

*Submission of the
Wellington Community Justice Project on*

Education Amendment Bill (No 2)

*To the Education and Science
Select Committee*

6 August 2010

**Contact person:
Anna Whaley
Wellington Community Justice Project
Human Rights Team
0273203260
humanrights@wellingtoncjp.org**

I wish to make oral representations on this submission

Education Amendment Bill (No 2)

Introduction

This submission is made on behalf of the Human Rights Team of the Wellington Community Justice Project (WCJP) – A VUW University Law School student initiative. The WCJP is composed of senior students from VUW Law School. It aims to utilise the skills of Wellington law students in ways that benefit the wider Wellington Community.

The Human Rights Team aims to advocate Human Rights protection in Wellington and New Zealand. As part of the Human Rights Team's functions, it considers the human rights implications of proposed bills. In particular WCJP is concerned with legislation which may compromise New Zealand's human rights protections domestically, and its human rights obligations internationally.

Executive Summary

The Bill seeks to advance education standards in New Zealand to promote achievement in New Zealand education institutes.

I commend the purpose of the Bill. However I consider that the Bill should not pass in its current form because aspects of the Bill breach certain rights in the New Zealand Bill of Rights Act 1990 (BORA) and are incompatible with the international human rights instruments. The Bill also appears to be incompatible with the Human Rights Act 1993.

I recommend that clauses 6, 16 and 18 be removed from the Bill. I further recommend that section 11F of the Education Act 1989 be reconsidered in its entirety.

Clause 6

General comments

Section 11F of the Education Act 1989 allows schools to select children from out of their school zone in certain circumstances such as where their parents are former students, employees or members of the Board of Trustees. Clause 6 proposes to reorder the priority of applicants when selecting students from outside a school's home zone.

New Zealand ratified the CRC in 1993. The preamble to the CRC states that to be prepared to live an individual life in society, children need to be "brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity."

Section 11F fosters elitism, in New Zealand society. Elitism is contrary to the principles of equality and democracy held dear by many New Zealanders. It teaches children that it is ok to judge individuals based on who their parents are. It will also teach children that the old adage "it is not about who you are, but who you know" is true. It is important that the values society teaches to today's children are values we want carried into the future.

Education is a basic and fundamental right. Legislating for such inequality in the education system is a travesty in an arena which above all others should be free from class-based discrimination.

Finally, I fear that this section has the potential to be easily abused by school administrators. There is nothing to stop a principal appointing a parent of a particularly gifted or otherwise preferable out-of-zone student to their school board for a superficial time period, to ensure they can legally enrol in the school. While I have faith that the majority of educators in such positions of power would not abuse this provision, I fear that the opportunity could prove tempting for some, especially those whose schools have fine reputations for producing high achieving students that they seek to uphold. Not only is this provision contrary to the CRC in creating a way to give preference to high achieving students over more ordinary ones who cannot, usually for economic reasons, relocate to a school's home zone; but it will also undermine the effectiveness of school boards, and the amount of credibility they receive from the public.

Any proposed amendments to section 11F must reconsider the section as a whole in light

of New Zealand's International human rights obligations.

Recommendations

I recommend that clause 6 be removed from the Bill and replaced with a new clause that repeals any system of priority for applications of students outside a school's home zone, for the reasons expressed above.

Clause 16

General comments

Clause 16 proposes to amend section 236 of the Education Act 1989 to make it more difficult for international students to receive refunds for courses which they withdraw from within 10 days of their commencement. International students already bear a financial burden which could easily be described as discriminatorily disproportionate in comparison to domestic student fees. Furthermore the ten day time limit is impractical given the nature of many university courses.

Specific comments

To discriminate between international and domestic students on the ground of nationality or citizenship is contrary to section 19 of the BORA and section 21 of the HRA. Section 19 (1) provides that "everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993." The HRA section 21 (1) (e) – (f) lists race and ethnicity (including nationality or citizenship) as unlawful grounds of discrimination.

While I understand the government's desire to increase the amount of funds available to tertiary education providers from pockets other than their own, I firmly believe that international students should not bear the burden any more than they already do. Already, international students pay nearly three times the fees domestic students do for the same quality of education. I see no reason why international students should be further financially disadvantaged by their nationality. This provision gives no thought to the

international student's experience. In addition to being in a foreign country, with no sense of security net or direction and often knowing very few people, this provision makes life even harder for them. If I was an international student coming to New Zealand, I would feel threatened by these provisions, and perhaps even be entirely put off choosing to study in New Zealand altogether.

To make it more difficult for international students to receive refunds when withdrawing from their courses is expressly contrary to the New Zealand Bill of Rights, specifically section 19.

Section 5 of the BORA provides that the “rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by the law as can be demonstrably justified in a free and democratic society.” In my view the application of a discriminatory fee structure based on nationality cannot be said to be demonstrably justifiable.

For these reasons, I strongly oppose this clause, which would create a glaring violation of international students' human rights.

Recommendations

I recommend clause 16 be removed. Furthermore, I recommend the government investigate reducing the already existing discrimination toward international students by the exceedingly disproportionate course fees.

Clause 18

General comments

Clause 18 which proposes to exempt short term, limited attendance early childhood education centres from complying with normal early childhood and education centres standards for a variety of policy based reasons.

Specific comments

I believe that children at early childhood education centres should all be required to comply with national standards and procedures. Early childhood is a crucial point in development, and the wellbeing of children at these education centres must therefore be ensured at all times, whether they are there for two hours or ten hours.

I understand the government's desire to provide cheaper short term childhood care centres. They serve the useful purpose of giving parents the ability to drop their children off while doing the shopping or attending the gym etc. .However, exempting such centres from complying with national standards puts the wellbeing of children at these centres at risk in a way that cannot be justified by the need of a parent to get a haircut. These provisions could create a situation where early childhood centres could have substandard systems in place to ensure the wellbeing of children in their care.

Finally, these provisions are contrary to the purpose of the Bill. The Bill seeks to advance education standards in New Zealand to promote achievement in New Zealand education institutes. The provisions proposed under clause 18, however, would be a backwards step in the quality of early childhood education in New Zealand.

Recommendations

For these reasons I recommend that clause 18 be removed from the Bill.

Conclusion

My submission opposes the inclusion of clauses 6, 16 and 18 in the Education Amendment Bill (no 2) on the grounds that they violate the UN Convention on the Rights of the Child, the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and are generally at odds with the advancement of education in New Zealand.

Thank you for taking the time to consider my submission.