

EDUCATION AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

PART 1

TERMINATION OF SALARIES GRANT FOR MANAGEMENT

The Education Act 1989 requires the salaries of teachers to be paid through a central payroll by the Secretary of Education (centrally resourced schools), unless the school enters into an agreement with the Minister of Education to pay its own teachers directly (directly resourced schools).

In addition, since 1992 there has been legislative authority for teachers holding positions of responsibility in centrally resourced schools to be paid by their own boards of trustees, which are the employers of teachers. The Secretary of Education pays a bulk grant to schools which, in turn, arrange for the payment of their senior teachers. This system was to give boards some flexibility in arranging for the payment of their senior staff. This has been known as a salaries grant for management. This does not apply to boards of directly resourced schools, which receive a bulk grant for the salaries of all the teachers in the school.

In 1996 the secondary and area schools teachers negotiated into their collective employment contracts a new unit system which gave boards greater flexibility to pay senior staff according to the boards' reward, recruitment, retention, and responsibility requirements. A similar system was recently negotiated by the primary, intermediate, and special schools teachers.

The flexibility provided through the previous directly resourced schools formula was financially unattractive to a number of schools, so the salaries grant for management allowed centrally resourced schools some flexibility. In 1998 the Government reviewed the formula for direct resourcing and decided to introduce a new formula (called the "fully funded flexible staffing scheme"). As these changes mean that all schools can now access flexible funding, it renders the salaries grant for management obsolete. The revised formula has also eliminated "loser" schools which, under the old formula, would have received less funding.

With greater flexibility for boards for dealing with the salaries for senior staff through employment contracts, and the fully funded flexible staffing scheme, there is no need for a legislative provision dealing with a salaries grant for management in centrally resourced schools.

PART 2

INCORPORATION OF INSTITUTION IN ANOTHER INSTITUTION

In December 1997 Manawatu Polytechnic and the Association of Polytechnics of New Zealand applied to the High Court for orders to restrain the Minister of Education from making any recommendation to the Governor-General that Massey University and Wellington Polytechnic could merge. Massey University and Wellington Polytechnic had applied to the Minister asking for Wellington Polytechnic to be disestablished and incorporated in Massey University.

One of the reasons given to the High Court to restrain the Minister from making a decision was that the Education Act 1989 may prevent a university and a polytechnic from merging because they have different institutional characteristics.

Justice Doogue granted an interim order preventing the Minister from making a recommendation to the Governor-General (High Court, Wellington, 15 December 1997). His Honour considered that there was a serious question of law to be heard. The case is awaiting a substantive hearing.

Once the injunction was issued, the Minister of Education decided not to consider the application. Since it is established Government policy that tertiary institutions should be able to merge where educational opportunities can be improved by their merging, then the law should allow that. The Government understood that to be the situation under the Education Act 1989, as 2 previous mergers with universities and colleges of education had already occurred since 1990. The Government is proposing this amendment to clarify the law in this regard.

Clause by Clause Analysis

Clause 1 deals with the Short Title and commencement. The Bill amends the Education Act 1989.

PART 1

TERMINATION OF SALARIES GRANT FOR MANAGEMENT

Clause 2 repeals section 91E, with effect on and from 15 July 1998. The section provides for the salaries grant for management. As explained above, this grant is to be terminated.

PART 2

INCORPORATION OF INSTITUTION IN ANOTHER INSTITUTION

The amendments in *clauses 3 to 5* deal with institutions. In this context, the term "institution" means a college of education, a polytechnic, a university, or a wananga.

Clause 3 amends section 164. The amendment makes it clear that a disestablished institution may be incorporated in an institution of a different class from itself.

Clause 4 amends section 192. The amendment makes it clear that an institution made up of an incorporating institution and an incorporated institution or institutions may perform functions characteristic of the incorporating and incorporated institutions.

Clause 5 amends section 193. The amendment makes it clear that the Councils of institutions have power to agree to disestablish their institutions and incorporate them in other institutions, whether of the same or a different class, and power to agree to incorporate in their institutions other institutions, whether of the same or a different class.

PART 2

INCORPORATION OF INSTITUTION IN ANOTHER INSTITUTION

3. Disestablishment of institutions—(1) Section 164 of the principal Act is amended by repealing subsection (4), and substituting the following subsection: 5

“(4) When an institution is, or 2 or more institutions are, disestablished, the Governor-General may, by Order in Council made on the written recommendation of the Minister, incorporate the disestablished institution or any one or more of the disestablished institutions in another institution, whether the other institution is— 10

“(a) An existing institution or a new institution established for the purpose:

“(b) An institution of the same class as the disestablished institution or institutions or an institution of a different class from it or them (for example, a disestablished polytechnic may be incorporated in a university).” 15

(2) Section 164 (5) of the principal Act is amended by omitting the words “or subsection (3) of this section”, and substituting the words “or subsection (4), or both subsections (1) and (4)”. 20

(3) Section 164 (6) of the principal Act is amended by omitting the words “of this section, the Minister shall lay before”, and substituting the words “, or both subsections (1) and (4), the Minister must present to”. 25

4. Powers of institutions—(1) Section 192 (2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) In the case of an institution that incorporates another institution or other institutions under **section 164 (4)**, functions characteristic of institutions of the class to which the incorporating institution belongs and functions characteristic of institutions of the class or classes to which the incorporated institution or institutions belong; or” 30 35

(2) Section 192 (2) (b) (ii) is amended by adding the words “or, in the case of an institution that incorporates another institution or other institutions under **section 164 (4)**, are appropriate for institutions of the classes represented in the institution”. 40

5. Powers of Councils—Section 193 (2) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraphs:

- 5 “(e) To agree to the disestablishment of the institution and its incorporation in another institution of the same class or a different class (for example, the Council of a polytechnic may agree to the disestablishment of the polytechnic and its incorporation in a university):
- 10 “(ea) To agree to the incorporation in the institution of another institution or other institutions, whether of the same class as itself or a different class from itself (for example, the Council of a university may agree to the incorporation of a polytechnic in the university):”.