

Regulatory Impact Statement

Christchurch Earthquake Order 2012

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education.

It analyses options to provide the necessary legislative powers to support the recovery and renewal phases of schooling and early childhood education in Christchurch.

This analysis has been constrained by two factors:

- The day-by-day fluidity of the situation in Christchurch, particularly in relation to the effect of aftershocks on both the decisions being made by parents and the school network infrastructure
- The need to second-guess the decisions to be made and the reactions to those decisions over the coming year. The powers contained in this Order will only be used if they are necessary for the efficient and effective administration of network decisions.

Consultation with the sector has been minimal. This is because the focus at the time of writing has been on consultation on the longer-term plan for renewing the Christchurch education network.

The policy options will not have effects that conflict with the Government Statement on Regulation

Frances Kelly, Group Manager Schooling Policy

Status quo and problem definition

The Canterbury Earthquake Recovery Act 2011 allows the making of Orders to provide adequate statutory powers to ensure that greater Christchurch can respond to and recover from the impacts of the Canterbury earthquakes. The Canterbury Earthquake (Education Act) Order 2011 (“the 2011 Order”) allowed for the variation of a small number of powers under the Education Act 1989 and associated regulations. This was to manage the schooling and early childhood education sectors in the immediate aftermath of the September and February earthquakes. This Order expires on 1 April 2012.

Education in Christchurch has changed for many schools and early childhood services and change is likely to continue for some years to come. Rolls are still in a state of flux as families make ongoing choices about where they will live and which schools and early childhood services their children will attend. As at November 2011, more than 3,500 students who had left the school they were at on 22 February 2011 had not returned to a school in Christchurch. Nearly 1800 students have enrolled in another school in Christchurch.

Some institutions continue to provide education in temporary buildings or sites with no decisions yet made as to whether buildings will or can be rebuilt. Geotechnical assessments will be completed by the middle of 2012.

The economic climate means that rebuilding Christchurch education will have to be efficient and effective and some hard decisions lie ahead. It is likely that some schools will have to close and/or need to merge. This operational work will begin this year against a backdrop of longer-term planning for a dynamic, new education network in Christchurch.

These factors mean that the status quo continues to be one of volatility and uncertainty. In such unprecedented circumstances, the issue is whether existing legislation is robust enough to allow adequate management of the recovery and renewal phase that is just beginning. In particular:

- i. significant residential movement within Christchurch will continue during 2012, affecting students’ eligibility for enrolment at certain schools with enrolment schemes and potentially creating unexpected over-enrolments at schools without enrolment schemes. The Education Act 1989 does not allow a scheme to be put in place quickly or for a scheme to be varied to make exemptions for students in unusual circumstances. The 2011 Order allowed the Secretary for Education to approve a special enrolment zone for a school, particularly around the way a home zone is defined and different methods for selecting out of zone students. The 2011 Order also provided that a student who was enrolled at a school on 22 February 2011 continued to be regarded as living in the home zone of the school for the purposes of that school’s enrolment scheme
- ii. schools may need to share premises again on a temporary basis while rebuilding proceeds or if their existing site is shown to be unsuitable for rebuilding or unable to meet new building requirements. It is not possible to have two schools share one set of premises and fulfil the requirement for them to be open for the prescribed number of half days. A “half-day” is defined as “at least two hours before noon or at

least two hours after noon.” In normal circumstances, a school would be open for two half days on any one day. Sharing premises means one school operates in the morning and one in the afternoon. Six schools had the meaning of “half-day” varied under the 2011 Order.

- iii. schools are required to submit their annual reports, financial statements and audited accounts to the Ministry of Education by 31 May of the year after the school year that these reports relate to. The 2011 Order exempted Christchurch schools from this deadline for their 2010 reports. There are still a few schools or their auditors that have not yet managed to submit their 2010 documents. These schools have been identified in conjunction with the Office of Auditor-General. Most schools will be able to present their 2011 reports by 31 May 2012. However, a small number of schools that have been preoccupied by more immediate problems are likely to need a six month extension
- iv. schools that are at risk of non-performance can be subject to a number of statutory interventions. To initiate these, the Minister of Education or the Secretary for Education must have reasonable cause to believe that there is either a risk to the operation of the school, or to the welfare or educational performance of the students. These tests relate to individual schools and do not allow any consideration of risk to the wider welfare of the school network. Schools may seek to block decisions or refuse to co-operate around the rebuilding of the network such that a statutory intervention is necessary but not able to be implemented under the Education Act provisions
- v. a school is established by a Gazette notice that prescribes, among other things, the location where it is sited. The legal identity of a school is therefore bound up with this gazetted location and that the school would need to be closed if it changed sites. Schools in Christchurch may need to move sites temporarily or permanently
- vi. twenty-nine early childhood centres have either closed, had their licences suspended or are operating in temporary premises. A number of these centres may have to open in new premises because their original premises are not able to be rebuilt on. The Education (Early Childhood Regulations) 2008 require the Ministry of Education to charge them a fee of \$2,817.50 (GST incl) in order to issue a new licence.

Objectives

The Government’s objective is to rebuild the early childhood and schooling network in Christchurch, taking the opportunity to look at it afresh in a fiscally responsible manner.

It wishes to ensure fair treatment for students, schools and early childhood services in unusual circumstances because of the earthquakes.

The proposals take the following considerations into account:

- the amended powers will only be used as a last resort

- the amended powers are not permanent. The Order is only to be in force for 12 months
- the amendments maintain the current level of decision-making. For example, powers that are for the Minister of Education remain with the Minister
- the amendments do not take any decision-making powers away from Boards of Trustees or the management of early childhood services although they do allow the earthquakes to be a reasons for replacing a Board of Trustees that is not performing.

Regulatory Impact Analysis

Enrolment schemes

The desired outcomes are to be able to better manage sudden fluctuations in enrolment patterns and to be fair to students who may have had a right to enrolment at a particular school before the earthquakes. The proposed option is for a continued power for the Secretary for Education to apply a special enrolment scheme which overrides any existing scheme. The special scheme can re-draw, amend or move existing enrolment schemes or create new enrolment schemes without consulting with affected schools, as current legislation requires.

The only other option is to proceed under the existing legislation where amendments require consultation with the immediate community, boards of other affected schools and students and prospective students of the school. This usually takes a number of months, since changes may affect a number of other schools' catchment areas. Fast decisions may be needed to manage network provision in Christchurch efficiently.

Enrolment schemes need to be finalised by about the middle of the year so that enrolment processes for the next school year can proceed in a timely manner. In the current volatile residential situation in Christchurch, a great deal of network change could occur over the period of a year. This could result in costs from schools suddenly needing new buildings for unexpected (but not necessarily sustainable) roll increases, or schools being required to make teachers and other staff redundant. Students may find themselves unable to enrol at schools to which, but for the earthquake, they would have had a right to enrolment. The current processes for amending a scheme are not likely to move fast enough to prevent or remediate some of the network issues that could arise. Negotiating numbers of amendments are unlikely to be the best use of the time of schools or Ministry staff.

In this option, schools and their communities will lose rights under existing provisions to be consulted over any amendments. The benefits of flexibility to manage both possible and as yet unknown situations outweigh this loss.

The 2011 Order also provided that a student who was enrolled at a school on 22 February 2011 continued to be regarded as living in the home zone of the school for the purposes of that school's enrolment scheme. It would be prudent to keep this for another year as students move out of their homes while repairs are done. The status quo means that in these circumstances a student's continued enrolment at a particular school could be challenged.

Meaning of half-day

The outcome sought is to ensure that the education network in Christchurch can be rebuilt without unnecessary delay. There is provision in section 65D (3) of the

Education Act 1989 for the Minister of Education to vary the meaning of a half-day but only if satisfied that the Board of Trustees has consulted the parents, staff and the local community and the change is generally acceptable to them. Sharing premises has been a difficult and unpopular option but the practicalities of reconstruction mean that there is a real possibility that it will be needed again on a temporary basis as rebuilding work gets underway in 2012. If the status quo remains, unwilling host or guest schools could delay or prevent rebuilding by dragging out consultation or rejecting the proposal as unacceptable. It is also possible that schools will be required to work, for instance, an extended morning session on their own site to allow reconstruction of the school to continue safely in the afternoon

The Ministry will only move to site-sharing if no other option is available. This will be when it is not possible for the school to stay on its site because of the scope of the rebuilding, the lack of relocatable buildings, danger to students or the inability to use temporary rented accommodation.

The need for speedy rebuilding arrangements outweighs the right to delay or veto temporary arrangements.

Submission of annual reports, financial statements and audited accounts

The outcome sought is to assist schools to meet their statutory requirements. The status quo means that some schools will be in breach of the law that requires them to submit such documents by a certain date. While the Crown has an interest in the timely completion of accountability reporting, this is out-weighed by the need to provide some extra time for schools that are struggling to meet these requirements because of the earthquakes. The powers will only be exercised in respect of certain identified schools – it is not the blanket exemption for all Christchurch schools that was provided in the 2011 Order. Schools will be provided with as much help as possible to meet the statutory deadline of 31 May 2012 and it is expected that the numbers requiring an extension will be very small.

Earthquake to be a reason for statutory interventions for schools.

The outcome sought is an ability to manage the rebuilding of the Christchurch in partnership with strong Boards of Trustees, willing to consider the good of the wider schooling network. The reasons for initiating a statutory intervention may not fit exactly with the reasons arising from the aftermath of a natural disaster. For example, boards of trustees that are unco-operative may delay decisions not only for themselves but also for other schools. The proposed option is to amend the Education Act to make it explicit that reasons arising from the earthquakes are sufficient reason for initiating a statutory intervention. There is a potential cost to schools if a Commissioner or Limited Statutory Manager is appointed because the school has to pay their fees.

Changing a school's location

The outcome sought is to ensure that the education network in Christchurch can be rebuilt without unnecessary delay. Under section 146 of the Education Act 1989, the Minister of Education establishes a school by gazetting a number of facts about it, such as its name, and describing the place where the school is located. There could therefore be a legal challenge that, if the school is re-sited elsewhere, the school is, in effect, disestablished and the appropriate procedures for closing a school should be followed. The preferred option is to make it explicit in the Order that a change of site does not do this. The decision to require a school to change sites will be exercised after consultation with the Board of Trustees.

The other option is to retain the status quo. While the risk of legal action is not high, the consequences of such an action would create significant delay and cost. Clarification would also help in determining the responsibility of boards of trustees for property in these circumstances.

Clarification of the nature of a school's legal identity will be considered in future work on amending the Education Act 1989.

Waiving the licensing fee for early childhood centres that open on new premises

The outcome sought is to reduce the financial hardship for damaged early childhood centres in Christchurch. When read together, regulations 6, 9 and 25 of the Education (Early Childhood Services) Regulations) 2008 require the Secretary for Education to issue a new licence if a centre-based early childhood service shifts premises. A new licence fee of \$2,817.50 is payable.

Twenty-nine centres in Christchurch could potentially be in this position as the result of the earthquake. The proposal is that if a centre re-opens in new premises as a result of the earthquakes, the Secretary for Education will have discretion to waive the licensing fee (but not any other requirements). This will create one less barrier to the re-establishment of a well-functioning early childhood education network in Christchurch. It is unlikely that all 29 centres will re-open in new premises. Therefore the loss of revenue to the Crown will be less than \$80,000 and is not likely to be substantial.

The status quo is the only other option. It could create financial hardship for centres as nearly half of those affected are community-based centres that have very little in the way of financial reserves.

Consultation

The Office of the Controller and Auditor-General, the Treasury and CERA have been consulted on the proposals. The Department of Prime Minister and Cabinet has been informed.

Conclusions and Recommendations

The proposed powers aim to ensure fair treatment of those affected by the earthquake and to ensure that the recovery and renewal phase for Christchurch education can proceed in an orderly manner. In all cases, the only other option is the status quo. The status quo will either disadvantage individuals and institutions or potentially hamper the efficient and effective reconstruction of the education network in Christchurch.

It is recommended that the proposed amendments are adopted.

Implementation

The powers proposed in this Order cover likely future scenarios. They will be used by the Secretary for Education only when necessary.

Monitoring evaluation and review

The work in Christchurch to reconstruct the early childhood and school network involves constant monitoring of emerging situations. The time-limited nature of this Order (to 1 April 2013) means that the need for the provisions will be kept under review during 2012 to determine whether this should be the last Education Order to be made under the Canterbury Earthquake Recovery Act 2011