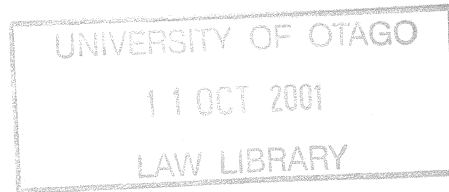


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No 199



House of Representatives

Supplementary Order Paper

Tuesday, 9 October 2001

Education Amendment Bill (No 2)

Proposed amendments

Hon Trevor Mallard, in Committee, to move the following amendments:

Clause 2(2)

To omit the words "and for different purposes" (line 10 on page 5).

Clause 8

To omit from *new section 61(2)* the word "goals" (line 6 on page 17), and substitute the word "guidelines".

Clause 14

To omit the word "subsection" (line 12 on page 34), and substitute the word "subsections".

To omit *new paragraph (c) from subclause (3)* (lines 21 to 23 on page 34), and substitute the following paragraph:

- "(c) if required by generally accepted accounting practice, a statement of cash flows reflecting cash flows of the Board for the financial year:

To omit *new paragraph (e) from subclause (3)* (lines 7 to 10 on page 34), and substitute the following paragraph:

- "(e) a statement in which schools provide an analysis of any variance between the school's performance and the relevant aims, objectives, directions, priorities, or targets set out in the school charter:

To omit *new paragraphs (h) and (i) from subclause (3)* (lines 33 to 37 on page 34), and substitute the following paragraph:

- "(h) any other statements that the Secretary determines in consultation with the Auditor-General:

To add (after line 7 on page 35) the following subsection:

- “(4) The annual financial statements must be accompanied by a statement of responsibility signed by the chair of the Board and principal, as required by section 42 of the Public Finance Act 1989.”

Clause 15(1)

To omit the definition of **deregister** (lines 25 to 29 on page 35).

Clause 26

To omit from *new section 139AH(2)* the words “commencement of this section” (line 8 on page 47), and substitute the words “first elected members of the Council take office”.

To omit from *new section 139AH(5)* the word “must” (line 27 on page 47).

To insert in *new section 139AH(5)(b)*, before the words “be notified” (line 29 on page 47), the word “must”.

To add to *new section 139AI* (after line 15 on page 49) the following subsection:

- “(5) Rules made under this section are regulations for the purposes of the Regulations (Disallowance) Act 1989.

To omit from *new section 139AL(2)(c)* the words “(if any)” (line 31 on page 54).

To insert in *new section 139AS(1)(g)*, after the word “deregistration” (line 10 on page 60), the words “(as defined in **section 129(6)**)”.

To omit from *new section 139AX(1)* the words “**139AQ(2), section 139AS, or section 139AY**” (lines 11 and 12 on page 62), and substitute the words “**139AQ(2) or section 139AS, or by the Council under section 139AY,**”.

Clause 33

To omit from the heading to this clause the expression “**195D**” (line 8 on page 72), and substitute the expression “**195F**”.

To omit paragraph (a) of *new section 195C(1)* (lines 32 to 36 on page 75), and substitute the following paragraph:

- “(a) there is a serious risk to the operation or long-term viability of the institution; and

To insert, after *new section 195C(1)* (after line 2 on page 76), the following subsection:

- “(1A) For the purpose of **subsection (1)**, there is a serious risk to the operation or long-term viability of an institution if—
- “(a) the institution is, or is at risk of being, unable to pay its debts as they become due in the normal course of business; and
- “(b) according to the criteria published under **section 195AA(2)**, there is a serious level of risk to the operation or long-term viability of the institution.

To add (after line 13 on page 77) the following sections:

“195E Minister to appoint advisory committee

- “(1) If the Minister appoints a commissioner under **section 195C**, the Minister must also appoint an advisory committee for the purpose of advising and supporting the commissioner in the exercise of the commissioner’s functions, duties, and powers.
- “(2) The Minister may appoint up to 5 persons to be members of an advisory committee and must ensure that the composition of the committee reasonably reflects the community of the institution as represented by its Council at the time of the Council’s dissolution.
- “(3) Members of an advisory committee may be paid fees at the same rates as were paid to members of the Council at the time of its dissolution.
- “(4) The commissioner must have regard to any advice given by an advisory committee.
- “(5) For the purposes of section 222(1) (which is about delegations by the Council to committees), an advisory committee is deemed to be a committee appointed under section 193(3).

“195F Review of operation of sections 195AA to 195E

No later than 5 years from the date on which **sections 195AA to 195E** come into force, the Minister must—

- “(a) review, in consultation with interested parties, the operation of **sections 195AA to 195E**; and
- “(b) prepare a report of the review that includes recommendations on whether any amendment to those sections is necessary or desirable; and
- “(c) present a copy of the report to the House of Representatives.”

New clause 35A

To insert, before *clause 36* (after line 1 on page 81), the following clause:

35A Definitions

Section 246 of the principal Act is amended by adding the following definition:

“**secondary school** means a secondary school or composite school, as those terms are defined in section 2.”

Clause 36

To omit this clause (lines 2 to 12 on page 81), and substitute the following clause:

36 Functions of Authority

- (1) Section 253(1)(e) of the principal Act is amended by inserting, after the word “institutions”, the words “, secondary schools,”.

- (2) Section 253(1)(f) of the principal Act is amended by inserting, after the word “institutions”, the words “, secondary schools,”.
- (3) Section 253(1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:
- “(g) to assist overseas governments, and agencies of those governments, by—
- “(i) conducting examinations and assessments:
 - “(ii) approving programmes and courses of study:
 - “(iii) accrediting providers to deliver programmes and courses of study:
 - “(iv) assisting governments and agencies to develop and conduct examinations, and to develop and confer awards:”.

Clause 38(1)

To omit from *new subsection (1A)* the words “overseas education providers,” (line 29 on page 81).

Clause 39(2)

To omit from *new subsection (1A)* the words “secondary school, or overseas education provider” (lines 17 and 18 on page 82), and substitute the words “or secondary school”.

Clause 44

To omit from *new section 315* the word “Education” in each place where it occurs (on page 85), and substitute in each case the word “Teachers”.

New heading and clause 44AA

To insert, after *clause 44* (after line 3 on page 87), the following heading and clause:

*Recognised education bodies***44AA Recognised bodies to keep accounts**

Section 322 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) The Minister and the Minister of Finance may jointly determine that section 203 applies to a body if, in any year (being a period of 12 months commencing on or after 1 July 2001), a grant under section 321 is paid to the body.
- “(3) Section 203 applies to the body in respect of the year in which the grant was paid and the year after as if the body is both an institution and the Council of that institution.
- “(4) The Ministers may determine under **subsection (2)** that section 203 applies to a body if—
- “(a) the body is likely to receive funding for a substantial period rather than a one-off grant for a short period; or
 - “(b) the body exists for a public purpose or a large amount of its work is of a public nature; or
 - “(c) the amount of money received by the body is so substantial either in total or as a proportion of the body’s

total income that the Ministers believe the body should be accountable to the Crown through section 203.”

Heading above clause 50

To omit the word “*Education*” (line 2 on page 92), and substitute the word “*Teachers*”.

Clause 54A

To insert in *subclause (2)(a)*, after the words “**or (j)**” (line 25 on page 94), the words “of the principal Act”.

To insert in *subclause (2)(b)*, after the expression “**section 139AH**” (line 27 on page 94), the words “of the principal Act”.

To insert in *subclause (2)(c)*, after the words “**to (e)**” (line 28 on page 94), the words “of the principal Act”.

To insert in *subclause (3)*, after the expression “**section 139AD(h)**” (line 33 on page 94), the words “of the principal Act”.

To insert in *subclause (4)*, after the words “**to (e)**” (line 36 on page 94), the words “of the principal Act”.

To insert in *subclause (5)*, after the words “**to (e)**” (line 4 on page 95), the words “of the principal Act”.

Omit *paragraph (a)* of *subclause (5)* (lines 5 and 6 on page 95), and substitute the following paragraphs:

“(a) **section 19** (which substitutes a new section 129 of the principal Act dealing with deregistration) and **section 22** (which repeals section 130G of the principal Act (cancellation of authorisation)):

“(aa) **sections 25 and 25A** (which repeal sections of the principal Act relating to deregistration and mandatory reporting):

To insert in *subclause (5)(b)*, after the words “**to 139AX**” (line 7 on page 95), the words “of the principal Act”.

To insert in *subclause (5)(c)*, after the expression “**section 139AY**” (line 10 on page 95), the words “of the principal Act”.

To insert in *subclause (6)*, after the expression “**section 139AD(h)**” (line 14 on page 95), the words “of the principal Act”.

To omit *subclause (7)* (lines 15 to 20 on page 95).

New clause 54B

To insert, after *clause 54A* (after line 20 on page 95), the following clause:

54B Transitional provision relating to inquiries

(1) Until the disciplinary bodies of the Teachers Council are established, the Teachers Council may continue or commence, and may complete,—

(a) any inquiries into notifications received under sections 138A or 138B of the principal Act, whether the notification is received by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date; and

- (b) any inquiry in connection with the possible deregistration of a teacher under section 129 of the principal Act or the possible cancellation of an authorisation under section 130G of the principal Act, whether the inquiry is commenced by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date.
- (2) Before the disciplinary bodies are established, when doing any of the things described in **subsection (1)**, the Teachers Council must (as far as reasonably practicable) follow the procedures, and apply the standards, that were used by the Teacher Registration Board for those purposes.
- (3) After the disciplinary bodies of the Teachers Council are established, those bodies must deal with any matter arising under any of **sections 139AJ to 139AN, section 139AP, or section 139AY** of the principal Act in accordance with the relevant rules.
- (4) However, in relation to an inquiry referred to in **subsection (1)** that is incomplete on the date when the disciplinary bodies are established,—
- (a) the Teachers Council must continue and complete the inquiry in the manner described in **subsection (2)**; or
- (b) with the agreement in writing (which is not revocable) of the teacher or authorised person concerned, the matter may be continued and completed by the disciplinary bodies in accordance with the relevant rules, as if the matter arose under the relevant equivalent provision specified in **subsection (3)**.

New clauses 62 to 74

To omit *clauses 62 to 69* (line 17 on page 97 to line 9 on page 101), and substitute the following clauses:

62 Interpretation

- (1) In **sections 63 to 74**, unless the context otherwise requires,—
- assets** has the same meaning as in section 216 of the principal Act
- collective agreement** means an employment agreement that is binding on 1 or more employers and 2 or more employees
- effective date** means 28 February 2002, unless an earlier date is appointed as the effective date by the Governor-General by Order in Council under **subsection (2)**
- employment agreement**, in relation to a transferred employee,—
- (a) has the same meaning as in section 5 of the Employment Relations Act 2000; and
- (b) to avoid doubt, includes an employment contract that took effect before the commencement of that Act and

covers the transferred employee's employment with the Specialist Education Services Board

liabilities has the same meaning as in section 216 of the principal Act

Ministry means the Ministry of Education

rights has the same meaning as in section 216 of the principal Act

Secretary means the chief executive of the Ministry

transferred employee means an employee of the Specialist Education Services Board who transfers to the Ministry under **section 65** before or on the effective date.

- (2) The Governor-General may, by Order in Council, appoint an effective date for the purposes of this section and **sections 63 to 74** that is earlier than 28 February 2001.

63 Specialist Education Services Board abolished and undertaking transferred on effective date

- (1) On the effective date,—
- (a) the Specialist Education Services Board ceases to exist; and
 - (b) all assets, liabilities, and rights of the Specialist Education Services Board, by virtue of this section, become those of the Crown.
- (2) On the effective date, Part IV and the Second Schedule of the principal Act are consequentially repealed.
- (3) On the effective date, the following enactments are consequentially repealed:
- (a) section 13(1) of the Education Amendment Act 1990;
 - (b) sections 3 and 4 of the Education Amendment Act 1993;
 - (c) sections 14 and 15 and the heading above section 14 of the Education Amendment Act (No 2) 1998.

64 Effect of reorganisation on employees

Despite **section 72**, the abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not transfer the chief executive or an employee of the Specialist Education Services Board.

65 Transfer of employees

- (1) An employee of the Specialist Education Services Board transfers to the Ministry under this section if—
- (a) his or her position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and

- (b) the Secretary agrees to his or her transfer under this section; and
 - (c) he or she is appointed to a position in the Ministry, whether before or on the effective date.
- (2) Nothing in sections 60, 61, and 65 of the State Sector Act 1988 applies to that appointment.
 - (3) The transfer of the employee under this section is subject to any relevant provisions of the employee's employment agreement (but this subsection does not limit the operation of **sections 66 to 69**).

66 Application of employment agreements of transferred employees

- (1) Unless a transferred employee's employment agreement otherwise provides, and subject to **subsection (2)**, the transferred employee's employment agreement continues to apply to that employee, on and from the date that the employee transfers to the Ministry, on the same terms and conditions (including the period of the agreement)—
 - (a) as if it were an agreement that had been made in respect of the Ministry; and
 - (b) as if it were binding on both that employee and on the Secretary, and on any other party to that agreement.
- (2) If there is a change to an employee's duties or location arising out of his or her transfer to the Ministry, the conditions of employment of that employee may be varied by agreement to reflect that change, but the conditions of employment (as so varied) must be no less favourable than those that the employee was entitled to receive under the employment agreement that applied to the employee at the date of the transfer.
- (3) **Subsections (1) and (2)** continue to apply to the conditions of employment of each transferred employee to whom this section applies until the time that any of the conditions of employment that apply under the employment agreement applying to that employee at the date of the transfer are subsequently varied (otherwise than for the purpose referred to in **subsection (2)**).
- (4) The conditions of employment of each such transferred employee must, on and from the date of any subsequent variation to which **subsection (3)** applies, be determined in accordance with the employment agreement that applies to that employee in the Ministry.
- (5) Nothing in **subsection (1) or subsection (2)** continues to apply to any transferred employee who receives any subsequent appointment, whether within the Ministry or any other department.

67 Application of collective agreements of transferred employees

- (1) This section limits the employees who may be bound by a collective agreement that binds the chief executive of the Specialist Education Services Board before the effective date and, as a consequence of **sections 63 and 72**, binds the Secretary and transferred employees after the effective date.
- (2) After the effective date, the only employees of the Ministry who are entitled to be bound by or enforce that collective agreement are transferred employees who are appointed to a position in the Ministry that has been established (whether or not previously existing in the Ministry) to enable the Ministry to perform the functions of the Specialist Education Services Board.
- (3) **Subsection (2)** does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- (4) Sections 62 and 64 of the Employment Relations Act 2000 do not apply to a transferred employee in relation to the transfer.
- (5) This section limits the employees who may be bound by a collective agreement and the coverage of that agreement under Part VI of the State Sector Act 1988 and sections 56(1), 57, 63(3), and 243 of the Employment Relations Act 2000.
- (6) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

68 Employment of transferred employees continuous

For the purposes of any provisions of a transferred employee's employment agreement relating to continuity of service, that employee's transfer from the Specialist Education Services Board to the Ministry is insufficient by itself to break his or her employment.

69 Restriction of compensation for technical redundancy for transferred employees

An employee of the Specialist Education Services Board who transfers to the Ministry under **section 65** is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist.

70 Restriction of compensation for technical redundancy for other employees

- (1) This section applies to an employee of the Specialist Education Services Board who is not transferred to the Ministry under **section 65**.
- (2) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist if—
 - (a) the position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is offered equivalent employment in the Ministry (whether or not the employee accepts the offer); or
 - (ii) the employee is offered, and accepts, other employment in the Ministry.
- (3) **Equivalent employment** to the employee's employment in the Specialist Education Services Board is employment in the Ministry—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
 - (d) on terms that treat the period of service with the Specialist Education Services Board (or any other period of service recognised by that Board as continuous service) as if it were continuous service with the Ministry.

71 Consequential amendments to other enactments

On the effective date,—

- (a) the First Schedule of the Official Information Act 1982 is consequentially amended by omitting the item relating to the Specialist Education Services Board; and
- (b) the First Schedule of the Ombudsmen Act 1975 is consequentially amended by omitting from Part II the item relating to the Specialist Education Services Board; and
- (c) the Fourth, Fifth, Sixth, and Seventh Schedules of the Public Finance Act 1989 are amended by omitting the item relating to the Specialist Education Services Board; and
- (d) the Education (Change of Name of Education Entities) Order 2000 (SR 2000/117) is consequentially amended by revoking clause 3(4) and so much of the Schedule as relates to the Specialist Education Services Board.

72 Consequential changes to other references

- (1) If any other enactment or other thing refers to the Specialist Education Services Board (or to the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Ministry.
- (2) If any other enactment or other thing refers to the chief executive of the Specialist Education Services Board (or of the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Secretary.

73 Application of consequential changes to references

- (1) **Section 72**—
 - (a) applies to things that are in force or existing on the effective date (whether coming into force, entered into, or created before or after the commencement of this section); and
 - (b) applies to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.
- (2) **Section 72** applies to an employment agreement only in accordance with **sections 64 and 66**.

74 Effect of reorganisation

- (1) On and from the effective date, anything done or omitted to be done by, or in relation to, the Specialist Education Services Board must be treated as having been done or omitted by, or in relation to, the Crown.
- (2) The abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not affect—
 - (a) the assets, liabilities, or rights of the Crown or the Board (other than by transferring them); or
 - (b) the commencement or continuation of proceedings by or against the Board; those proceedings may instead be commenced or continued by or against the Crown.
- (3) If a transfer of an asset or liability under **section 63** is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
- (4) **Subsection (2)** does not limit **sections 63 to 73**.

Schedule 2A

To omit from line 11 on page 119 the word “Council’s” and substitute the word “Council”.

To insert, after line 3 on page 121, the following item:

Heading to section 129

Omit and substitute “Cancellation of registration”.

Section 129

Omit the words “Registration Board” wherever they appear and substitute in each case the words “Teachers Council”.

Repeal subsection (2A)(a) and substitute:

- “(a) the professional leader of the school, early childhood service, or other educational institution at which the person is or was employed (or, in the case of a request made in respect of a professional leader, the professional leader’s employer or former employer) has requested the Teachers Council to do so; or”.

To omit from line 11 on page 122 the expression “**section 135**” in both places where it occurs, and substitute in each case the expression “**section 136**”.

To insert, after line 35 on page 122, the following item:

Heading to section 138

Omit the word “Board” and substitute the word “Council”.

Section 138

Omit the words “Registration Board” and substitute the words “Teachers Council”.

Omit the words “school authority, and the management of every free kindergarten (within the meaning of section 315(1) of this Act), are” and substitute the words “employer is”.

Explanatory note

This Supplementary Order Paper—

- amends the financial reporting requirements in *clause 14* to make them better reflect current accounting practice:
- inserts a provision in *clause 26* that means the rules made by the Teachers Council are regulations for the purposes of the Regulations (Disallowance) Act 1989:
- amends *new section 195C* to clarify the circumstances in which the Minister may appoint a commissioner to replace the Council of a tertiary institution:
- inserts a *new section 195E* that provides for the appointment of an advisory committee to advise and support a commissioner appointed under *new section 195C*:
- inserts a *new section 195F* that requires the Minister to review, within 5 years, the operation of the provisions relating to tertiary institutions at risk:
- amends *clause 36* (which relates to the functions of the New Zealand Qualifications Authority) to clarify the role of the Authority:

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- inserts a *new clause 44AA*, which amends section 322 of the Education Act 1989 to enable the Minister and the Minister of Finance jointly to make education bodies subject to the audit requirements of section 203 of the Education Act 1989:
 - amends *clause 54A* to ensure that, in the period before the disciplinary bodies of the Teachers Council are operational, the Council may exercise the powers that the Teacher Registration Board had to deregister teachers and cancel limited authorities to teach.
 - inserts a *new clause 54B* to ensure that the standards and procedures used by the Teacher Registration Board are used to complete disciplinary cases that are unresolved when the new disciplinary bodies are established:
 - clarifies matters relating to the collective employment agreement of staff transferred from the Specialist Education Services Board to the Ministry:
 - provides that employees of the Specialist Education Services Board who are not transferred to the Ministry of Education, but who receive offers of equivalent employment in the Ministry, or who accept other employment in the Ministry, are not entitled to redundancy payments under their existing employment agreements:
 - contains technical drafting amendments.
-