

19 August 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Vocational Education Reform Bill

Purpose

1. We have considered whether the Vocational Education Reform Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO21821/3.0). We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.

The Bill

3. The Bill is an omnibus Bill, to be introduced in accordance with Standing Order 263(a). The amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The Bill will amend the Education Act 1989 and repeal the Industry Training and Apprenticeships Act 1992. The purpose of the Bill is to create a unified and cohesive vocational education and training system. Primarily, the Bill will achieve this by:
 - a. establishing a new regulatory environment for vocational tertiary education;
 - b. establishing the New Zealand Institute of Skills & Technology (the Institute) as a tertiary education institution under the Education Act 1989, and by providing for all existing polytechnics to become subsidiaries of the Institute; and
 - c. enabling workforce development councils to be established as bodies corporate by Order in Council to provide skills leadership, set standards and develop qualifications for their specified industries.

Consistency of the Bill with the Bill of Rights Act

Section 14 - Freedom of Expression

4. Several provisions in the Bill require the provision of information. This includes:
 - a. financial and operational information, which is to be provided by the workforce development councils to the Tertiary Education Commission (clause 10, the new section 159FB), and an annual report to the Minister of Education for tabling in the House (clause 57, the new section 518);

- b. operational information, which is to be provided by the Institute to the Tertiary Education Commission for specified purposes (clause 42, the new section 222N); and
 - c. information, which is to be provided by the Institute to a Crown observer, a Crown manager, or specialist third-party advisor, in circumstances where the Institute, any of its subsidiaries, or the education performance of students are at risk (clause 42, the new sections 222Q, 222R, and 222T).
5. These provisions limit the right to freedom of expression. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹
6. However, the limits on section 14 are clearly justified in terms of section 5 of the Bill of Rights Act. The limitation on freedom of expression serves a sufficiently important public objective and is rationally connected to the objective. Workforce development councils are expected to receive funding from industry via a levy imposed by Order in Council. Further, the Institute will receive significant public funding. It is appropriate that these entities are transparent in the use of this funding and are publicly accountable. Workforce development councils and the Institute are also carrying out public functions of significant social importance. The provision of operational information in specified contexts is necessary to ensure effective oversight of the bodies and to protect the interests of students.
7. The limitations on the freedom of expression are proportionate and go no further than reasonably necessary to achieve their purpose. The instances in which information can be requested or required are generally limited to prescribed circumstances as outlined in each of the provisions.

Section 19 - Freedom of Discrimination

8. Clause 42 of the Bill (the new section 222F) provides that a person is not eligible to be appointed a member of the Institute's council if a personal or property order has been made about them under the Protection of Personal and Property Rights Act 1998. In the case that a personal order has been made about the person, the order must adversely reflect on the person's competence to manage their own property affairs if they are to be prevented from being appointed, or the person's capacity to make or communicate decisions relating to their personal care and welfare.
9. This provision limits the right to be free from discrimination. Section 19(1) of the Bill of Rights Act affirms the right to be free from discrimination on the prohibited grounds set out in the Human Rights Act 1993, which includes disability. Disability is defined in the Human Rights Act 1993 as including intellectual or psychological disability or impairment, along with psychiatric illness.
10. However, the limits on section 19(1) are clearly justified in terms of section 5 of the Bill of Rights Act. The exclusion of individuals who are subject to a property or personal order serves a sufficiently important public objective and is rationally connected to the

¹ See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

objective. It ensures that only those people capable of discharging the relevant functions of the office are appointed. The exclusions are proportionate and go no further than reasonably necessary to achieve that purpose.

Conclusion

11. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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