

Tanya Jacob  
fyi-request-1738-  
6c0d1d8a@requests.fyi.org.nz

Dear Tanya

Thank you for your letter of 10 June 2014 requesting “*the Review of the Education Act 1964/1989 for Consistency “2000”*”, and, “*if no review took place, please provide all relevant documentation to show why this decision was made.*”

Your request has been considered under the Official Information Act 1982 (the Act).

On 23 June 2014 a letter was sent informing you that a reply to your request was being extended to 8 August 2014. This extension was due to your request necessitating a search through a large quantity of official information.

We have identified 11 documents that are within the scope of your request.

### Release of Information

The following documents are being released in response to your request.

Document number	Date	Title
1	Undated but likely early 1996	Human Rights Act Review
2	Undated but likely early-mid 1997	Principles for Justification of Policies under the Human Rights Commission Act 1993
3	Undated but likely early-mid 1997	Potential conflict with Human Rights Act 1993  Note: The potential conflicts identified in this paper are not actual.
4	23 May 1997	Compliance with the Human Rights Act 1993 – Consistency 2000

5	5 December 1997	Human Rights and Consistency 2000  Certain information is being withheld under section 9(2)(h) of the Act in order to maintain legal privilege.
6	11 February 2000	Compliance with Human Rights Act 1993 – Education Legislation
7	Undated	Education Amendment Bill No 2: Drafting Instructions
8	17 March 2000	Compliance with Human Rights Act 1993

**Information being withheld**

The following documents are being withheld in response to your request under section 9(2)(h) of the Act in order to maintain legal privilege.

Document number	Date	Title
9	Undated but likely early-mid 1997	Review of Act for conflicts
10	July 1997	Conflict instances
11	27 February 2001	Compliance with Human Rights Act 1993 – Ministry of Education Legislation and Policy

Under sections 19 and 28(3) of the Official Information Act 1982 you have the right to ask an Ombudsman to review this decision.

Yours sincerely



Rowena Phair  
Deputy Secretary  
Student Achievement

# HUMAN RIGHTS ACT REVIEW

## INTRODUCTION

You are aware that Cabinet has directed the Ministry to identify all provisions in any Act or regulation administered by the Ministry, and any policy or administrative practice of the Ministry, which discriminate (or may discriminate) between persons or groups of persons on any of the grounds of discrimination set out in the Human Rights Act, or which infringe the spirit or intention of the Human Rights Act.

The identification of any instances of discrimination requires, as a first step, the listing by the Ministry of every **current** document which contains a policy or practice. This means that all Acts, regulations, manuals, deskfiles (or other material which represents a set of practices), publications, circulars, official allocation procedures, Gazette notices, policy documents, handbooks, check lists, forms and form letters need to be listed.

There may be doubt about whether a particular policy or practice is "current". If the document is still in use, even as a base or guide only, it should be listed.

After listing, all the documents Ministry-wide will need to be analysed. As there is a set timeframe for this to be done, **it is essential that you complete your list by Friday 31 May 1996.**

**To ensure the integrity of the listing process I ask that each Manager responsible for a list sign it off as a complete record of all current documents in that area.** There will be an audit of randomly selected lists to verify the quality of the Ministry list.

Once a document is listed you may wish to keep the document in a place where it can be retrieved easily for the next stage of the project.

Attached is a hardcopy example of a spreadsheet which will be E-mailed to you. After opening this, use *File>Save As* to save the file to your Drive while working on it. Once complete, please E-mail back to User ID "FergusonR". If experiencing difficulty with using or E-mailing the spreadsheet, please call x6418 Rowan/Moya for assistance.

If you have any difficulties with the listing process, please contact Jan Breakwell, extension 6410.

## INSTRUCTIONS FOR LISTING

### Document Name

Enter the name of the document if it has one, eg Education Act 1989; Home Schooling Deskfile; Education for the 21st Century.

If the document has no official name, give it a generic name according to the type of document it is. Whatever name is given, the document must be readily identifiable and retrievable.

### Category

Enter the appropriate category code from the following list -

CIR	Circular
DF	Desk File
FRM	Form
GAZ	Gazette Notice
LEG	Legislation
POL	Policy Document
PUB	Publication
OTH	Other

A policy document is any document which has a statement of current policy in any area.

### Area

This is meant to identify the area of the Ministry from which this document originated, so the originating division should be entered, eg National Operations; RCET Policy.

### Subject Matter

Enter a brief description of the subject matter using accepted Ministry terminology to describe it. The purpose of this is to enable sorting of the list by subject matter if it is decided that the list should be analysed in subjects or topics rather than, for example, in areas or categories. For example, when listing a document which relates to special education, the term 'special education' would describe the subject matter and would respond to a key word search.

### Units

Each document listed will later need to be analysed against the requirements of the Human Rights Act. In order to size and scope this task from the compiled list, we need to know the number of units which will need to be scanned, for example, the number of pages in a publication or the number of sections in an Act. You will need

to use some judgment in deciding which units to use for some documents, and the list below is provided as a reference.

Acts ..... sections  
 Regulations ..... clauses  
 Notices and Circulars..... paragraphs  
 Publications, Deskfile, Manuals etc..... pages

#### Number

Please enter the number of units in each document you list, for example, if the Education Act 1989 was listed, the units would be sections and the number would be 340.

#### Date Listed

Enter the date the document was listed.

#### Person Listing

Enter the name of the person listing. This should be a person with some knowledge of the Division concerned and the items to be entered.

#### Review Likely

Is the document is likely to be reviewed in the near future? If so, indicate likely date if known. This is necessary so that we can identify documents that are likely to change during the project, which is highly likely in an environment of changing policy and practice.

#### Comments

Enter any comments you have about the document which may include any doubts about whether it should be listed or not. If in doubt, please list and record your doubts here.

**REMEMBER:** *The purpose of this review is to identify all instances of current policy and practice in the Ministry therefore the document must be current or represent a set of current practices.*

*It is recommended that you list only documents which are generated from your area, but if there is any concern that the document is cross-divisional, list it and note this in the comments section.*

## NEXT STAGE OF THE REVIEW

When the Divisional lists and the audit of the listing process is complete (probably about mid-June 1996, the next stage of the review will commence. The list will need to be sorted into batches of documents to be analysed in depth by Divisions.

It is expected that each Division will nominate a person or persons to undertake this task and training in Human Rights legislation will be provided. Support will also be provided by Legal Division and difficulties can be discussed with the Human Rights Commission.

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**PRINCIPLES FOR JUSTIFICATION OF POLICIES UNDER THE HUMAN RIGHTS COMMISSION ACT 1993**

The following are principles which can be used to determine whether a policy which is in conflict with the Human Rights Commission Act can be justified as an exception to that Act:-

**Reasons taken from the Bill of Rights Act 1990 which Justify Exemptions**

- rights are important
- there must be reasons for limiting any right
- those reasons must be ones which carry weight in a free and democratic society
- any limitations must be prescribed by law

**Reasons Given by the Court of Appeal in Interpreting the Bill of Rights Act, drawing on Canadian Precedents**

- the objective for which the limitation is sought must be important of substantial
- the limitation must be rationally connected to the objective pursued
- the degree of limitation must be proportionate to the objective pursued
- the limitation must intrude on the right as little as possible

**Reasons for Exemptions in the Privacy/Human Rights Act**

- maintenance and enforcement of law and order
- serious threats to public/individual health and safety
- security and defence of New Zealand

**Human Rights Act Itself**

- unreasonable expense (disability) Note that the Wellington Stagecoach case indicates that the HRC takes a stringent view of "unreasonable expense."
- positive discrimination
- preferential treatment for some groups eg those with the care of children and in connection with insurance premiums

**Education Policy Aims**

The following were put forward as part of a Cabinet paper defining social policy aims for the purpose of Human Rights Act justification:-

The education system is to:-

- (a) enable an increasing proportion of children to receive effective early childhood care and education;
- (b) promote the highest standards of achievement through programmes in the compulsory sector which enable all students to reach their full potential as individuals;
- (c) provide equality of opportunity for all in the compulsory sector by identifying and removing barriers to learning;



- (d) support the attainment of recognised qualifications that will enable all to participate successfully in a changing technological and economic environment;
- (e) build a highly skilled workforce at enterprise and industry level to enhance New Zealand's international competitiveness.
- (f) seek increased participation and success by Maori through the advance of Maori education initiatives consistent with the principles of the Treaty of Waitangi

**Relevant International Covenants**

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### POTENTIAL CONFLICT WITH HUMAN RIGHTS ACT 1993

#### *School Transport*

**Age** Free transport till age 19 but adult students are required to pay.

**Sex** If the closest school to a student is co-ed, there is no further assistance to attend a more distant single sex school.

**Race** Kura Kaupapa Maori are funded at a lesser rate than state schools for transport. There is currently a budget bid which will remove many but not necessarily all the anomalies.

**Ethnic and national origin** Foreign fee-paying students do not receive transport assistance.

**Religion** Students who attend integrated schools can be advantaged in the transport assistance they receive.

**Disability** Special transport arrangements exist for the disabled. (Probably best to deal with all aspects of special education in a policy paper on special education.)

**Family status** Conveyance allowances per child decrease in amount where there is more than one child in the family.

#### *Staffing*

**Disability** Special schools get a better staffing ratio. Different special schools get different staffing ratios (largely through historical accident)

**Race** Te Atakura positions.

**CECs** There are likely to be some conflicts arising out of the CECs and we need to talk further with SSC about this. However, anything identified will have to be changed through industrial negotiations.

#### *Resourcing*

**Age** 1. Special needs support to 21 (To be dealt with the rest of Special Ed) 2. School pupils who are over 16 can only enrol in adult education classes in very limited circumstances. (Probably on the basis of some reasoning related to double-dipping.)

**Race** 1. Four levels of Maori immersion funding. 2 TFEA Funding. One criterion is the number of Maori and PI students. 3 Possible discrimination over

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granting of cultural and sports leave - rather vague criteria mean that on a case-by-case basis it might be possible to claim discrimination. This is a CEC matter.

**Ethnic or national origins** Esol funding

**Disability** 1 Special education funding graded within special education. (Deal with under special education) 2 No special ed resourcing for home schoolers. (Area?)

**Family status** 1. Homeschooling. Funding drops with each subsequent child. 2 Some situation in ECE where if the parent is present with the child, no funding is provided in respect of that child. (Margaret to clarify) 3 TFE scheme. Eligibility based on parental income. 4 Correspondence school supervision allowance decreases with each successive child.

**Employment** TFEA criteria is parents on income maintenance.

### *Unesco*

There are two main questions relating to UNESCO: One is whether they are caught by this exercise. Unesco New Zealand is set up by the NZ Government and its constitution has been approved by Cabinet. It was then affiliated to the parent UNESCO body. It is staffed by employees of the Ministry of Education. The other problem is that when UNESCO in New Zealand, for instance, advertises scholarships from the parent body with conditions which could breach the Human Rights Act, is UNESCO NZ in breach of the law?

UNESCO NZ sometimes has limited opportunity to impose a local policy on applications for UNESCO funding eg for one particular set of funds it has targeted youth, women and Pacific Island nations.

### *National Operations*

**Sex** 1. Special enrolment provisions at the Correspondence School for pregnant school girls. 2 The subjects which must be taken to be eligible for a boarding bursary in certain circumstances are weighted towards subjects traditionally taken by boys. 3 In co-opting BOT members, boards are required to take account of gender balance.

**Religious Belief** The secular clause only applies to primary schools.

**Ethnic or National Origins** 1 Board of trustee co-options and appointments to represent ethnic mix. 2 Restricted category of non N Z citizens can't be Trustees.

**Race** Boarding bursaries for Maori and Polynesian students.

**Disability** 1 BOTs (Mental Health) 2 Special ed provisions (SEDA)

### *Tertiary Charters and Funding*

**Ethnic or national origin** 1 ESOI 2 Foreign students

**Age 1** Study right. Tertiary institutions are funded more generously for students under a certain age (25?) They may or may not pass this on to those students in the form of reduced fees. 2 membership of tertiary councils - over 18

**Employment status** If unemployed for a certain time, a student can trigger Study Right.

**Disability 1** membership of councils. 2 Some funding in a new policy coming in but it will not be given in respect of particular students.

**Property**

**Sex 1** School site sizes - girls' schools have smaller sites. 2 Access to home economics/technology facilities in single sex schools. A new School Buildings code is in the process of being drafted this year and any new schools will rectify these anomalies. Upgrading over time for existing schools??

**Race 1** Kura have been disadvantaged in terms of property provisions in the past but these inequities are currently being rectified. 2 Financial assistance criteria include priority for TFEA schools (see above). Maori projects? (Not sure above this) 2 Early childhood discretionary grants are divided into three pools -Maori/Pacific Island /Other.

**Disability 1** Access. All remodelling now complies with the Building and Disabilities etc Act requirements. (Students, parents and staff) 2 Ablution facilities. 3 Special needs units within a mainstreaming situation.

**Age** Adult students not counted as part of the roll for property allocations.

**Ethnic or national origins** Foreign students not counted for the purposes of property.

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**Minister of Education**

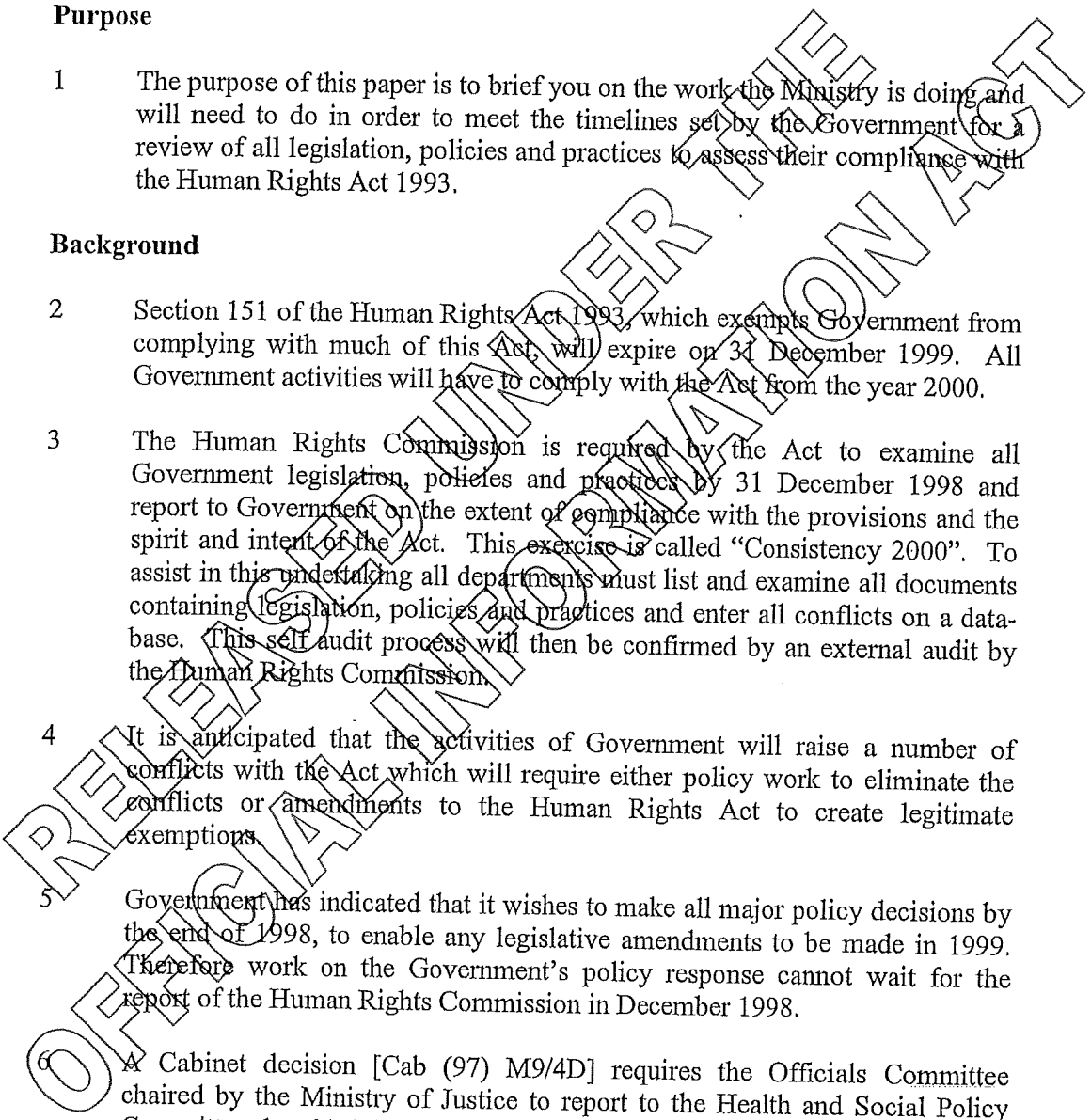
**COMPLIANCE WITH THE HUMAN RIGHTS ACT 1993 - CONSISTENCY  
2000**

**Purpose**

- 1 The purpose of this paper is to brief you on the work the Ministry is doing and will need to do in order to meet the timelines set by the Government for a review of all legislation, policies and practices to assess their compliance with the Human Rights Act 1993.

**Background**

- 2 Section 151 of the Human Rights Act 1993, which exempts Government from complying with much of this Act, will expire on 31 December 1999. All Government activities will have to comply with the Act from the year 2000.
- 3 The Human Rights Commission is required by the Act to examine all Government legislation, policies and practices by 31 December 1998 and report to Government on the extent of compliance with the provisions and the spirit and intent of the Act. This exercise is called "Consistency 2000". To assist in this undertaking all departments must list and examine all documents containing legislation, policies and practices and enter all conflicts on a database. This self audit process will then be confirmed by an external audit by the Human Rights Commission.
- 4 It is anticipated that the activities of Government will raise a number of conflicts with the Act which will require either policy work to eliminate the conflicts or amendments to the Human Rights Act to create legitimate exemptions.
- 5 Government has indicated that it wishes to make all major policy decisions by the end of 1998, to enable any legislative amendments to be made in 1999. Therefore work on the Government's policy response cannot wait for the report of the Human Rights Commission in December 1998.
- 6 A Cabinet decision [Cab (97) M9/4D] requires the Officials Committee chaired by the Ministry of Justice to report to the Health and Social Policy Committee by 31 May 1997 with a proposed timeline for Government decisions. The Departments of Labour and Social Welfare and the Ministries of Health and Education are to report by the same date identifying the main issues arising in these social policy portfolios and recommending a work programme for dealing with the issues.
- 7 In the course of the preliminary work for these papers officials have raised concerns that the self-audit process for departments set up by the Human



Rights Commission may be unnecessarily detailed and resource-intensive. The Social Policy Agency paper has identified as a key problem that, in order to provide social assistance within resource limits to those in greatest need, Government often reasonably uses grounds for targeting assistance which are discriminatory under the Human Rights Act.

### Ministry Work

- 7 Attached is a table of the conflicts which the Ministry has put forward for contribution to these papers. It must be stressed that these are prima facie conflicts only. Because the Ministry is just starting on the self-audit process, potential conflicts had to be identified by interviewing key people in the Ministry. Further work is needed to determine whether conflicts do exist. The interview process is unlikely to have identified all potential conflicts and more will undoubtedly come to light when the self-audit is carried through.
- 8 There are a number of additional issues which the Ministry has in common with other government departments. Those identified so far are:-
- the relationship between the Treaty of Waitangi and the Human Rights Act;
  - restrictions on eligibility for membership of statutory boards;
  - targeting (providing benefits on an unequal basis);
  - rationing (allowing only a certain number of people to receive a benefit or a certain level of benefit).
- 9 Policy work will need to be done in close consultation with the Legal Services Division. The Human Rights Act is not simple to interpret. There is a link between this Act and the Bill of Rights Act 1990 which means that although some policies and practices may not be held to be discriminatory under the Human Rights Act, they may nevertheless be successfully challenged under the Bill of Rights Act. The Human Rights Commission and the Department of Justice have offered to assist with advice on some issues.
- 10 The following steps will be necessary once a conflict has been established:-
- check that there is no specific exemption in the Act;
  - decide whether a case can be made in terms of the affirmative action provisions of the Human Rights Act;
  - consider Bill of Rights implications;
  - decide whether the policies or practices can be justified. (So far, little guidance has been given as to the criteria for justification other than 'the public interest and other policy issues');
  - provide Government with advice on the course of action to follow.
- 11 As indicated on the attached table, a number of issues are linked to reviews, and Human Rights Act work will need to be done in conjunction with those reviews. The rewriting of the Education Act is likely to be significant in this context.

- 12 Work is now proceeding to examine in more detail those issues identified in the table.
- 13 It is proposed that you should be updated regularly on Consistency 2000 progress.

**Recommendations**

- 14 It is recommended that you **note** this report.

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## MINISTRY OF EDUCATION

The following sets out the broad subject areas for papers in which the Ministry proposes to discuss potential conflicts with the Human Rights Act. The Ministry is still at a relatively early stage of identifying those conflicts and considering whether they are justified.

PAPER	GROUND	COMMENT
<b>Tertiary Education</b> a) Study Right Funding b) Student Allowances	Age, marital status, family status, sexual orientation, employment status, across benefit discrimination. <b>Area</b> Access to educational establishments; Provision of goods and services.	Both these areas are under review and major policy decisions are to be made by Government in December 1997.
<b>Special Education</b>	Age, disability. <b>Area</b> Provision of goods and services. Access to educational establishments. Access to places, vehicles and facilities.	There is major on-going policy work ( <i>Special Education 2000</i> ) which will lead to implementation in the year 2000. The next set of policy decisions by Government is scheduled for September 1997.
<b>Maori Education</b>	Race. Treaty Issues. <b>Area</b> Access to educational establishments. Provision of goods and services	There is on-going policy work on Maori Education Strategy which has a final reporting date to Cabinet in June 1998.
<b>Staffing, Resourcing and Industrial Relations in the Education Sector</b>	Disability, race, age, ethnic or national origin, family status. <b>Area</b> Provision of goods and services. Employment	The responsibility for industrial relations in the education sector will be transferred from SSC to MOE in July 1997.
<b>School Transport</b>	Age, sex, race, ethnic or national origins, religion and family status. <b>Area</b> Provision of goods and services	Policy development proceeding on some aspects.
<b>Property</b>	Race, sex, age. <b>Area</b> Provision of goods and services. Access to places, vehicles and facilities.	The School Buildings Code is being revised in the course of the year.
<b>School Sector</b>	Race, sex, religious belief.	As outlined in the Co-



	<p><b>Area Access to educational establishments, provision of goods and services.</b></p>	<p>alition Agreement the Education Act is scheduled for a major rewrite during the term of the Government. It is likely that this will be preceded by an extensive green paper process which will impact on some of the issues identified as discriminatory.</p>
<p><b>Other Issues</b></p>		<p>There are some small issues identified, for instance in the early childhood area which do not fall easily into the other papers.</p>

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5 December 1997

Mathew Palmer  
Deputy Secretary for Justice  
Ministry of Justice  
PO Box 180  
WELLINGTON

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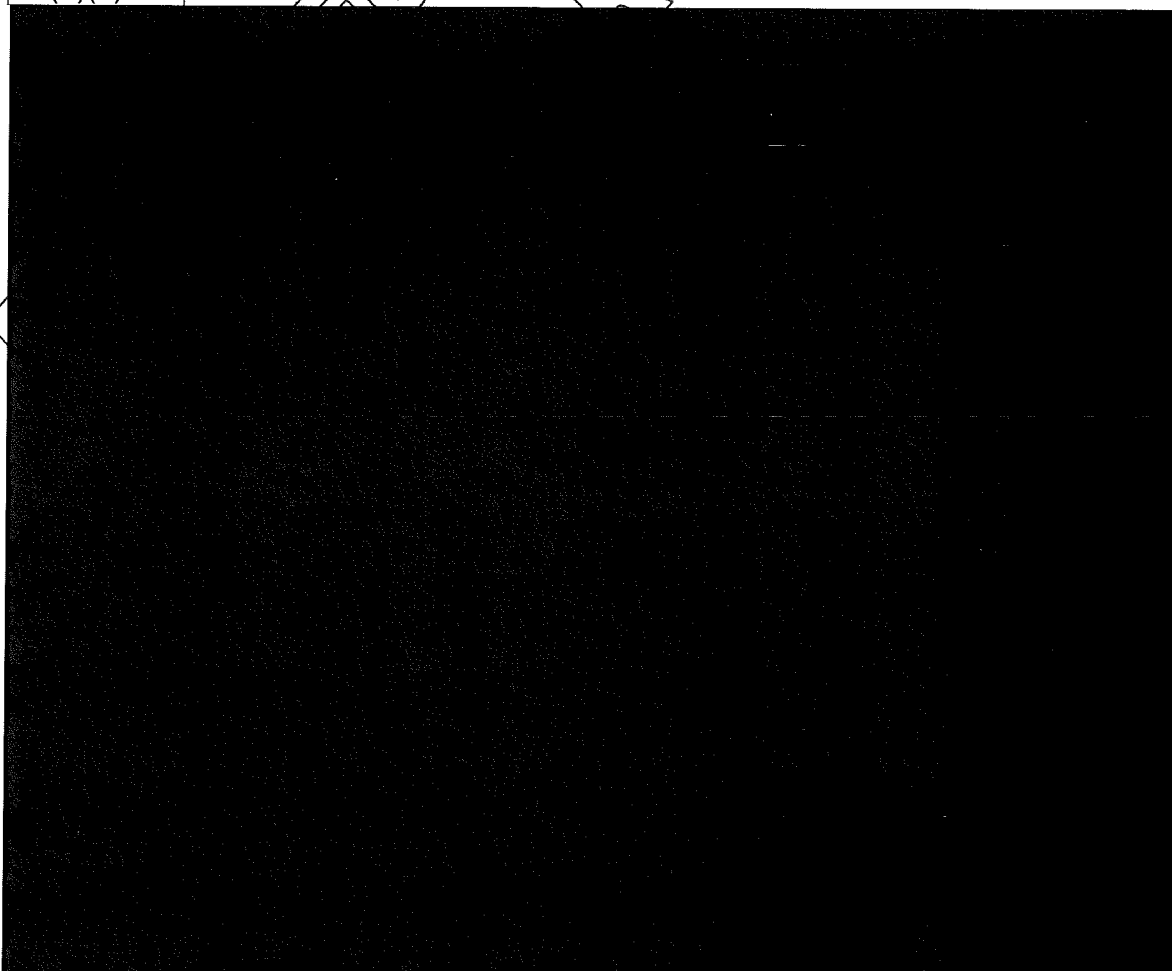
**HUMAN RIGHTS AND CONSISTENCY 2000**

Thank you for keeping us informed of developments following on from Cabinet's decisions in relation to Consistency 2000.

As requested in your memorandum dated 11 November 1997, the Ministry has considered each of the elements in the template in Appendix 2 of that memorandum.

Currently this Ministry has five areas of possible discriminatory policy and practice. In none of these five categories is it envisaged that the Ministry would seek a specific exemption from the Human Rights legislation; it is intended that we pursue other avenues. At this stage it is difficult to assess which amendments to education legislation will be required.

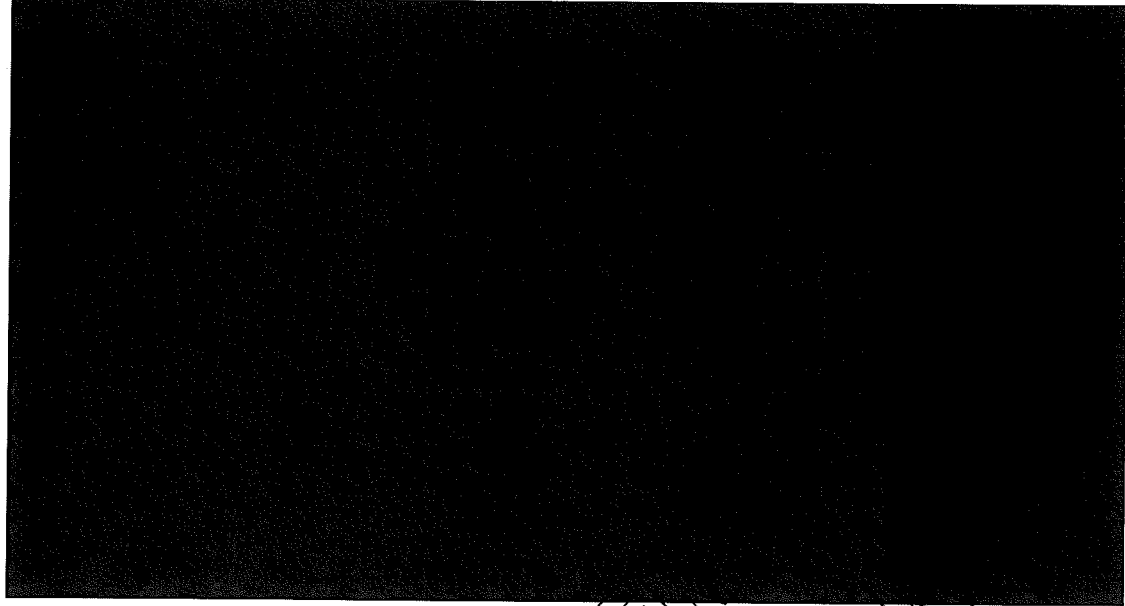
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**REDACTED**



## **Other issues in relation to the Human Rights Act**

### **1 Non-primacy of the Human Rights Act**

Appendix 1 of your memorandum details the draft views of your Ministry relating to legislative amendments to continue the non-primacy of the Human Rights Act with regard to other Acts and regulations.

Your paper proposes that the wording in section 151(1) be retained. This subsection refers to "Act or regulation". You refer to the definition of regulation in the Regulations Disallowance Act. This includes instruments of authority made by a Minister which extend or vary the scope or provisions of any Act. We would appreciate your confirmation that this wording would include the following instruments made under the authority of the Education Act :

Section 60A of the Education Act provides for 'National Education Guidelines' and 'National curriculum statements' which are published in the *Gazette*, and section 312 provides for 'Statements of Desirable Objectives and Practices', also published in the *Gazette*. Would you agree that these documents would come within the proposed section 151(1) wording?

If these documents are not considered to be legislation under the current wording of section 151, it might be useful to consider whether to incorporate some wording from the alternative drafting option you suggest on page 2 of Appendix 1. The first example refers to "... Act...regulation, ordinance, by-law, rule or any other instrument made under any such other Act ..."

### **2 Crown obligations under the Treaty of Waitangi**

It may be necessary to consider whether the Treaty obligations of the Crown should be included as separate exemptions under the Human Rights Act rather than relying on section 73 to cover any otherwise discriminatory treatment on the grounds of race. At present the Ministry' Annual Report on Maori Education identifies a number of policy initiatives in place which are intended to provide more opportunities for Maori

language learning and the promotion of the Maori language. The reasoning behind these policies is that the Maori language is integral to the development of Maori education and fundamental to the improvement of Maori education. Section 73 would covers these policies at this stage as they are designed to advance Maori education which has been behind the achievements of other groups.

Once Maori education levels reach other groups, section 73 will not apply and yet the Ministry on behalf of the Crown will still be required to fulfill Treaty obligations in respect of the promotion and protection of the Maori language as a taonga under the Treaty of Waitangi.

### 3 Discussions with Ministers

We note that the Minister of Justice is to report to the Cabinet Committee on Health and Social Policy by 28 February 1998 on the results of discussions with other Ministers regarding the scope of specific exemptions with respect to their portfolios. We would be grateful if you could advise us when these discussions are likely to take place so that we have time to prepare a brief for our Minister.

Although it is unlikely that this Ministry will be seeking any amendments to the Human Rights Act, we would be interested in any amendments made at the request of other government departments. In particular we would be affected by any amendments which involve treaty issues, targetting, for example benefits, and rationing, for example this might apply to the way we fund special education.

Your sincerely

Jan Breakwell  
Manager, Legal Services

IN CONFIDENCE

11 February 2000

Minister of Education

**Compliance with Human Rights Act 1993 - Education Legislation**

**Purpose of Paper**

- 1 In January we provided you with a paper which outlined the legislative issues you could consider for this year's legislative programme. In that paper, and in an earlier paper in December last year, we had identified some Human Rights Act compliance issues which needed to be addressed. You indicated that you were willing to have the issues included.
- 2 This paper outlines the issues and proposes ways each can be dealt with. It also proposes that some issues can be included in the first Education Amendment Bill this year, some in the second and some in other ways, and seeks your agreement to that.

**Background**

- 3 The Human Rights Amendment Act 1999 came into force on 1 October. The key measures of the Amendment were to extend the exemption applying to government policies and practices until 31 December 2001 and to require the Minister of Justice to report regularly to Parliament on government progress in remedying significant inconsistencies between existing legislation and the Human Rights Act.
- 4 In addition to this requirement and as part of the consultations undertaken in relation to the Human Rights Amendment Act, the previous Government assured Parliament that all existing Government policies and practices would comply with the Human Rights Act, unless specifically authorised by legislation.

- 5 The Ministry has therefore reviewed its existing legislation and its policies and practices in order to identify any Human Rights Act issues. Those issues still outstanding are outlined in the following paragraphs.

### **Education Statutes : Possible Inconsistencies with the Human Rights Act**

*Education Act 1989, section 3 Right to free enrolment for 5 – 19 year olds*  
*Education Act 1989, section 9 Special education for students up to 21 years*

- 6 These sections discriminate on the grounds of age. However there are two exceptions in section 58 of the Human Rights Act which may apply. Section 58(1) allows educational institutions to refuse to admit students not in a particular age group if the institution is maintained wholly or principally for students in a particular age group. Section 58(5) allows educational institutions to charge different fees to persons in different age groups.

These provisions arguably allow for prescription by statute that one age group is to be enrolled free compared to another age group or that one age group can enrol compared to another age group. If this is so, these sections are consistent with the provisions of the Human Rights Act.

It is considered advisable to consult with the Ministry of Justice and with the Human Rights Commission about whether these provisions are consistent with the Human Rights Act because of the exceptions. It will then be necessary to determine whether the provisions should be repealed or whether they should be retained in a form which clarifies their relationship with the Human Rights Act.

*Education Act 1989, section 18A: Boards not required by Secretary to enrol students over 18*

- 7 An amendment to this provision can be included in the No. 1 Bill to remove the discriminatory reference to age if the necessary consultation can be carried out in the time available. As this section requires the Secretary's direction to be only in response to a recommendation by the chief executive of the department responsible for administering the Children, Young Persons, and Their Families Act 1989, it will be necessary to consult with the appropriate department.

*Education Act 1989, section 25A Release from religious tuition for under 18yr olds;*  
*Education Act 1964 Sections 78, 78A of the Education Act 1964*

- 8 These provisions raise issues of discrimination on the grounds of religious belief. It is proposed to seek a Crown Law opinion on the various provisions covering religious education, in the Education Act 1964 and the 1989 Act

If amendment is necessary, this could be done in the second bill this year.

*Education Act 1989, sections 103, 133, 171(6), 249 Under 18 year olds ineligible for membership of various bodies*

*Education Act 1989, section 304(3) and Schedules Members of bodies may be removed from office for disability*

*Pacific Islands Polynesian Education Foundation Act 1972 Section 8(6): A trustee may be removed because of disability*

- 9 These provisions appear to discriminate directly on the grounds of age and disability, however the discrimination does not take place in any of the areas specified by the Human Rights Act, because these are not an employment situations nor are the Boards, Councils, Authorities etc, qualifying bodies within the meaning of the Act.

While there is therefore no discrimination in terms of the Human Rights Act, the Ministry considers that the wording is inappropriate. This issue has been discussed with the State Services Commission and it is considered that these provisions should be flagged and updated to more suitable wording in future amendments to these provisions as they arise.

*Education Act 1989, section 224(3) and 257 Students under 20 have to have any required minimum entry qualifications or other prerequisites to enrol at a tertiary institution whereas those over 20 do not*

- 10 These provisions discriminate on the grounds of age. Advice in regard to these sections was provided in a paper to the Associate Minister of Education (Tertiary Education) and dated 9 February 2000 which addressed tertiary education policies in the Education Amendment Bill No. 1. The Associate Minister was advised that in relation to section 257, the common university entrance requirement for students under the age of 20 years was an anachronism since degrees are provided outside of the universities, and there is considerable variation in entrance requirements for individual courses. The Ministry advised that this provision should be repealed and that the New Zealand Qualifications Authority would continue to maintain the University Bursaries Examinations until such time as Achievement 2001 is fully implemented. The Ministry of Education recommended that the repeal be included in the first Amendment Bill.

In relation to section 224 the paper stated that very few (if any) public tertiary education institutions currently use the power provided in that section to discriminate on the basis of age for enrolment of students. The Ministry suggested that this provision, subject to consultation with public institutions, be repealed as it is not consistent with other policy or the trend to lifelong learning. The Ministry of Education will urgently consult with the relevant bodies to ensure that any change would not result in disruption in current enrolment practices.



*Private Schools Conditional Integration Act 1975 Section 77 Teachers shall be compulsorily retired when they are 70*

- 11 This is direct discrimination on the grounds of age and it is recommended that amendment to this provision be included in the No. 1 Bill

*Music Teachers Act 1981, section 18(1) No one can be registered unless they are over 20 years of age*

- 12 It is recommended that amendment to this provision be included in the No. 1 Bill. Officials consider that this will not require an omnibus bill as the scope of the proposed amendment is sufficiently wide.

*Queen Elizabeth the Second Technicians Study Award Act 1970, section 7 Award is for full time study*

- 13 This provision arguably amounts to indirect discrimination on the grounds of disability and family status as the award is not available to those who are studying part time. This discrimination is based on a Memorial to the Queen and consideration will need to be given to how this should be amended.

*Royal New Zealand Foundation for the Blind Act 1963 Section 4(2) Foundation can only enrol blind people between 6 and 20*

- 14 It is recommended that the repeal of this provision be included in the No. 1 Bill. This would remove the discriminatory age requirement and is also necessary because after 1 July when Homai becomes a state school the enrolment at the school will then be in accordance with the Education Act.

It is proposed at the same time to make a minor amendment to the reporting date for the Foundation to bring it into line with its new financial year.

*Royal New Zealand Foundation for the Blind Act 1963 Section 32(1)(g) financial assistance is available to the wife or widow of a blind person*

- 15 It is recommended that the repeal of this provision be included in the No. 1 Bill.

#### **Education Regulations : Possible Inconsistencies with the Human Rights Act**

*Education (Early Childhood Centres) Regulations 1998 Regulation 36 requires all staff to have turned 17*

- 16 It is recommended that this regulation be revoked.

*Māori and Polynesian Scholarship Regulations 1973, regulation 8(2)(b) scholarship terminates once holder is 19*

*United World Scholarships Regulations 1980 Regulation 4(a) Over 17 year olds are not eligible*

*Secondary School Bursaries Regulations 1977 Regulation 5(2) criteria for bursary – applicant has to be under 18*

*Secondary Schools Technical Bursaries Regulations Regulation 8(e) candidates cannot be over 17*

- 17 These regulations directly discriminate on the grounds of age and the Ministry is reviewing the policy with a view to ensure consistency between the regulations and to set the eligibility criteria for the various awards without using age based criteria.

#### *Student Allowances Regulations 1998*

- 18 These regulations contain many instances of direct discrimination on a number of grounds, including age, marital status, family status, and national origin. Advice in regard to these regulations was given in the paper to the Associate Minister of Education (Tertiary Education) referred to above. This paper stated that the Student Allowance Regulations 1998 were in breach of the commitment of the Government to ensure government policy and practice is consistent with the Human Rights Act from 1 January 2000 and that legislation was likely to be essential in order to continue to discriminate on the basis of age in the regulations since the regulations are regularly reviewed and updated. The paper recommended that the matter be deferred since it would require liaison with the Ministry of Social Policy and any legislative provisions would be needed to ensure ongoing discriminatory practices in relation to social welfare benefits.

#### **Education Policies and Practices : Possible Inconsistencies with the Human Rights Act**

*School transport policy : Possible indirect discrimination on the grounds of ethical belief*

- 19 The policy limits the transport assistance available for eligible state school students who bypass their nearest state school to attend the state school of their choice. The rule does not apply to eligible integrated school students who receive transport assistance to the integrated school of their choice.

It is arguable that state school students are being disadvantaged in comparison to integrated school students, and that as most integrated school students are at integrated schools because their parents hold a particular religious belief, that state school students are disadvantaged because of their ethical belief (which is defined in the Human Rights Act as "the lack of a religious belief. If this is so then this policy amounts to indirect discrimination under the Human Rights Act.

The Ministry will review this policy to determine whether the policy should be retained without specific statutory authorisation, amended to comply with the Act, or retained with specific statutory authorisation.

*Special Education policy : Discrimination on the grounds of disability*

- 20 The amount of assistance provided for pupils in need of special education is 'rationed' on the basis of the degree of disability of the student. There is some uncertainty as to whether the special needs type of "rationing" amounts to discrimination within the grounds specified in the Human Rights Act and the Ministry has sought a Crown Law opinion on this issue.

*Teacher supply policy : Indirect discrimination on the grounds of national origin*

- 21 Short term teacher supply initiatives include relocation grants to overseas teachers. The policy which provides that an international relocation grant is available to teachers who relocate from overseas may be indirectly discriminatory on the grounds of national origin.

The Ministry will consider whether the policy should be retained without specific statutory authorisation, amended to comply with the Act, or retained with specific statutory authorisation.

*Student Loans policy: Discrimination on the grounds of age*

- 22 Student loan policy discriminates on the grounds of age in that students under 18 are required to have parental consent before they can obtain a loan. It was intended that this discrimination would be authorised by legislation but the Student Loan Scheme Amendment Act does not do this.

The issue of the Student Loan Scheme requirement for students under the age of 18 to gain parental consent before they borrow has already been raised with you and is also addressed in the paper to the Associate Minister of Education (Tertiary Education). Officials, other than the Treasury, have proposed the removal of the current requirement for parental consent for students under 18 (S99/0897 refers). If discrimination on the basis of age were to continue, then the Student Loan Scheme Act would need to be amended. This would best occur in conjunction with other amendments to the Student Loan Scheme Act this year.

## Recommendations

23 It is recommended that you:

- a **note** that all the possible inconsistencies and the actions proposed;
- b **agree** to the following amendments being included in the No. 1 Bill:
  - i Education Act 1989, section 18A
  - ii Education Act 1989, sections 224(3) and 257
  - iii Private Schools Conditional Integration Act 1975, section 77
  - iv Music Teachers Act 1981, section 18(1)
  - v Royal New Zealand Foundation for the Blind Act 1963, sections 4(2) and 32(1)(g)
- c **agree** to the issues relating to the compulsory age of schooling, special education and religious instruction being dealt with in the No. 2 Bill.

Norman La Rocque  
Senior Manager  
Education Management Policy

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## Education Amendment Bill No 2 : Drafting instructions

### Amendments to ensure consistency with Human Rights Act 1993

#### 1 Section 3A Education Act 1989

Cabinet Committee has agreed that this section be repealed. Repeal is proposed not because the section is inconsistent with the Human Rights Act provisions. (There are exceptions in section 58 which allows schools that are maintained for students of one sex to refuse to admit students of the other sex.) Repeal is proposed because the existence of section 58 means section 3A is no longer necessary to protect the special status of single sex schools. Also the wording of section 58 would allow some mixed classes at single sex schools if schools considered it desirable.

#### 2 Section 25A Education Act 1989

This section is to be amended to make it consistent with the Human Rights Act and to clarify the rights of older students.

At present the section provides that the parents of students under 18 may ask schools to release their children from particular tuition. Students who are 18 have no right to ask for their own release.

It is proposed that section 25A be amended so that the parent of a student under 16 or a student who is 16 years or older may ask the principal to release the student from particular tuition because of the parent's, or, in the case of students aged 16 or over, the student's, religious or cultural views. In both cases subsections (3) and (4) of 25A will still apply so that the principal must take account of the student's views.

#### 3 Sections 171(6) and 249(5) Education Act 1989

These sections are to be amended by repealing paragraph (a) so that people of any age are eligible for membership of Councils of tertiary institutions and for membership of NZQA.

#### 4 Section 32(1)(g) Royal New Zealand Foundation for the Blind Act 1963

This section states that the Foundation may apply money or property for the purpose of providing assistance to the wife, widow, or dependent children of a blind person.

In order to make this provision consistent with the Human Rights Act and consistent with the intent of the provision, it is proposed that it be amended so that assistance may be provided to the partner and dependent children of a blind person.

**5 Section 304(3) and clause 2(1) of Schedules 2, 3, 15, 16, 17, and 18 of the Education Act 1989 and section 8(6) of the Pacific Islands Polynesian Education Foundation Act 1972**

These sections provide that the member of the Student Allowance Appeal Authority, and members of the Specialist Education Services Board, the Early Childhood Development Board, the New Zealand Qualifications Authority, Skill New Zealand, Career Services, the Tertiary Research Board, and the Pacific Islands Polynesian Education Foundation, may be dismissed on the grounds of disability.

It is proposed that the provisions be amended so that disability is not a ground.

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### Compliance with Human Rights Act 1993

Parliamentary Counsel has advised that three of the four amendments intended to address compliance of the Human Rights Act 1993 may not survive scrutiny by the Clerk of the House under the Standing Orders relating omnibus bills.

The amendment to section 18A of the Education Act 1989 could proceed without objection, but the proposed amendments to the Private Schools Conditional Integration Act 1975, the Music Teachers 1981 and the Royal New Zealand Foundation for the Blind Act 1963 could be seen to be in breach of SO256. We have proceeded with the drafting of the amendments and included them in the Bill on the basis that the Bill is a miscellaneous collection of education amendments, and that the collection of human rights compliance issues are interrelated.

The Ministry has considered whether or not these could proceed in a Statutes Amendment Bill and officials have discussed the matter with the Ministry of Justice. It is the view of officials that the Human Rights Act type amendments are too controversial for Statutes Amendment.

It is important that these issues continue to be addressed in some way. The Human Rights Amendment Act 1989 requires the Minister of Justice to report to the House on progress made by the Government in remedying inconsistencies between existing legislation and the Human Rights Act. The first such report is due on 30 June 2000, and input will be required from all government agencies.

The options for addressing these issues in education legislation if they are considered to breach Standing Orders in the way they have been included in the current bill appear to be:

- 1 to include them in an Education Amendment Bill which is an omnibus bill. It would be possible to do this in the No. 2 Bill later this year.
- 2 include the amendments in any Human Rights Amendment Bill put forward by the Ministry of Justice as part of a schedule covering miscellaneous compliance issues. It is not known whether such an amendment is intended for the Government's legislative programme, or what priority it will have.