

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

Government Bill

As reported from the Education and Science Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Education (Establishment of Universities) Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The bill amends the statutory process for the establishment of new universities, as set out in the Education Act 1989 (the Act). The Act currently provides for the parallel consideration of six different criteria. The bill prescribes a sequential process that gives priority to the requirement that the establishment of a new university must be in the interests of the tertiary education system and the nation as a whole.

We received 123 submissions and heard from 25 submitters. This commentary focuses on proposed amendments to the bill.

### **Substantive tests to remain the same**

We recommend the insertion of new subsections 162(3A) to (3F), as inserted by clause 3, and the removal of clause 4, to clarify that the substantive tests in the bill, those of the academic criteria and the national interest, are the same as in the Act. This is to make it explicit that there is no intent to raise the threshold of these tests.

**Use of the term “university” subject to same tests**

We recommend the insertion of new subsections 264A(2B) to (2G), as inserted by clause 5, to clarify that the application of a registered establishment to use the protected term “university” is subject to the same tests as outlined in amended clause 3.

**New process not to apply to current applications**

We recommend the removal of clause 6. It provides for the revised process (that of considering national-interest issues first) to apply to all current and future requests. This clause is no longer necessary as the only current application, that of UNITEC, has progressed to a stage where significant resources have been expended by both the Tertiary Education Commission and the New Zealand Qualifications Authority. It would therefore be more prudent to assess the request using the current parallel process in the Act.

In line with this amendment we recommend the insertion of new subsection (3) in clause 3 and new subsection (4) in clause 5 to make it explicit that the new processes for establishing a university and for using the term “university” do not apply to an application currently in progress.

We also recommend the removal of clause 7, as this clause is unnecessary given the removal of clause 6.

## **Appendix**

### **Committee process**

The Education (Establishment of Universities) Amendment Bill was referred to the committee on 14 October 2004. The closing date for submissions was 19 November 2004. We received and considered 123 submissions from interested groups and individuals. We heard 25 submissions, which included holding hearings in Auckland. Hearing of evidence took 7 hours and 23 minutes and consideration took 2 hours.

We received advice from the Ministry of Education.

### **Committee membership**

Hon Brian Donnelly (Chairperson)

Lynne Pillay (Deputy Chairperson)

Dr Ashraf Choudhary

Deborah Coddington

Helen Duncan

Hon Bill English

Bernie Ogilvy

Simon Power

H V Ross Robertson

Metiria Turei (non-voting member)

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Education (Establishment  
of Universities) Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Trevor Mallard*

# Education (Establishment of Universities) Amendment Bill

Government Bill

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**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”. 5
- <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.

**Struck out (unanimous)**

## **Part 1 Amendments to principal Act**

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### **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”. 15
- (2) Section 162 of the principal Act is amended by inserting, after subsection (3), the following subsections:

**Struck out (unanimous)**

“(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—

“(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).”

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**New (unanimous)**

“(3A) In considering whether to recommend the making of an Order in Council under subsection (2) for the establishment of a university, the Minister must, before seeking advice from the Qualifications Authority under **subsection (3D)**, seek and receive advice from the Commission on whether the establishment of the institution is in the interests of the tertiary education system and the nation as a whole.

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“(3B) When the Commission is asked under **subsection (3A)** to provide advice, it must consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as it considers appropriate.

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“(3C) After receiving advice from the Commission on the matter, the Minister must determine whether he or she is satisfied that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole.

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“(3D) If the Minister is satisfied that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole, the Minister must seek and receive advice from the Qualifications Authority on the matters referred to in subsection (4). If the Minister is not so satisfied, he or she must cease further consideration of the proposal.

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“(3E) If the Qualifications Authority is asked under **subsection (3D)** to provide advice, it must consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as it considers appropriate.

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**New (unanimous)**

“(3F) After considering the advice of the Qualifications Authority, the Minister must decide whether or not to recommend to the Governor-General the making of an Order in Council establishing the body as a university.”

- (3) If, before this section comes into force, the Minister has referred a matter relating to the establishment of a body as a university to the New Zealand Qualifications Authority for advice, section 162 of the principal Act continues to apply as if this section had not come into force. 5

**Struck out (unanimous)**

**4 New section 162A inserted** 10

The principal Act is amended by inserting, after section 162, the following section:

**“162A Procedure before recommending establishment of university**

“(1) In considering whether to recommend that a body be established as a university— 15

“(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

“(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). 20

“(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—

**Struck out (unanimous)**

- “(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. 5
- “(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—
- “(a) is not required to determine whether the body has the characteristics of a university; and 10
- “(b) may not seek or receive advice on the matter from the Qualifications Authority or any other body.”

**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’,”. 15
- (2) Section 264A of the principal Act is amended by inserting, 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. 20

**Struck out (unanimous)**

- “(2B) Before deciding whether to give consent under **subsection (2A)**—
- “(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



**Struck out (unanimous)**

“(c) must consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.”

**New (unanimous)**

- “(2B) Before deciding whether to give consent under **subsection (2A)** to an application to use the word ‘university’, the Minister must, before seeking advice from the Authority under **subsection (2E)**, seek and receive advice from the Commission on whether consenting to the application is in the interests of the tertiary education system and the nation as a whole. 5
- “(2C) When the Commission is asked under **subsection (2B)** to provide advice, it must consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as it considers appropriate. 10
- “(2D) After receiving advice from the Commission on the matter, the Minister must determine whether he or she is satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole. 15
- “(2E) If the Minister is satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole, the Minister must seek and receive advice from the Authority on the matter referred to in subsection (2)(a). If the Minister is not so satisfied, he or she must cease consideration of the proposal. 20
- “(2F) If the Authority is asked under **subsection (2E)** to provide advice, it must consult on the matter with such institutions, organisations representing institutions, and other relevant bodies as it considers appropriate. 25
- “(2G) After considering the advice of the Authority, the Minister must decide whether or not to consent to a registered establishment using the term ‘university’ to describe the registered establishment.” 30

- (3) Section 264A(4) of the principal Act is amended by inserting, after the expression “subsection (1)”, the words “, or the term ‘university’,”.

**New (unanimous)**

- (4) If, before this section comes into force, the New Zealand Qualifications Authority has been asked to give advice on an application to use the term “university”, section 264A of the principal Act continues to apply as if this section had not come into force.

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**Struck out (unanimous)****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— 10
- (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. 15
- (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— 20
- (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 25
  - (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). 30

**Struck out (unanimous)**

**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.

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**Legislative history**

17 September 2004  
14 October 2004

Introduction (Bill 203-1)  
First reading and referral to Education and Science  
Committee

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