

House of Representatives

Supplementary Order Paper

Thursday, 12 May 2016

Education Legislation Bill

Proposed amendments

Hon Hekia Parata, in Committee, to move the following amendments:

New clause 6A

After *clause 6* (page 6, after line 11), insert:

6A Section 65 amended (Staff)

In section 65, replace “section 120A” with “section 349”.

New subpart 3A of Part 1 inserted

After *clause 13* (page 7, after line 31), insert:

Subpart 3A—Amendments to Part 8A (payment of teacher salaries)

13A Part 8A heading amended

In the Part 8A heading, replace “salaries” with “salaries, limitations on staffing, and powers of Secretary to employ teachers and create positions”.

13B Section 91A amended (Interpretation)

(1) In section 91A(1), insert in their appropriate alphabetical order:

initial teacher education programme means a training programme recognised by the Education Council as suitable for people who want to teach

trainee teacher means a person who is undertaking an initial teacher education programme that includes a period of employment by a board

trainee teaching position means a position established by the Secretary under **section 91O(1)**

- (2) In section 91A(1), definition of **regular teacher**, after “relieving teacher”, insert “or a trainee teacher”.

13C Section 91G amended (Relieving teachers)

- (1) Replace the heading to section 91G with “**Payment of salaries of relieving teachers and trainee teachers**”.
- (2) In section 91G(1), after “relieving teachers”, insert “and trainee teachers”.
- (3) In section 91G(2), after “relieving teacher” insert “or a trainee teacher”.
- (4) In section 91G(3), replace “a relieving teacher’s salary” with “the salary of a relieving teacher or a trainee teacher”.

13D New cross-heading above section 91N inserted

After section 91M, insert:

Powers of Secretary to employ teachers and create positions

13E New section 91O inserted (Trainee teacher positions)

After section 91N, insert:

91O Trainee teacher positions

- (1) The Secretary may, by written notice to the board, establish a trainee teaching position for a school.
- (2) Despite any provision to the contrary in this Act or in the State Sector Act 1988, the board of a school for which a trainee teaching position has been established may appoint only a trainee teacher to the position.

New subpart 1AA in Part 2

After the Part 2 heading (page 14, after line 2), insert:

Subpart 1AA—Amendments to New Zealand Council for
Educational Research Act 1972

35A Principal Act

This **subpart** amends the New Zealand Council for Educational Research Act 1972 (the **principal Act**).

35B Section 2 amended (Interpretation)

- (1) In section 2, repeal the definition of **electoral college**.

- (2) In section 2, insert in its appropriate alphabetical order:
fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest
- (3) In section 2, definition of **financial year**, replace “31 March” with “30 June”.

35C Section 5 amended (Disqualification from membership of Council)

- (1) In section 5(b), replace “his” with “an”.
- (2) Replace section 5(c) with:
- (c) a person convicted of any offence punishable by imprisonment, unless the person has received a full pardon or has served the sentence or otherwise suffered the penalty imposed:
- (3) In section 5(d), replace “officer or servant” with “employee”.

35D Section 6 replaced (Constitution of Council)

Replace section 6 with:

6 Constitution of Council

The Council consists of—

- (a) 1 member appointed by the Minister:
- (b) 5 elective members appointed by the Council on election in accordance with rules made under **section 33(1)**:
- (c) 3 members appointed by the Council.

6A Criteria for appointment to Council

- (1) When appointing a member under **section 6(a)**, the Minister must—
- (a) appoint a person who, in the Minister’s opinion, has the appropriate knowledge, skills, and experience to assist the Council to perform its functions; and
- (b) take into account the collective knowledge, skills, and experience of all of the members that constitute the Council.
- (2) When appointing a member under **section 6(c)**, the Council must—
- (a) appoint a person who, in the Council’s opinion, has the appropriate knowledge, skills, and experience to assist the Council to perform its functions; and

- (b) take into account the collective knowledge, skills, and experience of all of the members that constitute the Council; and
- (c) take into account the desirability of achieving diversity in the membership of the Council.

35E Section 7 amended (Extraordinary vacancies on Council)

Replace section 7(1)(b) with:

- (b) resigns by signed notice of resignation given to the chairperson of the Council; or

35F Section 8 replaced (Term of office of members of Council)

Replace section 8 with:

8 Term of office of members of Council

- (1) Unless otherwise provided by this Act, each member of the Council is appointed for a term of up to 4 years and may be reappointed.
- (2) Despite anything in this Act, each member of the Council continues to hold office (unless the member earlier vacates the office) until a successor comes into office.

35G Section 9 amended (Chairman, deputy chairman, and treasurer)

- (1) In the heading to section 9, replace “**Chairman, deputy chairman,**” with “**Chairperson, deputy chairperson,**”.
- (2) In section 9(1), replace “shall appoint a chairman, a deputy chairman” with “must appoint a chairperson, a deputy chairperson”.
- (3) In section 9(2), replace “chairman, deputy chairman, or treasurer shall, while he continues to be a member of the Council, hold office until the appointment of his successor” with “chairperson, deputy chairperson, or treasurer, while the person continues to be a member of the Council, holds office until the appointment of a successor”.

35H Section 10 amended (Meetings of Council)

- (1) In section 10(2), replace “chairman” with “chairperson”.
- (2) Repeal section 10(4).
- (3) Replace section 10(5), (6), and (7) with:
- (5) The chairperson must preside at all meetings of the Council at which he or she is present.
- (6) The deputy chairperson (if present) must preside at any meeting of the Council from which the chairperson is absent.

- (7) At any meeting from which both the chairperson and the deputy chairperson are absent, the members present must appoint one of their number to chair the meeting.
- (8) At any meeting of the Council, the chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

35I Section 11 amended (Passing of resolutions by Council without a meeting)

- (1) In section 11(1), replace “his duly appointed deputy, entitled to sign that resolution may by notice in writing to the chairman” with “the member’s duly appointed deputy, entitled to sign that resolution may by notice in writing to the chairperson”.
- (2) In section 11(3), replace “chairman” with “chairperson” in each place.

35J New section 12A inserted (Members of Council not personally liable)

After section 12, insert:

12A Members of Council not personally liable

No member of the Council is personally liable for—

- (a) any act or omission by the Council; or
- (b) any loss to the Council arising out of any act or omission by the member if the act or omission was in good faith with the intention of performing the functions of the Council.

35K Section 14 amended (Powers of Council)

In section 14(b), replace “him or them” with “the person or persons”.

35L Section 15 amended (Power to appoint officers and servants)

- (1) In the heading to section 15, replace “**officers and servants**” with “**employees**”.
- (2) In section 15(1), replace “officers and servants” with “employees” in each place.
- (3) In section 15(2), replace “officers and servants” with “employees”.

35M Section 16 amended (Power to insure members, officers, and servants)

- (1) In the heading to section 16, replace “**members, officers, and servants**” with “**members and employees**”.
- (2) In section 16(1), replace “members, officers, and servants” with “members and employees”.

- (3) In section 16(1), replace “case of officers and servants” with “case of employees”.
- (4) In section 16(2), replace “his” with “the person’s”.

35N Section 21 and cross-heading repealed

Repeal section 21 and the cross-heading above section 21.

35O Section 26 replaced (Money to be paid into bank)

Replace section 26 with:

26 Bank account

The Council must, as soon as practicable after it receives money belonging to the Council, pay the money into the account of the Council at a bank appointed by the Council.

35P Section 28 amended (Accounting records must be kept)

Repeal section 28(2) and (3).

35Q Section 30 replaced (Remuneration and travelling expenses of members of the Council and of committees)

Replace section 30 with:

30 Remuneration of members of Council

- (1) Every Council member and member of a committee appointed under section 14(e) is entitled to receive from the Council remuneration for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework.
- (2) A person holding any of the following offices is not entitled to any remuneration for services as a member of the Council or a member of a committee:
 - (a) a Judge:
 - (b) a member of Parliament:
 - (c) an employee of the State services who is acting in the employee’s official capacity.

30A Expenses of Council members and committee members

In addition to any remuneration received under **section 30**, every Council member and member of a committee is entitled, in accordance with the fees framework, to be reimbursed by the Council for actual and reasonable travelling and other expenses incurred in carrying out his or her service as a member.

35R Section 33 amended (Rules)

- (1) Replace section 33(1) with:
 - (1) The Council must, as soon as practicable, by resolution, make rules prescribing the method of election of members of the Council.
 - (1A) Rules made under **subsection (1)** must require the notification of elections.
 - (1B) The Council may from time to time, by resolution, make rules that are reasonably necessary to enable the Council to perform its functions.
- (2) After section 33(2), insert:
- (3) Rules made under this section are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Subpart 5 heading in Part 2

In Part 2, subpart 5 heading, after “amendments” (page 27, line 3), insert “and revocation”.

Clause 84

Replace *clause 84* (page 27, lines 4 and 5) with:

- 84 Consequential amendments and revocation**
- (1) Amend the enactments specified in **Parts 1 and 2 of Schedule 2** as set out in those Parts.
 - (2) The order specified in **Part 3 of Schedule 2** is revoked.

Schedule 2

In *Schedule 2*, after **Part 2** (page 30, after line 8), insert:

Part 3
Consequential revocation

New Zealand Council for Educational Research (Electoral College) Order 2009 (SR 2009/92)

Explanatory note

This Supplementary Order Paper amends the Education Legislation Bill (the **Bill**) to make a number of further amendments to the Education Act 1989 (the **Act**). The main objective of these amendments is to facilitate the lawful administration of field-based initial teacher education programmes, which involve trainee teachers being employed

to teach unsupervised in schools while they continue their studies. To achieve this objective, the Act is amended to—

- empower the Secretary to establish trainee teaching positions in schools; and
- permits boards to appoint only trainee teachers to those positions.

The amendments also insert into the Act new definitions of initial teacher education programme, trainee teacher, and trainee teaching position.

The Supplementary Order Paper updates a cross-reference in section 65 of the Act. It also amends the definition of regular teacher in section 91A(1) of the Act and amends section 91G to provide that the salaries of trainee teachers are paid by boards (not through the central funding mechanism by which the salaries of regular teachers are paid).

The Supplementary Order Paper inserts into *Part 2* of the Bill a *new subpart IAA*, which makes amendments to the New Zealand Council for Educational Research Act 1972 (**NZCERA**). The main changes effected by these amendments relate to—

- the manner in which members of the Council are elected and appointed; and
- the introduction of criteria for appointment of members to the Council; and
- the introduction of flexibility in the length and commencement of terms of appointment; and
- the Council's rule-making powers and the status of the rules.

New clause 35D of the Bill replaces section 6 of NZCERA with *new sections 6 and 6A*. *New section 6*—

- replaces the requirement for 1 member of the Council to be appointed by the Governor-General with a requirement that 1 member be appointed by the Minister of Education; and
- replaces the requirement for the 6 elected members to be appointed by the Governor-General with a requirement for 5 members to be appointed by the Council following elections carried out in accordance with the election rules; and
- requires the Council to appoint 3 members (rather than to appoint 2 co-opted members).

New section 6A sets out criteria that must be considered by the Minister and by the Council when making appointments to the Council, including that the appointee must have the appropriate knowledge, skills, and experience to assist the Council to perform its functions.

New clause 35J of the Bill inserts *new section 12A* into NZCERA, providing that members of the Council are not personally liable for any act or omission of the Council or for any loss to the Council arising out of any act or omission by the member if the act or omission was in good faith with the intention of performing the functions of the Council.

New clause 35Q of the Bill replaces section 30 of NZCERA with *new sections 30 and 30A*, updating relevant terminology and enabling expenses of members of the Council to be paid in accordance with the Government's fees framework. A definition of fees framework is also inserted into section 2 of NZCERA (*see clause 35B* of the Bill).

New clause 35R of the Bill substantially amends section 33 of NZCERA, which concerns the Council's power to make rules. The amendments remove from the rule-making powers the detailed list of administrative matters, such as providing for the custody and use of the common seal, because these matters are now more commonly dealt with through operational guidelines and policies. Under section 33, as amended by *new clause 35R*, the Council would be required to make rules prescribing the method of election of members of the Council (which rules must include the notification of elections) and would be permitted to make rules that are necessary to enable the Council to perform its functions. The amendments to section 33 would also make the Council's rules disallowable instruments for the purposes of the Legislation Act 2012, in order to accord with current policy and practice in relation to tertiary legislation (because those rules have legislative effect and do not fall within any of the established exceptions to instruments being disallowable).

The Supplementary Order Paper makes further amendments to NZCERA to remove spent or redundant provisions, to update banking and accounting provisions, and to replace gender-specific language with gender-neutral language.

Departmental disclosure statement

The Ministry of Education considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.