

‘The Pendulum Swings’ – Back to Reasonably Convenient Schools

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‘Perhaps the most contentious changes introduced in this Bill, or the ones around which there was the most debate, are those concerning enrolment schemes’.

Hon Wyatt Creech, Minister of Education, during Third Reading debate on the Education Amendment Bill (No 2), December 1998

Introduction

Enrolment schemes, as they are called in New Zealand, are required where schools have more applications for enrolment than they have capacity for students. This pressure can be the result of population increase or movement, or school popularity. Enrolment schemes set out the criteria for allocating places at these schools. New provisions relating to enrolment schemes were enacted in December 1998, and allow new schemes to be developed to apply to enrolments for the year 2000.

This article discusses the legislative history of enrolment schemes in New Zealand, and the cases which have interpreted those provisions. It also outlines the new legislation.

Enrolment schemes are contentious. They cut across the right to enrolment that every child has at any state school between the ages of 5 and 19 (see s3 of the Education Act, 1989). They also cut across the freedom of choice of state school that the general right to enrol provides. They raise the temperature and stir the emotions like almost nothing else in education and, when discussed, words and phrases such as ‘school choice’, ‘parent choice’, ‘elitism’, ‘creaming’, ‘equity’, ‘market model’, ‘protect standards’ often arise.

Legislative History

There have been four different regulatory regimes for enrolment schemes since 1989, making that part of the Education Act amongst the most amended in the last decade. It is interesting to note that alongside the policy changes reflected in the legislative activity, the number of schools which have enrolment schemes has grown steadily and the number

of parents and students affected is the highest it has ever been. Currently about 360 out of the 2,600 schools in New Zealand have such schemes.

The history of enrolment schemes also illustrates the inherent tensions in any policy on the subject, for example, the tension between a parent's free choice of school and the best use of school accommodation provided by the state. The first statutory provision in New Zealand limiting attendance at state schools for reasons of overcrowding was s19 of the Education Amendment Act 1924. This section is brief in comparison with modern equivalents, relates only to primary schools, and states that:

- 19. To prevent overcrowding at public schools Board may limit attendance** – In addition to the powers conferred on it by section 32 of the principal Act, a Board may, with the approval of the Minister, in order to avoid overcrowding at any public school, limit the attendance at such school in such manner as it determines:

Provided that the power hereby conferred shall not be exercised unless there is adequate and convenient provision for every child eligible therefore and debarred from attending such school at another public school.

Of particular interest are the central approval requirement (by the Minister), and the reference to 'adequate and convenient' provision for a potentially excluded child to attend another state school. These are enduring themes in enrolment scheme legislation over the decades between 1924 and now.

Section 19 of the Education Amendment Act 1924 was complemented by s10 of the Education Amendment Act 1932-33 which provided that:

Where the accommodation available at any secondary school, technical school, or combined school is not sufficient for all the children qualified for free places and applying for admission thereto, the Minister may, by notice in writing, direct the governing body of the school to restrict the admission of pupils to the school in manner set out in the notice:

Provided that no direction shall be given under this section which would exclude any child qualified for a free place from admission as a pupil unless there is adequate and reasonably convenient accommodation for such child available at another secondary school, technical school, or combined school.

Section 19 was the subject of comment by Turner J. in *Reade v Smith* [1959] NZLR 996. This case was about the validity of a regulation made by the Governor-General which allowed any Education Board or governing body of a school to transfer any pupil to another school or refuse to enrol a pupil, for the purpose of ensuring that the best use was made of all accommodation and educational facilities available. Section 19 itself was not at issue, but Turner J. said:

By the original Act he (the parent) is given an absolute choice; but by section 19 of the Education Amendment Act 1924, the Board may, with the consent of the Minister, declare some schools ineligible for further enrolments on the grounds of overcrowding. Leaving out such schools, however, a parent still has complete freedom of choice. By section 59(2) the child is then obliged to attend the school at which he is enrolled. The essence of this part of the Act is therefore compulsory attendance coupled with freedom of choice.¹

This last comment was to reverberate through later judgments when disputes concerning enrolment schemes were litigated. In 1964 there was a major revision of the Education Act and the following section appeared:

129. Restriction on enrolment – (1) In addition to the powers conferred on it by section 26 of this Act, an Education Board may, with the approval of the Minister, in order to avoid overcrowding at any State primary school (other than a Maori school) limit the attendance at the school in such manner as it determines.

(2) Where the accommodation available at any secondary school or technical school is not sufficient for all the children qualified for free education and applying for admission thereto, the Minister may, by notice in writing, direct the governing body of the school to restrict the admission of pupils to the school in the manner set out in the notice.

(3) The power conferred by subsection (1) of this section shall not be exercised, and no direction under subsection (2) of this section shall be given, so as to exclude any child qualified for free education from admission as a pupil unless there is adequate and reasonably convenient accommodation for the child available at a state primary school (other than a Maori school), or at another secondary school, as the case may be.

The previous reference to ‘adequate and convenient’ provision for those excluded by a limitation on admission was widened to ‘adequate and reasonably convenient accommodation’ at another state school to make the criteria for primary and secondary schools the same. This was really a consolidation of the 1924 and the 1932 provisions. For a primary school, the Education Board of the particular district, with the approval of the Minister could limit attendance. For a secondary school, the Minister was given the power to *direct* the governing body of the school to restrict admission in the manner directed. For secondary schools then, the Minister of Education had direct control over the type of limitation which would operate.

In 1978 the Education Act was again amended to insert new and much more detailed provisions about limitations on enrolment at secondary schools. Before the 1978 amendment, while there was clearly a power to restrict enrolments on accommodation grounds, this had been used infrequently as the practice had developed of regulating enrolment by informal schemes agreed by the affected schools. The objective was to ensure orderly enrolment procedures at a time of rising rolls and limited accommodation.

However, the power of direction was starting to be used more frequently in the 1970’s and was subject to a challenge by way of judicial review. The two cases (which were heard together) were *Otto* and *Wright*, both against the Minister of Education.² In August 1977 the Minister had issued a notice to the Auckland Grammar Schools Board restricting the third form intake of pupils at Auckland Grammar School and Epsom Girls’ Grammar School, to pupils within a defined area. The effect of the notice was that the applicants (two students through their parents) were excluded from enrolment when they would have been eligible under the previous scheme, in force by way of an earlier direction.

The case was heard in March 1978, and the decision turned on the precise wording of s129(2). The judge found that the Minister’s direction was invalid for two main reasons. Firstly, the judge decided that at the time the direction notice was issued there was no evidence that the accommodation available at the Grammar schools was not sufficient. That could not be decided because no applications for admission had been received, although at that time they were expected. In other words, the Minister had anticipated the level of enrolments and the Act did not provide for that. Secondly, it was found, on the evidence, that an irrelevant consideration was taken into account by the Minister – that of excess accommodation at neighbouring schools.

The 1978 amendment (passed 7 months after the *Otto* decision) introduced the term ‘enrolment scheme’ for the first time, along with an elaborate procedure for devising, agreeing and approving secondary school enrolment schemes. The amendment applied in any district in which a student could conveniently attend more than one secondary school. The legislation allowed for secondary school boards, acting under the chairmanship of the regional superintendent of education (a departmental officer), to agree, by a majority vote

if necessary, upon an enrolment scheme. If the boards were unable to agree, or if one of their number objected to the agreed scheme, the regional superintendent was empowered to determine a scheme. All schemes were submitted to the Minister of Education for approval. The Minister needed to be satisfied that each scheme was valid in terms of the legislation.

Tight time constraints were imposed upon secondary school boards, departmental officials and the Minister. Where a request to implement a new enrolment scheme, or revise an existing scheme, was received by 1 May, the regional superintendent was required to have convened an enrolment meeting by 1 June. A scheme was established either by local agreement or determination, and a one-month objection period allowed before submitting the scheme to the Minister of Education for consideration. For the scheme to become operative for the start of the following school year, the Minister was required to approve the proposed scheme before 1 August.

The requirements of the new provisions (which were ss 129A and 129B) hinged on the following key points:

The threshold test was no longer overcrowding for secondary schools, although the (separate) primary provision remained much the same and still included that term. For secondary schools the Director-General of Education exercised a discretion where two or more schools were so situated that some or all of the students residing in the locality might, with reasonable convenience, attend either of them and no scheme was in force, or the scheme that was in force was not adequate.

Schemes were to have either, what was in effect a 'home zone', or state a number of entitlement students and the criteria used in selecting them. The latter came to be called 'numbers schemes'. The schemes were approved on a regional basis and groups of secondary schools were brought together by regional departmental officials to coordinate schemes across an area. This coordination was necessary because of the new s129B of the Act which expanded on what had, until now, been references to 'adequate and reasonably convenient accommodation'. It said:

129B. Students to have access to reasonably convenient accommodation – The Minister shall not approve –

- (a) Any limitation under section 129 of this Act; or
- (b) Any enrolment scheme under section 129A of this Act –

that has the effect of excluding a student from a state primary school or secondary school that he might otherwise reasonably conveniently attend,

unless that student will still be able reasonably conveniently to attend some other such school that is not an integrated school.

The 1978 provisions stayed in place until 1989 and were the subject of many challenges – culminating in litigation in the mid 1980's. The litigation was an expression of the inherent tension in enrolment scheme policy which were referred to earlier - that of placing restrictions on parental choice while ensuring that all students are allocated to schools which have adequate physical facilities. In other words to ensure that schools are neither overcrowded nor under-used.

The Litigious Eighties

In 1959 in *Reade v Smith*,³ the court had, leaving aside the enrolment restriction section, seen the scheme of the Act as 'compulsory attendance coupled with freedom of choice'. The importance of the ideal of 'freedom of choice' was undoubtedly one of the catalysts for two major cases in the 1980's, and the success of the challenge in 1978 would not have been a disincentive. Despite the change in the legislation after *Otto*, the scene had been set.

***Goldfinch v Minister of Education*⁴**

In this case the applicants were six third form students who challenged the validity of the enrolment scheme which applied to all five secondary schools in Palmerston North. The scheme had been arranged by way of a regional meeting under s129A of the Education Act 1964 and approved by the Minister under s129B. The scheme specified the number of students to be permitted to enrol at each school and the criteria to be used in selecting them.

At issue was the validity of the Minister's approval under section 129B. That section provided that the Minister could not approve any scheme 'that has the effect of excluding a student from a state school that he might otherwise reasonably conveniently attend, unless that student will still be able reasonably conveniently to attend some other such state school'.

The applicants' case was based on the geography of Palmerston North and the distribution of secondary schools there, and was essentially that a student living in the extreme south-western part of the city might be compelled by the scheme to be enrolled at a school in the north-east region bypassing a closer school.

The Crown argued that the Minister's approval was valid under section 129B unless it could be shown that an excluded student could not reasonably conveniently attend another school, and that the concept of reasonable convenience must be assessed objectively.

Ongley J. had difficulty in finding a standard of convenience against which the reasonableness of particular situations could be judged. He said:

In contending for an objective approach, however, it seems to me that the respondents have failed to indicate any standard of convenience against which the reasonableness of any particular situation may be judged. It cannot be a national concept of convenience. The country boy who rides a pony some miles to school cannot be compared to a student in a metropolitan area. One city may differ materially from another. It seems that a particular 'locality' is the entity with which the legislation is concerned. Convenience must then be judged in relation to what schools are available to be attended and in assessing what is reasonable one must, so far as it is possible to do so, put oneself in the place of the ordinary person familiar with the locality who may be concerned with such things. Mr Williams argued that reasonable convenience within the meaning of section 129B must take into account other things than mere proximity of residence and that may well be so but, nevertheless, it is the convenience of the student that is to be considered and not the convenience of the administrators of schools, national or local. Furthermore it is convenience in attendance that is in issue and not any other sort of convenience. In my view proximity of residence will, in the average case, be a primary consideration if not the overriding consideration. My impression of the evidence is that people in the locality have a view as to what is reasonably convenient attendance at school having regard to the availability of schools in the area. So far as that view is dictated by proximity of residence I do not think it necessary for me to attempt to state exactly what the distance may be. I need only say that I am satisfied that it is much less than the distance from one extremity of the City to the opposite extremity.⁵

Brown v Minister of Education⁶

The *Brown* (1985) case which went to the Court of Appeal was also set in Palmerston North, and was another challenge to an enrolment scheme covering the five schools in the city. It was brought by the parents of intending third formers and, once again, it was the Minister's discretionary power to approve the scheme which was challenged.

A background of expanded development in parts of the city, demographic changes and parental preferences for particular schools had resulted in an uneven flow of pupils to the five schools. Following the *Goldfinch*⁷ case a new scheme had been approved by the Minister in 1984. The new scheme contained a number of changes designed to give

greater weight to the preference and convenience of third form applicants. The validity of the scheme was challenged in judicial review proceedings which were removed to the Court of Appeal for urgency and because of some uncertainty surrounding an appeal of the *Goldfinch* decision.

Section 129B of the Act was once again subject to judicial scrutiny, and the Court found against the Minister. The words of Turner J. in *Reade and Smith* were once again quoted, and also Ongley J's interpretation of reasonable convenience in *Goldfinch*. The Court of Appeal took a similar view to that of Ongley J. and it drew some conclusions worth noting. The Court of Appeal noted that all students affected by a scheme are to be afforded the minimum protection of s129B; it is not a matter of the greatest good for the greatest number. The Court recognised the high value traditionally attached in New Zealand society to the right of all parents to choose the secondary school their children will attend and it was clear that if that right must be eroded by legislation, no child could be disadvantaged beyond the measure in the legislation. The Court added that while there may well be considerations about under-utilisation of resources and the optimum use of schools, the statutory test was the convenience of the individual student, not administrative convenience and this was not a matter of balance against the interests of other students, or of staff or administrators or the Treasury.

On the issue of what the term reasonably convenient meant, the Court said:

The composite expression 'reasonably convenient' both imports an objective standard and specifies the requisite degree of convenience. What constitutes reasonable convenience must be determined by the standards of the locality in relation to such obvious matters as the mode and distance of travel, exposure to traffic hazards and the time spent in travel, always bearing in mind that pupils begin third form when they are 12 or 13 years old. The enrolment schemes are directed to 'the students residing in the locality'. Reasonableness must be judged by the standards of that neighbourhood.

Legislative Response

In 1989 a major restructuring of education administration put in place a new Education Act which took effect on 1 October that year. The review on which the new Act was based is known as the Picot Report and the Government decisions made on the basis of the report were set out in the document titled '*Tomorrow's Schools*'. It is interesting to note that there were differences between the recommendations of the Picot Report relating to enrolment schemes and the subsequent decisions by Government encapsulated in the

'Tomorrow's Schools' report. It is on *'Tomorrow's Schools'* that the statutory provisions were based.

Picot said:

In our view, zoning of enrolments should only have one purpose. That is, to ensure that every student has an absolute right to attend the nearest neighbourhood school. We do not support the notion that zoning should be used to maintain enrolments in schools which might otherwise decline.

We propose that enrolment schemes be devised, where necessary, on the following principles:

- That every student have the right to attend the nearest neighbourhood school.
- That schools be entitled to enrol any other student who can be accommodated in the opinion of the school.
- That where there are more enrolments than accommodation available, a supervised ballot be held to decide which students will be enrolled.
- That schools with a 'special character' be entitled (with the Minister's approval) to give preference to students who subscribe to the particular religious or philosophical values of that school.⁸

In *Tomorrow's Schools* Government said:

There will be an enrolment scheme for secondary schools available for use in communities which need to regulate the catchment areas for schools. This scheme could also apply to primary schools where required.

The purpose of the enrolment scheme will be to ensure that students can attend a state school reasonably convenient to their home, to give parents maximum choice, and to make the best use of existing school plant. The enrolment scheme will work as follows:

- A maximum roll will be set for every school as part of its charter negotiations with the Ministry – available accommodation will be a significant, but not the sole factor, in deciding on the maximum-roll figure.
- Within the total maximum roll, a threshold roll to accommodate 'home-zone' pupils will be established.

- All pupils living within the home zone will be guaranteed enrolment.
- The Ministry will negotiate the home zone for a school and will establish its threshold limit.
- Where a school still has unfilled places after enrolling home-zone pupils and where there are more out-of-zone applicants than there are places available, these will be filled by ballot.
- Once students have been admitted to a school their brothers and sisters can also attend that school, on the same basis as home-zone pupils.
- There will be provision to review the home-zone area, and the maximum-roll and threshold-roll numbers, and to vary them if necessary.

The details of this scheme will be further considered by the Government.

Enrolments to integrated schools will continue to be controlled through a maximum roll.⁹

This is consistent with the basic principles of the first statutory provision in 1924, but with the addition of ‘parental choice’ and ‘best use of existing school plant’. These are not principles that have been obvious in the statutory provisions or the kind of schemes which applied through the years between 1924 and 1989. In the event it proved difficult to express the intention of *Tomorrow’s Schools* in the Act which gave it life – and the Parliamentary process had an inevitable effect on the detail of the provisions.

The Result under the Education Act 1989

For primary schools the situation remained much the same because the primary sector had previously managed its enrolments without having to develop complex enrolment schemes and in a way which had not attracted the controversy which dogged secondary schools. For secondary schools an elaborate system was prescribed which required a maximum roll, a home zone, a maximum number of out-of-zone enrolments, early applicants, late applicants, acceptance of applicants in the order applications were received, and if that was not possible, a ballot for places.

The Act tried to cover every eventuality, probably in an attempt to cure the ‘ills’ of the 1980’s when schemes were challenged in court and overturned. The ballot proved to be unpopular for many - particularly schools - as it removed the element of school choice by way of criteria for out-of-zone places. It was also found to deny any element of

discretion if, for example, the school offered better provision for special needs students or had a bilingual unit. The ballot, it was feared by some, might also create imbalance among year levels if intake was left to chance (although because of the short life of this statutory provision these fears were not tested to any extent).

As had always been the case, not every school needed to have an enrolment scheme but every school now had to have a maximum roll. Only those schools which were likely to have more applications than places available needed a scheme.

One critical difference from the pre-1989 system was that under the new system schemes were negotiated on an individual basis with each board, not on a district basis with groups of boards where an enrolment scheme was required, the school was required to have a home zone. All students living in the home zone had, as of right, entry although they did not have to attend their home zone school. This was another point of difference. Previously, schemes imposed an obligation on most students to attend a zoned school.

In the event, this system was shortlived and only applied for enrolments in 1991. A new government was elected at the end of 1990, and in 1991 the Education Act was once again amended. The new policy stressed maximum possible parental choice although some critics argued that it really provided the means for the schools to do the choosing. The 1991 amendment transferred the entire responsibility for devising and implementing an enrolment scheme to the board of the school concerned. The role of the Secretary of Education was limited to certifying that a threat of overcrowding existed at the school. Once the school had the Secretary's agreement on the issue of overcrowding it could put its own scheme in place.

The same provisions applied to primary *and* secondary schools for the first time since the power to put limitations in place first appeared. Boards were required to review their schemes annually against the benchmark of overcrowding, and if, in the board's opinion, the school was no longer under pressure, were required to abandon the scheme. The Act did not set down any parameters for the content or form of a scheme. That was up to the individual board. It was quite a change from the prescriptive process put in place in 1989 and in the succeeding years of its application many considered that the balance had gone too far away from central control.

In the years between 1991 and 1998 the number of schools with enrolment schemes increased,¹⁰ and increasing numbers of these schemes had no geographic zone giving priority in enrolment. There was a decreasing emphasis on the student's place of residence and an increasing emphasis on selection criteria or simply discretionary entry. In June 1997, 78 schemes out of the 414 then in place did not have zones, and 13 of the 78 made no mention of proximity to the school as a criterion.¹¹

The Problem Solved?

It became clear by the mid 1990's that in some districts the network of schools was unable to provide access to a convenient school for all. Some families, particularly those moving during the school year, encountered difficulty in enrolling at a local school in their neighbourhood. These situations applied particularly to areas of population growth, exacerbated by increased immigration and infill housing. It was considered that a new balance needed to be struck between the need of each local community for convenient access to a network of schools, parents' choice of school, and the best use of finite resources available to provide accommodation to meet increased demand in an area. The result was the Education Amendment Act (No 2) 1998 which replaced the 1991 provisions and widened the application of enrolment schemes to include groups of schools which had not previously been subject to the regime.

A major feature of the new legislation is that the term 'reasonably convenient' reappears, not as part of a statutory discretion but as a principle underlying the development and operation of schemes. Another difference is that there is explicit reference to the Ministry needing to make reasonable use of the existing network of schools in situations where overcrowding exists. Although this had always been the case it had not been stated in legislation before, and that omission had certainly contributed to the decisions against the Minister in the cases which have been referred to earlier. The legislation has been framed to avoid such problems – stating up front the purposes and principles which would operate. The traditional ideal of parental choice is recognised but as a secondary consideration to principles which recognise the fundamental tensions that have made it necessary to restrict that choice.

Enrolment schemes set out criteria for allocating enrolment places at schools where the demand for places exceeds the number of places available. Under the 1991 legislation, the content of enrolment schemes was entirely a matter for boards of trustees; the Ministry's only role was to verify that a scheme was needed. The development of an enrolment scheme is still the responsibility of a school's board of trustees, but boards are now required to comply with a number of principles, the most important of which is the desirability of students being able to attend a reasonably convenient school. Furthermore, each scheme must now be approved by the Secretary for Education before it is adopted and implemented by the board.

The content of an enrolment scheme is initially a matter for a school's board of trustees to determine although, as already stated, the new legislation sets out purposes and principles which the board must have regard to. The role of the Secretary is to ensure compliance by the board with the purposes and principles of the Act and with the consultation requirements specified in the Act.

One purpose of an enrolment scheme is to avoid overcrowding or the likelihood of overcrowding at a school. The second purpose of an enrolment scheme is to enable the Secretary to make reasonable use of the existing network of schools. This is also a principle governing the content of schemes and means that boards cannot consider their school's scheme in isolation.

The principles are set out in full in the new s11B which states:

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.

An enrolment scheme then, must reflect the desirability of students being able to attend a reasonably convenient school. While this principle is at the heart of the new legislation, boards must also consider the network of schools around them.

The term 'reasonably convenient school' is defined in s11C of the Act and this statutory definition takes its colour from the way the Court of Appeal approached similar statutory words in the *Brown* case. In 1999 a 'reasonably convenient school' is 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

distance, travelling time, reasonably available modes of transport, common public transport routes, traffic hazards and the age of the student.

The meaning of ‘reasonably convenient school’ may vary as between different schools depending on whether the school is single-sex or not, whether it is primary, secondary or composite, or whether it is one of a range of specialist types of school.

The new provisions also give the Secretary of Education a coordinating role because as a result of the approval process and the explicit reference to making reasonable use of the network of schools, the Secretary will be able to consider all schools in an area and identify any problems in access. This coordinating role fits neatly with the express principle that boards must take into account the existing network of schools and the location and capacity of other schools that are reasonably convenient schools for students in a general area served by the school.

Consultation is an important element in making this work. There needs to be real consultation between boards because the Ministry must be assured that the network of schools is providing access to a reasonably convenient school for all students in an area. If the problems encountered in the past are to be avoided in the future, consultation and cooperation will be critical elements in the operation of the new provisions. We can learn from history and in the case of enrolment schemes, we need to take heed. We are hopeful that the new amendment has done this.

This article began with a quotation from the (then) Minister of Education, the Honourable Wyatt Creech, during the Third Reading debate on the new enrolment scheme provisions. It seems appropriate to end, with another quotation from the Minister, from the same debate, this time indicating his hope for the effect the legislation will have:

‘As I have said, it reflects in a common-sense and practical way what I think many New Zealanders believe to be the right policy – that is, that there should be a broad neighbourhood schools principle involved in enrolment schemes. I know there will be contention about some of the details, but I think the argument was less about the policy than the way some of these details would work in practice. This is good legislation that will advance the education sector in New Zealand and be in the best interests of all our young people’.

Endnotes

1. [1959] NZLR 996 at page 1003
2. *Otto and the Auckland Grammar Schools Board v Gandar (Minister of Education)* (Supreme Court, Auckland, A 1599/77, 1 March 1978, McMullin J, Unreported).
Wright and the Auckland Grammar Schools Board v Gandar (Minister of Education) (Supreme Court, Auckland, A 1597/77, 1 March 1978, McMullin J, Unreported).
3. *Reade v Smith* [1959] NZLR 996 at 1003
4. High Court, Palmerston North, A126/83, 20 December 1983, Ongley J, Unreported.
5. *Ibid* at pp 12-13
6. *Brown v Minister of Education* [1985] 2 NZLR 356
7. *Supra* note 4.
8. 'Administering for Excellence, Effective Administration in Education, Report of the Taskforce to Review Education Administration', April 1998, at page 77.
9. The Rt Hon David Lange, '*Tomorrow's Schools, The Reform of Education Administration in New Zealand*', August 1988, pages 35 and 36.
10. For example, Ministry of Education figures show that in April 1992, 70 schools had schemes and by December 1997 this had increased to 422.
11. Rae, Ken: 'The Right to Attend School in New Zealand: School Choice, Enrolments and Suspensions and Potential Impacts of the 1998 Education Amendment (No 2) Act', Paper prepared for the NZEAS Research Symposium, 22-24 January 1999.