

# **Education (Establishment of Universities) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This is a Bill to amend the Education Act 1989. It proposes to clarify the current process for determining the establishment of universities. The clarification is to give priority to the requirement, introduced by the Education (Tertiary Reform) Amendment Act 2002, that the establishment of a new university must be in the interests of the tertiary education system and the nation as a whole.

The Bill also provides, in the interests of the efficiency of public administration, for the Minister to be able to make an adverse determination on the basis of this priority requirement alone.

At present, the Education Act 1989 requires that, before making a recommendation to the Governor-General for the establishment of a body as a university, the Minister must be satisfied both as to the interests of the tertiary education system and the nation as a whole and as to whether the body has the characteristics of a university (academic criteria). The expectation is that the Tertiary Education Commission would provide advice as to the interests of the tertiary education system and the nation as a whole, and the New Zealand Qualifications Authority on the academic criteria. The Minister must also consult with sector bodies as appropriate before coming to a decision. The Minister at present has no discretion to determine the matter on receipt of adverse advice from one or other of these bodies, but must complete both statutory processes, as well as the consultation, before making a decision.

The Bill proposes to amend the arrangements by providing for a sequential process in which the strategic issues (the interests of the

tertiary education system and the nation as a whole) would be determined by the Minister before the assessment of whether the particular body has the characteristics for a university as set out in section 162(4) of the Education Act 1989. The Minister must consult on each part of the sequential process.

The Bill formalises the role of the Tertiary Education Commission in providing advice to the Minister during this process.

The Bill does not affect the merger arrangements provided for in section 164 of the Education Act 1989. However, consequential amendments need to be made to the provisions governing the use of “university” as a protected term.

The Bill would have retrospective effect in relation to any Order in Council establishing a university that may be made after this Bill is introduced into the House of Representatives. Such orders would cease to have effect and expire unless the Minister can confirm that establishment would be in the interests of the tertiary education system and the nation as a whole and that the procedures set out in the Bill had been followed.

It is intended that the retrospective application would have the effect of encouraging both the Qualifications Authority and those seeking establishment as a university either to wait until after the Act comes into force or to follow the new procedures in anticipation of the Bill’s enactment.

### **Clause by clause analysis**

*Clause 1* is the Title clause. The Act amends the Education Act 1989, which is called “the principal Act”.

*Clause 2* provides that the Act comes into force on the day after the date on which it receives the Royal assent.

### **Part 1**

#### **Amendments to principal Act**

*Clause 3* amends section 162 of the principal Act, which is about how tertiary education institutions are established. The Minister’s obligations as regards colleges of education, polytechnics, specialist colleges, and wananga are unchanged. However, in relation to the establishment of universities, *new subsection (3A)* sets out the 2

matters that the Minister must be satisfied about before recommending the establishment of a university, and requires the Minister to follow the procedure set out in *new section 162A*.

*Clause 4* inserts *new section 162A* into the principal Act. This section requires that the Minister must make a decision on the interests of the tertiary education system and the nation as a whole first, and only if that decision is favourable may he or she embark on considering the second matter, which is about whether the body in question has the characteristics of a university. The section also identifies who the Minister must consult with, and take advice from, before making those decisions.

*Clause 5* amends section 264A of the principal Act, which is about the Minister giving consent for registered establishments to use certain terms such as “polytechnic” and “university”. The amendments modify the requirements in relation to an application to use the term “university” to more closely (but not exactly) reflect the requirements in *new section 162A*.

## Part 2

### Application of amendments to principal Act

*Clause 6* provides that an Order in Council for the establishment of a university that is made after the date on which the Bill is introduced but before the Act comes into force ceases to have effect and expires unless the Minister, when recommending its establishment, certified that he or she was satisfied as to the 2 matters referred to in *new section 162(3A)*, and that he or she has followed the procedure in *new section 162A*. The effect of this is that a body established as a university after this Bill is introduced will cease to be a university unless the Minister complies with *new sections 162(3A) and 162A* before recommending that the body be established as a university.

*Clause 7* provides that the amendments in *clause 5* do not affect any approval given under section 264A of the principal Act before the commencement of this Act.

---

*Hon Steve Maharey*

# Education (Establishment of Universities) Amendment Bill

Government Bill

## Contents

1	Title	5	Minister may consent to registered establishments using certain terms in their names
2	Commencement		
	<b>Part 1</b>		<b>Part 2</b>
	<b>Amendments to principal Act</b>		<b>Application of amendments to principal Act</b>
3	Establishment of institutions	6	Retrospective application of new sections 162(3A) and 162A
4	New section 162A inserted	7	Application of amendments to section 264A not retrospective
	162A Procedure before recommending establishment of university		

**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Education (Establishment of Universities) Amendment Act **2004**.
- (2) In this Act, the Education Act 1989<sup>1</sup> is called “the principal Act”.
- <sup>1</sup> 1989 No 80

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 1**

### **Amendments to principal Act** 10

#### **3 Establishment of institutions**

- (1) Section 162(3) of the principal Act is amended by omitting the words “of this section”, and substituting the words “for the establishment of a college of education, a polytechnic, a specialist college, or a wananga”.

- (2) Section 162 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) Before recommending under subsection (2) that a body be established as a university, the Minister must be satisfied, having followed the procedure set out in **section 162A**, that— 5
- “(a) the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole; and
- “(b) the body has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii).” 10
- 4 New section 162A inserted**
- The principal Act is amended by inserting, after section 162, the following section:
- “**162A Procedure before recommending establishment of university** 15
- “(1) In considering whether to recommend that a body be established as a university—
- “(a) the Minister must first determine whether the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole; and 20
- “(b) if the Minister is so satisfied, he or she must then seek and receive advice on, consult about, and determine whether the body has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii).
- “(2) Before determining whether the establishment of the body as a university is in the interests of the tertiary education system and the nation as a whole, the Minister must— 25
- “(a) seek and receive advice on the matter from the Commission; and
- “(b) consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as the Minister considers appropriate. 30
- “(3) Before determining whether the body has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii), the Minister must— 35
- “(a) seek and receive advice on the matter from the Qualifications Authority; and

- “(b) consult on the matter with such institutions, organisations representing institutions, and other relevant bodies, as the Minister considers appropriate.
- “(4) If the Minister determines that the establishment of a body as a university is not in the interests of the tertiary education system and the nation as a whole, the Minister— 5
- “(a) is not required to determine whether the body has the characteristics of a university; and
- “(b) may not seek or receive advice on the matter from the Qualifications Authority or any other body.” 10
- 5 Minister may consent to registered establishments using certain terms in their names**
- (1) Section 264A(1) of the principal Act is amended by omitting the word “‘university’,”.
- (2) Section 264A of the principal Act is amended by inserting, 15  
after subsection (2), the following subsections:
- “(2A) A registered establishment that is not a university may apply to the Minister for consent to use the term ‘university’ to describe the registered establishment.
- “(2B) Before deciding whether to give consent under **subsection (2A)**— 20
- “(a) the Minister must first satisfy himself or herself, after receiving advice from the Commission, that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and 25
- “(b) if the Minister is so satisfied, he or she must then seek advice on the application from the Authority about the extent to which the establishment has the characteristics of a university as set out in section 162(4)(a)(i) to (v) and (4)(b)(iii); and 30
- “(c) must consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.”
- (3) Section 264A(4) of the principal Act is amended by inserting, after the expression “subsection (1)”, the words “, or the term ‘university’,”. 35

**Part 2****Application of amendments to principal Act****6 Retrospective application of new sections 162(3A) and 162A**

- (1) This section applies to an Order in Council that— 5
- (a) is made under section 162(2) of the principal Act; and
  - (b) is for the establishment of a body as a university; and
  - (c) was made during the period from **17 September 2004** to the day before the date on which this Act comes into force. 10
- (2) On the day on which this Act comes into force, every Order in Council to which this section applies ceases to have effect and expires, and the body identified in the Order in Council ceases to be a university, unless the written recommendation required under section 162(2) of the principal Act for the Order in Council included a statement by the Minister that— 15
- (a) the Minister was satisfied as to both matters set out in proposed **section 162(3A)** of the principal Act (as proposed to be inserted by **clause 3** of the Education (Establishment of Universities) Amendment Bill); and 20
  - (b) before making the recommendation, the Minister had followed the procedure as set out in proposed **section 162A** of the principal Act (as proposed to be inserted by **clause 4** of the Education (Establishment of Universities) Amendment Bill). 25

**7 Application of amendments to section 264A not retrospective**

To avoid doubt, nothing in **section 5** affects any approval given under section 264A of the principal Act before the commencement of this Act. 30