership of fixed assets.
- 4.2 Thus state schools face very little competition from private schools which, because of the low state subsidy levels, have to charge substantial fees which many less well off families are unable to afford. The abolition of the Targeted Individual Entitlement scheme from next year and the freezing of the private school subsidy will reduce still further the ability of the remaining private schools to compete with state schools.
- 4.3 Furthermore, the ability of state schools to meet the diversity of parental expectations and student needs is very curtailed. All state schools have to deliver to the same extensive curriculum and pay teachers according to a national award. State schools have relatively little control over finances and property. Easing out non-performing teachers is possible, but can be a time-consuming and difficult process. The shadow of the Employment Court overhangs the process, adding to the complications, uncertainty and costs. Given this situation it would be surprising if there are not significant numbers of teachers who should not be teaching. The abolition of bulk funding (see section 2 above) will remove some existing freedoms as regards staffing arrangements, as will the Employment Relations Bill by adding to the costs and uncertainties of employment, including employment of temporary staff.
- 4.4 There is little reliable information on student performance. Some of the information that is available, for example the comparative data from the IEA international surveys, is worrying. The government's decision to abolish the proposed trial of national testing at the primary level is unfortunate in this regard. The effects are to bolster the state school monopoly and to protect schools within it from criticism of low performance. By and large, monopolies resist independent evaluation of their effectiveness. This is certainly the case in schooling as evidenced by the widespread outcry by education provider interests against national testing and anything that might look like a performance league table. However, parents, the 'consumers' of education, clearly want more and better information about the performance of their children's schools and of their own children.

- 4.5 A productive approach would be to consider the incentive structure under which schools operate and to seek to change it so as to give greater encouragement to all schools to raise their performance and to meet the diverse learning needs of all their students.

Effective schooling

- 4.6 There is a considerable amount of literature on what makes for effective schooling. The usual empirical approach is to take schools with similar student population characteristics and to seek to identify why some of them do well and others poorly. Characteristics consistently found to be correlated with success include: strong educational leadership from the principal, an emphasis on acquiring basic skills, a collegial approach among the teaching staff, a safe and orderly climate, high expectations, and regular assessment against those expectations.¹³ None of this is particularly surprising: the findings resonate with what might be expected in many, if not most, kinds of enterprises.
- 4.7 A well-known study further identified school organisation as a key factor in effective schooling (along with student aptitude, family background and peer group influence) and found that the less a school is subject to pressures outside the school, specifically from external administrators and teacher unions, the more likely it is to be effectively organised.¹⁴ Again this is not particularly surprising: successful enterprises usually give a high degree of autonomy to local managers. Organisations that subject local managers to significant 'top-down' control are unlikely to attract enterprising and capable employees, and any move to reduce the discretion of school principals will have an unfortunate effect on the state school system's ability to attract and retain able teachers.
- 4.8 A recent study¹⁵ identified common elements among seven successful, low income schools in the United States, the first one of which is "Principals must be free". "Effective principals decide how to spend their money, whom to hire and what to teach", and ... "innovation and flexibility are the keys to their success". This is a very small scale survey, but the findings confirm what is intuitively to be expected.
- 4.9 Quite what weighting should be put on the various factors contributing to effective schooling can be, and is, disputed. Nevertheless, the general message about what is important is clear enough, and it strongly suggests that the bulk funding and enrolment changes in the Bill go in the opposite direction to that indicated by research. Principals will have less freedom not more and, other things being equal, school effectiveness is likely to suffer.

The effects of choice and competition on school performance

- 4.10 It is also the case that empirical studies, mostly American, show that competition raises educational standards. The evidence is often drawn from comparisons of changes in attainment levels of students in private (Catholic) and state schools after controlling for differences in student bodies.¹⁶ In some cases it has been found that disadvantaged groups were the main beneficiaries of the higher performance of private schools. A US

¹³ See, for example, Jaap Scheerens, (1992), *Effective Schooling – Research, Theory and Practice*, Cassell, London.

¹⁴ John Chubb and Terry Moe, (1990), *Politics, Markets, and America's Schools*, The Brookings Institution, Washington.

¹⁵ Carter, S C (1999), *No Excuses*, The Heritage Foundation, Washington D.C.

¹⁶ See, for example, Chubb and Moe 1990.

study found that urban minorities gain the most from Catholic schooling because they face the worst public school alternatives.¹⁷

4.11 Some of the empirical evidence suggests that:

- Competition between schools improves performance. For example, an increase in public school choice improves student achievement and reduces costs. Moreover, the response increases with the financial penalty attached to losing students.¹⁸
- Private control over school output generally increases student achievement and the effects of private schools on achievement were either independent of family socio-economic status or higher for the lower status groups.¹⁹
- The centralisation of school finance and control is bad for educational outcomes.²⁰
- Unionisation has a negative effect on student achievement.²¹ A recent survey summarises the evidence as "the general sense that is emerging suggests a negative role for unions when isolated from competition through a centralised bureaucracy."²²

Conclusion

4.12 In contrast to the direction indicated by this research, the thrust of the bulk funding proposals is to maintain or increase teacher union influence and central bureaucratic control at the expense of flexibility in resource use, while enrolment provisions will reduce competition in the interests of stability in the use of existing state school capacity irrespective of the consequences on the effectiveness of education.

5.0 School governance

¹⁷ Neal, D (1997), "The Effects of Catholic Secondary Schooling on Educational Attainment", *Journal of Labor Economics*, Volume 15, pp 98-123. For a survey of the literature, see Neal, D "What Have We learned about the Benefits of Private Schooling?", *Federal Reserve Board of New York Economic Policy Review*, Volume 4, Number 1, March, pp 79-86.

¹⁸ For a survey of the literature, see Hoxby, C (1998) "What Do America's 'Traditional' Forms of School Choice Teach Us about School Choice Reforms?", *Federal Reserve Bank of New York Economic Policy Review*, March, Volume 4, Number 1, pp 47-59.

¹⁹ Toma, E (1996), "Public Funding and Private Schooling across Countries", *Journal of Law and Economics*, Volume XXXIX, Number 1, April, pp 121-148. This used an international data set that included data for New Zealand.

²⁰ Chubb and Moe 1990; Peltzman, S (1993), "The Political Economy and the Decline of American Public Education", *Journal of Law and Economics*, Volume 39, Number 1, pp 73-120; Peltzman, S (1996), "The Political Economy of Public Education: Non-college-bound Students", *Journal of Law and Economics*, Volume 99, Number 1, pp 73-120.

²¹ Peltzman 1993 and 1996; Hoxby, C (1996), "How Teachers' Unions Affect Education Production", *Quarterly Journal of Economics*, Volume 111, Number 3, August.

²² Nechyba, T (1998), "The Economics of Education: Vouchers and Peer Group Effects", Speech to the New Zealand Association of Economists.

- 5.1 The Bill provides for greater continuity in board membership, some changes to merger provisions, ministerial approval of alternative constitutions in certain exceptional circumstances, and removes a discretion that allows a board not to have a student trustee.
- 5.2 We note the curious fact that at the same time as boards are being reconstituted in the interests of more effective governance, their powers to allocate funding and to determine school enrolment schemes are being reduced. These reductions in board powers will inevitably reduce whatever beneficial effects the governance changes would otherwise have.
- 5.3 Nevertheless, we support the proposed changes with one exception. They recognise that different local circumstances require different solutions. This recognition and resulting policy are at odds with what is proposed for bulk funding which, contrary to the rhetoric, denies the importance of flexibility and the need to provide for local solutions to local problems. The reason for this difference is, presumably, that changes to board structure and terms do not threaten the power and influence of the teacher unions and are thus not opposed by them.
- 5.4 The exception to our general support of the governance changes is the provision to remove a secondary school board's discretion not to have a student trustee. We do not consider that student representation is generally desirable because of the potential for conflict of interest, although we would not wish to remove boards' discretion in this matter. We understand that in many cases it works well. However, in some schools at some times there may not be a suitable student representative and this possibility should be recognised. There are other ways of assessing student views than having a student representative on the board. The same potential for conflict of interest exists, of course, with having teachers on the board.²³
- 5.5 We see the proposed changes to governance as relatively minor variations in the *Tomorrow's Schools* policy of the previous Labour government. In it boards of trustees are the essential link between parents and professional teaching staff and, via the charter, between the government and the school. While this was in many respects an advance over the previous cumbersome administrative arrangements, we see the desirability of taking reform to a further stage. Parents are not necessarily good school governors, but more importantly boards lack accountability, there are inherent measurement problems, and there is a lack of significant pressure on schools to be responsive to parental expectations.
- 5.6 Parents' choice of schooling for their children is far more important than their involvement as governors. Parents are 'consumers' of education on behalf of their children and are not necessarily good governors. Schools need to be directly accountable to parents and not weakly and very indirectly accountable via infrequent board elections. Open competition between alternative suppliers is the strongest safeguard of consumers' interests. In education this requires both funding of parents via a voucher or similar mechanism and giving state schools much more freedom in terms of their use of resources, control over staff, and choice of curriculum.

²³ Trustees who are students or teachers are excluded from meetings at which their conduct or, in the case of a staff member, employment *as individuals* is to be discussed (paragraphs 9-10, 6th Schedule, Education Act). This doesn't, of course, address the broader issue of potential conflict between the board with its school-wide interests on the one hand and the interests of students or teachers on the other.

- 5.7 A move in the direction we would wish school reform to proceed would be along the lines of the charter school movement in the United States. Charter schools are public schools run by community or other organisations with varying degrees of exemption²⁴ from the usual regulatory controls relating to curriculum, staffing, and so on. We consider that liberal provision for similar exemptions should be included in the Bill.

Conclusion

- 5.8 We support the proposals with the exception of the provision to make student representation on a school board compulsory. We consider, however, that the provisions should be extended to provide for 'charter schools' status under which approved schools could have extensive exemptions from curricular, staffing, financial and national award requirements.

6.0 Tertiary students' associations

- 6.1 The Bill seeks to promote collective organisation and representation of student interests and to protect the right of students to exercise democratic choice over whether membership of a students' association should be compulsory or voluntary. It removes a bias in present legislation in favour of voluntary membership of tertiary associations. The Bill amends the 1998 legislation which brought in voluntary membership.

The new provisions

- 6.2 The main new features are:
- The removal of the present provision that membership of a tertiary student association is voluntary unless a referendum of students determines that it be compulsory. Under the Bill associations can move between voluntary and compulsory membership under the same processes (new section 229D).
 - Under the Bill a Council *must* collect fees if asked to do so by an association that meets certain criteria and without charge. At present a Council "may" collect such fees.
 - Under the Bill, exemptions will be controlled by the associations and not, as at present, by the Councils. The Bill further provides that where exemption is granted on conscientious objection grounds the association concerned will send the fee to a charity of its own choosing.
 - Present provisions requiring equality of association funding for promoting compulsory and voluntary membership are to be removed.
 - Present provisions about undue influence on students regarding membership of an association are to be removed.

Comments

²⁴ Charter school legislation varies from state to state within the United States.

- 6.3 Providing for compulsory membership of an incorporated society infringes liberty and is oppressive. It should only be contemplated where there is an arguable case for protecting the interests of the public against misconduct or incompetence. But such a consideration does not apply in the present case, and we know of no other similar situation where membership of an incorporated society is made compulsory by legislation. The current provisions are inconsistent with the principle of freedom of association and some of the particular provisions in the Bill make the situation even worse. Higher education should be characterised by freedom of expression and openness to diversity of opinion, and in terms of membership of institutional organisations individual autonomy should prevail. Academic staff are not legally required to join a staff association, and it can reasonably be supposed that many would object most strongly to any such proposal.
- 6.4 There are two main arguments against the view that state tertiary institutions should be free to decide whether association membership should be compulsory or not. First, student associations are representational and political. There can be, of course, no objection to students engaging in politics, but it is unconscionable to require membership of such organisations. Secondly, tertiary institutions have quasi-monopoly status, and vesting coercive power in non-elected state-controlled institutions, whether in their Councils or in student associations, is undemocratic because students wanting a university education have no alternative but to attend a state university. PTEs on the other hand are far more numerous and not state-owned or controlled and should not be subject to legislative requirements on student associations: it should be left to each PTE to decide its own policy on such matters.
- 6.5 The opportunity to gain an exemption does not make compulsory membership acceptable. It is in fact totally bizarre that legislation should have to provide exemption on conscientious grounds from membership of an incorporated society. Such provisions are usually only required in cases such as exemption from military service in times of national peril. Also, in practice obtaining an exemption can be time consuming and, in the case of exemption for conscientious objection, without financial benefit. The Bill makes matters worse by giving to associations the responsibility to decide to whom exemptions will be given and to what charities fees from those on whom they confer conscientious objector status should be sent. To give the same body from which one seeks exemption the right to decide on exemptions is contrary to natural justice. The lack of any complaint or appeal procedure makes this aspect even more worrying.
- 6.6 The Bill aims to remove the bias towards voluntary membership by providing the same procedures for moving from compulsory to voluntary membership as for going in the opposite direction. In practice, the provisions will provide a relatively easy route for activist minorities to change or retain membership requirements. They will be well placed to marshal the required numbers of students to achieve control over the relatively disorganised, often uninformed and apathetic, majority. The appeal of compulsory membership, including the very considerable financial advantages, provides an enormous incentive to retain or to regain compulsory membership.
- 6.7 The appeal of compulsion is exemplified by the very sharp falls in membership and income that occurred at the universities of Waikato and Auckland which moved to voluntary membership under the 1998 legislation. The Waikato students' union is reported to have 2000 members out of the 13,000 students currently attending the university (*NZ Education Review*, 31 March 2000). The New Zealand University Students' Association (NZUSA) will also have suffered losses of revenue as a result of

the move to voluntary membership at these two universities. It has had to change its constitution so a constituent union pays fees to it on the basis of its actual membership and not, as until recently, on the basis of student numbers.

- 6.8 It should be noted, however, that it is the Councils who are to decide, in consultation with any associations, the rules under which votes are to be conducted. Presumably, a Council could require, for example, a two-thirds majority of all students, rather than a simple majority of those who vote, to effect a change to voluntary or compulsory membership, and if such were to be the requirement a change would be much more difficult to effect. We anticipate that Councils will argue that it is in the interests of 'harmony' for them to set low thresholds.
- 6.9 Whatever the voting procedures to be chosen, the government should not allow compulsory membership of student associations at state-owned institutions. Student associations may express strong views of a political and ideological kind and are not limited to providing student services and advocacy. It is intolerable that students holding different views should be required to join (or go through the highly flawed exemption process to escape membership of) an association expressing views with which they disagree and may even find morally repugnant.
- 6.10 It may be argued that the efficient delivery of association services requires compulsory membership. But associations can offer advocacy and other services to their members, and non-members requiring similar services can go elsewhere for them. There may be some economies of scale, but the government does not require all motorists to join the Automobile Association or subscribe to the *Consumer* magazine on such grounds. In practice, of course, monopoly situations with compulsory membership inevitably lead to complacency, disregard of minority views, ineffective and costly service delivery, and apathy among members who can do little if anything to effect change.
- 6.11 Arguments for compulsion are hard to find while arguments against compulsion are compelling. It would seem that the main reasons for the Bill are the government's 'partnership' view of the relationship between student associations and Councils. This would seem to combine with the desire to privilege favoured groups, namely student associations, and to give student activists, often representing a minority of students, a degree of legitimacy which is unwarranted.
- 6.12 The 'partnership' view advanced in the Explanatory Note is not explained nor is it defended against other possible models of tertiary governance. It may be convenient for a Council to have a single student association with compulsory membership with which to deal and to claim that having association representation on it necessarily means that students are being consulted. However, associations with compulsory membership are not likely to represent the diversity of student views, and Councils should employ a wide range of ways of assessing student opinion.
- 6.13 It is unwise to deal with the issue of student representation on Councils outside the wider context of tertiary governance. The issue needs separate and careful treatment. Mandatory student representation is not usually desirable. An institution's governance arrangements and other aspects of organisational design should be determined in the context of its objectives, the need for decision making processes that enable objectives to be effectively pursued, and the requirements of accountability, monitoring and incentives for high performance. It is not clear that the same organisational requirements should

apply to all types of state tertiary institutions, a point that may be underscored by the government's concern for greater discrimination between the roles of the various types of institution.

Conclusion

- 6.14 We do not support the relevant amendments and recommend they do not proceed. They make existing provisions worse, offending the usual notions of natural justice in several important respects by giving priority to institutional interests over individual freedom.
- 6.15 We consider that compulsory membership of student associations in state tertiary institutions should be specifically prohibited, just as compulsory trade union membership has been eliminated and is not being reimposed by the Employment Relations Bill. It is not desirable for the government to legislate for student associations at PTEs. The issue of student representation on Councils should be considered in the wider context of tertiary governance and, pending such a review, present arrangements should stand.

7.0 Compliance with the Human Rights Act

- 7.1 The Bill contains four clauses that remove from education legislation the exemption from compliance with the Human Rights Act 1993 that presently applies to government policies and practices. These provisions are as follows:
 - The principal Act provides that the Secretary for Education may, on the recommendation of the chief executive of the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989, direct that the board of a state school enrol at the school any person under 18. Clause 5 of the Bill removes the age limit.
 - The Royal New Zealand Foundation for the Blind Act 1993 provides that the Minister of Education may direct the Foundation to admit to, and maintain in, one of its institutions, establishments or accommodations any blind person between the ages of 6 and 20. Clause 26 of the Bill removes the age limits.
 - The Private Schools Conditional Integration Act 1975 provides, at section 77, for the retirement of teachers in integrated schools at certain specified ages. Clause 27 of the Bill removes these provisions.
 - The Music Teachers Act 1981 provides that the Institute of Registered Music Teachers shall not register anyone under the age of 20 years. Clause 28 removes the age limit.
- 7.2 The proposed amendments end exemptions for various age restrictions in education legislation from compliance with the Human Rights Act. We are not told in the Bill's Explanatory Note the original reasons for the restrictions or why their removal is now desirable other than the need for compliance with the Human Rights Act. In the absence of this information we are unable to come to a view about them. We would, however, be concerned if there is an inference that any age restriction is discriminatory as, in our view, there can be no simplistic equation of age restriction with discrimination. Our

preference would be to retain the exemptions pending a more detailed review of their merits and of the Human Rights Act itself.²⁵

Conclusion

- 7.3 In the absence of detailed information about the exemptions we are unable to express an opinion on the merits of removing them. Our preference would be to maintain the exemptions pending a more detailed review of their merits and of the Human Rights Act itself.

8.0 Recommendations

- 8.1 It is recommended that the Select Committee:

- decline to support the abolition of the 'fully funded' (bulk funding) option (section 2);
- decline to support the changes to enrolment provisions (section 3);
- note the importance of freeing up the supply side of schooling and of direct accountability of schools to parents and promote the introduction of a liberal voucher scheme for the funding of schooling, with vouchers 'cashable' at both state and private schools (section 4);
- decline to support the proposal that student representation on school boards be compulsory and support the other proposed changes to state school governance provisions (section 5);
- promote the inclusion in the Bill of 'charter school' provisions enabling the minister to confer on approved schools wide exemptions from present regulatory requirements and from the national teacher industrial awards (section 5);
- decline to support the proposed changes to provisions concerning tertiary student associations and promote the legislative prohibition of compulsory membership of student associations at state tertiary institutions and the removal of provisions concerning tertiary student associations from legislation relating to Private Training Establishments (PTEs) (section 6); and
- note our preference to retain present exemptions from the Human Rights Act pending a detailed review of their merits and of the Act itself (section 7).

²⁵ For discussion on human rights legislation see Epstein, R (1996), *Human Rights and Anti-discrimination Legislation*, New Zealand Business Roundtable, Wellington; and Epstein R (1999), *Age Discriminations and Employment Law*, New Zealand Business Roundtable, Wellington.

APPENDIX A

EDUCATION FORUM

The Education Forum has been formed to contribute to education policy through research and debate on the current issues, structures, and expectations at all levels of New Zealand education.

The Forum believes that New Zealand education requires an approach to learning and achieving which encourages all individuals to reach their full potential, and which will take New Zealand to the leading edge of international performance and achievement.

The Forum is an association of individuals who have a common concern for the future direction of New Zealand education. The membership is drawn from primary, secondary and tertiary sectors of education, together with leaders of industry and commerce.

The principles incorporated in the above statements include the following:

A commitment to excellence and high expectation in all human endeavour, based on a lifelong desire for learning.

The belief that the community/government should ensure that all young New Zealanders have access to quality education.

The teaching of values and life skills which will preserve the dignity of the individual and the integrity of the family.

The acceptance of healthy competition for both individuals and the education sector.

The encouragement of cooperation, creativity, adaptability and enterprise.

The encouragement and recognition of personal responsibility, goal setting and achievement in all endeavours, through self discipline and hard work.

The acceptance of a compulsory core curriculum in primary and secondary schools.

The necessity for high standards of assessment of student performance and of accountability of teachers and institutions.

The promotion of a New Zealand cultural identity.

The key involvement and responsibility of parents in their children's education.

The emphasis on the value of parental choice and the self-management of education institutions.

The development of closer links between education institutions and industry.

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