

Education (Establishment of Tertiary Education Institutions) Amendment Bill

24 September 2004

Attorney-General

Legal Advice:

Education (Establishment of Tertiary Education Institutions) Amendment Bill 2004:
Consistency With The New Zealand Bill of Rights Act 1990:

1. We have considered the Education (Establishment of Tertiary Education Institutions) Amendment Bill (PCO version 6153/2) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that this Bill is to be considered by Cabinet Policy Committee on Wednesday, 15 September 2004. We have been asked to consider this Bill under some urgency.
2. The Bill proposes to amend the current process for determining the establishment of tertiary education institutions by establishing a sequential process for making such a determination. A tertiary education institution is identified as being a college of education, a polytechnic, a specialist college, a university or a wananga.
3. This Bill intends to make it clear that the initial consideration for any application must be whether the establishment of such an institution is in the interests of the tertiary education system and the nation as a whole (new section 162A(1)(a)). This criterion is currently provided for in the Education Act 1989 but is not given any priority over the other criteria (section 162(3) of the Education Act).
4. The Bill also provides that, if the establishment of a new tertiary education institution is **not** in the interests of the tertiary education system and nation as a whole, the Minister may decline the application on this basis alone without considering the merits of the application further (new section 162A(4)). The Bill provides that the Minister must obtain the advice of the Tertiary Education Commission before making a determination under section 162A(1)(a) (new section 162A(2)).
5. The Bill will have retrospective effect in relation to any Order in Council establishing a university that may be made after this Bill is introduced into the House (see clause 5). The explanatory note of the Bill states that it is intended that the retrospective application would have the effect of encouraging both the Qualifications Authority and those seeking establishment of a university either to wait until after the Act comes into force or to follow the new procedures in anticipation of the Bill's enactment. We understand that the changes to the process will be applied to one long-standing application by a tertiary institution for university status.

6. We have considered whether this Bill raises issues of consistency with the Bill of Rights Act, specifically the right to the observance of the principles of natural justice (section 27(1)). We have come to the view that the Bill appears to be consistent with the Bill of Rights Act.
7. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. We also attach a copy for referral to the Minister of Education and Associate Minister of Education (Tertiary Education), if you agree.

Roger Palairt	Boris van Beusekom
Acting Chief Legal Counsel	Senior Legal Adviser
Office of Legal Counsel	Bill of Rights/Human Rights Team

cc
Minister of Justice
Minister of Education
Associate Minister of Education (Tertiary Education)

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