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BILLS DIGEST

Digest No. 1728

Education (Polytechnics) Amendment Bill 2009 (2009 No 70-2)

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Portfolio:	Tertiary Education
Select Committee:	Education and Science
Date report presented:	20 November 2009
Published: 09 December 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this bill is to amend the Education Act 1989 (the Act) by introducing new governance arrangements for polytechnic councils, creating an extended interventions framework for the polytechnic sector, and making several other changes affecting polytechnics¹.

Background

The size of polytechnic councils would be reduced from between 12 and 20 members to eight members, with four of the eight to be appointed by the Minister for Tertiary Education. The Minister would make these appointments principally on the basis of relevant governance experience. In addition, the Minister would be required to take into account that it is desirable in principle that a polytechnic council should include Māori; and that, so far as is possible, a polytechnic council should reflect the ethnic and socio-economic diversity of the community it serves. The Minister would appoint the council chairperson and deputy chairperson².

¹ Education (Polytechnics) Amendment Bill, 2009 No 70-2, As reported from the Education and Science Committee, Commentary, p. 1.

² Ibid., pp. 1 and 2.

The extended interventions framework would allow a graduated series of responses to situations of risk³.

The Minister would be able to combine the councils of two or more polytechnics if requested to do so by the councils; two or more polytechnic councils would be able to combine their academic boards; and the Manukau Institute of Technology would be able to establish a tertiary high school⁴.

Main changes to the Bill

Interventions framework risk criteria

The Select Committee has recommended that the Secretary for Education be able to determine polytechnic-specific criteria for assessing risk to the educational performance of students (*Part 1 Clause 14, amending Section 195A of the Act, by substituting subsection (1) and inserting new subsection (1A); Clause 15, inserting New Part 15A into the Act, New Section 222C, substituting subsection (6)*).

Crown managers

The Select Committee has recommended that the Minister be required to consult with a polytechnic council before appointing a Crown manager, to publish the notice of appointment in the Gazette, and to review the appointment at least once a year. It is also recommended that the Crown manager be required to exercise the functions, duties, and powers of a polytechnic council in accordance with the Education Act 1989, having "regard to" Sections 160⁵ and 161⁶ of that Act. The Select Committee has also recommended that the Bill provide for the indemnification of Crown managers appointed for polytechnics against personal liability for acts or omissions carried out in good faith in the course of performing their functions (*Clause 15, inserting New Part 15A into the Act, New Section 222C, inserting new subsections (1A), (1B), (2A), (3A), (3B) and (5)*).

³ Ibid.

⁴ Ibid.

⁵ Section 160 is the first section in Part 14 of the Education Act 1989 which is headed "Establishment and Disestablishment of Tertiary Institutions" and reads: "The object of the provisions of this Act relating to institutions is to give them as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability."

⁶ Section 161 is headed "Academic Freedom" and subsection (1) provides: "It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced". The section defines the meaning of that term for the purpose of Section 161 as follows:

- The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions (*Section 161(2)(a)*);
- The freedom of academic staff and students to engage in research (*Section 161(2)(b)*);
- The freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution (*Section 161(2)(c)*);
- The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning (*Section 161(2)(d)*);
- The freedom of the institution through its chief executive to appoint its own staff (*Section 161(2)(e)*).

Section 161(3) provides that in exercising their academic freedom and autonomy, institutions must act in a manner that is consistent with:

- The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
- The need for accountability by institutions and the proper use by institutions of resources allocated to them.

Section 161(4) provides that "In the performance of their functions the Councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown shall act in all respects so as to give effect to the intention of Parliament as expressed in this section".

Composition of councils

The Select Committee has recommended that each polytechnic council, in addition to the four members appointed by the Minister, consist of four members appointed by the polytechnic council from its constituents, and from groups, organisations, and the wider community the polytechnic serves, in place of the student member, the academic board member, the community member, and the chief executive officer. It is also recommended that the council's appointments be made in accordance with statutes issued by the polytechnic council (*Part 1, Clause 16, inserting New Section 222AA, amending subsection (1) of new section 222AA and inserting new section 222AAB*).

Terms and conditions of office

The Select Committee has recommended that the maximum term of office for polytechnic council members be four years. It is also recommended that the duty of a member of a polytechnic council to act in the interests of the polytechnic as a whole overrides their appointment as a representative of a particular group or institution and that polytechnic council members are accountable only to the Minister and the institution itself for any breach of the individual duties set out in New Section 222AG. It is also clarified that a polytechnic council member is not entitled to compensation or other payment or benefit on ceasing to hold office (*Part 1, Clause 16, New Section 222AD, inserting new subsection (1A); New Section 222AG, inserting new subsection (1A); inserting New Section 222AGA; New Section 222AL, inserting new subsection (3)*).

Chairperson and deputy chairperson

The Select Committee has recommended that the Minister be required to consult the person concerned before removing that person from the position of chairperson or deputy chairperson, and that the chairperson or deputy chairperson be required to send a copy of her or his written notice of resignation to the polytechnic council concerned (*Part 1, Clause 16, New Section 222AF, inserting new subsections (2A) and (4B)*).

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