

House of Representatives

Supplementary Order Paper

Wednesday, 5 June 2002

Tertiary Education Reform Bill

UNIVERSITY OF OTAGO
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Proposed amendments

Hon Steve Maharey, in Committee, to move the following amendments:

Clause 2(2)

To insert, after the expression “13” (line 8 on page 4), the expression “13A,”.
To omit the words “45C, and 45E” (lines 9 and 10 on page 4), and substitute the words “45C, 45E, and 46A”.

Clause 3

To omit this clause (line 11 on page 4 to line 12 on page 5).

New clause 4AA

To insert, after *clause 4* (after line 17 on page 5), the following clause:

4AA Purpose

The purpose of this Act is to amend the Education Act 1989 in order to reshape the tertiary education sector, so as to achieve coherence between different parts of the sector and strategic use of resources, by—

- (a) establishing a Tertiary Education Commission and incorporating Skill New Zealand within it; and
- (b) extending the requirements for charters, and introducing profiles, to steer the tertiary education sector; and
- (c) introducing a new approach to funding for the sector to create consistency and strategic use of resources across the sector as a whole; and
- (d) allowing the New Zealand Qualifications Authority to set conditions on the registration of private training establishments, and on course approvals and accreditations, and providing for the enforcement of those conditions; and
- (e) providing for the imposition of an export education levy; and

- (f) making other minor changes to provisions relating to the tertiary education sector.

Clause 5

To insert, before *subclause (4)* (above line 17 on page 7), the following subclause:

- (3) Section 159(1) of the principal Act is amended by repealing the definition of **association**.

Clause 5A

To insert, after *new clause 159AE* (after line 21 on page 9), the following new section:

“159AF Secretary may delegate certain powers and functions to Commission

- “(1) The Secretary may delegate to the Commission any powers or functions of the Secretary under regulations made pursuant to section 303 or section 306 or section 307 (which relate to student allowances).
- “(2) A delegation under this section—
- “(a) must be in writing; and
- “(b) may not include a power to further delegate any power or function; and
- “(c) may be revoked at any time by notice in writing.
- “(3) The Commission may exercise any functions or powers delegated to it under this section in the same manner and with the same effect as if the powers or functions had been conferred on the Commission directly, rather than by delegation.
- “(4) If the Commission purports to act under a delegation under this section, the Commission is presumed, in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

Clause 6

To omit from *new section 159F(1)(ca)* the words “this Part” (line 23 on page 12), and substitute the expression “**section 159ZJ**”.

To omit from *new section 159J(2)* the words “fund any specified organisation under this Part, or refuse funding under this Part to,” (lines 20 and 21 on page 15), and substitute the words “provide or deny funding under **section 159ZJ** to”.

To omit *new section 159R(1)(c)* (lines 19 to 21 on page 21).

To omit from *new section 159Y* the words “a tertiary education provider” (line 21 on page 25), and substitute the words “an organisation”.

To omit from *new section 159Y* the words “under this Part” (line 23 on page 25), and substitute the words “from the Commission”.

To insert, after *new section 159ZH(2)(a)* (after line 19 on page 30), the following paragraph:

- “(ab) must indicate which mechanisms relate to funding provided under **section 159ZJ**, and which (if any) relate to other funding; and

To omit from *new section 159ZIA(4)* the words “under this Part” (line 27 on page 32), and substitute the words “from the Commission”.

To omit from *new section 159ZJ(1)* the words “under this Part” (lines 7 and 8 on page 33).

To insert in *new section 159ZM*, before the words “funding to an organisation” (line 18 on page 35), the word “any”.

To omit from *new section 159ZM(a)* the words “made; or” (line 22 on page 35), and substitute the word “provided:”.

To insert in *new section 159ZM(b)*, before the words “the organisation” (line 23 on page 35), the words “in the case of funding provided under **section 159ZJ**”.

Clause 13

To omit this clause (lines 17 to 31 on page 38), and substitute the following clauses:

13 Heading before section 199 and section 199 repealed

- (1) The principal Act is amended by repealing section 199 and the heading before it.
- (2) Section 228(2A) of the principal Act is consequentially amended by omitting the words “section 199 of this Act”, and substituting the expression “**section 159ZJ**”.

13A New section 201A inserted

The principal Act is amended by inserting, after section 201, the following section:

“201A How institutions may use income and capital

- “(1) An institution may, subject to the provisions of any enactment and the terms of any trust or endowment,—
 - “(a) apply its income and capital in doing whatever the Council of the institution thinks will accomplish the goals and purposes set out in the institution’s charter; and
 - “(b) create, maintain, or add to, out of income, a fund or funds for any 1 or more of the purposes for which the income may be applied.
- “(2) **Subsection (1)(b)** does not limit the generality of **paragraph (a)** of that subsection.”

Clause 14(2)

To omit this subclause (lines 22 to 24 on page 39), and substitute the following subclause:

- (2) Despite **subsection (1)**, section 203(2) of the principal Act, as it read immediately before **1 July 2002**, continues to apply after that date to every institution that does not have a profile.

Clause 16

To omit from *new section 237(4)* the expression “**section 255A**” (line 2 on page 43), and substitute the expression “**section 255A(6)**”.

Clause 17C

To insert in *new section 238H(2)(e)*, after the word “section” (line 15 on page 44), the words “and **section 238I**”.

Clause 17G

To omit from the heading to *new section 255A* the words “**to registered establishments**” (line 15 on page 46).

To omit *subsection (1)* (lines 16 to 19 on page 46), and substitute the following subsections:

“(1) In this section, **institutions** includes institutions, government training establishments, registered establishments, secondary schools, and other bodies.

“(1A) The Authority may issue a compliance notice to an institution requiring the institution to do, or refrain from doing, a particular thing in relation to the institution’s registration (in the case of an institution that is a registered establishment) or to the institution’s course approvals or accreditations.

To omit from *subsection (2)(b)* the word “establishment” (line 23 on page 46), and substitute the word “institution”.

To omit from *subsection (4)* the words “A registered establishment” (line 30 on page 46), and substitute the words “An institution”.

To omit from *subclause (6)* the words “registered establishment” (line 3 on page 47), and substitute the word “institution”.

To insert in *subclause (6)(a)*, after the words “if the notice” (line 5 on page 47), the words “was issued to a registered establishment and”.

To omit from *subclause (6)(b) and (c)* the word “establishment” wherever it appears in lines 10, 12 and 14 on page 47, and substitute in each case the word “institution”.

Heading above clause 18

To omit this heading (lines 22 and 23 on page 47).

Clause 18A

To omit from *new section 258A(1)* the expression “section 153(1)(d)” (lines 7 and 8 on page 49), and substitute the expression “section 253(1)(d)”.

Clause 19

To omit from *new subsection (8)* the expression “**section 255A(5)**” (line 2 on page 51), and substitute the expression “**section 255A(6)**”.

Clause 24

To add (after line 31 on page 53), as subclause (2), the following subclause:

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

“(2) Every grant under section 321 to an educational body must be paid under a funding agreement that specifies—

“(a) the purpose of the grant; and

“(b) any conditions attaching to it; and

“(c) the reporting obligations of the recipient.”

Clause 30(2)(b)

To omit the words “by commenced” (line 19 on page 58), and substitute the words “be commenced”.

Clause 40(3)

To omit from *new subsection (2)* the words “may, at any time before an industry training organisation’s” (lines 26 and 27 on page 62), and substitute the words “may, at the request of an industry training organisation, at any time before that industry training organisation’s”.

Clause 42(4)

To omit *new paragraph (h)* (lines 13 to 15 on page 65).

Clause 46

To insert in *new section 32(1)(a)*, after the word “used” (line 22 on page 76) the words “to identify potential members”.

To omit from *new section 33(2)(b)* the words “has been advised that the person is” (lines 13 and 14 on page 77), and substitute the words “considers that the person is or may be”.

To omit from *new section 35(1)* the words “ballot papers to the persons specified in **subsection (2)**” (lines 36 and 37 on page 77), and substitute the words “a ballot paper to each person in the levy group”.

To omit *new section 35(2)* (lines 1 to 13 on page 78).

To omit from *new section 43(1)* the words “An person” (line 13 on page 80), and substitute the words “A person”.

To omit from *new section 51(5)* the words “unless a levy” (line 2 on page 85), and substitute the words “unless the levy”.

New clause 46A

To insert, after *clause 46* (after line 15 on page 85), the following clause:

46A Collection of levy if person switches industry training organisation

Section 43 of the principal Act is amended by omitting the expression “**10(2A)**”, and substituting the expression “**10A**”.

Schedule 1

To omit *clause 54A(1)(e)(i)* of *new Schedule 13A* (lines 30 to 32 on page 102), and substitute the following subparagraph:

- (i) which other persons or bodies engaged in similar or related work it proposes to liaise with, and how it proposes to liaise with those other persons or bodies; and

Schedule 2

To insert, after the heading to this schedule (after line 2 on page 108), the following Part heading:

**Part 1
Acts amended**

To omit the items relating to the Education (Change of Name of Education Entities) Order 2000 (lines 13 to 16 on page 108) and to the New Zealand

Council for Educational Research (Electoral College) Order 1998 (lines 2 to 5 on page 110).

To add the following Part:

Part 2 **Regulations amended**

Education (Change of Name of Education Entities) Order 2000 (SR 2000/117)

Revoke clause 3(3) and so much of the schedule as relates to Skill New Zealand.

New Zealand Council for Educational Research (Electoral College) Order 1998 (SR 1998/336)

Revoke clause 2(11) and substitute:

“Part 11

“(11) the chief executive of the Tertiary Education Commission:”

Schedule 3

To omit from *clause 13 of new Schedule 4* the words “stops working in” (line 22 on page 112) and substitute the words “ceases to be a qualifying member of”.

Explanatory note

This Supplementary Order Paper makes various minor and technical amendments to correct and clarify the intent of the Bill. In addition, it—

- authorises the Secretary to delegate his or her powers under student allowance regulations to the Commission;
 - omits *new paragraph (h)* that was to be inserted in section 7 of the Industry Training Act 1992. That paragraph requires the Commission to take into account the extent to which an organisation can demonstrate alignment with the Government’s statement of tertiary education priorities before recognising it. This will now be dealt with through the charter process, rather than at registration.
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