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as at 1 July 2014**



**Education Act 1989**

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Education.**

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## **An Act to reform the administration of education**

### **1 Short Title and commencement**

- (1) This Act may be cited as the Education Act 1989.
- (2) Except as otherwise provided in this Act, this Act comes into force on 1 October 1989.

## **Part 1**

### **Rights to primary and secondary education**

#### **2 Interpretation**

- (1) In this Part, and Parts 2, 3, and 11, unless the context otherwise requires,—

**board** means a board of trustees constituted under Part 9; and,—

- (a) in relation to a school, means the school's board; and
- (b) in relation to a principal, means the board of the principal's school

**Chief Review Officer** means the chief executive of the Education Review Office

**composite school** has the same meaning as in section 145(1)

**correspondence school** has the same meaning as in section 145(1)

**crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961

**criteria for registration**, in relation to a private school or proposed private school, means the criteria set out in section 35C

**doctor** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**domestic student**, at any time, means a person who is then—

- (a) a New Zealand citizen; or
- (b) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or
- (c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not international students

**enrolment scheme** means a scheme adopted (and not since abandoned) under section 11H; and includes any amendments to the scheme that have been adopted under section 11M

**government training establishment** has the same meaning as it has in section 159

**hostel** means a boarding establishment used mainly or solely for the accommodation of students enrolled at a registered school

**industry training organisation** has the same meaning as in section 2 of the Industry Training and Apprenticeships Act 1992

**institution** has the same meaning as it has in section 159

**intermediate school** has the same meaning as in section 145(1)

**international student**, at any time, means a person who is not then a domestic student

**lead provider** means a provider of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under section 31F as a lead provider

**managers of a private school** means all the people who control and manage the school, whether or not they have a proprietary interest in it

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part, and Parts 2, 3, and 11

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part, and Parts 2, 3, and 11

**overcrowding**, in relation to a school, means the attendance at the school of more students than its site or facilities can reasonably be expected to take

**parent**, in relation to any person, means a person who is the person's mother, father, or guardian

**participating student** means a student undertaking a secondary-tertiary programme who is enrolled in any of the following:

- (a) a secondary school:
- (b) a composite school:



- (c) a school that is registered under section 35A, other than a school registered under that section only as a primary school:
- (d) a special school that is a relevant school within the meaning of section 246

**partnership school contract** means a contract for the operation of a partnership school kura hourua entered into under section 158D and, in relation to a sponsor, means the partnership school contract to which the sponsor is a party

**partnership school kura hourua** means a school in respect of which—

- (a) the Minister has approved a sponsor under section 158B; and
- (b) a partnership school contract is in force

**primary partnership school kura hourua** means a partnership school kura hourua designated as a primary partnership school kura hourua by notice under section 158B

**primary school** has the same meaning as in section 145(1)

**principal** means the chief executive of a State school; and, in relation to a school, a person enrolled at the school, or the enrolment of a person at a school, means the principal of the school

**provider group** means a group of providers of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under section 31B as a provider group

**registered establishment** has the same meaning as it has in section 159

**registered school** means a school that is a State school, a partnership school kura hourua, or a school registered under section 35A

**review officer** has the same meaning as it has in section 323

**secondary component**, in relation to a secondary-tertiary programme, means the portion of the programme that consists of participation in secondary education, whether or not provided by the school in which the participating student is enrolled

**secondary school** has the same meaning as in section 145(1)

**secondary-tertiary programme** has the meaning given to it in section 31A

**Secretary** means the chief executive of the Ministry

**serious criminal activity** means any offence involving fraud, violence, or harm to children, any sexual offence, or any crime involving dishonesty

**special education** means education or help from a special school, special class, special clinic, or special service

**sponsor** means a body approved by the Minister under section 158B to operate a partnership school kura hourua

**State school** means a school that is a primary school, a composite school, a secondary school, or a special school

**student**, in relation to a school or institution, means a person enrolled at the school or institution

**tertiary component**, in relation to a secondary-tertiary programme, means the portion of the programme that consists of the participating student's apprenticeship training (as defined in section 13C of the Industry Training and Apprenticeships Act 1992), or participation in tertiary education that—

- (a) is provided by any 1 or more of the following:
  - (i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
  - (ii) the managers of a school registered under section 35A, other than a school registered under that section only as a primary school:
  - (iii) a government training establishment:
  - (iv) an institution:
  - (v) a registered establishment; and
- (b) may include work experience (other than work experience obtained by a student under section 71) as part of the programme that is approved by the provider of the secondary or tertiary component of the programme

**walking distance**, in relation to travel between a person's residence and a school,—

- (a) where there is no public transport that the person can conveniently use, means the distance (measured along the most direct route by public road, public footpath, or combination of both) between the residence and the school; and

- (b) where in both directions there is public transport that the person can conveniently use, means the sum of the following distances (each measured along the most direct route by public road, public footpath, or combination of both) or, where the sum is greater in one direction than the other, the greater sum:
    - (i) the distance between the residence and the place where public transport must first be taken (or, as the case may be, finally be left); and
    - (ii) the distance between the school and the place where public transport must finally be left (or, as the case may be, first be taken); and
    - (iii) every intermediate distance between one element of public transport and another
- (2) In this Part, and Parts 2 and 3, unless the context otherwise requires, a **special school**, **special class**, **special clinic**, or **special service** means a school, class, clinic, or service established under section 98(1) of the Education Act 1964 as a special school, special class, special clinic, or special service respectively.
- (3) *[Repealed]*
- (4) The Governor-General may, by Order in Council, make regulations prescribing criteria that the holder of a residence class visa granted under the Immigration Act 2009 must satisfy in order to fulfil the requirements of paragraph (b) of the definition of domestic student in subsection (1).
- (5) Regulations made under subsection (4),—
  - (a) if made on or before 30 June in any year, expire on the close of 31 December of that year unless they are expressly confirmed by Act of Parliament passed during that year; and
  - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year unless they are expressly confirmed by Act of Parliament passed before the end of that following year.
- (6) The expiry of regulations made under subsection (4) does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.

Section 2(1) **assisted student**: repealed, on 30 August 2011, by section 4(1) of the Education Amendment Act 2011 (2011 No 66).

Section 2(1) **composite school**: inserted, on 1 January 1990, by section 15(1) of the Education Amendment Act 1989 (1989 No 156).

Section 2(1) **correspondence school**: replaced, on 1 January 1990, by section 15(1) of the Education Amendment Act 1989 (1989 No 156).

Section 2(1) **crime involving dishonesty**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **criteria for registration**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **doctor**: replaced, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **domestic student**: replaced, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 2(1) **domestic student** paragraph (c): amended, on 30 August 2011, by section 4(2) of the Education Amendment Act 2011 (2011 No 66).

Section 2(1) **enrolment scheme**: replaced, on 19 December 1998, by section 2 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 2(1) **enrolment scheme**: amended, on 8 July 2000, by section 26(1) of the Education Amendment Act 2000 (2000 No 21).

Section 2(1) **exempt student**: repealed, on 30 August 2011, by section 4(1) of the Education Amendment Act 2011 (2011 No 66).

Section 2(1) **foreign student**: repealed, on 30 August 2011, by section 4(1) of the Education Amendment Act 2011 (2011 No 66).

Section 2(1) **government training establishment**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **hostel**: inserted, on 25 October 2001, by section 3 of the Education Standards Act 2001 (2001 No 88).

Section 2(1) **industry training organisation**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **industry training organisation**: amended, on 23 April 2014, by section 23 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2(1) **institution**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **intermediate school**: inserted, on 1 January 1990, by section 15(1) of the Education Amendment Act 1989 (1989 No 156).

Section 2(1) **international student**: inserted, on 30 August 2011, by section 4(3) of the Education Amendment Act 2011 (2011 No 66).

Section 2(1) **lead provider**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **managers of a private school**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **Minister**: replaced, on 1 January 1992, by section 2(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 2(1) **Ministry**: replaced, on 1 January 1992, by section 2(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 2(1) **overcrowding**: inserted, on 20 June 1991, by section 6(1) of the Education Amendment Act 1991 (1991 No 43).

Section 2(1) **participating student**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **partnership school contract**: inserted, on 13 June 2013, by section 4(1) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **partnership school kura hourua**: inserted, on 13 June 2013, by section 4(1) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **primary partnership school kura hourua**: inserted, on 13 June 2013, by section 4(1) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **primary school**: replaced, on 1 January 1990, by section 15(1) of the Education Amendment Act 1989 (1989 No 156).

Section 2(1) **principal**: replaced, on 13 June 2013, by section 4(2) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **provider group**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **registered establishment**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **registered school**: replaced, on 13 June 2013, by section 4(3) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **review officer**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **secondary component**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **secondary school**: replaced, on 1 January 1990, by section 15(1) of the Education Amendment Act 1989 (1989 No 156).

Section 2(1) **secondary-tertiary programme**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **serious criminal activity**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **sponsor**: inserted, on 13 June 2013, by section 4(1) of the Education Amendment Act 2013 (2013 No 34).

Section 2(1) **State school**: amended, on 20 May 2010, by section 4(1) of the Education Amendment Act 2010 (2010 No 25).

Section 2(1) **tertiary component**: inserted, on 21 December 2010, by section 4 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 2(1) **tertiary component**: amended, on 23 April 2014, by section 23 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2(2): replaced, on 20 May 2010, by section 4(2) of the Education Amendment Act 2010 (2010 No 25).

Section 2(3): repealed, on 30 August 2011, by section 4(4) of the Education Amendment Act 2011 (2011 No 66).

Section 2(4): inserted, on 1 January 2003, by section 4(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 2(4): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 2(5): inserted, on 1 January 2003, by section 4(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 2(6): inserted, on 1 January 2003, by section 4(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### **3 Right to free primary and secondary education**

Except as provided in this Act or the Private Schools Conditional Integration Act 1975, every person who is not an international student is entitled to free enrolment and free education at any State school or partnership school kura hourua during the period beginning on the person's fifth birthday and ending on 1 January after the person's 19th birthday.

Compare: 1964 No 135 ss 75(2), 85(1)

Section 3: amended, on 13 June 2013, by section 5 of the Education Amendment Act 2013 (2013 No 34).

Section 3: amended, on 30 August 2011, by section 5 of the Education Amendment Act 2011 (2011 No 66).

### **3A Restriction on attendance at certain schools**

*[Repealed]*

Section 3A: repealed, on 25 October 2001, by section 4 of the Education Standards Act 2001 (2001 No 88).

### **4 Enrolment of international students**

- (1) Subject to section 4A(3), an international student—
  - (a) shall not be enrolled at a State school without the board's consent; and
  - (b) shall not be enrolled in special education without the consent of the person or body administering the institution or service concerned.
- (2) Subject to section 4B and to subsections (3) and (4) of this section, once enrolled at a State school or in special education an international student has the same rights to remain enrolled, and to tuition, at the school as a domestic student.

- (3) Except as provided in subsection (5), no international student may be enrolled at a State school if the student's enrolment has the effect that a domestic student who is entitled to enrol there and has applied for enrolment is not able to be enrolled.
- (4) Except as provided in subsection (5), no international student may be enrolled in any subject, course, or programme at a State school if the student's enrolment has the effect that a domestic student who is entitled to enrol in the subject, course, or programme and has applied for enrolment in it is not able to be enrolled in it.
- (5) Although domestic students may not be able to be enrolled, an international student may be enrolled at a State school, or in any subject, course, or programme at a State school, if the enrolment is in a vacant place—
  - (a) that the board established for international students; and
  - (b) the continued availability of which is dependent on the fees payable by international students enrolled in it.
- (6) *[Repealed]*
- (7) As soon as is practicable after an international student is enrolled at a State school, the principal shall give the Secretary written notice of—
  - (a) the student's name, age, and nationality; and
  - (b) the day on which the student began (or will begin) to receive tuition at the school.
- (8) Notwithstanding anything in this section or section 4B, with the consent of the principal, an international student may, during a period of not more than 28 consecutive days (or any longer period the Secretary approves for any particular student), receive tuition at or from a State school—
  - (a) without the consent of the board; and
  - (b) without paying the amount required by section 4B;—but in that case the student shall not be counted for the purpose of calculating or ascertaining the school's entitlement to teachers or funding.

Section 4: replaced, on 1 January 1992, by section 3(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 4 heading: amended, on 30 August 2011, by section 6(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4(1): amended, on 30 August 2011, by section 6(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4(1)(b): amended, on 20 May 2010, by section 5 of the Education Amendment Act 2010 (2010 No 25).

Section 4(2): amended, on 30 August 2011, by section 6(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4(3): replaced, on 30 August 2011, by section 6(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4(4): replaced, on 30 August 2011, by section 6(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4(5): replaced, on 30 August 2011, by section 6(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4(6): repealed, on 30 August 2011, by section 6(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4(7): amended, on 30 August 2011, by section 6(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4(8): amended, on 30 August 2011, by section 6(2) of the Education Amendment Act 2011 (2011 No 66).

#### **4A Certain international students may enrol at State schools as of right**

- (1) The Minister may from time to time, by notice in the *Gazette*, declare international students of a specified kind or description to be entitled to enrol at State schools.
- (2) A notice may be unconditional, or subject to conditions specified in it.
- (3) Subject to—
  - (a) the conditions (if any) specified in the notice; and
  - (b) section 4B,—an international student of a kind or description for the time being specified in a notice under subsection (1) has the same rights to enrolment and tuition at State schools as a domestic student.

Section 4A: replaced, on 1 January 1992, by section 3(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 4A heading: amended, on 30 August 2011, by section 7(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4A(1): amended, on 30 August 2011, by section 7(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4A(3): amended, on 30 August 2011, by section 7(3) of the Education Amendment Act 2011 (2011 No 66).



**4B Fees for international students**

- (1) Subject to section 4(8), no international student shall receive tuition in any subject, course, or programme at a State school unless there has been paid to the board an amount fixed by the board that is not less than the sum of the following amounts:
  - (a) the board's best estimate of the cost to the board (including the appropriate proportion of the board's administrative and other general costs) of providing tuition in the subject, course, or programme for 1 student:
  - (b) an amount that is in the board's opinion an appropriate reflection of the use made by 1 student receiving tuition in the subject, course, or programme of the board's capital facilities:
  - (c) the amount (if any) prescribed under section 4D for a student receiving tuition at a State school in the subject, course, or programme:
  - (d) all other fees (if any) prescribed by the board.
- (2) Nothing in subsection (1) prevents a board's accepting by instalments any amount required by that subsection to be paid; but subject to section 4(8), no international student shall at any time continue to receive tuition in any subject, course, or programme at a State school unless the sum of the following amounts is less than the sum of the instalments paid up to that time:
  - (a) the board's best estimate of the cost to the board (including the appropriate proportion of the board's administrative and other general costs and the appropriate proportion of any initial or start-up costs of the subject, course, or programme) of providing tuition in the subject, course, or programme for 1 student up to that time:
  - (b) an amount that is in the board's opinion an appropriate reflection of the use made by 1 student receiving tuition in the subject, course, or programme of the board's capital facilities:
  - (c) the appropriate proportion of the amount (if any) prescribed under section 4D for a student receiving tuition at a State school in the subject, course, or programme:
  - (d) all other fees (if any) prescribed by the board.

- (3) Where an international student has after 31 December 1989 received tuition in a subject, course, or programme at a State school without paying the full amount required by subsection (1) in respect of the subject, course, or programme, the board may, in any court of competent jurisdiction, recover the underpayment from the student (or, as the case requires, a parent of the student), as a debt due to the board.
- (4) In any year, the amount of any grant for a board in respect of a school it administers may be reduced from what it would otherwise have been by any amount by which (in the Secretary's opinion), by virtue of the fact that the full amount required by subsection (1) in respect of a subject, course, or programme at the school in which an international student was enrolled has not been paid to the board, the student's education has been subsidised by money appropriated by Parliament.
- (5) No grant shall be reduced under subsection (4) unless the Secretary has given the board concerned written notice of the circumstances taken into account when the proposed reduction was decided on.
- (6) Where a board disputes that a grant should be reduced under subsection (4), or disputes the amount by which it should so be reduced, the following provisions shall apply:
  - (a) the board may, within 28 days of getting notice from the Secretary under subsection (5), by written notice to the Secretary giving the name and address of a proposed arbitrator, require the dispute to be settled by arbitration:
  - (b) if, within 14 days of getting the board's notice, the Secretary has agreed an arbitrator with the board, the agreed arbitrator shall settle the dispute:
  - (c) if, within 14 days of getting the board's notice, the Secretary has not agreed an arbitrator with the board, an arbitrator appointed jointly by the Secretary and the arbitrator originally proposed by the board shall settle the dispute:
  - (d) the arbitrator's decision is final.
- (7) Where at any time an international student withdraws from a subject, course, or programme at a State school, the board may refund to the person who paid (in respect of the student's enrolment in the subject, course, or programme) the amount of the

fees referred to in subsection (1) (or the sum of any instalments paid in respect of those fees) any amount it thinks appropriate not exceeding the extent (if any) by which the amount paid exceeds the sum of the following amounts:

- (a) the board's best estimate of the cost to the board (including the appropriate proportion of the board's administrative and other general costs and the appropriate proportion of any initial or start-up costs of the subject, course, or programme) of providing tuition in the subject, course, or programme for 1 student up to that time:
- (b) an amount that is in the board's opinion an appropriate reflection of the use made by 1 student receiving tuition in the subject, course, or programme of the board's capital facilities:
- (c) the appropriate proportion of the amount (if any) prescribed under section 4D for a student receiving tuition at a State school in the subject, course, or programme:
- (d) all other fees (if any) prescribed by the board.

Section 4B: inserted, on 1 January 1992, by section 3(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 4B heading: amended, on 30 August 2011, by section 8(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4B(1): amended, on 30 August 2011, by section 8(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4B(2): amended, on 30 August 2011, by section 8(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4B(3): amended, on 30 August 2011, by section 8(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4B(4): amended, on 30 August 2011, by section 8(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4B(7): amended, on 30 August 2011, by section 8(3) of the Education Amendment Act 2011 (2011 No 66).

#### **4C Minister may exempt certain international students from payment of fees**

The Minister may, by notice in the *Gazette*, exempt international students of a particular kind or description from the payment of all or a specified proportion or amount of the amount required by section 4B to be paid; and that section shall have effect accordingly.

Section 4C: inserted, on 1 January 1992, by section 3(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 4C heading: amended, on 30 August 2011, by section 9(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4C: amended, on 30 August 2011, by section 9(2) of the Education Amendment Act 2011 (2011 No 66).

**4D Boards to reimburse the Crown for expenditure in respect of international students**

- (1) Before 1 July in every year, the Minister shall, by notice in the *Gazette*, set fees to be paid by boards in respect of international students enrolled at State schools in the following year.
- (2) Fees may be set in respect of all or any of the following:
  - (a) all State schools, State schools of a specified kind or description, or specified State schools:
  - (b) all international students, or international students of a specified kind or description:
  - (c) all subjects, courses, and programmes; subjects, courses, and programmes of a specified kind or description; or specified subjects, courses, or programmes.
- (3) Within 28 days of the first day in any year on which an international student enrolled at a State school attends the school, the board shall pay to the Secretary the appropriate fee (if any) prescribed under subsection (1).
- (3A) The Minister may pay to the proprietors of an integrated school whose board has paid a fee under this section a portion of that fee, as determined in accordance with a formula prescribed under subsection (3B), for the purpose of reimbursing the proprietors for that part of the levy associated with the use of capital assets owned by the proprietors.
- (3B) The Minister must, by notice in the *Gazette*, prescribe a formula for the payment of money under subsection (3A), and may prescribe different formulae to apply to different schools or classes of school.
- (4) If before 1 July in any year the Minister has not set under subsection (1) fees to be paid by boards in respect of international students enrolled at State schools in the following year, there shall be deemed to have been set under that subsection the fees set (or deemed to have been set) in the year before.

Section 4D: inserted, on 1 January 1992, by section 3(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 4D heading: amended, on 30 August 2011, by section 10(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4D(1): amended, on 30 August 2011, by section 10(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4D(2)(b): amended, on 30 August 2011, by section 10(2) of the Education Amendment Act 2011 (2011 No 66).

Section 4D(3): amended, on 30 August 2011, by section 10(3) of the Education Amendment Act 2011 (2011 No 66).

Section 4D(3A): inserted, on 17 May 2006, by section 4 of the Education Amendment Act 2006 (2006 No 19).

Section 4D(3B): inserted, on 17 May 2006, by section 4 of the Education Amendment Act 2006 (2006 No 19).

Section 4D(4): amended, on 30 August 2011, by section 10(2) of the Education Amendment Act 2011 (2011 No 66).

#### **4E Courses for international students**

- (1) The board of a State school or the managers of a school registered under section 35A must not establish, or permit any student to enrol or continue to be enrolled in, any class, course, or programme, intended exclusively or mainly for international students, unless the class, course, or programme is for the time being approved by the New Zealand Qualifications Authority.
- (2) The New Zealand Qualifications Authority must not approve a class, course, or programme under subsection (1) unless satisfied on reasonable grounds that—
  - (a) the school has or will have adequate staff, equipment, and premises to provide it; and
  - (b) the standard of instruction provided in it will be no lower than the standard that would be expected in any similar class, course, or programme for domestic students.

Section 4E: inserted, on 21 December 2010, by section 5 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 4E heading: amended, on 30 August 2011, by section 11(1) of the Education Amendment Act 2011 (2011 No 66).

Section 4E(1): amended, on 30 August 2011, by section 11(2) of the Education Amendment Act 2011 (2011 No 66).

**5 Restrictions on enrolment at primary school**

- (1) No person under 5 shall be or continue to be enrolled at a primary school, or in a class below form 3 at a composite school.
- (2) No person who turned 14 in any year shall be or continue to be enrolled at a primary school, or in a class below form 3 at a composite school, in the next year.
- (3) No person who, in the opinion of the Secretary,—
  - (a) has completed the work of form 3; or
  - (b) has completed work equivalent to the work of form 2,—shall in any year be or continue to be enrolled at a primary school, or in a class below form 3 at a composite school.
- (4) Notwithstanding subsection (1), at any time before 1 January 1993, this Act shall apply to children attending pre-school classes at any school specified in section 3(2) of the Education Amendment Act 1990 as if they are enrolled at the school; but on that day, all those classes shall be deemed to have been dis-established.
- (5) Nothing in subsection (4) limits or affects section 308(4).

Compare: 1964 No 135 s 109(1)

Section 5(4): inserted, on 23 July 1990, by section 3(1) of the Education Amendment Act 1990 (1990 No 60).

Section 5(5): inserted, on 23 July 1990, by section 3(1) of the Education Amendment Act 1990 (1990 No 60).

**6 Restrictions on enrolment at secondary school**

No person who, in the opinion of the Secretary,—

- (a) has not completed the work of form 2; and
- (b) has not completed work equivalent to the work of form 2,—

shall in any year be or continue to be enrolled at a secondary school, or in a class above form 2 at a composite school, unless the person turned 13 before 1 April in the previous year.

Compare: 1964 No 135 s 85(1)

**7 Additional restrictions on enrolment at correspondence school**

- (1) The Minister may from time to time, by notice in the *Gazette*, fix criteria for enrolment in early childhood, primary, and sec-

- ondary classes at correspondence school; and different criteria may be fixed for all or any of the following:
- (a) different correspondence schools:
  - (b) correspondence schools of different classes or descriptions:
  - (c) early childhood, primary, and secondary classes at correspondence school.
- (2) No person shall be enrolled at a correspondence school unless—
- (a) the board is satisfied that the person's enrolment meets criteria then fixed under subsection (1); or
  - (b) the person is entitled under section 3 to free education at a State school, and the Secretary has directed the board to enrol the person.
- (3) The Secretary shall not direct the board of a correspondence school to enrol a person unless satisfied that the person cannot conveniently attend any State school (being a school offering education at the level, and in the subjects, required by the person's parents or, as the case requires, the person) that is not a correspondence school.
- (4) If satisfied that a person who is enrolled at a correspondence school pursuant to a direction under subsection (2)(b) can conveniently attend a State school (being a school offering education at the level, and in the subjects, required by the person's parents or, as the case requires, the person) that is not a correspondence school, the Secretary may notify the board of the fact; and in that case the board shall cancel the person's enrolment unless the board is satisfied that the person's enrolment meets criteria then fixed under subsection (1).
- (5) If satisfied that—
- (a) a person's enrolment at a correspondence school does not meet criteria then fixed under subsection (1); and
  - (b) there is not in force in respect of the person a direction under subsection (2)(b) relating to the school,—
- the board shall cancel the enrolment.
- (6) The board of a correspondence school may delegate to the principal the task of being satisfied that enrolments meet or do not meet criteria specified under subsection (1).

- (7) Every person lawfully enrolled at a correspondence school immediately before the commencement of this Act who is entitled under section 3 to free education at a State school shall be deemed to have been so enrolled pursuant to a direction given under subsection (2)(b) on that commencement.

Compare: 1964 No 135 s 110

**7A Certain domestic students may be required to pay fees for tuition from correspondence schools**

- (1) No—
- (a) domestic student who has turned 16 and is not enrolled full-time at a registered school; or
  - (ab) domestic student enrolled at a school registered under section 35A; or
  - (b) domestic student for whom a current certificate under section 21(1) is held,—
- shall be or continue to be enrolled in a course, class, or programme at a correspondence school unless there has been paid to the board the appropriate fee (if any) for the time being prescribed by the board with the Minister's consent.
- (2) Nothing in subsection (1) gives any person a right to enrol at or receive tuition from a correspondence school.

Section 7A: inserted, on 1 January 1990, by section 6 of the Education Amendment Act 1989 (1989 No 156).

Section 7A heading: amended, on 23 July 1990, by section 4 of the Education Amendment Act 1990 (1990 No 60).

Section 7A(1)(a): replaced, on 23 July 1990, by section 4 of the Education Amendment Act 1990 (1990 No 60).

Section 7A(1)(a): amended, on 1 January 1993, by section 5(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 7A(1)(ab): replaced, on 13 June 2013, by section 6 of the Education Amendment Act 2013 (2013 No 34).

**7B Fees for evening classes, etc**

The board of a State school may refuse to allow any person to attend classes at the school—

- (a) usually held outside normal school hours; and
  - (b) open to people not enrolled full-time at the school,—
- unless there have been paid to the board the fees (if any) prescribed by the board for attendance at those classes.



Section 7B: inserted, on 1 January 1990, by section 6 of the Education Amendment Act 1989 (1989 No 156).

## **8 Equal rights to primary and secondary education**

- (1) Except as provided in this Part, people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at State schools as people who do not.
- (2) Nothing in subsection (1) affects or limits the effect of Part 2 (which relates to enrolment schemes and the suspension, expulsion, and exclusion of students).
- (3) Subsections (1) and (2) come into force on 1 January 1990.

Compare: 1964 No 135 s 112A

## **9 Special education**

- (1) If satisfied that a person under 21 should have special education, the Secretary shall—
  - (a) agree with the person's parents that the person should be enrolled, or direct them to enrol the person, at a particular State school, special school, special class, or special clinic; or
  - (b) agree with the person's parents that the person should have, or direct them to ensure that the person has, education or help from a special service.
- (2) Notwithstanding anything in this Act that relates to enrolment schemes, or in the enrolment scheme of any school, but subject to the rest of Part 2 (which relates to the suspension, expulsion, and exclusion of students), where there has been an agreement or direction under subsection (1), the person concerned shall be allowed to enrol at the State school, special school, special class, or special clinic, concerned or (as the case requires) to have education or help from the special service concerned.
- (3) Subject to section 10(4), where a direction has been given under subsection (1) in respect of a person, a parent who, more than 1 month after it was given, fails or refuses to comply with it commits an offence, and is liable on conviction to the penalty prescribed for failing to comply with section 20(1) (which relates to enrolling children at school).

- (4) No person shall be or continue to be enrolled at a special school, special class, or special clinic, or have or continue to have education or help from a special service, except pursuant to an agreement or direction under subsection (1).
- (5) Notwithstanding anything in section 5 or section 6,—
- (a) a child under 5 may be or continue to be enrolled at a primary school, or in a class below form 3 at a composite school; and
  - (b) a person under 21 who turned 14 in any year may in any later year be or continue to be enrolled at a primary school, or in a class below form 3 at a composite school; and
  - (c) a person under 21 who, in the opinion of the Secretary,—
    - (i) has not completed the work of form 2; and
    - (ii) has not completed work equivalent to the work of form 2,—may be or continue to be enrolled at a secondary school, or in a class above form 2 at a composite school; and
  - (d) a person under 21 may be or continue to be enrolled at a secondary school, or in a class above form 2 at a composite school, on or after 1 January after the person's 19th birthday,—
- pursuant to an agreement or direction under subsection (1).
- (6) Subsections (1) to (5) come into force on 1 January 1990.
- (7) The provisions set out in Schedule 1 shall have effect during the period commencing on the commencement of this Act and ending with 31 December 1989.
- (8) Schedule 1 shall expire and be deemed to have been repealed with the close of 31 December 1989.

Section 9(2): amended, on 8 July 2000, by section 26(2) of the Education Amendment Act 2000 (2000 No 21).

Section 9(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 9 compare note: repealed, on 20 May 2010, by section 6 of the Education Amendment Act 2010 (2010 No 25).

**10 Right of reconsideration**

- (1) Subject to paragraphs (p) and (q) of subsection (6), any person's parent may, in accordance with this section, require the reconsideration of—
  - (a) any direction under subsection (1) of section 9 relating to the person; or
  - (b) if the person is not an international student, the Secretary's refusal to come to an agreement under that subsection relating to the person.
- (2) A requirement under subsection (1) shall be made to the Secretary in writing within 1 month of the direction or refusal concerned.
- (3) Subject to subsection (5), where a requirement under subsection (1) is made in respect of a direction given by the Secretary,—
  - (a) the direction shall not take effect—
    - (i) until the Secretary has reconsidered and confirmed it; or
    - (ii) where a requirement is made under subsection (4)(c), until that requirement has been considered by an arbitrator and the parent concerned has been told of the arbitrator's decision; and
  - (b) no offence is committed under section 9(3) for so long as the direction has not taken effect.
- (4) Where a requirement is made under subsection (1), the following provisions apply:
  - (a) if the requirement relates to a direction, the Secretary shall reconsider it and then—
    - (i) confirm it, or cancel it and issue another, or cancel it and refuse to issue another, as seems appropriate; and
    - (ii) notify the parent concerned in writing of the result of the reconsideration and the reasons for it:
  - (b) if the requirement relates to a refusal, the Secretary shall reconsider whether or not the matter concerned should be agreed, and then—
    - (i) agree or refuse to agree to the matter with the parent concerned, as seems appropriate; and

- (ii) notify the parent concerned in writing of the result of the reconsideration and the reasons for it:
  - (c) a parent who is dissatisfied with the result of the reconsideration may, by notice in writing to the Secretary, require the result to be sent to an arbitrator.
- (5) Where—
- (a) a requirement has been made under subsection (4)(c) in respect of the result of the reconsideration by the Secretary of a direction under section 9(1); and
  - (b) 1 month after the Secretary notified the parent concerned of the name of a person to represent the Secretary in the appointment of an arbitrator, the Secretary's representative and a nominee of the parent have not appointed an arbitrator,—
- the direction shall forthwith take effect, and section 9(2) shall have effect accordingly.
- (6) Where a parent makes a requirement under subsection (4)(c), the following provisions apply:
- (a) the Secretary shall forthwith give the parent the names of 3 people:
  - (b) each person shall, in the opinion of the Secretary, have experience in or expert knowledge of special education, but shall not be an employee of the Ministry, or an employee or trustee of a board:
  - (c) within 14 days of being given the names, the parent shall tell the Secretary—
    - (i) which one of the people is acceptable; or
    - (ii) that none of them is acceptable, and the name of some other person who is:
  - (d) if within 14 days of being given the names the parent tells the Secretary that one of the people is acceptable, the person concerned shall be the arbitrator:
  - (e) if within 14 days of being given the names the parent does not comply with paragraph (c), the Secretary shall choose one of the 3 people to be the arbitrator:
  - (f) if within 14 days of being given the names the parent tells the Secretary that none of the people is acceptable, and the name of some other person who is, the Secretary shall forthwith accept or reject the other person:

- (g) if the Secretary accepts the other person, the other person shall be the arbitrator:
- (h) if the Secretary rejects the other person, the Secretary shall forthwith tell the other person the name of a person to act as the Secretary's agent in choosing an arbitrator; and the other person and the Secretary's agent shall, as soon as is possible, choose the arbitrator:
- (i) once it is known who the arbitrator is, the Secretary shall give the arbitrator a copy of all the relevant documents:
- (j) the arbitrator shall give the parent notice in writing that—
  - (i) the arbitrator has been appointed; and
  - (ii) the parent may make written submissions:
- (k) on getting written submissions from the parent or 21 days after notifying the parent (whichever comes first), the arbitrator shall tell the parent and the Secretary when and where the arbitrator will hear the matter:
- (l) the parent (or a nominee), a representative of the parent, the Secretary (or a nominee), and a representative of the Secretary may take part in the hearing, and may require the child or other person concerned to be produced:
- (m) except as provided in this subsection, the arbitrator shall decide how the hearing proceeds:
- (ma) if, at the hearing, the parent of the person concerned produces evidence about the person that was not available to the Secretary when the Secretary reconsidered the relevant direction or refusal to come to an agreement under section 9(1),—
  - (i) the arbitrator may not consider that evidence and must refer the case back to the Secretary:
  - (ii) the Secretary must reconsider the decision that was the subject of the arbitration, and subsection (4) applies to the Secretary's decision under this subparagraph with any necessary modifications:
- (n) subject to paragraph (ma), after the hearing the arbitrator shall either confirm the Secretary's decision or direct the Secretary to make some decision that the Secretary could have made but did not:
- (o) the Secretary shall comply with any order made:

- (p) a parent has no right to require the reconsideration or reference to an arbitrator of a decision the Secretary has made pursuant to an arbitrator's direction:
  - (q) if the arbitrator confirms a decision of the Secretary to refuse to come to an agreement under section 9(1), no parent has a right to require the reconsideration or reference to an arbitrator of a further refusal made in respect of the same child or person within 12 months of the confirmation of the decision.
- (7) Subsections (1) to (6) come into force on 1 January 1990.
- Section 10(1)(b): amended, on 30 August 2011, by section 12 of the Education Amendment Act 2011 (2011 No 66).
- Section 10(3)(b): amended, on 23 July 1990, by section 5 of the Education Amendment Act 1990 (1990 No 60).
- Section 10(6)(b): amended, on 28 February 2002, pursuant to section 95(1) of the Education Standards Act 2001 (2001 No 88).
- Section 10(6)(ma): inserted, on 19 December 1998, by section 4(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).
- Section 10(6)(n): amended, on 19 December 1998, by section 4(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).
- Section 10 compare note: repealed, on 20 May 2010, by section 7 of the Education Amendment Act 2010 (2010 No 25).

## Part 2

### Enrolment schemes, and suspension, expulsion, and exclusion of students

#### 11 Limitations on enrolment at certain primary schools

*[Repealed]*

Section 11: repealed, on 20 June 1991, by section 3(1) of the Education Amendment Act 1991 (1991 No 43).

#### *Enrolment schemes*

Heading: inserted, on 19 December 1998, by section 5 of the Education Amendment Act (No 2) 1998 (1998 No 118).

#### 11A Purpose and principles

- (1) The purpose of the enrolment scheme of a State school is—
  - (a) to avoid overcrowding, or the likelihood of overcrowding, at the school; and

- (b) to ensure that the selection of applicants for enrolment at the school is carried out in a fair and transparent manner; and
  - (c) to enable the Secretary to make the best use of existing networks of State schools.
- (2) In achieving its purpose, the enrolment scheme of every State school must, as far as possible, ensure that—
  - (a) the scheme does not exclude local students; and
  - (b) no more students are excluded from the school than is necessary to avoid overcrowding at the school.

Section 11A: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

## 11B Interpretation

In sections 11C to 11PB, unless the context otherwise requires,—

**give notice** means to publish a notice in a daily or community newspaper circulating in the area served by the school

**reasonably convenient school** means a State school that a reasonable person living in the area in which the school is situated would judge to be reasonably convenient for a particular student, taking into account such factors as the age of the student, the distance to be travelled, the time likely to be spent in travel, the reasonably available modes of travel, common public transport routes, and relevant traffic hazards. The meaning may vary as between different schools depending on such matters as—

- (a) whether the school is a single sex or co-educational school;
- (b) whether the school is an ordinary State school, a Kura Kaupapa Maori, a designated character school, an integrated school, or a special school;
- (c) whether the school is a primary, intermediate, secondary, composite, or area school

**special programme** means a programme, or a programme of a type, that the Secretary has, by notice in the *Gazette*, approved as a special programme, and—

- (a) that provides—
  - (i) special education; or

- (ii) Maori language immersion classes; or
  - (iii) any other type of specialised education to overcome educational disadvantage; or
- (b) that is a programme—
  - (i) that takes a significantly different approach in order to address particular student needs; and
  - (ii) that would not be viable unless it could draw from a catchment area beyond the school's home zone; and
  - (iii) to which entry is determined by an organisation or process that is independent of the school.

Section 11B: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

#### **11C Content of enrolment scheme**

- (1) A school's enrolment scheme must—
  - (a) define a home zone for the school; and
  - (b) set out the pre-enrolment procedures for selecting applicants who live outside the home zone; and
  - (c) identify any special programmes offered by the school and the criteria on which students will be accepted onto any special programme.
- (2) The procedures described in subsection (1)(b) must be consistent with section 11F and any relevant instructions issued by the Secretary under section 11G.

Section 11C: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

#### **11D Effect of home zone**

- (1) Subject to the provisions of this Act, a person who lives in the home zone of a school that has an enrolment scheme is entitled at any time to enrol at that school.
- (2) An applicant for enrolment at a school with an enrolment scheme who lives outside the school's home zone is entitled to enrol at the school only—
  - (a) if he or she is offered a place at the school in accordance with the procedure set out in the enrolment scheme; or
  - (b) if the Secretary has agreed or directed under section 9, or directed under section 11P, section 16, section 17D,



or section 18A, that the student be enrolled at the school;  
or

- (c) if—
- (i) the student has been excluded or expelled from another school (**school A**); and
  - (ii) the principal of the school at which the student wishes to enrol agrees, by arrangement with the principal of school A, to enrol the student; and
  - (iii) the Secretary endorses the proposal.

Section 11D: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11D(2)(b): amended, on 25 October 2001, by section 5 of the Education Standards Act 2001 (2001 No 88).

Section 11D(2)(c): inserted, on 25 October 2001, by section 5 of the Education Standards Act 2001 (2001 No 88).

#### **11E How a school defines its home zone**

- (1) A State school's home zone must be defined by geographic boundaries, and must be described in such a way that any given address is either within or outside the home zone.
- (2) A school's home zone—
  - (a) must be an area for which the school is a reasonably convenient school for a student living in that area to attend; and
  - (b) may exclude any area for which another school is also a reasonably convenient school for a student living in that area to attend; and
  - (c) may exclude any area that it is desirable to exclude for the purpose of allowing the Secretary to make best use of the existing network of State schools in the area.

Section 11E: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11E(2)(c): amended, on 20 May 2010, by section 8 of the Education Amendment Act 2010 (2010 No 25).

#### **11F How to select applicants who live outside home zone**

- (1) The order of priority in which applicants who live outside a school's home zone are to be offered places at the school is as follows:

- (a) first priority must be given to any applicant who is accepted for enrolment in a special programme run by the school:
  - (b) second priority must be given to any applicant who is the sibling of a current student of the school:
  - (c) third priority must be given to any student who is the sibling of a former student of the school:
  - (d) fourth priority must be given to any applicant who is a child of a former student of the school:
  - (e) fifth priority must be given to any applicant who is either a child of an employee of the board of the school or a child of a member of the board of the school:
  - (f) sixth priority must be given to all other applicants.
- (2) If there are more applicants in the second, third, fourth, fifth, or sixth priority groups than there are places available, selection within the priority group must be by ballot conducted in accordance with instructions issued by the Secretary under section 11G.
- (3) For the purposes of this section, child A is the **sibling** of child B if—
- (a) both children share a common parent; or
  - (b) a parent of child A is married to, or in a civil union with, a parent of child B; or
  - (c) a parent of child A was married to, or in a civil union with, a parent of child B at the time when child B's parent died; or
  - (d) a parent of child A is the de facto partner of a parent of child B; or
  - (e) both children live in the same household and, in recognition of family obligations, are treated by the adults of that household as if they were siblings; or
  - (f) the Secretary, by written notice to the school, advises that child A is to be treated as the sibling of child B.
- (4) If 2 or more siblings apply for places at a school at the same level, the applications of those siblings must be dealt with as a single application for the purpose of the ballot.
- (5) Every application for enrolment at a school with an enrolment scheme must be processed by the school in accordance with the enrolment scheme, and may not be declined on technical

grounds or on any other ground that would be inconsistent with the purpose and principles set out in section 11A.

Section 11F: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11F(1)(d): replaced, on 21 December 2010, by section 6(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 11F(1)(e): replaced, on 21 December 2010, by section 6(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 11F(1)(f): inserted, on 21 December 2010, by section 6(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 11F(2): amended, on 21 December 2010, by section 6(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 11F(3)(b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 11F(3)(c): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 11F(3)(d): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **11G Instructions and guidelines on operation of enrolment schemes**

- (1) The Secretary may issue instructions to State schools that have enrolment schemes about the following matters:
  - (a) the procedures for holding ballots:
  - (b) the dates on which ballots are to be held:
  - (c) the establishment and maintenance of waiting lists:
  - (d) the information to be given to applicants who live outside the school's home zone:
  - (e) any other matter that the Secretary considers necessary for ensuring the fair, transparent, and efficient operation of enrolment schemes.
- (2) Instructions issued under subsection (1)—
  - (a) must be complied with by schools; and
  - (b) may apply to all or specified schools or classes of school; and
  - (c) must be notified in the *Gazette*, either in full, or by a notice outlining the content of the instructions and saying where a copy can be obtained, and the date on which the instructions take effect; and

- (d) may be amended or revoked, in which case notice of the amendment or revocation must be given in the *Gazette*, as described in paragraph (c).
- (3) The Secretary may issue guidelines to State schools about any or all of the following matters:
  - (a) the basis on which the Secretary's powers in relation to enrolment schemes may be exercised (including, in particular, the power in section 11P(2)(a) relating to the determination of whether an applicant lives within a home zone or outside it):
  - (b) the kinds of amendments to enrolment schemes that are minor amendments for the purpose of section 11MA, or the criteria for deciding what is a minor amendment, or both:
  - (c) the manner in which schools must conduct reviews under section 11OA (which relates to the review of a student's enrolment).

Section 11G: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11G(3): replaced, on 25 October 2001, by section 6 of the Education Standards Act 2001 (2001 No 88).

### **11H Process for developing and adopting enrolment scheme**

- (1) If the Secretary gives a written notice to a State school that there is, or is likely to be, overcrowding at the school, the board of the school must develop an enrolment scheme for the school.
- (2) A board may not begin developing an enrolment scheme unless it has received a written notice of the type referred to in subsection (1).
- (3) When developing a proposed enrolment scheme, a board must consult with whatever persons and organisations it considers appropriate and, in particular, must take all reasonable steps to discover and consider the views of—
  - (a) the parents of students at the school; and
  - (b) the people living in the area for which the school is a reasonably convenient school; and
  - (c) the students and prospective students of the school (depending on their age and maturity); and

- (d) the boards of other schools that could be affected by the proposed enrolment scheme.
- (4) In addition to the consultation required by subsection (3),—
  - (a) the board of a Kura Kaupapa Maori must consult with the persons and organisations that the board believes have an interest in fostering the school's adherence to Te Aho Matua and any special characteristics set out in the school's charter:
  - (b) the board of a designated character school must consult with those persons and organisations that the board believes have an interest in fostering the aims, purposes, and objectives that constitute the school's different character:
  - (c) the board of an integrated school must consult with the school's proprietors.
- (5) If the Secretary approves a proposed enrolment scheme for a State school, the school's board must pass a resolution adopting the scheme as soon as practicable.

Section 11H: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11I Proposed enrolment schemes to be approved by Secretary**

- (1) The Secretary may approve the proposed enrolment scheme of a State school only if he or she is satisfied that—
  - (a) the scheme complies, as far as possible, with the purpose and principles of enrolment schemes as set out in section 11A; and
  - (b) the definition of the school's home zone in the enrolment scheme ensures that students can attend a reasonably convenient school; and
  - (c) the boundaries of the school's home zone overlap or are contiguous with the boundaries of the home zone of any adjacent State school that has an enrolment scheme; and
  - (d) the scheme promotes the best use of the network of State schools in the area; and
  - (e) the procedures for determining which applicants who live outside the home zone will be offered places at the school comply with section 11F and any instructions issued under section 11G; and

- (f) the board has carried out adequate consultation under section 11H.
- (2) If a board and the Secretary are unable to reach agreement about the content of the school's enrolment scheme or proposed enrolment scheme, the Secretary may require the board to amend the scheme or proposed scheme in the manner required by the Secretary.
- (3) A board that receives a requirement under subsection (2) must, as soon as practicable, change its enrolment scheme or proposed enrolment scheme to give effect to the Secretary's requirement, and the board need not obtain separate approval from the Secretary for the change.

Section 11I: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

#### **11J Information about school's enrolment scheme**

- (1) When the board of a State school adopts an enrolment scheme, it must give notice of the fact that it has adopted an enrolment scheme, and the notice must include—
  - (a) a general description of the school's home zone; and
  - (b) information about where copies of the enrolment scheme may be viewed and obtained.
- (2) Each year, the board of a school that has an enrolment scheme must give notice of—
  - (a) the likely number of out-of-zone places; and
  - (b) the significant pre-enrolment dates and procedures; and
  - (c) the date or dates on which any ballot will be held.
- (3) The following must be available for inspection at the school at all reasonable times:
  - (a) a copy of the school's current enrolment scheme;
  - (b) a copy of the results of the most recent ballot for places at the school;
  - (c) a copy of the waiting list for places at the school;
  - (d) if it is available, information about the matters listed in subsection (2).

Section 11J: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11K Commencement of enrolment scheme**

- (1) An enrolment scheme for a primary school commences on the date 3 months after the day of its adoption, or on a later date specified in the scheme.
- (2) An enrolment scheme for a secondary or composite school commences on 1 January in the year following the year in which it was adopted, or on a later date specified in the scheme and agreed to by the Secretary.
- (3) Despite subsections (1) and (2), the Secretary may, on application by a board, authorise the early commencement of an enrolment scheme if he or she considers that early commencement is appropriate.
- (4) If the Secretary gives authorisation for early commencement after the board has given notice of the enrolment scheme, the board must give notice showing the revised date on which the scheme will commence.

Section 11K: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11L End of enrolment scheme**

- (1) The board of a school may by resolution, in accordance with this section, abandon an enrolment scheme, in which case the scheme ends on the date specified in the resolution.
- (2) A board may not resolve to abandon an enrolment scheme unless it has received written notice from the Secretary authorising it to do so.
- (3) The Secretary may at any time, by notice in writing, require the board of a State school to abandon its enrolment scheme on the grounds that the Secretary is satisfied that there is not, or is not likely to be, overcrowding at the school if the enrolment scheme is abandoned; and the board must resolve at its next meeting to abandon the scheme.
- (4) When a board abandons an enrolment scheme, it must—
  - (a) notify the Secretary of the date on which the enrolment scheme ended or will end; and
  - (b) give notice of the date on which the scheme ended or will end.

Section 11L: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11M Amendment of enrolment scheme**

- (1) The board of a State school that has adopted an enrolment scheme may amend it.
- (2) A board must not amend a scheme unless it is satisfied that an enrolment scheme is still necessary in order to avoid overcrowding, or the likelihood of overcrowding, at the school.
- (3) If the board of a State school (**school A**) adopts or amends an enrolment scheme, the Secretary may require the board of any nearby State school that also has an enrolment scheme to develop a proposed amendment to its enrolment scheme in order to take into account the effect of school A's scheme.
- (4) Sections 11A to 11L apply to an amendment and a proposed amendment to an enrolment scheme as if it were an enrolment scheme or a proposed enrolment scheme (as the case may be).

Section 11M: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11M(3): amended, on 20 May 2010, by section 9 of the Education Amendment Act 2010 (2010 No 25).

**11MA Making minor amendments to enrolment schemes**

- (1) A State school that wishes to make a minor amendment to its enrolment scheme may make it using the procedure set out in subsection (2) instead of going through the process set out in sections 11H to 11J.
- (2) In order to make a minor amendment to its enrolment scheme under this section, a school must—
  - (a) apply to the Secretary for confirmation that the proposed amendment is minor; and
  - (b) on receiving confirmation from the Secretary, give notice of the proposed amendment; and
  - (c) forward to the Secretary any written comments or queries received by the school regarding the proposed amendment; and
  - (d) adopt the amendment by resolution of the school's board.
- (3) A school may not adopt an amendment under subsection (2)(d) unless—
  - (a) at least 1 month has passed since notice of the proposal was given; and



- (b) the Secretary has, after that time, given approval for the amendment to be incorporated.
- (4) At any time before the amendment is incorporated into the enrolment scheme, the Secretary may advise the school that the proposed amendment is not minor, in which case the school may not adopt the amendment without going through the process set out in sections 11H to 11J.

Section 11MA: inserted, on 25 October 2001, by section 7 of the Education Standards Act 2001 (2001 No 88).

**11N Pre-enrolment in schools with enrolment schemes**

- (1) The board of a State school may apply the pre-enrolment procedures of an enrolment scheme at any time after notice has been given of the scheme under section 11J(1), even if the scheme has not yet commenced.
- (2) In the case of applications by applicants who will be subject to a ballot, the board must notify each applicant, in writing, of—
  - (a) when and how the ballot will be held; and
  - (b) when and how applicants will be advised of the results of the ballot; and
  - (c) the rights and responsibilities of applicants after the ballot.
- (3) The board must give written notice to every applicant whose application is declined of—
  - (a) the reason why the application has been declined; and
  - (b) the Secretary's powers under section 11P(2).
- (4) The board must give written notice to every applicant whose name was included in a ballot of the outcome of the ballot as it relates to the applicant.

Section 11N: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11O Enrolment may be annulled if based on false information or temporary residence**

- (1) The board of a State school that has an enrolment scheme may, subject to subsection (4), annul the enrolment of a student if the board believes on reasonable grounds that the student's enrolment or pre-enrolment form falsely claimed, for the purpose of securing enrolment, that—

- (a) the student was living in the school's home zone when the student enrolled at the school; or
  - (b) the student was entitled to a particular priority in the ballot for places (for example, by falsely claiming the applicant to be the sibling (as defined in section 11F(3)) of an existing student).
- (1A) The board of a State school that has an enrolment scheme may, subject to subsection (4), annul the enrolment of a student if, following a review under section 11OA, the board determines that the student has used a temporary residence for the purpose of gaining enrolment at the school.
- (2) The address given in a student's pre-enrolment form as the address where the student lives will be taken to be the address at which the student is living on enrolment, unless the board is notified otherwise.
- (3) The board may annul the enrolment of any student, or may refuse an application for enrolment by any person, who claimed or claims priority in a ballot as a sibling of a student whose enrolment the board has annulled under this section.
- (4) If the board annuls an enrolment under any of subsections (1), (1A), or (3), the annulment takes effect 1 month from the date on which the board decides to annul the enrolment.
- (5) A board that annuls the enrolment of a student must immediately—
  - (a) advise the student's parents, in writing, of the date of annulment and the date on which it takes effect; and
  - (b) advise the Secretary of the name of the student and the date of annulment.

Section 11O: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

Section 11O heading: amended, on 25 October 2001, by section 8(1) of the Education Standards Act 2001 (2001 No 88).

Section 11O(1A): inserted, on 25 October 2001, by section 8(2) of the Education Standards Act 2001 (2001 No 88).

Section 11O(4): replaced, on 25 October 2001, by section 8(3) of the Education Standards Act 2001 (2001 No 88).

Section 11O(5): replaced, on 25 October 2001, by section 8(3) of the Education Standards Act 2001 (2001 No 88).

**11OA Review of student's enrolment**

- (1) The board of a State school that has an enrolment scheme may issue the parents of a student enrolled at the school with a review notice under this section if—
  - (a) the student was enrolled at the school on the grounds that he or she lived in the school's home zone; and
  - (b) the student has, since enrolling at the school, moved out of the school's home zone; and
  - (c) the board believes on reasonable grounds that the student has used a temporary residence within the school's home zone for the purpose of gaining enrolment at the school.
- (2) On receipt of a review notice, a parent who wishes to rebut the board's view may make submissions to the board in whatever manner he or she considers appropriate, and the board must, in accordance with any guidelines issued under section 11G(3)(c), give the parent every reasonable opportunity to explain the situation.
- (3) The board may exercise its power under section 11O(1A) to annul the student's enrolment if, no earlier than 10 school days after the date on which the review notice was sent, the board determines that the student has used a temporary residence within the school's home zone for the purpose of gaining enrolment at the school.
- (4) Every review notice must—
  - (a) be in writing; and
  - (b) be sent by any 1 or more of post, fax, or email to the student's parents; and
  - (c) advise the parents of the effect of the notice, and explain what the parents may do next.

Section 11OA: inserted, on 25 October 2001, by section 9 of the Education Standards Act 2001 (2001 No 88).

**11P Secretary may direct board to enrol applicant**

- (1) The Secretary may direct the board of any State school (including the board of the school at which the student was enrolled) to enrol a student whose enrolment has been annulled under section 11O.

- (2) The Secretary may direct the board of any State school to enrol an applicant whose application for enrolment it has declined if the Secretary is satisfied that—
  - (a) the board has declined the application on the ground that the applicant is not living in the school's home zone, but in fact the applicant is living in the school's home zone; or
  - (b) the consequences of not giving the direction would be so disadvantageous to the applicant that overriding the enrolment scheme in this case is justified.
- (3) The Secretary must not give a direction about a person under subsection (1) or subsection (2)(b) unless he or she has taken all reasonable steps to consult the person's parents, the board of the proposed school, and (if appropriate, having regard to the age and maturity of the person) the person.
- (4) The Secretary may not direct the board of a Kura Kaupapa Maori, a designated character school, or an integrated school to enrol a person under this section unless the person's parents agree, and accept the special character of that school.
- (5) A board must comply with a direction under this section, and the direction overrides the provisions of any enrolment scheme the school may have in place.

Section 11P: replaced, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

#### **11PA Annual review of enrolment scheme**

- (1) The board of a State school that has an enrolment scheme in place on 1 February in any year must, before 1 May of that year,—
  - (a) review the operation of the enrolment scheme, having regard to the purpose and principles of enrolment schemes; and
  - (b) ask the Secretary whether he or she agrees with the board's view about the continuing need for a scheme to prevent overcrowding, or the likelihood of overcrowding, at the school.
- (2) The Secretary may exempt a board for any period not exceeding 3 years from the obligation to conduct an annual review if the Secretary considers that compliance is unnecessary.

- (3) The Secretary may at any time rescind an exemption given under subsection (2), and may require the board to conduct a review of its enrolment scheme within a period specified by the Secretary.

Section 11PA: inserted, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11PB Enrolment schemes of certain State schools**

- (1) Sections 11A to 11PA apply to Kura Kaupapa Maori, designated character schools, integrated schools, and special schools, and to their enrolment schemes, subject to the following modifications:
- (a) all references to overcrowding or the likelihood of overcrowding must be read as if they were references to there being, or being likely to be, more applicants for enrolments at the school than there are places available; and
  - (b) the enrolment scheme need not define a home zone for the school, nor provide for balloting of applicants who live outside any home zone, but must accord priority to applicants for whom the school is a reasonably convenient school; and
  - (c) section 11J is modified as follows:
    - (i) subsection (1) applies as if paragraph (a) read “a general description of the enrolment scheme”; and
    - (ii) subsection (2) applies as if paragraphs (a) to (c) were replaced with the words “the likely number of places available and the significant pre-enrolment dates and procedures that will apply”; and
    - (iii) subsection (3)(b) does not apply; and
  - (d) in the case of a Kura Kaupapa Maori, the application of the sections must not result in inconsistency with section 155; and
  - (e) in the case of a designated character school, the application of the sections must not result in inconsistency with the school’s charter or section 156; and
  - (f) in the case of an integrated school, the application of the sections must not result in inconsistency with the

school's integration agreement or the Private Schools Conditional Integration Act 1975.

- (2) Sections 11A to 11PA do not apply to any State school of a type specified by the Secretary by notice in the *Gazette*.

Section 11PB: inserted, on 8 July 2000, by section 4 of the Education Amendment Act 2000 (2000 No 21).

**11Q Obligation to report to Parliament on enrolment schemes**

- (1) The annual report on the schools sector that is laid before the House of Representatives by the Minister of Education in accordance with section 87B must include a statement signed by the Secretary that—

- (a) lists the schools that have an enrolment scheme in place; and
- (b) states the period for which each scheme has been in place; and
- (c) notes the schools where adjacent schools have schemes in place; and
- (d) outlines any plans included in the Ministry's property development or other programmes to address the pressures on capacity in areas where a number of adjacent schools have enrolment schemes in place, including development plans to manage school population changes to maximise (to the extent it is reasonable and practicable to do so) the opportunity for students to attend a reasonably convenient State school.

- (2) In this section, an enrolment scheme is **in place** once it has been notified in accordance with section 11J.

Section 11Q: replaced, on 19 December 1998, by section 5 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 11Q(1): amended, on 20 May 2010, by section 10 of the Education Amendment Act 2010 (2010 No 25).

Section 11Q(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 11Q(2): amended, on 8 July 2000, by section 26(3) of the Education Amendment Act 2000 (2000 No 21).

## **12 Enrolment schemes for certain other schools**

*[Repealed]*

Section 12: repealed, on 20 June 1991, by section 3(1) of the Education Amendment Act 1991 (1991 No 43).

### *Standing-down, suspension, exclusion, and expulsion of students*

Heading: inserted, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

## **13 Purpose**

The purpose of the provisions of this Act concerning the standing-down, suspension, exclusion, or expulsion of a student from a State school is to—

- (a) provide a range of responses for cases of varying degrees of seriousness; and
- (b) minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate; and
- (c) ensure that individual cases are dealt with in accordance with the principles of natural justice.

Section 13: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

## **14 Principal may stand-down or suspend students**

- (1) The principal of a State school may stand-down or suspend a student if satisfied on reasonable grounds that—
  - (a) the student's gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or
  - (b) because of the student's behaviour, it is likely that the student, or other students at the school, will be seriously harmed if the student is not stood-down or suspended.
- (2) A stand-down may be for 1 or more specified periods, and—
  - (a) the period or periods may not exceed 5 school days in any one term;
  - (b) a student may be stood-down more than once in the same year but for not more than 10 school days in total in that year:

- (c) in calculating the period of a stand-down, the day on which the student was stood-down, and any day on which the student would not have had to attend school in any event, must not be counted:
  - (d) the principal may lift the stand-down at any time before it is due to expire.
- (3) If a student has been stood-down or suspended, the following provisions apply in relation to the student's attendance at the school:
  - (a) the principal may require the student to attend the school if the principal reasonably considers the student's attendance is appropriate for the purposes of section 17A:
  - (b) the principal must allow the student to attend the school if the student's parents request that the student be permitted to attend the school and the principal considers the request is reasonable:
  - (c) otherwise the student does not have to, and is not permitted to, attend the school while stood-down or suspended.

Section 14: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 14(1)(b): amended, on 17 May 2006, by section 5 of the Education Amendment Act 2006 (2006 No 19).

## **15 Board's powers when suspended student younger than 16**

- (1) If a student younger than 16 has been suspended from a State school, the school's board may—
  - (a) lift the suspension at any time before it expires, either unconditionally or subject to any reasonable conditions the board wants to make:
  - (b) extend the suspension conditionally for a reasonable period determined by the board when extending the suspension, in which case subsection (2) applies:
  - (c) if the circumstances of the case justify the most serious response, exclude the student from the school by extending the suspension and requiring the student to be enrolled at another school.



- (2) If the board extends a suspension conditionally, the board must impose reasonable conditions aimed at facilitating the return of the student to school and must take appropriate steps to facilitate the return of the student to school.
- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of his or her suspension, the principal may request the board to reconsider the action it took under this section in that case and the board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in any of paragraphs (a) to (c) of subsection (1).
- (4) If the board has not sooner lifted or extended it or excluded the student under subsection (1)(c), the suspension of a student younger than 16 ceases to have effect—
  - (a) at the close of the seventh school day after the day of the suspension; or
  - (b) if the suspension occurs within 7 school days before the end of a term, at the close of the tenth calendar day after the day of the suspension.
- (5) If the board of a State school excludes the student under subsection (1)(c), the principal must try to arrange for the student to attend another school (which school is a suitable school that the student can reasonably conveniently attend).
- (6) If the principal is unable, by the tenth school day after the day of the board's decision to exclude a student, to arrange for the student to attend another school, the principal must tell the Secretary what steps the principal took in trying to do so.

Section 15: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

## **16 Secretary's powers when excluded student younger than 16**

- (1) If the Secretary is satisfied that the board of a State school has excluded a student who is younger than 16 from the school under section 15(1)(c), and that the principal has not arranged for the student to attend another school, the Secretary must either,—

- (a) if satisfied that it is not inappropriate for the student to return to the school from which the student has been excluded, lift the exclusion; or
  - (b) arrange for and, if necessary, direct the board of any other State school (that is not an integrated school) to enrol the student at the other school; or
  - (ba) arrange for and, if necessary, direct the sponsor of a partnership school kura hourua to enrol the student at the partnership school kura hourua; or
  - (c) direct a parent of the student to enrol the student at a correspondence school.
- (2) The Secretary may not give a direction under subsection (1)(b) or lift an exclusion under subsection (1)(a) unless the Secretary has also made all reasonable attempts to consult the student, the student's parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student's education or welfare.
- (2A) The Secretary may not give a direction under subsection (1)(ba) unless—
  - (a) the student's parents agree to the direction; and
  - (b) the Secretary has made all reasonable attempts to consult the student, the sponsor, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.
- (3) If the board of the school from which the student has been excluded also controls another school, the Secretary (in exercising the power conferred by subsection (1)(b)) may direct the board to enrol the student at that other school.
- (4) A board must comply with a direction under subsection (1)(b), and the direction overrides the provisions of any enrolment scheme the school may have in place.
- (5) A sponsor must comply with a direction under subsection (1)(ba), and the direction overrides any enrolment process the partnership school kura hourua may have in place.

Section 16: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 16(1)(ba): inserted, on 13 June 2013, by section 7(1) of the Education Amendment Act 2013 (2013 No 34).

Section 16(2A): inserted, on 13 June 2013, by section 7(2) of the Education Amendment Act 2013 (2013 No 34).

Section 16(5): inserted, on 13 June 2013, by section 7(3) of the Education Amendment Act 2013 (2013 No 34).

**17 Board's powers when suspended student 16 or older**

- (1) If a student who is 16 or older has been suspended from a State school, the board may—
  - (a) lift the suspension at any time before it expires, either unconditionally or subject to any reasonable conditions it wants to make; or
  - (b) extend the suspension conditionally for a reasonable period determined by the board when extending the suspension, in which case subsection (2) applies; or
  - (c) expel the student.
- (2) If the board extends a suspension conditionally, the board must impose reasonable conditions aimed at facilitating the return of the student to school, and must take steps to facilitate the return of the student to school.
- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of his or her suspension, the principal may request the board to reconsider the action it took under this section in that case and the board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in any of paragraphs (a) to (c) of subsection (1).
- (4) If the board has not sooner lifted or extended it or expelled the student under subsection (1)(c), the suspension of a student who is 16 or older ceases to have effect—
  - (a) at the close of the seventh school day after the day of the suspension; or
  - (b) if the suspension occurs within 7 school days before the end of a term, at the close of the tenth calendar day after the day of the suspension.

Section 17: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**17A Duties of principal when student stood-down or suspended**

- (1) When a student is stood-down or suspended from a State school, the principal must take all reasonable steps to ensure that the student has the guidance and counselling that are reasonable and practicable in all the circumstances of the stand-down or suspension.
- (2) If a student's suspension is subject to conditions (whether under section 15 or section 17), the principal must take all reasonable steps to ensure that an appropriate educational programme is provided to the student.
- (3) The purpose of the programme referred to in subsection (2) is to facilitate the return of a student to school and to minimise the educational disadvantages that occur from absence from school.

Section 17A: inserted, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**17B Who may attend board meeting concerning suspensions**

If a student has been suspended, the student, the student's parents, and their representatives are entitled to attend at least 1 meeting of the board and speak at that meeting, and to have their views considered by the board before it decides whether to lift or extend the suspension or exclude or expel the student (whether under section 15 or section 17).

Sections 17B: inserted, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**17C Effect of suspension on school register**

- (1) The name of a student younger than 16 who has been suspended from a school under section 14 or excluded from a school under section 15(1)(c) must stay on the school's register until the earliest of the following days:
  - (a) the day the student is enrolled at another registered school;
  - (b) the day the student is given an exemption under section 21 or section 22.
- (2) The name of a student who has turned 16 and is suspended from a school under section 14 must stay on the register of the school until the earliest of the following days:

- (a) the day on which the student is enrolled at another registered school:
  - (b) the day on which the student is expelled from the school:
  - (c) the day on which the student leaves school:
  - (d) 1 January after the student's 19th birthday.
- (3) Subsection (2) applies to a student who is younger than 16 when suspended from a school under section 14 or excluded from a school under section 15(1)(c), and turns 16 while subject to the suspension or exclusion.

Sections 17C: inserted, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**17D Re-enrolment of excluded or expelled student**

- (1) The board of a State school from which a student has ever been excluded or expelled (whether under section 15 or section 17) may refuse to enrol the student at the school (unless, in the case of an exclusion, the Secretary has lifted the exclusion under section 16(1)(a)).
- (2) Subject to sections 16(1)(b) and 158R(1)(b), the board of a State school may refuse to enrol a student who is for the time being excluded or expelled (whether under section 15 or 17) from another State school or a partnership school kura hourua.
- (3) The Secretary may, in the case of a student who has turned 16, direct the board of another State school (that is not an integrated school) to enrol a student at the school if—
- (a) the student has been expelled from a State school under section 17; and
  - (b) the Secretary has made all reasonable attempts to consult the student, the student's parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student's education or welfare.
- (3A) The Secretary may, in the case of a student who has turned 16, direct the sponsor of a partnership school kura hourua to enrol the student at the school if—
- (a) the student has been expelled from a State school under section 17; and
  - (b) the student's parents agree to the enrolment; and

- (c) the Secretary has made all reasonable attempts to consult the student, the sponsor, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.
- (4) A board must comply with a direction under subsection (3), and the direction overrides the provisions of any enrolment scheme the school may have in place.
- (5) A sponsor must comply with a direction under subsection (3A), and the direction overrides any enrolment process the partnership school kura hourua may have in place.

Sections 17D: inserted, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 17D(2): replaced, on 13 June 2013, by section 8(1) of the Education Amendment Act 2013 (2013 No 34).

Section 17D(3)(a): amended, on 13 June 2013, by section 8(2) of the Education Amendment Act 2013 (2013 No 34).

Section 17D(3A): inserted, on 13 June 2013, by section 8(3) of the Education Amendment Act 2013 (2013 No 34).

Section 17D(5): inserted, on 13 June 2013, by section 8(4) of the Education Amendment Act 2013 (2013 No 34).

## **18 Notice requirements for stand-downs, suspensions, exclusions, and expulsions**

- (1) Immediately after a student is stood-down under section 14, the principal must tell the Secretary and (except in the case of a student who has turned 20) a parent of the student—
  - (a) that the student has been stood-down; and
  - (b) the reasons for the principal's decision; and
  - (c) the period for which the student has been stood-down.
- (2) Immediately after a student is suspended under section 14, the principal must tell the board, the Secretary, and (except in the case of a student who has turned 20) a parent of the student—
  - (a) that the student has been suspended; and
  - (b) the reasons for the principal's decision.
- (3) Immediately after a board lifts a suspension, extends a suspension, excludes a student, or expels a student (whether under section 15 or section 17), the board must tell the Secretary and (except in the case of a student who has turned 20) a parent of the student—

- (a) that the suspension has been lifted or extended, and the period of the extension (if any), or that the student has been excluded or expelled; and
- (b) the reasons for the board's decision.

Section 18: replaced, on 12 July 1999, by section 7 of the Education Amendment Act (No 2) 1998 (1998 No 118).

### **18AA Secretary may make rules**

- (1) The Secretary may from time to time, by notice in the *Gazette*, make rules (which must not be inconsistent with this Act) regulating the practice and procedure to be followed by boards, principals, students, parents of students, and other persons under sections 14 to 18, including (without limitation) rules—
  - (a) setting out procedural requirements to be followed when a proposed stand-down, suspension, exclusion, or expulsion is to be considered or decided;
  - (b) specifying who should be consulted about the circumstances of a stand-down, suspension, exclusion, or expulsion;
  - (c) setting out the steps to be taken by the principal and board, respectively, when a student has been stood-down, suspended, excluded, or expelled;
  - (d) specifying the notices to be given when a decision not to lift a suspension, or a decision to extend a suspension or expel a student, is made; and specifying the particulars to be set out in each notice;
  - (e) specifying time limits within which specified things are to be done, and the reports that are to be produced and the persons who are to produce them;
  - (f) providing reasonable measures (which must not be inconsistent with the Privacy Act 1993) to protect the privacy of individuals;
  - (g) providing for such other matters as the Secretary considers desirable in the interests of natural justice.
- (2) Before making any rules under this section, the Secretary must—
  - (a) publish in the *Gazette*, and in such newspapers as the Secretary considers appropriate, a notice of his or her intention to make the rules; and

- (b) give interested persons a reasonable time to make representations about the proposed rules; and
  - (c) consult such persons and groups as the Secretary considers appropriate.
- (3) If there is any conflict between rules made under this section and the provisions of clause 8 of Schedule 6, the rules override clause 8.
- (4) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 18AA: inserted, on 19 December 1998, by section 8 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 18AA(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **18A Recommendation that student should attend particular school**

- (1) The Secretary may, on the recommendation of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, direct the board of a State school to enrol at the school any person; and in that case the board must do so.
- (2) No direction may be given under subsection (1) unless the Secretary has taken all reasonable steps to consult—
  - (a) the person's parents; and
  - (b) the board of the school concerned; and
  - (c) the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, and any other person or organisation that, in the Secretary's opinion, may be interested in, or able to advise on or help with, the person's education or welfare.
- (3) A board must comply with a direction under subsection (1), and the direction overrides the provisions of any enrolment scheme the school may have in place.

Section 18A: replaced, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).



Section 18A(1): amended, on 8 July 2000, by section 5 of the Education Amendment Act 2000 (2000 No 21).

Section 18A(3): replaced, on 8 July 2000, by section 26(4) of the Education Amendment Act 2000 (2000 No 21).

**19 Principal may preclude student for health reasons**

- (1) A principal of a State school who believes on reasonable grounds that a student—
  - (a) is not clean enough to keep attending the school; or
  - (b) may have a communicable disease (within the meaning of the Health Act 1956),—  
may preclude the student from the school.
- (2) Forthwith after precluding a student from school under subsection (1), the principal shall make all reasonable efforts to tell—
  - (a) the board; and
  - (b) either the student (in the case of a student who has turned 20) or the student's parents (in every other case); and
  - (c) in the case of a student precluded under subsection (1)(b), the Medical Officer of Health,—  
that the student has been precluded, and why.
- (3) Where a student has been precluded from a State school for being not clean enough, the board shall have the matter looked into; and shall either cancel the preclusion or confirm that the student should stay precluded until the principal is satisfied that the student is clean enough to go back to school.
- (4) Where a student has been precluded from a State school on suspicion of having a communicable disease, the board shall have the matter looked into; and shall either cancel the preclusion or confirm that the student should stay precluded until the board has received a certificate from a doctor stating that the student is well enough to go back to school.
- (5) Where any person is charged with an offence against section 29 (which relates to ensuring the attendance of students at school)—
  - (a) it is a defence to the charge if it is proved that—
    - (i) the student did not attend because precluded for having a communicable disease; and

- (ii) the time for which the student did not attend was no longer than was necessary for the board to cancel the preclusion or the student to get well enough to go back to school (as the case may be); and
  - (b) except to the extent set out in paragraph (a), it is not a defence to the charge that the student did not attend because precluded under subsection (1).
- (6) No principal or board is liable for any act done or omitted—
  - (a) in good faith; and
  - (b) with reasonable care; and
  - (c) in pursuance or intended pursuance of a power or duty given or imposed by this section.

Compare: 1964 No 135 s 193B

Section 19 heading: amended, on 19 December 1998, by section 9 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(1): amended, on 19 December 1998, by section 9(a) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(2): amended, on 19 December 1998, by section 9(b) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(2): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(2)(c): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(3): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(3): amended, on 19 December 1998, by section 9(d) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(4): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(4): amended, on 19 December 1998, by section 9(d) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(5)(a)(i): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(5)(a)(ii): amended, on 19 December 1998, by section 9(d) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 19(5)(b): amended, on 19 December 1998, by section 9(c) of the Education Amendment Act (No 2) 1998 (1998 No 118).

### **Part 3**

#### **Enrolment and attendance of students**

#### **20 New Zealand citizens and residents between 6 and 16 to go to school**

- (1) Except as provided in this Act, every person who is not an international student is required to be enrolled at a registered school at all times during the period beginning on the person's sixth birthday and ending on the person's 16th birthday.
- (2) Before a child's seventh birthday, the child is not required to be enrolled at any school more than 3 kilometres walking distance from the child's residence.

Compare: 1964 No 135 ss 108, 109

Section 20 heading: amended, on 1 January 1993, by section 5 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 20(1): amended, on 30 August 2011, by section 13 of the Education Amendment Act 2011 (2011 No 66).

Section 20(1): amended, on 1 January 1993, by section 5(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

#### **21 Long term exemptions from enrolment**

- (1) An employee of the Ministry designated by the Secretary for the purpose (in this section and section 26 referred to as a **designated officer**) may, by certificate given to a person's parent, exempt the person from the requirements of section 20,—
  - (a) on the parent's application; and
  - (b) if satisfied that the person—
    - (i) will be taught at least as regularly and well as in a registered school; or
    - (ii) in the case of a person who would otherwise be likely to need special education, will be taught at least as regularly and well as in a special class or clinic or by a special service.
- (2) A certificate under subsection (1) continues in force until it is revoked or expires under this section.
- (3) If a designated officer refuses to grant a certificate under subsection (1), the applicant parent may appeal to the Secretary who, after considering a report on the matter from the Chief Review Officer, shall confirm the refusal or grant a certificate.
- (4) The Secretary's decision is final.

- (5) Every certificate under subsection (1) or subsection (3) shall state why it was given.
- (6) Subject to subsection (7), the Secretary may at any time revoke a certificate under subsection (1) or subsection (3).
- (7) The Secretary shall not revoke a certificate under subsection (1) or subsection (3), unless, after having—
  - (a) made reasonable efforts to get all the relevant information; and
  - (b) considered a report on the matter from the Chief Review Officer,—the Secretary is not satisfied of whichever of the grounds specified in subsection (1)(b) the certificate was originally granted on.
- (8) If the Secretary thinks any person exempted under subsection (1) would be better off getting special education, the Secretary may revoke the certificate and issue a direction under section 9.
- (8A) A certificate for the time being in force under subsection (1) or subsection (3) expires when the person to whom it applies turns 16 or enrolls at a registered school, whichever happens first.
- (9) Every certificate of exemption under section 111 of the Education Act 1964 that was in force on 30 September 1989 shall be deemed to have been granted—
  - (a) on the ground specified in subsection (1)(b)(i) if it was in fact granted—
    - (i) before 20 July 1987, under section 111(4)(a) of the Education Act 1964; or
    - (ii) after 19 July 1987, under section 111(3)(a) of that Act; and
  - (b) on the ground specified in subsection (1)(b)(ii) if it was in fact granted—
    - (i) before 20 July 1987, under section 111(4)(b) of the Education Act 1964; or
    - (ii) after 19 July 1987, under section 111(3)(b) of that Act;—

and may be revoked under this section accordingly.

Section 21(2): amended, on 19 December 1998, by section 10(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 21(6): amended, on 23 July 1990, by section 10 of the Education Amendment Act 1990 (1990 No 60).

Section 21(8A): inserted, on 19 December 1998, by section 10(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 21(9): inserted, on 1 January 1990, by section 8 of the Education Amendment Act 1989 (1989 No 156).

Section 21 compare note: repealed, on 20 May 2010, by section 11 of the Education Amendment Act 2010 (2010 No 25).

## **22 Secretary may exempt from enrolment**

- (1) Subject to subsection (2), the Secretary may, by certificate given to the parent of a person who has turned 15, exempt the person from the requirements of section 20—
  - (a) on the parent's application; and
  - (b) if satisfied that, on the basis of—
    - (i) the person's educational problems; and
    - (ii) the person's conduct; and
    - (iii) the benefit (if any) the person is likely to get from available schools,—it is sensible to do so.
- (2) The Secretary shall not exempt under subsection (1) any person who has neither completed the work of form 2 nor enrolled for a class above form 2.
- (3) The Secretary shall tell the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 the name and address of every person exempted under subsection (1).
- (4) If satisfied that it is in the best interests of any person to do so, the Secretary may revoke the person's certificate under subsection (1).

Compare: 1964 No 135 s 112

Section 22(1): amended, on 1 January 1993, by section 5(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 22(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**22A Secretary may exempt from enrolment persons placed in residence or programme under Children, Young Persons, and Their Families Act 1989**

- (1) On an application from the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, the Secretary may, by a certificate given to the chief executive of that department, exempt a person from the requirements of section 20 if satisfied that the requirements set out in subsection (2) have been met.
- (2) The requirements referred to in subsection (1) are that the person—
  - (a) has been placed—
    - (i) in a residence established under section 364 of the Children, Young Persons, and Their Families Act 1989; or
    - (ii) in a residential programme instituted by, and operated under contract with, the chief executive of that department where the person would otherwise be in a residence established under section 364 of that Act; and
  - (b) will receive education services appropriate to the person's needs.
- (3) The Secretary may at any time revoke a certificate granted under subsection (1)—
  - (a) on notification by the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989 that the person exempted has been released from a residence other than for a temporary period; or
  - (b) if the Secretary is no longer satisfied that the person exempted meets the requirements of subsection (2); or
  - (c) at the request of the chief executive of that department and if satisfied that an exemption from section 20 is no longer required.
- (4) A certificate under subsection (1) continues in force until revoked under this section.

Section 22A: replaced, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**23 Effect of exemption**

For so long as a certificate under section 21 or section 22 continues in force—

- (a) the exempted person does not have to be enrolled at any school; and
- (b) no person has to have the exempted person enrolled at any school.

Section 23 compare note: repealed, on 20 May 2010, by section 12 of the Education Amendment Act 2010 (2010 No 25).

**24 Penalty for failure to enrol**

- (1) Where the parent of a person required by this Act to be enrolled at a registered school fails or refuses to ensure that the person is enrolled at a registered school, the parent commits an offence, and is liable on conviction to a fine not exceeding \$3,000.
- (2) The payment of a fine in respect of a conviction for an offence against subsection (1) is not a bar to proceedings for a further such offence.

Compare: 1964 No 135 s 116

Section 24(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 24(1): amended, on 17 December 2008, by section 4 of the Education (National Standards) Amendment Act 2008 (2008 No 108).

**25 Students required to enrol must attend school**

- (1) Except as provided in this Act, every student of a registered school (other than a correspondence school) who is required by section 20 to be enrolled at a registered school shall attend the school whenever it is open.
- (2) Every board and every sponsor of a partnership school kura hourua shall take all reasonable steps to ensure that students who are required by subsection (1) to attend the school whenever it is open do so.
- (3) For the purposes of this section, a student attends a school on any day if, on the day,—
  - (a) it has been open for instruction for 4 hours or more; and
  - (b) the student has been present for 4 hours or more when it was open for instruction.

- (4) Nothing in subsections (1) to (3) applies to a participating student who is enrolled at a registered school for the purposes of the secondary component of his or her secondary-tertiary programme, but he or she must attend the school for any portion of the programme as notified by the provider group or lead provider under section 31J.
- (5) Nothing in subsections (1) to (3) applies to an affected student.
- (6) An affected student must attend school for the whole of the time period (or periods) each day during which the student's timetable is running.
- (7) A board or a sponsor that is running a multiple timetable arrangement must take all reasonable steps to ensure that an affected student attends the school for the whole of the time period (or periods) each day during which the student's timetable is running.
- (8) In this section,—

**affected student** means a student who is required to attend school in accordance with a multiple timetable arrangement

**multiple timetable arrangement** means an arrangement under which more than 1 timetable is run on the same day (whether consecutively or concurrently).

Compare: 1964 No 135 s 117

Section 25(2): amended, on 13 June 2013, by section 9(1) of the Education Amendment Act 2013 (2013 No 34).

Section 25(4): replaced, on 21 December 2010, by section 7 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 25(5): inserted, on 13 June 2013, by section 9(2) of the Education Amendment Act 2013 (2013 No 34).

Section 25(6): inserted, on 13 June 2013, by section 9(2) of the Education Amendment Act 2013 (2013 No 34).

Section 25(7): inserted, on 13 June 2013, by section 9(2) of the Education Amendment Act 2013 (2013 No 34).

Section 25(8): inserted, on 13 June 2013, by section 9(2) of the Education Amendment Act 2013 (2013 No 34).

## **25A Release from tuition on religious or cultural grounds**

- (1) A student aged 16 and above, or the parent of a student aged under 16, may ask the principal to release the student from tuition in a particular class or subject.



- (1A) A request under subsection (1) must be made in writing, and at least 24 hours before the start of the tuition.
- (1B) This section applies only to students enrolled at a State school that is not an integrated school.
- (2) Unless satisfied that—
  - (a) the parent or student (as the case may be) has asked because of sincerely held religious or cultural views; and
  - (b) the student will be adequately supervised (whether within or outside the school) during the tuition,—the principal shall not release the student.
- (3) Upon receiving a request from a parent under subsection (1), the principal must, before agreeing to release the student, take all reasonable steps to find out the student's views on the matter.
- (4) Subject to subsection (2), the principal shall release the student from the tuition and (if the student is to be supervised outside the school) let the student leave the school during the tuition unless satisfied, in the light of—
  - (a) the student's age, maturity, and ability to formulate and express views; and
  - (b) any views the student has expressed,—that it is inappropriate to do so.
- (5) Nothing in this section limits or affects section 79 of the Education Act 1964.

Section 25A: inserted, on 1 January 1992, by section 6(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 25A(1): replaced, on 25 October 2001, by section 10(1) of the Education Standards Act 2001 (2001 No 88).

Section 25A(1A): inserted, on 25 October 2001, by section 10(1) of the Education Standards Act 2001 (2001 No 88).

Section 25A(1B): inserted, on 25 October 2001, by section 10(1) of the Education Standards Act 2001 (2001 No 88).

Section 25A(2)(a): amended, on 25 October 2001, by section 10(2) of the Education Standards Act 2001 (2001 No 88).

Section 25A(3): replaced, on 25 October 2001, by section 10(3) of the Education Standards Act 2001 (2001 No 88).

**25AA Release from tuition in specified parts of health curriculum**

- (1) The parent of a student enrolled at any State school may ask the principal in writing to ensure that the student is excluded from tuition in specified parts of the health curriculum related to sexuality education and, on receipt of such a request, the principal must ensure that—
- (a) the student is excluded from the relevant tuition; and
  - (b) the student is supervised during that tuition.
- (2) Nothing in subsection (1) requires a principal to ensure that a student who is to be excluded from tuition in specified parts of the health curriculum related to sexuality education is excluded at any other time while a teacher deals with a question raised by another student that relates to the specified part of the curriculum.

Section 25AA: inserted, on 25 October 2001, by section 11(1) of the Education Standards Act 2001 (2001 No 88).

**25B Release from school**

The principal of a State school—

- (a) may, if satisfied that—
  - (i) a student will receive outside the school tuition acceptable to the principal; and
  - (ii) releasing the student would not result in a contravention of section 25(2),—  
release the student from attendance at the school, for a period or periods agreed with a parent of the student, to receive the tuition (and, where appropriate, travel between the school and the place where the tuition is to be given):
- (b) may, if satisfied that—
  - (i) a student has, on any day on which the school was open for instruction, been present at the school for 4 hours or more; and
  - (ii) there are good reasons for the student to leave before the school closes on that day,—  
let the student leave early on that day.

Section 25B: inserted, on 1 January 1992, by section 6(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

**26 Exemption from attendance**

- (1) A designated officer (as defined in section 21(1)) may, by certificate given to a student's parent, exempt the student (entirely or partly) from attending a school—
  - (a) on the parent's application; and
  - (b) if satisfied that—
    - (i) the student is under 10, and the walking distance between the student's residence and the school is more than 3 kilometres; or
    - (ii) the walking distance between the student's residence and the school is more than 5 kilometres; or
    - (iii) it is sensible to exempt the student for some other reason.
- (2) If a designated officer refuses to grant a certificate under subsection (1), the applicant parent may appeal to the Secretary who, after considering a report on the matter from the Chief Review Officer, shall confirm the refusal or grant a certificate.
- (3) The Secretary's decision is final.
- (4) Subject to subsections (6) and (7), a certificate under subsection (1) shall specify the day on which it expires; and until it expires or is cancelled, the student's parent is not subject to section 20 in respect of the student.
- (5) Every certificate under subsection (1) shall state the grounds on which it was granted.
- (6) No certificate granted under subsection (1)(b)(iii) shall specify an expiry day more than 7 school days after the day it is granted.
- (7) No other certificate under subsection (1) shall specify an expiry day more than 1 year after the day it is granted.
- (8) Where a certificate under subsection (1) expires, a designated officer may, subject to that subsection, issue another in its place.
- (9) The Secretary may at any time cancel a certificate under subsection (1).

Compare: 1964 No 135 s 118

**27 Principal may exempt from attendance for short period**

- (1) If satisfied that a student's absence was or will be justified, the principal of the school may exempt the student from attending the school for a period of no more than 5 school days.
- (2) The parent of a student exempted under subsection (1) is not subject to section 25 in respect of the student for the period to which the exemption relates.
- (3) In the absence of evidence to the contrary, a certificate from the principal of a school that—
  - (a) a student was absent from the school for any period; and
  - (b) the principal is not satisfied that the absence was justified,—is proof that the student was absent for that period without being exempted under subsection (1).
- (4) For the purposes of subsection (3), judicial notice shall be taken of the appointment and signature of every principal.

Compare: 1964 No 135 s 118(9)

**28 Secretary may require parents of certain children to enrol them at correspondence school**

- (1) The Secretary, by notice in writing to the parent of a student—
  - (a) who has a certificate of exemption for the student under subparagraph (i) or subparagraph (ii) of section 26(1)(b); or
  - (b) who has been directed under section 16(7)(c) to enrol the student at a correspondence school,—may call on the parent to have the student enrolled at a correspondence school specified in the notice, and ensure that the student does the work of the course in which the student is enrolled.
- (2) Enrolment under subsection (1) shall be—
  - (a) for the period of exemption, in the case of a student exempted under section 26(1)(b); and
  - (b) until the student turns 16, or for a shorter period specified in the notice, in every other case.
- (3) A parent who fails to comply with a notice under subsection (1) to have a student enrolled at a correspondence school commits an offence, and is liable on conviction to a fine not exceed-

ing the maximum fine provided for in section 24(1) (which relates to the failure to enrol at a registered school).

Compare: 1969 No 135 s 119

Section 28(2)(b): amended, on 1 January 1993, by section 5(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 28(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **29 Penalty for irregular attendance**

- (1) Every parent of a person who,—
- (a) while enrolled at a registered school, does not attend as provided in section 25; or
  - (b) while enrolled at a correspondence school, does not do the work of the course in which the student is enrolled,—
- commits an offence, and is liable on conviction to a fine not exceeding an amount calculated at the rate of \$30 for every school day for which the offence has occurred.
- (2) Notwithstanding subsection (1), a fine imposed for an offence against that subsection shall not exceed \$300 for a first offence against the subsection (or section 120(1) of the Education Act 1964), or \$3,000 for a second or subsequent offence.
- (3) The imposition of a penalty under this section does not affect or restrict the operation of any provision of the Children, Young Persons, and Their Families Act 1989.

Compare: 1964 No 135ss 119(2), 120

Section 29(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 29(1): amended, on 20 May 2010, by section 13 of the Education Amendment Act 2010 (2010 No 25).

Section 29(1): amended, on 17 December 2008, by section 5(1) of the Education (National Standards) Amendment Act 2008 (2008 No 108).

Section 29(2): amended, on 17 December 2008, by section 5(2)(a) of the Education (National Standards) Amendment Act 2008 (2008 No 108).

Section 29(2): amended, on 17 December 2008, by section 5(2)(b) of the Education (National Standards) Amendment Act 2008 (2008 No 108).

## **30 Employment of school-age children**

- (1) No person shall employ any person who has not turned 16 at any time—

- (a) within school hours; or
- (ab) in the case of a person who is a student participating in a secondary-tertiary programme, when the employment interferes with the person's ability to undertake the secondary-tertiary programme; or
- (b) in the case of a person enrolled at a correspondence school, when the employment interferes with the person's ability to do the work of the course in which the student is enrolled; or
- (c) in the case of a person who has been granted a certificate of exemption under section 21, when the employment interferes with the person's ability to be taught as well and regularly as in a registered school; or
- (d) if the employment then—
  - (i) prevents or interferes with the person's attendance at school; or
  - (ia) in the case of a person who is a participating student, interferes with the person's ability to undertake his or her secondary-tertiary programme; or
  - (ii) in the case of a person enrolled at a correspondence school, interferes with the person's ability to do the work of the course in which the person is enrolled,—

unless there has been produced to the employer a certificate of exemption, or other satisfactory evidence that the person is exempted (otherwise than under section 21(1)) from enrolment at any school.

- (2) Every person who—
  - (a) being a parent of any other person, permits the other person to be employed contrary to subsection (1); or
  - (b) employs any other person in contravention of the subsection,—

commits an offence, and is liable on conviction to a fine not exceeding \$1,000.

Compare: 1964 No 135 ss 121, 122

Section 30(1): amended, on 1 January 1993, by section 5(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 30(1)(ab): inserted, on 21 December 2010, by section 8(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 30(1)(d)(ia): inserted, on 21 December 2010, by section 8(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 30(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **31 Ensuring attendance of students**

- (1) Any board may appoint any person to be an attendance officer for the schools or institutions it administers.
- (1A) A sponsor of a partnership school kura hourua may appoint any person to be an attendance officer for the school.
- (2) A person may be appointed an attendance officer by 2 or more boards or sponsors, or a board and a sponsor jointly.
- (3) Every board shall, by any means it thinks appropriate, take all reasonable steps to ensure the attendance of students enrolled at its school or schools (or institution or institutions).
- (3A) Every sponsor must, by any means the sponsor thinks appropriate, take all reasonable steps to ensure the attendance of students enrolled at its school.
- (4) An attendance officer, on producing a distinctive badge or other evidence of appointment, or a constable may at any time detain any person who appears to have turned 5 and not to have turned 16, and who is not then at school, and question the person as to the person's name and address, the school (if any) at which the person is enrolled and its address, and the reason for the person's absence from school.
- (5) If not satisfied by the person's answers that the person has a good reason for not being at school, the attendance officer or constable—
  - (a) may take the person to the person's home, or to the school at which the officer thinks the person is enrolled.
  - (b) *[Repealed]*
- (6) A person who, after an attendance officer has produced evidence of appointment, obstructs or interferes with the officer in the exercise of powers under this section, commits an offence, and is liable on conviction to a fine not exceeding \$1,000.
- (7) Any attendance officer, a sponsor, a principal, the Secretary, or any person appointed by a board, a sponsor, or the Secretary

for the purpose may file charging documents, conduct prosecutions, and take any other proceedings, under this Part.

- (8) A certificate sealed by a board showing that a person named in it is appointed for any purpose under this section is sufficient evidence of the matters specified in the certificate; and the authenticity of, and validity of the affixing of, a board's seal shall not in any proceedings under this Part be inquired into or disputed.
- (8A) A certificate signed on behalf of a sponsor showing that a person named in it is appointed for any purpose under this section is sufficient evidence of the matters specified in the certificate; and the authenticity or authority of any signature on behalf of a sponsor may not in any proceedings under this Part of this Act be inquired into or disputed.
- (9) This section applies to a participating student only in relation to any portion of his or her secondary-tertiary programme during which he or she is required to attend school, as notified by the provider group or lead provider under section 31J.
- (10) This section applies to an affected student (within the meaning of section 25(8)) only in relation to the time period (or periods) each day during which his or her timetable is running.

Compare: 1964 No 135 s 123

Section 31(1A): inserted, on 13 June 2013, by section 10(1) of the Education Amendment Act 2013 (2013 No 34).

Section 31(2): amended, on 13 June 2013, by section 10(2) of the Education Amendment Act 2013 (2013 No 34).

Section 31(3A): inserted, on 13 June 2013, by section 10(3) of the Education Amendment Act 2013 (2013 No 34).

Section 31(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 31(4): amended, on 1 January 1993, by section 5(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 31(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 31(5)(b): repealed, on 1 January 1992, by section 7 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 31(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 31(7): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).



Section 31(7): amended, on 13 June 2013, by section 10(4)(a) of the Education Amendment Act 2013 (2013 No 34).

Section 31(7): amended, on 13 June 2013, by section 10(4)(b) of the Education Amendment Act 2013 (2013 No 34).

Section 31(7): amended, on 17 December 2008, by section 6 of the Education (National Standards) Amendment Act 2008 (2008 No 108).

Section 31(8A): inserted, on 13 June 2013, by section 10(5) of the Education Amendment Act 2013 (2013 No 34).

Section 31(9): inserted, on 21 December 2010, by section 9 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31(10): inserted, on 13 June 2013, by section 10(6) of the Education Amendment Act 2013 (2013 No 34).

### **31A Nature of secondary-tertiary programme**

A **secondary-tertiary programme** means a full-time programme for a participating student that—

- (a) consists of a secondary component and a tertiary component; and
- (b) is co-ordinated by a provider group or a lead provider.

Section 31A: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **31B Provider group for secondary-tertiary programme**

- (1) The Minister may, by notice in the *Gazette*, recognise as a provider group of secondary-tertiary programmes a group of organisations that consists of—

- (a) any 1 or more of the following:
  - (i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246;
  - (ia) a sponsor of a partnership school kura hourua, other than a partnership school kura hourua that is only a primary partnership school kura hourua;
  - (ii) a body corporate that is the manager of a school registered under section 35A, other than a school registered under that section only as a primary school; and
- (b) any 1 or more of the following:
  - (i) a government training establishment;
  - (ii) an industry training organisation;
  - (iii) an institution;

- (iv) a registered establishment.
- (2) Each member of a provider group is jointly and severally liable with the other members of the group in respect of the group's obligations and responsibilities.
- (3) Each member of a provider group must take all reasonable steps to work in a co-operative manner with the other members of the group.

Section 31B: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31B(1)(a)(ia): inserted, on 13 June 2013, by section 11 of the Education Amendment Act 2013 (2013 No 34).

**31C Secretary may enter into agreement with provider group**

- (1) A provider group may co-ordinate a secondary-tertiary programme, if the provider group has entered into a written agreement with the Secretary in relation to the programme.
- (2) The matters that an agreement under subsection (1) may provide for, in relation to a secondary-tertiary programme, may include (without limitation) any 1 or more of the following:
  - (a) its organisation and operation:
  - (b) its curriculum, courses, and any qualification resulting from it:
  - (c) selection of students to participate in it:
  - (d) clarification of responsibility for the welfare and educational performance of participating students:
  - (e) pastoral care and career guidance for participating students:
  - (f) its funding, and the responsibility of specific members of the provider group in relation to that funding:
  - (g) the maximum number of students that may participate in it.
- (3) The Secretary and the provider group may agree at any time to cancel or vary an agreement under subsection (1).
- (4) The Secretary or the provider group may cancel an agreement under subsection (1) by giving at least 6 months' notice in writing to the provider group or the Secretary (as the case may be).

Section 31C: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31D Provider group plan for secondary-tertiary programme**

- (1) A provider group must—
- (a) prepare and maintain a plan that contains short-term and long-term goals for each secondary-tertiary programme that it co-ordinates; and
  - (b) provide the Secretary with a copy of the plan.
- (2) A provider group that alters any plan provided to the Secretary under subsection (1)(b) must provide the Secretary with a copy of the changed plan as soon as practicable.

Section 31D: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31E Report to Secretary by provider group**

- (1) A provider group must report at least annually to the Secretary regarding its performance and progress.
- (2) The Secretary may, by notice in the *Gazette*, specify the format, or content, or both, required for reports that are to be made under subsection (1).

Section 31E: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31F Recognition as lead provider of secondary-tertiary programme**

The Minister may, by notice in the *Gazette*, recognise as a lead provider of secondary-tertiary programmes any of the following:

- (a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
- (ab) a sponsor of a partnership school kura hourua, other than a partnership school kura hourua that is only a primary partnership school kura hourua:
- (b) a body corporate that is the manager of a school registered under section 35A, other than a school registered under that section only as a primary school:
- (c) a government training establishment:
- (d) an industry training organisation:
- (e) an institution:
- (f) a registered establishment.

Section 31F: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31F(ab): inserted, on 13 June 2013, by section 12 of the Education Amendment Act 2013 (2013 No 34).

**31G Lead provider to co-ordinate secondary-tertiary programme**

- (1) A lead provider may co-ordinate a secondary-tertiary programme, if the lead provider has made an arrangement for the safety, welfare, and educational programmes of participating students that is—
  - (a) agreed to by the Secretary; or
  - (b) in a form approved by the Secretary.
- (2) Any of the following may provide a secondary component or a tertiary component of a secondary-tertiary programme, after making an arrangement as specified in subsection (1) with the lead provider of the programme:
  - (a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
  - (ab) a sponsor of a partnership school kura hourua, other than a partnership school kura hourua that is only a primary partnership school kura hourua:
  - (b) the managers of a school registered under section 35A, other than a school registered under that section only as a primary school:
  - (c) a government training establishment:
  - (d) an institution:
  - (e) a registered establishment:
  - (f) an employer providing work experience under the programme.
- (3) The Secretary may withdraw his or her agreement under subsection (1)(a), or his or her approval under subsection (1)(b), by giving at least 6 months' notice in writing to the lead provider.

Section 31G: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31G(2)(ab): inserted, on 13 June 2013, by section 13 of the Education Amendment Act 2013 (2013 No 34).

**31H Government policies or priorities**

- (1) The Minister may, by notice in the *Gazette*, publish government policies, or priorities, or both that apply in relation to any 1 or more of the following:
  - (a) secondary-tertiary programmes:
  - (b) provider groups, or specified types of provider groups:
  - (c) lead providers, or specified types of lead providers.
- (2) The Minister may, by written notice to a provider group or lead provider, issue a government policy or priority that applies in relation to the group or provider.
- (3) A provider group or lead provider must take all reasonable steps to comply with any government policy or priority—
  - (a) published under subsection (1); or
  - (b) notified under subsection (2).
- (4) In this section, **comply** means to give effect to the government policy or priority or to have regard to the government policy or priority, as the context requires.

Section 31H: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31I Entry into secondary-tertiary programme**

- (1) A student who is enrolled in any of the following may apply to a provider group or lead provider for his or her entry into a secondary-tertiary programme:
  - (a) a secondary school:
  - (b) a composite school:
  - (ba) a partnership school kura hourua, other than a partnership school kura hourua that is only a primary partnership school kura hourua:
  - (c) a school that is registered under section 35A, other than a school registered under that section only as a primary school:
  - (d) a special school that is a relevant school within the meaning of section 246.
- (2) Approval for a student's entry into a secondary-tertiary programme is at the discretion of the provider group or lead provider.

Section 31I: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31I(1)(ba): inserted, on 13 June 2013, by section 14 of the Education Amendment Act 2013 (2013 No 34).

**31J Provider group or lead provider to notify student and parents about any school attendance requirement**

The provider group or lead provider co-ordinating a participating student's secondary-tertiary programme must take all reasonable steps to notify the student and his or her parents in writing about any portion of the programme during which the student's participation in the programme requires his or her attendance at school.

Section 31J: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31K Withdrawal from secondary-tertiary programme**

- (1) A participating student may withdraw from his or her secondary-tertiary programme at any time.
- (2) A provider group or lead provider (as the case may be) may withdraw its approval for a student's participation in a secondary-tertiary programme after consulting with the student.

Section 31K: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**31L International students and secondary-tertiary programmes**

A provider group or lead provider must not approve the entry of an international student into a secondary-tertiary programme if to do so would result in the provider excluding from entry to the programme any domestic student who has applied for entry into the programme and is otherwise eligible to participate in the programme.

Section 31L: inserted, on 21 December 2010, by section 10 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 31L heading: amended, on 30 August 2011, by section 14(1) of the Education Amendment Act 2011 (2011 No 66).

Section 31L: amended, on 30 August 2011, by section 14(2) of the Education Amendment Act 2011 (2011 No 66).

Section 31L: amended, on 30 August 2011, by section 14(3) of the Education Amendment Act 2011 (2011 No 66).

**32 Hearings of proceedings may be private**

If the District Court Judge concerned so orders, proceedings under this Part shall be held with closed doors.

Compare: 1964 No 135 s 124

**33 Evidence of school roll, etc**

- (1) In any proceedings under this Act, a certificate by a principal as to any of the following matters is, in the absence of proof to the contrary, proof of the matter stated:

- (a) the enrolment of a person:
- (b) the days on which a school was open during any period:
- (c) the days on which a student attended a school during any period:
- (d) a student's age:
- (e) the name and address of a student's parent.

- (2) Judicial notice shall be taken of the signature and appointment of a principal on a certificate under subsection (1).

Compare: 1964 No 135 s 125

**34 Burden of proof on parents**

In proceedings under this Part of this Act, the burden of proving any of the following matters in relation to a person is on the person's parent:

- (a) the enrolment of the person at a school:
- (b) the person's attendance at a school:
- (c) the person's exemption from enrolment or attendance at a school.

Compare: 1964 No 135 s 126

**35 Fines to be paid to boards**

Every fine recovered under this Part shall be paid to the board on whose behalf the proceedings concerned were commenced.

Compare: 1964 No 135 s 127

Section 35: amended, on 20 May 2010, by section 14 of the Education Amendment Act 2010 (2010 No 25).

*Registration of private schools*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35A Provisional and full registration of private schools**

- (1) The managers of an unregistered or proposed private school must apply to the Secretary, on a form provided by the Secretary for the purpose, for its provisional registration as a primary, secondary, or special private school, or as a school of 2 or all of those descriptions.
- (2) The Secretary must provisionally register a school in respect of which an application is made under subsection (1) as a school of the description or descriptions concerned if he or she is satisfied that the school or proposed school meets or is likely to meet the criteria for registration as a private school.
- (3) Provisional registration of a school or proposed school continues—
  - (a) for 12 months (unless it is revoked earlier); or
  - (b) until the expiry of any period specified by the Secretary under subsection (4).
- (4) The Secretary may renew the provisional registration of a school only once, for a period specified by the Secretary, if he or she is satisfied that—
  - (a) exceptional circumstances exist in relation to the school; and
  - (b) the school is likely to meet the criteria for registration as a private school in that period.
- (5) The Secretary may request a further review, in addition to the review under section 35I(2), of a school that has its provisional registration renewed under subsection (4).
- (6) The Secretary must fully register a school as a school of the description or descriptions concerned if he or she is satisfied, having considered any report under section 35I(4) in relation to a review under section 35I(2) or (3) (as the case may be), that a provisionally registered school meets the criteria for registration as a private school.

Section 35A: replaced, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).



**35AA Suspensions and expulsions of students from private schools to be notified to Secretary**

*[Repealed]*

Section 35AA: repealed, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35B Secretary may require application for registration of school**

The Secretary may require the managers of a school that is not registered under section 35A to apply for its registration under that section if he or she considers that the school is operating as a school, whether or not certificates of exemption under section 21 are held in respect of all or any of the students being taught there.

Section 35B: replaced, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Criteria for registration as private school*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35C Criteria for registration as private school**

The criteria for registration as a private school under section 35A are that the school—

- (a) has premises that are suitable, as described in section 35D; and
- (b) usually provides tuition for 9 or more students who are of or over the age of 5 years but are under the age of 16 years; and
- (c) has staffing that is suitable to the age range and level of its students, the curriculum taught at the school, and the size of the school; and
- (d) has equipment that is suitable for the curriculum being delivered or to be delivered at the school; and
- (e) has a curriculum for teaching, learning, and assessment and makes details of the curriculum and its programme for delivery available for parents; and
- (f) has suitable tuition standards, as described in section 35F; and

- (g) has managers who are fit and proper persons (as described in section 35G) to be managers of a private school.

Section 35C: replaced, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **35D Suitable premises**

- (1) Suitable premises for a school registered under section 35A are premises that are suitable for a school of its description and the number of students at the school.
- (2) Subsection (1) applies to all premises used by the school for the regular delivery of courses, whether or not the managers of the school own or lease the premises for the school.

Section 35D: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **35E Additional and substituted premises to be approved**

- (1) The managers of a school registered under section 35A must, in the circumstances set out in subsection (2), notify the Secretary and obtain his or her approval before using new premises for the regular delivery of courses.
- (2) The circumstances are that the managers of the school propose that the school is to occupy—
  - (a) premises that are in addition to its current premises; or
  - (b) different premises that are to replace the premises currently occupied by the school.
- (3) When considering whether to grant approval of premises under subsection (1), the Secretary must consider whether the premises are suitable, as described in section 35D.

Section 35E: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **35F Tuition standards**

- (1) Tuition of a suitable standard at a school registered under section 35A must include giving students tuition of a standard no lower than that of the tuition given to students enrolled at State schools of the same class levels.
- (2) In assessing the standard of tuition, the mode of curriculum delivery and the regularity of instruction must be considered.

Section 35F: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35G Managers to be fit and proper persons**

- (1) In assessing whether a person who is a manager of a school is a fit and proper person to be a manager of a school registered under section 35A, the following matters must be taken into account:
  - (a) any conviction for a serious criminal activity:
  - (b) any health problems that may affect the person's ability to comply with his or her obligations towards the school and its students:
  - (c) any adjudication of bankruptcy under the Insolvency Act 2006 or the Insolvency Act 1967, or prohibition from being a director or promoter of, or being concerned or taking part in the management of, a company under any of sections 382, 383, 385, and 386A of the Companies Act 1993:
  - (d) any previous cancellation under this Act or section 186 of the Education Act 1964 of the registration of a school of which the person was a manager:
  - (e) any serious breach of the person's statutory duties as manager of a school registered under section 35A of this Act or section 186 of the Education Act 1964:
  - (f) any conviction for an offence under section 35R:
  - (g) all other relevant matters.
- (2) If the manager of a school is—
  - (a) a company, the assessment under subsection (1) applies to its directors:
  - (b) an incorporated society or an incorporated trust board, the assessment under subsection (1) applies to its members.
- (3) When the management of a school registered under section 35A changes in its entirety or is transferred to a new entity, the new managers must give notice to the Secretary and an assessment under subsection (1) must be made of the new managers of the school.

Section 35G: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Managers to advise Secretary of private school  
ceasing operation*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35H Managers must advise Secretary of school ceasing operation**

The managers of a school registered under section 35A that is about to cease to operate as a school must inform the Secretary—

- (a) that the school will cease to operate as a school; and
- (b) of the date on which the school will cease to operate as a school.

Section 35H: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Review of private schools registered under  
section 35A*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35I Review of schools registered under section 35A**

- (1) As soon as practicable after provisionally registering a school or proposed school under section 35A(2), the Secretary must inform the Chief Review Officer of the provisional registration.
- (2) The Chief Review Officer must ensure that a review officer reviews any school that is provisionally registered under section 35A(2) either—
  - (a) between 6 and 12 months after the provisional registration of the school or proposed school; or
  - (b) earlier, by agreement with its managers.
- (3) The Chief Review Officer must ensure that a review officer conducts a further review of a school that has had its provisional registration renewed under section 35A(4), when the further review is requested by the Secretary under section 35A(5).
- (4) The Chief Review Officer must ensure that a review officer who conducts a review under subsection (2) or (3) prepares a

written report in relation to the review and gives copies of it to the Secretary and the school's manager.

- (5) The Chief Review Officer must ensure that a school, while registered under section 35A(6), is reviewed in accordance with Part 28.
- (6) The Chief Review Officer must also ensure that the review officer who conducts a review under subsection (5)—
  - (a) prepares a written report on the review; and
  - (b) gives copies of it to the Secretary and the school's principal (or other chief executive) and managers.
- (7) A review officer's written report on a review under this section must also include—
  - (a) information as to whether the school meets the criteria for registration as a private school; and
  - (b) information as to the areas in which improvement is required, if it does not meet the criteria.

Section 35I: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Actions by Secretary in regard to schools  
registered under section 35A*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35J Secretary's actions in regard to schools registered under section 35A**

- (1) The Secretary may take action in regard to a school registered under section 35A if—
  - (a) he or she considers that the school is not meeting all or any of the criteria for registration as a private school; or
  - (b) a review conducted under section 35I indicates that the school does not, or is not likely to, meet all or any of the criteria for registration as a private school; or
  - (c) the managers of the school have breached or are breaching their statutory duties in relation to the school under this or any other enactment; or
  - (d) he or she has reasonable grounds to believe that serious criminal activity is occurring in the school.

- (2) If the Secretary is satisfied that any 1 or more of the grounds set out in subsection (1) exist in relation to a school registered under section 35A, he or she may do any 1 or more of the following:
- (a) issue the school's managers with a notice to comply;
  - (b) require the managers of a school to inform parents of the students at the school that the school is not meeting the criteria for registration as a private school;
  - (c) impose conditions on the school's registration;
  - (d) impose a requirement or requirements under any 1 or more of paragraphs (a) to (c), and suspend the school's registration;
  - (e) cancel the school's registration under section 35M.
- (3) Any action taken by the Secretary under subsection (2)—
- (a) must be proportionate to the seriousness of the school's situation; and
  - (b) is in addition to any fine incurred or other penalty imposed under section 35R or under any other enactment.

Section 35J: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35K Suspension of registration if welfare of students may be at risk**

The Secretary may at any time suspend the registration of a school registered under section 35A if he or she has reasonable grounds to believe that the welfare of the students at the school is at risk, and—

- (a) that it is unlikely that the risk can be managed by any practicable means other than by suspension of the registration; or
- (b) that, although the risk could be managed by means other than by suspension of the registration, the amount of time necessary to do so is likely, in the opinion of the Secretary, to be excessive.

Section 35K: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35L Duration of suspension**

- (1) Suspension under section 35J(2)(d) continues until the Secretary—
  - (a) is satisfied that the managers of the school have complied with all requirements imposed by him or her under any of paragraphs (a) to (c) of section 35J(2); or
  - (b) cancels the school's registration under section 35M.
- (2) Suspension under section 35K continues until the Secretary—
  - (a) is satisfied that the welfare of the students at the school is no longer at risk; or
  - (b) cancels the school's registration under section 35M, after taking action under section 35J(2).

Section 35L: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35M Process for cancellation of registration**

- (1) The Secretary may cancel the registration of a school if, following an action by him or her taken under any of paragraphs (a) to (d) of section 35J(2),—
  - (a) the school—
    - (i) does not improve sufficiently to meet the criteria for registration under section 35A; and
    - (ii) is not likely to do so, in the opinion of the Secretary, within a further reasonable time; or
  - (b) the managers of the school are continuing in breach of their statutory duties in relation to the school; or
  - (c) serious criminal activity continues to occur in the school.
- (2) Before cancelling a school's registration under subsection (1), the Secretary must—
  - (a) take reasonable steps to obtain and consider any relevant information, including any report by a review officer; and
  - (b) give written notice to the managers of the school that he or she is considering cancelling the school's registration, and give reasons; and
  - (c) give the managers of the school a reasonable opportunity to respond to the notice.

Section 35M: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Grants for private schools*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

#### **35N Grants for private schools**

- (1) The Minister may make grants to the managers of schools registered under section 35A out of money appropriated by Parliament for the purpose.
- (2) The Minister must determine the amount of each grant made under subsection (1).
- (3) A grant may be made unconditionally, or subject to conditions determined by the Minister.
- (4) The managers of a school to which a grant is made subject to conditions must take all reasonable steps to ensure that the conditions are complied with.

Section 35N: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

#### **35O Record-keeping in relation to grants to private schools**

- (1) The managers of a school to which a grant has been made unconditionally under section 35N must ensure that records are kept—
  - (a) in respect of the year in which the grant was made and the year after; and
  - (b) in a manner approved by the Minister.
- (2) The records must—
  - (a) show fully and correctly all the managers' financial transactions, assets, liabilities, and funds; and
  - (b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- (3) The managers of a school to which a grant under section 35N has been made subject to conditions must ensure that all necessary records are kept—
  - (a) in respect of the year in which the grant was made and the year after; and



- (b) in a manner approved by the Minister.
- (4) The records must—
  - (a) show fully and fairly—
    - (i) any of the managers' financial transactions, assets, liabilities, and funds, that relate to or are or were affected by the making of the grants; and
    - (ii) that the conditions have been complied with; and
  - (b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- (5) For the purposes of this section and section 35P, the financial year of a school's managers ends—
  - (a) at the close of the day specified by the Minister for the purpose; or
  - (b) at the close of 30 June, if the Minister has not specified a day for the purpose.

Section 35O: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **35P Providing accounts to Secretary**

As soon as practicable after the end of each financial year during which a school's managers are required by section 35O to keep records, they must—

- (a) have prepared an income and expenditure account, showing all financial transactions for the year records of which are required to be kept; and
- (b) have the account audited by a chartered accountant; and
- (c) give the Secretary copies of the account and the audit report on it.

Section 35P: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Suspensions and expulsions from private schools*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35Q Suspensions and expulsions of students from private schools to be notified to Secretary**

- (1) Immediately after a student has been suspended from attendance at, or expelled from, a school registered under section 35A, the school's principal or head teacher must give the Secretary—
  - (a) written notice of—
    - (i) the student's name and last known address; and
    - (ii) the day on which the student was suspended or expelled or, if the student was first suspended and later expelled, the days on which the student was suspended and expelled, and the length of the suspension; and
  - (b) a written statement of the reasons for the student's suspension or expulsion.
- (2) Unless the student is within a reasonable time reinstated at the school or enrolled at some other registered school, the Secretary must (if the student is younger than 16) and may (if the student is 16 or older)—
  - (a) arrange for the student to be enrolled at some other reasonably convenient registered school that the student can attend; or
  - (b) direct the board of a State school that is not an integrated school to enrol the student at the school; and, in that case, the board must do so; or
  - (c) direct a parent of the student to have the student enrolled at a correspondence school.
- (3) The Secretary must not give a direction under subsection (2) unless he or she has also made all reasonable attempts to consult the student, the student's parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student's education or welfare.
- (4) A direction under subsection (2)(b) overrides section 11M.
- (5) To the extent that there is any inconsistency between this section and a contract of enrolment at the school, this section prevails.

Section 35Q: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Offences in relation to private schools*

Heading: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**35R Offences in relation to operation of private schools**

- (1) A manager of a private school that is not registered under section 35A commits an offence if it operates as a school.
- (2) A manager of a private school that is registered under section 35A as a school of a particular description or descriptions commits an offence if the school operates as a school of another description or of other descriptions.
- (3) The managers of a private school that is registered under section 35A commit an offence if the school ceases to operate before the managers tell the Secretary that it will cease to operate.
- (4) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200 for every day or part of a day on which the offence took place.

Section 35R: inserted, on 21 December 2010, by section 11 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 35R(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**Part 4**

**Specialist Education Services Board**

*[Repealed]*

Part 4: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**36 Interpretation**

*[Repealed]*

Section 36: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**37 Board continued for purposes of this Part**

*[Repealed]*

Section 37: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**38 Membership of Board***[Repealed]*

Section 38: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**39 Function of Board***[Repealed]*

Section 39: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**40 Board responsible to Minister***[Repealed]*

Section 40: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**41 Powers of Board***[Repealed]*

Section 41: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

**Part 5****Early Childhood Development Board***[Repealed]*

Part 5: repealed, on 6 April 2004, by section 5(2) of the Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**42 Interpretation***[Repealed]*

Section 42: repealed, on 6 April 2004, by section 5(2) of the Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**43 Board continued for purposes of this Part***[Repealed]*

Section 43: repealed, on 6 April 2004, by section 5(2) of the Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**44 Membership of Board**

*[Repealed]*

Section 44: repealed, on 6 April 2004, by section 5(2) of the Education (Dis-establishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**45 Function of Board**

*[Repealed]*

Section 45: repealed, on 6 April 2004, by section 5(2) of the Education (Dis-establishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**46 Board responsible to Minister**

*[Repealed]*

Section 46: repealed, on 6 April 2004, by section 5(2) of the Education (Dis-establishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**47 Powers of Board**

*[Repealed]*

Section 47: repealed, on 6 April 2004, by section 5(2) of the Education (Dis-establishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

**Part 6  
Parent Advocacy Council**

*[Repealed]*

Part 6: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**48 Interpretation**

*[Repealed]*

Section 48: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**49 Parent Advocacy Council**

*[Repealed]*

Section 49: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**50 Membership of Council***[Repealed]*

Section 50: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**51 Criteria for appointing members***[Repealed]*

Section 51: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**52 Function of Council***[Repealed]*

Section 52: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**53 Council may refuse to act in certain cases***[Repealed]*

Section 53: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**54 Powers of Council***[Repealed]*

Section 54: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**55 Procedure where Council takes matter up***[Repealed]*

Section 55: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**56 Council may decide not to proceed with matter***[Repealed]*

Section 56: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**57 Council to give reasons***[Repealed]*

Section 57: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**58 Procedure where matter deserves action**

*[Repealed]*

Section 58: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**59 Power to obtain information**

*[Repealed]*

Section 59: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**Part 7**

**Control and management of State schools**

**60 Interpretation**

In this Part, Part 7A, and Part 8, unless the context otherwise requires,—

**board** means a board of trustees constituted under Part 9; and

(a) in relation to a school, means the school's board; and

(b) in relation to a principal, means the board of the principal's school

**board staff** means board staff within the meaning of section 92

**charter** means a charter of aims, purposes, and objectives that has been approved for a school under this Part; and, in relation to a school, means the school's charter (or, where it has no charter in fact, the charter it is deemed by section 61(12) to have)

**Chief Review Officer** means the chief executive of the Education Review Office

**domestic student** has the same meaning as in section 2(1)

**international student** has the same meaning as in section 2(1)

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**national education guidelines** means all the national education goals, foundation curriculum policy statements, national curriculum statements, national standards, and national administration guidelines, for the time being in force under section 60A

**parent** means a parent within the meaning of section 92

**review officer** means an employee of the Education Review Office

**school** means a State school within the meaning of section 2

**Secretary** means the chief executive of the Ministry

**Teachers Council** means the New Zealand Teachers Council established under Part 10A

**unsupervised access to students**, in relation to a school, means access to any student on the school's premises that is not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:

- (a) a registered teacher or holder of a limited authority to teach:
- (b) an employee of the school on whom a satisfactory Police vet has been conducted within the last 3 years:
- (c) a parent of the student.

Section 60: amended, on 20 May 2010, by section 16(1) of the Education Amendment Act 2010 (2010 No 25).

Section 60 **assisted student**: repealed, on 30 August 2011, by section 15(1) of the Education Amendment Act 2011 (2011 No 66).

Section 60 **board** paragraph (a): amended, on 20 May 2010, by section 16(2) of the Education Amendment Act 2010 (2010 No 25).

Section 60 **Chief Review Officer**: inserted, on 23 July 1990, by section 15 of the Education Amendment Act 1990 (1990 No 60).

Section 60 **domestic student**: replaced, on 30 August 2011, by section 15(2) of the Education Amendment Act 2011 (2011 No 66).

Section 60 **exempt student**: repealed, on 30 August 2011, by section 15(1) of the Education Amendment Act 2011 (2011 No 66).

Section 60 **foreign student**: repealed, on 30 August 2011, by section 15(1) of the Education Amendment Act 2011 (2011 No 66).

Section 60 **international student**: inserted, on 30 August 2011, by section 15(2) of the Education Amendment Act 2011 (2011 No 66).

Section 60 **Minister**: inserted, on 1 January 1992, by section 2(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).



Section 60 **Ministry**: inserted, on 1 January 1992, by section 2(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 60 **national curriculum objective**: repealed, on 1 January 1992, by section 9(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 60 **national education guidelines**: replaced, on 1 January 1992, by section 9(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 60 **national education guidelines**: amended, on 17 December 2008, by section 7 of the Education (National Standards) Amendment Act 2008 (2008 No 108).

Section 60 **national education guidelines**: amended, on 19 December 1998, by section 18 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 60 **review officer**: inserted, on 23 July 1990, by section 15 of the Education Amendment Act 1990 (1990 No 60).

Section 60 **Secretary**: inserted, on 1 January 1992, by section 2(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 60 **Teachers Council**: inserted, on 20 May 2010, by section 16(5) of the Education Amendment Act 2010 (2010 No 25).

Section 60 **unsupervised access to students**: inserted, on 20 May 2010, by section 16(5) of the Education Amendment Act 2010 (2010 No 25).

#### **60A National education guidelines**

- (1) The Minister may from time to time, by notice in the *Gazette*, publish (in their entirety, or by way of a general description and an indication of where the full text can be obtained) all or any of the following:
  - (a) **national education goals**, which are—
    - (i) statements of desirable achievements by the school system, or by an element of the school system; and
    - (ii) statements of government policy objectives for the school system:
  - (aa) **foundation curriculum policy statements**, which are statements of policy concerning teaching, learning, and assessment that are made for the purposes of underpinning and giving direction to—
    - (i) the way in which curriculum and assessment responsibilities are to be managed in schools:
    - (ii) national curriculum statements and locally developed curriculum:
  - (b) **national curriculum statements** (that is to say statements of—

- (i) the areas of knowledge and understanding to be covered by students; and
  - (ii) the skills to be developed by students; and
  - (iii) desirable levels of knowledge, understanding, and skill, to be achieved by students,—during the years of schooling):
- (ba) **national standards**, which are standards, in regard to matters such as literacy and numeracy, that are applicable to all students of a particular age or in a particular year of schooling:
- (c) **national administration guidelines**, which are guidelines relating to school administration and which may (without limitation)—
  - (i) set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body, including guidelines for the purpose of section 61:
  - (ii) set out requirements relating to planning and reporting including—
    - (A) scope and content areas, where appropriate:
    - (B) the timeframe for the annual update of the school charter:
    - (C) broad requirements relating to schools' consultation with parents, staff, school proprietors (in the case of integrated schools) and school communities, and the broad requirements to ensure that boards take all reasonable steps to discover and consider the views and concerns of Maori communities living in the geographical area the school serves, in the development of a school charter:
    - (D) variations from the framework for school planning and reporting for certain schools or classes of schools, based on school performance:
  - (iii) communicate the Government's policy objectives:

- (iv) set out transitional provisions for the purposes of national administration guidelines.
- (2) Without limiting the generality of subsection (1), a notice relating to a national curriculum statement may—
  - (a) specify different commencement dates for different provisions or different purposes, which dates may differ according to the class or designation of a school, the group or year level of students attending a school, or any combination of such classes, designations, groups, or levels:
  - (b) specify a transitional period during which a board may elect to comply with an existing curriculum statement or the new curriculum statement, and specify a date on which a board must begin complying with the new curriculum statement:
  - (c) revoke any curriculum statement issued under this section, and revoke any corresponding statement (such as a syllabus) issued in the form of a notice and having effect under the Education Act 1964.

Section 60A: inserted, on 1 January 1992, by section 9(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 60A(1): amended, on 25 June 1993, by section 7 of the Education Amendment Act 1993 (1993 No 51).

Section 60A(1)(a): replaced, on 25 October 2001, by section 12(1) of the Education Standards Act 2001 (2001 No 88).

Section 60A(1)(aa): inserted, on 19 December 1998, by section 19(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 60A(1)(ba): inserted, on 17 December 2008, by section 8 of the Education (National Standards) Amendment Act 2008 (2008 No 108).

Section 60A(1)(c): replaced, on 25 October 2001, by section 12(2) of the Education Standards Act 2001 (2001 No 88).

Section 60A(1)(c)(i): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 60A(2): inserted, on 19 December 1998, by section 19(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

## **60B Consultation about treatment of health curriculum**

- (1) The board of every State school must, at least once in every 2 years, and after consultation with the school community, adopt a statement on the delivery of the health curriculum.
- (2) In this section,—

**school community** means,—

- (a) in the case of an integrated school, the parents of students enrolled at the school, and the school's proprietors;
- (b) in the case of any other State school, the parents of students enrolled at the school;
- (c) in every case, any other person whom the board considers is part of the school community for the purpose of this section

**statement on the delivery of the health curriculum** means a written statement of how the school will implement the health education components of the relevant national curriculum statements.

- (3) The purpose of the consultation required by subsection (1) is to—
  - (a) inform the school community about the content of the health curriculum; and
  - (b) ascertain the wishes of the school community regarding the way in which the health curriculum should be implemented, given the views, beliefs, and customs of the members of that community; and
  - (c) determine, in broad terms, the health education needs of the students at the school.
- (4) A board may adopt any method of consultation that it considers will best achieve the purpose set out in subsection (3), but it may not adopt a statement on the delivery of the health curriculum until it has—
  - (a) prepared the statement in draft; and
  - (b) given members of the school community an adequate opportunity to comment on the draft statement; and
  - (c) considered any comments received.

Section 60B: inserted, on 25 October 2001, by section 13(1) of the Education Standards Act 2001 (2001 No 88).

## **61 School charter**

- (1) Every board must, for each school it administers, prepare and maintain a school charter.
- (2) The purpose of a school charter is to establish the mission, aims, objectives, directions, and targets of the board that will

give effect to the Government's national education guidelines and the board's priorities, and provide a base against which the board's actual performance can later be assessed.

- (3) A school charter must contain the following sections:
  - (a) a section that includes—
    - (i) the aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Maori culture; and
    - (ii) the aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it:
  - (b) a long-term strategic planning section that—
    - (i) establishes the board's aims and purposes; and
    - (ii) establishes for the next 3 to 5 years the board's aims, objectives, directions, and priorities for intended student outcomes, the school's performance, and use of resources; and
    - (iii) includes any aims or objectives that designate the school's special characteristics or its special character (within the meaning of this Act):
  - (c) an annually updated section that—
    - (i) establishes for the relevant year the board's aims, directions, objectives, priorities, and targets relating to intended student outcomes, the school's performance, and use of resources; and
    - (ii) sets targets for the key activities and achievement of objectives for the year.
- (4) A school charter must include the board's aims, objectives, directions, priorities, and targets in the following categories:
  - (a) student achievement, including the assessment of students against any national standard published under section 60A(1)(ba):
  - (b) the board's activities aimed at meeting both general government policy objectives for all schools, being policy objectives set out or referred to in national educa-

tion guidelines, and specific policy objectives applying to that school:

- (c) the management of the school's and board's capability, resources, assets, and liabilities, including its human resources, finances, property, and other ownership matters:
  - (d) other matters of interest to the public that the Minister may determine.
- (5) A school charter must—
- (a) contain all annual or long-term plans the board is required to have or has prepared for its own purposes; or
  - (b) contain a summary of each plan or a reference to it.

Section 61: replaced, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

Section 61(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 61(4)(a): amended, on 17 December 2008, by section 9 of the Education (National Standards) Amendment Act 2008 (2008 No 108).

## **62 Procedural requirements of preparing or updating school charter**

- (1) The board must provide the Secretary with a copy of its first school charter and every updated or amended school charter.
- (2) A school charter must be prepared and updated annually in accordance with national administration guidelines.
- (3) A board must amend its school charter as soon as practicable after it becomes aware of any information contained in the charter that is false or misleading in a material particular.

Section 62: replaced, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

Section 62(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 62(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 62(3): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **63 Effect of school charter**

A school charter has effect as an undertaking by the board to the Minister to take all reasonable steps (not inconsistent with

any enactment, or the general law of New Zealand) to ensure that—

- (a) the school is managed, organised, conducted, and administered for the purposes set out in the school charter; and
- (b) the school, and its students and community, achieve the aims and objectives set out in the school charter.

Section 63: replaced, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

Section 63(a): amended, on 17 May 2006, by section 6 of the Education Amendment Act 2006 (2006 No 19).

**63A When school charter or updated charter takes effect**

- (1) When the Secretary receives a school charter or updated school charter, the Secretary must consider whether the charter has been developed or updated in accordance with the requirements of this Act and the national administration guidelines.
- (2) Unless it takes effect on a different date under subsection (5), a new or updated school charter takes effect on the 25th working day after the date that the Secretary receives it.
- (3) If, before the first or updated school charter takes effect, the Secretary determines that it was not developed or updated in accordance with the Act or is inconsistent with the Act or the national administration guidelines, the Secretary must notify the board of the matters in the school charter to be resolved.
- (4) The Secretary must then negotiate with the board to resolve the matters concerned and, if the board and the Secretary are unable to reach agreement about the content of the school charter or updated school charter, the Secretary may require the board to amend the charter or updated charter.
- (5) If the Secretary issues a notice under subsection (3), the school charter or updated charter takes effect—
  - (a) on the date agreed by the Secretary and the board; or
  - (b) on the date the Secretary determines to be the commencement date for his or her amendments.

Section 63A: inserted, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

**63B Board must make copies of school charter available**

Once a school charter or updated school charter takes effect, the board must make the charter available.

Section 63B: inserted, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

**64 Effect of charter**

*[Repealed]*

Section 64: repealed, on 25 October 2001, by section 14 of the Education Standards Act 2001 (2001 No 88).

**64A Secretary may require board to get specialist support**

*[Repealed]*

Section 64A: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**65 Staff**

Subject to Part 8A and section 120A, a board may from time to time, in accordance with the State Sector Act 1988, appoint, suspend, or dismiss staff.

Section 65: replaced, on 1 January 1997, by section 2 of the Education Amendment Act 1996 (1996 No 98).

**65A Length of school year**

- (1) The Minister may, before 1 July in any year, prescribe the number of half-days on which schools must be open during the next year; and different numbers may be prescribed for schools of different classes or descriptions.
- (2) Except as provided in this Act, every board shall ensure that each school it administers is in every year open for instruction on the number of half-days required under subsection (1).
- (2A) If, because of a strike or lockout, a school is not open for instruction on any half-day, the school is, for the purposes of subsection (2), deemed to be open for instruction on that half-day.
- (3) Where the Minister has not in fact prescribed for a school a number under subsection (1) in respect of any year, the Minister shall be deemed to have prescribed in respect of the year the number prescribed (or deemed under this subsection to have been prescribed) for the school for the year before.



Section 65A: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

Section 65A(2): amended, on 20 May 2010, by section 17 of the Education Amendment Act 2010 (2010 No 25).

Section 65A(2A): inserted, on 6 April 2004, by section 6 of the State Sector Amendment Act 2004 (2004 No 15).

### 65B Terms

- (1) The Minister may, before 1 July in any year, prescribe (by reference to specific dates, specified days, the number of half-days prescribed under section 65A, or any 2 or more of those means)—
  - (a) the terms that schools must observe during the next year; or
  - (b) a means for ascertaining or determining those terms.
- (2) Except as provided in this Act, every board shall ensure that the schools it administers are in every year open for instruction on every day during the terms prescribed, ascertained, or determined for the year under subsection (1).
- (3) For the purposes of section 65A and subsection (2)—
  - (a) on any day, a school is open for instruction for a **half-day** only, if—
    - (i) it is in fact open for instruction for 2 hours or more before noon; but is not in fact open for instruction for 2 hours or more after noon; or
    - (ii) it is in fact open for instruction for 2 hours or more after noon; but is not in fact open for instruction for 2 hours or more before noon; and
  - (b) on any day, a school is not open for instruction at all if it is not in fact open for instruction for 2 hours or more before noon and for 2 hours or more after noon.
- (4) Where the Minister has not in fact prescribed terms, or a means of ascertaining or determining them, under subsection (1) in respect of any year, the Minister shall be deemed to have prescribed in respect of the year the terms or means prescribed (or deemed under this subsection to have been prescribed) in respect of the year before.

Section 65B: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

Section 65B(1): amended, on 20 May 2010, by section 18 of the Education Amendment Act 2010 (2010 No 25).

Section 65B(3)(a)(i): amended, on 25 June 1993, by section 8(1) of the Education Amendment Act 1993 (1993 No 51).

Section 65B(3)(a)(ii): amended, on 25 June 1993, by section 8(1) of the Education Amendment Act 1993 (1993 No 51).

Section 65B(3)(b): amended, on 25 June 1993, by section 8(1) of the Education Amendment Act 1993 (1993 No 51).

### **65C Holidays**

- (1) Subject to subsection (2), every board must ensure that every school it administers is closed on—
  - (a) Saturdays, Sundays, New Year's Day, 2 January, Waitangi Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, the Sovereign's birthday, Labour Day, Christmas Day, Boxing Day; and
  - (b) the day observed as anniversary day in the locality in which the school is situated; and
  - (c) if 1 January falls on a Friday, the following Monday; and
  - (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
  - (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.
- (2) The Minister may at any time prescribe the circumstances in which boards may open the schools they administer or any of them on Saturdays or Sundays; and schools may be open accordingly.
- (3) The Minister may, before 1 July in any year, prescribe days during the next year (in addition to those specified in subsection (1)) on which boards may close the schools they administer, or any of them; and, subject to section 65A, schools may be closed accordingly.
- (4) Where the Minister has not in fact prescribed days under subsection (1) in respect of any year, the Minister shall be deemed to have prescribed in respect of the year the days prescribed (or deemed under this subsection to have been prescribed) in respect of the year before.
- (5) The Minister may at any time prescribe the circumstances in which boards may close the schools they administer or any

of them; and, subject to section 65A, schools may be closed accordingly.

Section 65C: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

Section 65C(1): replaced, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

**65D Exceptions in particular cases**

- (1) The Minister may authorise a board to open any specified school it administers for fewer half-days in any year than required by section 65A(2); and schools may be closed accordingly.
- (2) The Minister may authorise a board to open and close any specified school it administers in accordance with terms and holidays (specified by the Minister) that differ from those otherwise required by this Act to be observed; and, subject to any terms and conditions specified by the Minister when giving the authority, schools may be open and closed accordingly.
- (3) The Minister may authorise a board to apply a meaning of half-day that differs from the meaning it has in section 65B(3), if the Minister is satisfied that—
  - (a) the board has adequately consulted parents, staff, and the local community about the proposal and it is generally acceptable; and
  - (b) the adoption of the proposal will not result in the students of the school spending less time in school than other students in comparable schools; and
  - (c) the Minister considers that such a variation is appropriate in the circumstances.
- (4) An authorisation under subsection (3) must be given either unconditionally or subject to such conditions as the Minister considers appropriate.
- (5) A student enrolled at a State school must comply with section 25 even if the school's board varies the meaning of half-day under subsection (3).
- (6) Subsection (3) overrides the provisions in section 77 of the Education Act 1964 concerning the times at which State primary schools are to be kept open.

Section 65D: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

Section 65D(3): inserted, on 19 December 1998, by section 21 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 65D(3): amended, on 20 May 2010, by section 19 of the Education Amendment Act 2010 (2010 No 25).

Section 65D(4): inserted, on 19 December 1998, by section 21 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 65D(5): inserted, on 19 December 1998, by section 21 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 65D(5): amended, on 20 May 2010, by section 19 of the Education Amendment Act 2010 (2010 No 25).

Section 65D(6): inserted, on 19 December 1998, by section 21 of the Education Amendment Act (No 2) 1998 (1998 No 118).

#### **65DA Multiple timetable arrangements**

- (1) The Minister may authorise a board to run a multiple timetable arrangement for a specified period at a specified school if—
  - (a) the Minister is satisfied that the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement; and
  - (b) the Minister considers that the proposed multiple timetable arrangement is appropriate in the circumstances.
- (2) An authorisation under subsection (1) must be given either unconditionally or subject to any conditions that the Minister considers appropriate.
- (3) A board must take all reasonable steps to notify every affected student and his or her parents in writing of—
  - (a) a multiple timetable arrangement authorised under subsection (1); and
  - (b) the time periods for each day during which the affected student's timetable will run.
- (4) In this section, **affected student** and **multiple timetable arrangement** have the meanings given by section 25(8).

Section 65DA: inserted, on 13 June 2013, by section 15 of the Education Amendment Act 2013 (2013 No 34).

**65E Emergencies**

- (1) Notwithstanding anything in this Part, a board may at any time, because of epidemic, flood, fire, or other emergency, close a school it administers.
- (2) If satisfied that the closure for instruction of any school during any period during which it was otherwise required by this Part to be open was necessary because of epidemic, flood, fire, or other emergency, the Secretary may, by written notice to the board, reduce the number of half-days for which the school would otherwise be required by section 65A to be open for instruction; and the school may be open and closed for instruction accordingly.

Section 65E: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

**65F Application of provisions**

- (1) The powers conferred on the Minister by sections 65A to 65E may be exercised in respect of all schools, schools of a particular class or description, or specified schools.
- (2) Sections 65A to 65E shall have effect as if special schools, special classes, special clinics, and special services are State schools.

Section 65F: inserted, on 23 July 1990, by section 17(1) of the Education Amendment Act 1990 (1990 No 60).

**65G Minister to act by means of instructions**

- (1) Except as provided in subsection (2), the powers of the Minister under sections 65A to 65F shall be exercised only by written instruction signed by the Minister.
- (2) The Minister may delegate to the Secretary the Minister's powers under section 65D(2); but if the Minister does so—
  - (a) the Secretary shall exercise the powers in respect of individual schools only; and
  - (b) the delegation shall not limit or affect the exercise of the powers by the Minister.

Section 65G: replaced, on 1 January 1992, by section 11 of the Education Amendment Act (No 4) 1991 (1991 No 136).

**65H Application of Crown Entities Act 2004**

- (1) Every board is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) However, that Act applies to boards only to the extent that subsection (3) provides.
- (3) The provisions of that Act set out in Schedule 3 of that Act and Schedule 5A of this Act apply to boards and their Crown entity subsidiaries (within the meaning of that Act).
- (4) The trustees are the governing board for the purposes of those provisions of the Crown Entities Act 2004.

Section 65H: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**66 Delegations**

- (1) The governing board of a board may delegate any of the functions or powers of the board or the governing board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:
  - (a) a trustee or trustees:
  - (b) the principal or any other employee or employees, or office holder or holders, of the board:
  - (c) a committee consisting of at least 2 persons, at least 1 of whom is a trustee:
  - (d) any other person or persons approved by the board's responsible Minister:
  - (e) any class of persons comprised of any of the persons listed in paragraphs (a) to (d).
- (2) Subsection (1) does not apply to any functions or powers specified in this Act as not being capable of delegation.
- (3) The governing board must not delegate the general power of delegation.
- (4) A delegate to whom any functions or powers of a board or governing board are delegated may,—
  - (a) unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the board or the governing board; and
  - (b) delegate the function or power only—

- (i) with the prior written consent of the governing board; and
  - (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.
- (5) A delegate who purports to perform a function or exercise a power under a delegation—
  - (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
  - (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.
- (6) No delegation in accordance with this Act—
  - (a) affects or prevents the performance of any function or the exercise of any power by the board or the governing board; or
  - (b) affects the responsibility of the governing board for the actions of any delegate acting under the delegation; or
  - (c) is affected by any change in the membership of the governing board or of any committee or class of persons.
- (7) A delegation may be revoked at will by—
  - (a) resolution of the governing board and written notice to the delegate; or
  - (b) any other method provided for in the delegation.
- (8) A delegation under subsection (4)(b) may be revoked at will by written notice of the delegate to the subdelegate.
- (9) The governing board may, by resolution, appoint committees—
  - (a) to advise it on any matters relating to the board's functions and powers that are referred to the committee by the governing board; or
  - (b) to perform or exercise any of the board's functions and powers that are delegated to the committee.
- (10) A person must not be appointed as a member of a committee unless, before appointment, he or she discloses to the governing board the details of any financial interest that would disqualify the person from being a member of the committee under section 103A.

- (11) This section applies to each member of a committee who is not a trustee with necessary modifications.
- (12) Until revoked, a delegation to a committee continues in force, even if the membership of the board or committee changes.

Section 66: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 66(8): amended, on 17 May 2006, by section 7 of the Education Amendment Act 2006 (2006 No 19).

#### **66A No delegation of power to borrow**

The governing board of a board must not delegate any power to borrow money that it may have under section 160 or section 162 of the Crown Entities Act 2004.

Section 66A: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **66B Application of new acquisition of securities, borrowing, guarantees, indemnities, and derivative transactions rules**

- (1) The amendments made to sections 67 to 67B and 73 by Schedule 6 of the Crown Entities Act 2004 (being amendments that correspond with sections 160 to 164 of that Act) apply on and after 1 April 2005.
- (2) Until that date, the existing law applies (*see* the transitional provisions in sections 196 and 197 of the Crown Entities Act 2004).

Section 66B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **67 Restrictions on borrowing**

- (1) Sections 160 and 162 of the Crown Entities Act 2004 apply.
- (2) Therefore, a board must not borrow from any person, or amend the terms of any borrowing, other than as provided in—
  - (a) any regulations made under Part 4 of that Act; or
  - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
  - (c) this Act.

Section 67: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).



**67A Restrictions on giving of guarantees and indemnities**

- (1) Sections 160 and 163 of the Crown Entities Act 2004 apply.
- (2) Therefore, a board must not, with or without security, give a guarantee to, or indemnify, another person other than as provided in—
  - (a) any regulations made under Part 4 of that Act; or
  - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
  - (c) this Act.

Section 67A: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**67B Restrictions on use of derivatives**

- (1) Sections 160 and 164 of the Crown Entities Act 2004 apply.
- (2) Therefore, a board must not enter into a derivative transaction, or amend the terms of that transaction, other than as provided in—
  - (a) any regulations made under Part 4 of that Act; or
  - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
  - (c) this Act.

Section 67B: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**68 Gifts**

- (1) Any money or property that is gifted to a school may be accepted or disclaimed by the board in accordance with section 167 of the Crown Entities Act 2004.
- (1A) A limitation in this Act or that applies under the Crown Entities Act 2004 (such as a limitation on the form in which property may be held) does not apply during a period that is reasonable in the circumstances.
- (1B) Subsections (1) and (1A) apply to any gift that is received by the board for funding scholarships or bursaries, or for other educational purposes in connection with a school.
- (2) A board shall hold every such gift for the specific purpose declared by the giver.

- (3) Unless the giver has created a special trust, scholarships and bursaries from a gift shall be open to every student at the school.
- (4) If the school for which a gift was given closes, the Minister shall direct that the gift should apply to some other school.

Compare: 1964 No 135 s 191

Section 68 heading: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(1): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(1B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **69 Real property**

Except as provided in section 68, a board shall not acquire an interest in land, or any licence to occupy any land or premises, without the consent of the Minister.

## **70 Occupancy of property and buildings**

- (1) The Secretary may from time to time, by notice in the *Gazette*, specify terms and conditions applying generally to land and buildings occupied by boards, and may from time to time, by written notice to a particular board, specify terms and conditions applying to land and buildings occupied by that board.
- (1A) A notice under subsection (1)—
  - (a) may apply to any land and buildings occupied by a board (regardless of who owns the property); but
  - (b) to the extent that it applies to the board of an integrated school, is subject to the Private Schools Conditional Integration Act 1975 and to the integration agreement for the time being in force between the Minister and the proprietors of the school.
- (2) Terms and conditions under subsection (1) may include such matters as standards of maintenance, standards of capital works, and minimum safety and health requirements.
- (3) Subsection (2) does not limit the generality of subsection (1).

- (4) Terms and conditions may be specified under subsection (1) in respect of a particular school or institution or schools or institutions, schools or institutions of particular classes or descriptions, or all schools and institutions.
- (5) A notice published in the *Gazette* under subsection (1) may publish the terms and conditions in their entirety, or by way of a general description and an indication of where the full text can be obtained.
- (6) Terms and conditions specified under subsection (1) apply to boards or a board (as the case may be) as if—
  - (a) the land and buildings were owned by the Crown and the Crown has leased them to the board; and
  - (b) the terms and conditions were part of the lease; and
  - (c) the Crown had empowered the Secretary to exercise the Crown's powers concerning the lease.

Section 70 heading: replaced, on 19 December 1998, by section 22 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 70(1): replaced, on 19 December 1998, by section 22(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 70(1A): inserted, on 19 December 1998, by section 22(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 70(5): replaced, on 19 December 1998, by section 22(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 70(6): inserted, on 19 December 1998, by section 22(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

#### **70A Minister may declare land to be no longer needed for educational purposes**

- (1) The Minister may, by notice in the *Gazette*, declare any land of the Crown to be no longer needed for educational purposes.
- (2) On publication of a notice under subsection (1), any land referred to in the notice that was, immediately before publication of the notice, held for a purpose set out in subsection (3), ceases to be so held and may be disposed of as land no longer required for a public work.
- (3) Subsection (2) applies to land held—
  - (a) for education or educational purposes; or
  - (b) for, or for the purposes of, a school or other educational institution (whether or not any particular school or institution); or

- (c) for any purpose related to or connected with a school or other educational institution (whether or not any particular school or institution); or
- (d) for any similar purpose.

Compare: 1949 No 24 s 5A

Section 70A: inserted, on 17 May 2006, by section 8(1) of the Education Amendment Act 2006 (2006 No 19).

### **70B Leases and licences granted by boards**

- (1) A board may, with the written consent of the Secretary, grant a lease or a licence to occupy to any person in respect of any land, buildings, or facilities occupied by the board.
- (2) The Secretary may agree to the grant of a lease or a licence by the board only if satisfied that—
  - (a) the land, building, or facilities are not needed or used for the purposes of the school during the time covered by the lease or licence; and
  - (b) the lease or licence is in the public interest; and
  - (c) the lease or licence—
    - (i) is for a purpose associated with educational outcomes and will bring educational benefit to the school or its community, or to any other school; or
    - (ii) is for a community purpose, and will bring no educational disadvantage to the school.
- (3) The Secretary must determine the terms and conditions of any lease or licence granted by a board, and may do so by either or both of the following:
  - (a) by notice in the *Gazette* specifying general terms and conditions that apply to all, or specified classes of, leases or licences:
  - (b) by written notice to the board.
- (4) Section 70(5) applies to a *Gazette* notice under subsection (3)(a).
- (5) In relation to an integrated school, this section applies subject to the Private Schools Conditional Integration Act 1975 and to any integration agreement in force between the Minister and the proprietors of the school.

Compare: 1949 No 24 ss 6, 6A

Section 70B: inserted, on 17 May 2006, by section 8(1) of the Education Amendment Act 2006 (2006 No 19).

**70C Other agreements to occupy school land or buildings**

- (1) In this section, **agreement** means an agreement, other than a lease or a licence to occupy under section 70B, between a board and any other person for the use of land, buildings, or facilities occupied by the board.
- (2) A board may not enter into an agreement unless—
  - (a) the agreement is of a type permitted by *Gazette* notice under subsection (5); and
  - (b) the agreement is consistent with this section and any conditions set out in *Gazette* notices made under subsection (5).
- (3) It is a condition of every agreement that the board has the right to enter at any time the land, buildings, or facilities that are the subject of the agreement.
- (4) No person has the right under an agreement to use or occupy any land, buildings, or facilities in such a way as to unduly interfere with the use by the board for school purposes of that land or those buildings or facilities, or any other land, buildings, or facilities of the school.
- (5) The Secretary may, by notice in the *Gazette*,—
  - (a) identify the kinds of agreements (such as, for example, agreements for the use of playing fields) that boards may enter into; and
  - (b) specify conditions to which agreements, or specified types of agreements, are subject.
- (6) Section 70(5) applies to a *Gazette* notice under subsection (5)(b).
- (7) In relation to an integrated school, this section applies subject to the Private Schools Conditional Integration Act 1975 and to any integration agreement in force between the Minister and the proprietors of the school.

Compare: 1949 No 24 s 6D

Section 70C: inserted, on 17 May 2006, by section 8(1) of the Education Amendment Act 2006 (2006 No 19).

**71 Courses and visits**

- (1) Except as provided in this section, a board may authorise any students to—
- (a) undertake courses of education; or
  - (b) obtain work experience; or
  - (c) make visits;—
- outside the school premises; and where the board has done so, a student shall be deemed to be attending the school while undertaking the course, obtaining the experience, or making the visit.
- (2) Except in accordance with conditions for the time being prescribed by the Minister in that behalf by notice in the *Gazette* no principal, teacher, or occupier of a workplace shall allow a student to go into, or remain in, a workplace to get work experience.
- (3) Subject to subsection (4), a student who is in a workplace (other than an undertaking within the meaning of the Factories and Commercial Premises Act 1981) to get work experience is deemed to be employed there; and every enactment, and collective agreement, (to the extent that it relates to the safety, health, and welfare of workers) applies to the student and the occupier of the workplace accordingly.
- (4) Subsection (3) does not—
- (a) entitle a student to be paid; or
  - (b) require a student to join or belong to a union; or
  - (c) entitle a student to enter or remain in a workplace; or
  - (d) require any person to pay any levy, fee, or charge, of any kind.

Compare: 1964 No 135 s 117A

Section 71(3): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

**72 Bylaws**

Subject to any enactment, the general law of New Zealand, and the school's charter, a school's board may make for the school any bylaws the board thinks necessary or desirable for the control and management of the school.

Compare: 1964 No 135 s 61(2)

**73 Restrictions on acquisition of securities**

- (1) Sections 160 and 161 of the Crown Entities Act 2004 apply.
- (2) Therefore, a board must not acquire securities other than—
  - (a) a debt security denominated in New Zealand dollars that is issued by a registered bank, or by any other entity, that satisfies a credit-rating test that is specified in either regulations made under Part 4 of that Act or a notice in the *Gazette* published by the Minister of Finance;
  - (b) a public security;
  - (c) as provided in—
    - (i) any regulations made under Part 4 of that Act; or
    - (ii) any approval given jointly by the Minister of Education and the Minister of Finance; or
    - (iii) this Act.

Section 73: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 73(2)(c)(ii): amended, on 20 May 2010, by section 20 of the Education Amendment Act 2010 (2010 No 25).

**74 Work for other boards**

- (1) Any 2 boards may agree in writing for—
  - (a) one of them to acquire materials for and supply them to the other; or
  - (b) one of them to do work for the other,—  
and for the other to pay the board acquiring and supplying the materials or doing the work.
- (2) An agreement under subsection (1) does not absolve a board from any responsibilities imposed by this Act.

**75 Functions and powers of boards**

- (1) A school's board must perform its functions and exercise its powers in such a way as to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement.
- (2) Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's board has complete discretion to control the management of the school as it thinks fit.

Section 75: replaced, on 13 June 2013, by section 16 of the Education Amendment Act 2013 (2013 No 34).

## **76 Principals**

- (1) A school's principal is the board's chief executive in relation to the school's control and management.
- (2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal—
  - (a) shall comply with the board's general policy directions; and
  - (b) subject to paragraph (a), has complete discretion to manage as the principal thinks fit the school's day-to-day administration.

## **77 Guidance and counselling**

The principal of a State school shall take all reasonable steps to ensure that—

- (a) students get good guidance and counselling; and
- (b) a student's parents are told of matters that, in the principal's opinion,—
  - (i) are preventing or slowing the student's progress through the school; or
  - (ii) are harming the student's relationships with teachers or other students.

Compare: 1964 No 135 s 193A

## **77A Enrolment records**

- (1) The principal of a registered school must ensure that an enrolment record in such form and containing such information as may be specified under subsection (3) is kept for each student who is enrolled at the school.
- (2) When a student moves from one registered school to another registered school, the principal of the first school must take reasonable steps to send the student's enrolment record to the principal of the second school.
- (3) The Secretary may from time to time, by notice in the *Gazette*, make rules setting out administrative and procedural requirements relating to enrolment records, including (without limitation) rules—



- (a) setting out the duties of principals concerning enrolment records and the information contained in enrolment records:
  - (b) requiring principals to inform students and parents about enrolment records and the use and distribution of enrolment records, and specifying the particulars about which students and parents are to be informed:
  - (c) specifying the form and content of enrolment records:
  - (d) specifying exceptions to particular requirements of the rules.
- (4) A principal of a registered school must comply with rules for the time being in force under subsection (3).
- (5) In this section, **principal**, in relation to a partnership school kura hourua, means the person to whom the sponsor of the school has assigned the role of managing enrolment records.
- (6) In subsection (5), **partnership school kura hourua** and **sponsor** have the meanings given by section 2(1).

Section 77A: inserted, on 19 December 1998, by section 23 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 77A(5): inserted, on 13 June 2013, by section 17 of the Education Amendment Act 2013 (2013 No 34).

Section 77A(6): inserted, on 13 June 2013, by section 17 of the Education Amendment Act 2013 (2013 No 34).

## **78 Regulations relating to control and management of schools**

- (1) Subject to the provisions of this Act and any other enactment, the Governor-General may from time to time make regulations providing for the control, management, organisation, conduct, and administration of schools.
- (2) Different provision may be made for schools of different classes or descriptions.
- (3) Regulations made under this section may give powers to, or impose duties on, boards, principals, or both.
- (4) Regulations made under this section prescribing a course of study shall not restrict the method by or manner in which any subject forming part of the course is to be taught, except to the

extent necessary to ensure that the teaching of the subject is consistent with the general aims of the course.

Compare: 1964 No 135 ss 59, 76

### **78A Powers of entry and inspection**

- (1) Any person holding an authorisation under subsection (2) may, at any reasonable time,—
  - (a) enter and inspect any registered school;
  - (b) inspect, photocopy, print out, or copy onto disk any documents (whether held in electronic or paper form) that the person believes on reasonable grounds to be those of the board of the school;
  - (c) remove any document described in paragraph (b), whether in its original form or as an electronic or paper copy.
- (1A) If any original documents are removed from a school under subsection (1)(c), the person who removes the documents must—
  - (a) leave at the school a list of the documents removed; and
  - (b) return the documents, or a copy of them, to the school as soon as practicable unless to do so would prejudice any investigation being or to be carried out by the Ministry.
- (2) The Secretary may authorise in writing any person to exercise the powers in subsection (1).
- (3) Every written authorisation under subsection (2) shall contain—
  - (a) a reference to this section; and
  - (b) the full name of the person authorised; and
  - (c) a statement of the powers conferred on that person by this section.
- (4) Every person exercising any power under subsection (1) shall possess the appropriate written authorisation, and evidence of identity, and shall produce them to the person in charge of the premises concerned (or, as the case may be, the person having possession or control of the books, records, or accounts concerned)—
  - (a) on first entering the premises; and
  - (b) whenever subsequently reasonably required to do so by the person in charge.

- (5) For the purposes of this section, **inspection**, in relation to any school, includes—
- (a) access to the written and recorded work of students enrolled there; and
  - (b) meeting and talking with students enrolled there.

Section 78A: replaced, on 23 July 1990, by section 19(1) of the Education Amendment Act 1990 (1990 No 60).

Section 78A(1): replaced, on 19 December 1998, by section 24(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 78A(1A): inserted, on 19 December 1998, by section 24(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 78A(2): replaced, on 19 December 1998, by section 24(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 78A(4): amended, on 19 December 1998, by section 24(2)(a) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 78A(4): amended, on 19 December 1998, by section 24(2)(b) of the Education Amendment Act (No 2) 1998 (1998 No 118).

**78B Entry where private school suspected of being unregistered**

- (1) A person who holds an authorisation under section 78A(2), and who has reasonable cause to believe that any premises are being used as a private school in contravention of section 35R, may apply for a warrant to enter the premises.
- (2) An application for a warrant must be in writing, on oath, and be made to a District Court Judge, Justice of the Peace, or Registrar or Deputy Registrar of any court.
- (3) A warrant may be issued on an application under subsection (1) if the person issuing it is satisfied that there is reasonable cause to believe that the premises are being used as a private school in contravention of section 35R.
- (4) A warrant issued under subsection (3) must contain—
  - (a) a reference to this section; and
  - (b) the full name of the person authorised; and
  - (c) a description of the premises concerned; and
  - (d) the date on which it was issued and the date on which it expires.
- (5) A warrant issued under subsection (3) must authorise the person named in it, at any reasonable time within 4 weeks of the date on which it is issued, to enter and inspect the premises

described in the warrant to ascertain whether those premises are being used as a private school in contravention of section 35R.

- (6) A person acting under a warrant under subsection (3) must retain the warrant and must show it, along with evidence of identity, to the occupier of the premises concerned—
- (a) on first entering the premises; and
  - (b) whenever subsequently reasonably required to do so by that occupier.

Section 78B: inserted, on 19 December 1998, by section 25 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 78B heading: amended, on 21 December 2010, by section 12(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 78B(1): amended, on 21 December 2010, by section 12(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 78B(3): amended, on 21 December 2010, by section 12(3) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 78B(5): amended, on 21 December 2010, by section 12(4) of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **78C Police vetting of non-teaching and unregistered employees at schools**

The board of a State school, or the management of a school registered under section 35A, must obtain a Police vet of every person—

- (a) whom the board or the management appoints, or intends to appoint, to a position at the school; and
- (b) who is to work at the school during normal school hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

Section 78C: replaced, on 20 May 2010, by section 21 of the Education Amendment Act 2010 (2010 No 25).

### **78CA Police vetting of contractors and their employees who work at schools**

- (1) The board of a State school, or the management of a school registered under section 35A, must obtain a Police vet of every contractor, or the employee of a contractor, who has, or is

likely to have, unsupervised access to students at the school during normal school hours.

- (2) In this section, **contractor** means a person who, under contract (other than an employment contract), works at a school.

Section 78CA: replaced, on 20 May 2010, by section 21 of the Education Amendment Act 2010 (2010 No 25).

**78CB Police vet must be obtained before person has unsupervised access to students**

- (1) A Police vet required under section 78C or 78CA must be obtained before the person has, or is likely to have, unsupervised access to students at the school during normal school hours.
- (2) The board of a State school, or the management of a school registered under section 35A, that is required under section 78C to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the school.

Section 78CB: replaced, on 20 May 2010, by section 21 of the Education Amendment Act 2010 (2010 No 25).

**78CC Further Police vets to be obtained under this Part every 3 years**

- (1) The board of a State school, or the management of a school registered under section 35A, must obtain a further Police vet of every person on whom a Police vet has already been obtained under this Part by that board or management, as the case may be, and who still works at the school.
- (2) A further Police vet required under subsection (1) must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.
- (3) The requirement for a further Police vet under this section does not apply to a person on whom a Police vet under section 78C or 78CA would not be required if he or she were about to be appointed to a position at the school or to work at the school at the time that the further Police vet would otherwise be required.

Section 78CC: inserted, on 20 May 2010, by section 21 of the Education Amendment Act 2010 (2010 No 25).

**78CD Procedures relating to Police vets**

The board of a State school, or the management of a school registered under section 35A, that applies for a Police vet of a person—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) must not take adverse action in relation to a person who is the subject of a Police vet until—
  - (i) the person has validated the information contained in the vet; or
  - (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Section 78CD: inserted, on 20 May 2010, by section 21 of the Education Amendment Act 2010 (2010 No 25).

**78D School risk management scheme**

- (1) In this section, and in sections 78E and 78F,—

**participating school board**—

- (a) means the board of a State school; and
- (b) includes a commissioner appointed in place of a board; but
- (c) does not include a board of a State school or a commissioner if that party has been a participant but, with the Minister's approval, has withdrawn from and is not for the time being a participant in a school risk management scheme

**school risk management scheme** means the school risk management scheme for the time being having effect under this section.

- (2) The Minister may, in accordance with this section, establish a school risk management scheme for the purpose of indemnifying participating school boards—
- (a) against accidental loss or damage to property of the board;
  - (b) for any other purpose authorised by regulations made under section 78F.

- (3) An indemnity under the school risk management scheme must be given in a form and contain terms and conditions authorised by regulations made under this Act.
- (4) A participating school board is liable to pay to the Crown the annual fee set under sections 78E.
- (5) The Minister may at any time, on giving reasonable notice to all participating school boards, discontinue a school risk management scheme and direct the Secretary to wind up the scheme.
- (6) Until a school risk management scheme is established under subsection (2 ), the deed signed by the Minister on 24 December 1999 entitled *Ministry of Education—Risk Management Scheme for School Contents* constitutes the school risk management scheme.

Section 78D: inserted, on 25 October 2001, by section 19 of the Education Standards Act 2001 (2001 No 88).

#### **78E School risk management scheme fees**

- (1) In respect of each year in which a school risk management scheme has effect, the Minister must, by notice in the *Gazette*, set the amount of the annual fee payable by a participating school board or the rate at which the amount is to be assessed.
- (2) The purpose of the annual fee is to recover the administration, insurance, and claims costs of the scheme.
- (3) The Secretary must deduct the fee from grants made to the board under section 79.
- (4) The Secretary must establish a separate bank account for the purposes of this section, and—
  - (a) all fees deducted under subsection (3) must be paid into the account; and
  - (b) the Secretary may authorise payments to be made from the account for the purposes of administering the scheme.
- (5) If the school risk management scheme is discontinued, the money held in the separate account after the scheme has been wound up must be paid into a Crown Bank Account in accordance with any directions of the Secretary to the Treasury.

Section 78E: inserted, on 25 October 2001, by section 19 of the Education Standards Act 2001 (2001 No 88).

Section 78E(5): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**78F Regulations relating to school risk management scheme**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the form of legal instrument by which a school risk management scheme may be established:
- (b) defining accidental loss or damage and other terms for the purposes of the regulations and the legal instrument:
- (c) setting out the scope of the indemnity that may be given by the Crown, including any exclusions:
- (d) setting out the procedure for lodging claims and their determination:
- (e) listing the kinds of costs that the Crown may deduct from money payable under the scheme to a participating school board:
- (f) providing for the manner in which the parties may withdraw from the scheme:
- (g) providing for the manner in which the legal instrument may be varied, replaced, or terminated.

Section 78F: inserted, on 25 October 2001, by section 19 of the Education Standards Act 2001 (2001 No 88).

**78G Former school risk management schemes**

- (1) The scheme referred to in section 78D(6), and all former schemes established for similar purposes by or on behalf of the Minister in 1991 or subsequent years, must be treated as if they were authorised by this section when executed.
- (2) All levies collected from school boards for the purposes of a scheme to which this section applies, and payments made from those fees, must be treated as having been collected or paid under the authority of this section.

Section 78G: inserted, on 25 October 2001, by section 19 of the Education Standards Act 2001 (2001 No 88).



## **Part 7A**

### **Interventions in schools**

Part 7A: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

#### **78H Purpose of Part**

The purpose of this Part is to provide for a range of interventions that may be used to address risks to the operation of individual schools or to the welfare or educational performance of their students.

Section 78H: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

#### **78I Application of interventions**

- (1) The interventions in schools that are available are as follows:
  - (a) a requirement by the Secretary for information:
  - (b) a requirement by the Secretary for a board to engage specialist help:
  - (c) a requirement by the Secretary for a board to prepare and carry out an action plan:
  - (d) the appointment by the Secretary, at the direction of the Minister, of a limited statutory manager:
  - (e) the dissolution of a board by the Minister, and the appointment of a commissioner:
  - (f) the dissolution of a board by the Secretary, and the appointment of a commissioner.
- (2) The Minister or Secretary (as the case may be) may apply any of the interventions described in subsection (1)(b) to (e) to a school if he or she has reasonable grounds to believe that there is a risk to the operation of the school, or to the welfare or educational performance of its students.
- (3) The Minister or Secretary (as the case may be) may apply any of the interventions described in subsection (1) to a school if either of the following requests an intervention:
  - (a) the board of the school:
  - (b) in the case of an integrated school, the school's proprietors.
- (4) When applying an intervention, the Minister or Secretary (as the case may be) must apply whichever intervention he or she

considers is reasonable to deal with the risk without intervening more than necessary in the affairs of the school.

- (5) The application of any one intervention does not preclude the application of any other intervention, either simultaneously or at any other time.

Section 78I: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

#### **78J Requirement to provide information**

- (1) The Secretary may, by written notice to the board of a school, require the board to provide specified information—
- (a) as at a given time; or
  - (b) at specified intervals; or
  - (c) both.
- (2) The Secretary may give a notice under subsection (1) only if he or she has reasonable grounds for concern about the operation of the school, or the welfare or educational performance of its students.
- (3) A board that receives a notice under subsection (1) must provide the Secretary with the information required—
- (a) within or at the time or times specified in the notice; and
  - (b) in the form (if any) specified by the Secretary.
- (4) The Secretary may at any time amend or revoke a notice under subsection (1), and the amendment or revocation takes effect on the date specified in the notice.

Section 78J: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

#### **78K Specialist help**

- (1) The Secretary may, by written notice to the board of a school, require the board to engage specified specialist help.
- (2) A notice given under subsection (1) must identify particular persons or organisations, or types of persons or organisations, whom the board must engage.
- (3) A board that receives a notice under subsection (1) must comply with the notice as soon as practicable, and must pay the fees and reasonable expenses of any person or organisations engaged to provide specialist help.

- (4) The Secretary may at any time amend or revoke a notice under subsection (1), and the amendment or revocation takes effect on the date specified in the notice.

Section 78K: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78L Action plans**

- (1) The Secretary may, by written notice to the board of a school, require the board to prepare and carry out an action plan, and every such notice must specify—
- (a) the matters that the action plan must address; and
  - (b) the outcomes sought; and
  - (c) the time within which a draft action plan must be prepared.
- (2) A board that receives a notice under subsection (1) must comply with it by preparing a draft action plan within the time specified in the notice and presenting it to the Secretary for approval.
- (3) The Secretary may negotiate with the board over the draft action plan in order to reach an agreed plan but, if after a reasonable period the board and Secretary have not reached agreement over the content of the action plan, the Secretary may give notice to the board that he or she will approve a particular version of the plan.
- (4) When the Secretary has approved an action plan, the board—
- (a) must implement it in accordance with its terms, unless or until the Secretary directs otherwise; and
  - (b) must make the plan available as if it were part of the school's charter.

Section 78L: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78M Limited statutory manager**

- (1) The Minister may, by notice in the *Gazette*, direct the Secretary to appoint a limited statutory manager for the board of a school.
- (2) A notice under subsection (1) must specify—

- (a) any functions, powers, and duties of the board (whether statutory or otherwise) that are to be vested in the limited statutory manager; and
  - (b) any matters on which the limited statutory manager may or must advise the board; and
  - (c) any conditions attaching to the exercise of the powers by the board or by the limited statutory manager.
- (3) Upon publication of the *Gazette* notice, the Secretary must, by notice to the board,—
  - (a) appoint a person to be the limited statutory manager for the board; and
  - (b) state the date on which the appointment takes effect.
- (3A) A notice under subsection (3) appointing a person to be the limited statutory manager for the board may refer to the person appointed—
  - (a) by his or her own name; and
  - (b) as being of a named body corporate.
- (4) On and from the date on which his or her appointment takes effect,—
  - (a) any functions, powers, or duties of the board specified in a notice under subsection (1) vest in the limited statutory manager; and
  - (b) the board must take into consideration advice given by the limited statutory manager on any matter on which he or she is obliged to give advice; and
  - (c) any conditions specified in the notice apply.
- (5) The board must pay the fees and expenses of a limited statutory manager appointed for it.
- (6) The Minister may at any time, by notice in the *Gazette*, amend a notice under subsection (1), and the amendment takes effect on and from the date given in the notice.
- (7) When the Minister is satisfied that the appointment of the limited statutory manager is no longer required, he or she must revoke the notice under subsection (1), in which case the appointment terminates from the date of the revocation.

Section 78M: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

Section 78M(3A): inserted, on 20 May 2010, by section 22 of the Education Amendment Act 2010 (2010 No 25).

**78N Dissolution of board and appointment of commissioner**

- (1) The Minister may, by notice in the *Gazette*, dissolve the board of a school and direct the Secretary to appoint a commissioner to replace that board.
- (2) On publication of a notice under subsection (1), the Secretary must, by notice in the *Gazette*, appoint a commissioner for the school, and state the date on which the appointment takes effect.
- (3) The Secretary may, by notice in the *Gazette*, dissolve the board of a school and appoint a commissioner in its place, as from a specified date, if any of the following applies:
  - (a) the board has not held a meeting during the previous 3 months;
  - (b) so many casual vacancies have arisen that there is no longer any member of the board who is eligible to pre-  
side at meetings of the board;
  - (c) the result of an election of trustees is that the board has fewer than 3 trustees elected by parents;
  - (d) an election of trustees has not been held as required by this Act;
  - (e) it is impossible or impracticable to discover the results of an election of trustees.
- (4) A notice under subsection (2) or (3) appointing a commissioner for a school may refer to the person appointed—
  - (a) by his or her own name; and
  - (b) as being of a named body corporate.

Section 78N: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

Section 78N(4): inserted, on 20 May 2010, by section 23 of the Education Amendment Act 2010 (2010 No 25).

**78NA No compensation for loss of office**

- (1) A trustee is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a trustee.
- (2) A board must ensure, to the extent that it is reasonably able to do so, that each of its Crown entity subsidiaries does not pay directors of the subsidiary any compensation or other payment

or benefit, on any basis, for ceasing for any reason to hold office.

- (3) However, subsections (4) and (5) apply to a person who is entitled, at the commencement of this section under any contract or arrangement, to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office.
- (4) The entitlement is not affected by the enactment of this section.
- (5) The entitlement is cancelled on the date of reappointment of the trustee or director or of the member to the committee (if any).

Section 78NA: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 78NA(2): amended, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

#### **78O Commissioners**

- (1) A commissioner appointed under section 78N has all the functions, powers, and duties of the board that he or she is appointed to replace.
- (2) Anything that, if done by or on behalf of the board, must be done by affixing the board's seal, or by the signature of 2 or more trustees, or both, may be done by the signature of the commissioner.
- (3) The remuneration of the commissioner must be determined by the Secretary and paid for out of funds of the board.

Section 78O: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

#### **78P Commissioner sets date for election of trustees**

- (1) In the case of a commissioner appointed under section 78N(2), when the Secretary is satisfied that a commissioner is no longer required for the school, the commissioner must appoint a date for the election of trustees.
- (2) In the case of a commissioner appointed under section 78N(3), when the Secretary is satisfied that an election of trustees will produce a functioning board, the commissioner must appoint a date for the election of trustees.

- (3) A commissioner's appointment ends 7 days after the date that he or she has set for the election of trustees.

Section 78P: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78Q Protection of limited statutory managers and commissioners**

No limited statutory manager, and no commissioner, is personally liable for any act done or omitted by him or her, or for any loss arising out of any act done or omitted by him or her, if the act or omission was in good faith and occurred in the course of carrying out his or her functions.

Section 78Q: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78R Annual review of interventions**

Within 1 year of the date of a notice under any of sections 78J(1), 78K(1), 78L(1), 78M(1), or 78N(1) or (3), the Secretary must review the operation of the intervention commenced by each notice, and after that must review the operation of the intervention annually.

Section 78R: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78S Application of interventions to integrated schools**

- (1) The Secretary must, if practicable, consult with the proprietors of an integrated school before appointing a limited statutory manager or commissioner for the school, and must have regard to any recommendations made by the proprietors.
- (2) If the Secretary considers that it is not practicable to consult with the proprietors before making an appointment, the Secretary must consult with the proprietors after making the appointment and must consider whether, in light of any recommendations made by the proprietors, a different person should be appointed in place of the original appointee.

Section 78S: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

**78T Application of interventions to Kura Kaupapa Maori**

- (1) Before applying any of the interventions in this Part to a Kura Kaupapa Maori, the Secretary must consult with te kaitiaki o Te Aho Matua (as defined in section 155B).
- (2) Subsection (1) applies only to Kura Kaupapa Maori that are required by their charters to operate in accordance with Te Aho Matua.

Section 78T: inserted, on 25 October 2001, by section 20 of the Education Standards Act 2001 (2001 No 88).

## **Part 8 Financial**

**79 Grants for boards**

- (1) Subject to subsection (2), in each financial year, a board shall be paid, out of public money appropriated by Parliament for the purpose, such grants and supplementary grants, of such amounts, as the Minister determines.
- (2) In determining the amount of any grant, the Minister shall take no account of foreign students (other than students exempted under section 4A(1)) enrolled or likely to be enrolled at any school or institution the board concerned administers.
- (3) A supplementary grant is paid subject to the condition that it will be used for the purposes set out in the grant, and a board that receives a supplementary grant must use it for those purposes only.

Section 79: replaced, on 8 August 1991, by section 5(1) of the Education Amendment Act (No 2) 1991 (1991 No 90).

Section 79(1): amended, on 25 October 2001, by section 21(1) of the Education Standards Act 2001 (2001 No 88).

Section 79(3): inserted, on 25 October 2001, by section 21(2) of the Education Standards Act 2001 (2001 No 88).

**80 No transfer between grants**

*[Repealed]*

Section 80: repealed, on 8 August 1991, by section 5(1) of the Education Amendment Act (No 2) 1991 (1991 No 90).



**81 Payment of teacher salaries from sources other than grants**

*[Repealed]*

Section 81: repealed, on 8 August 1991, by section 5(1) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**81A Grants for correspondence schools**

Notwithstanding sections 79 to 81,—

- (a) the board of a correspondence school shall in each financial year be paid, out of money appropriated by Parliament for the purpose, a single grant of an amount determined by the Minister:
- (b) any part of such a grant may be used for the payment of teacher salaries:
- (c) the board shall not out of money that is not part of such a grant pay any part (or all) of a teacher's salary, or pay to the Crown any part (or all) of a teacher's salary paid by the Crown, except—
  - (i) with the Minister's consent; and
  - (ii) in accordance with any conditions subject to which the consent was given:
- (d) the Minister shall withhold consent under paragraph (c) unless satisfied that special circumstances applying to the school make it inappropriate for the Minister to do so.

Section 81A: inserted, on 23 July 1990, by section 20 of the Education Amendment Act 1990 (1990 No 60).

**81B Management of financial management system**

*[Repealed]*

Section 81B: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**82 Annual financial statements**

*[Repealed]*

Section 82: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**83 Responsibility for financial statements***[Repealed]*

Section 83: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**84 Audit report on financial statements***[Repealed]*

Section 84: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**85 Financial statements to be included in annual report***[Repealed]*

Section 85: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**86 Financial year***[Repealed]*

Section 86: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**87 Annual reports**

- (1) As soon as is practicable after the end of every financial year, and in any event no later than a day fixed by the Secretary, every board shall give the Secretary an annual report in accordance with this section.
- (2) A report given under subsection (1) must include—
  - (a) the names of all the board's elected trustees, appointed trustees, and co-opted trustees; and
  - (b) the date on which each trustee goes out of office; and
  - (c) the auditor's report in accordance with section 87A; and
  - (ca) in respect of the board or, in the case of a Crown entity group, for each Crown entity in the group,—
    - (i) the total value of the remuneration (other than compensation and other benefits referred to in subparagraph (v)) paid or payable to the trustees in their capacity as trustees from the board (or entities in the group, as the case may be), during that financial year; and

- (ii) the total value of the remuneration (other than compensation, and other benefits referred to in subparagraph (v)) paid or payable to the committee members in their capacity as committee members from the board (or entities in the group, as the case may be) during that financial year (except that this paragraph does not apply to trustees whose remuneration is disclosed under subparagraph (i)); and
    - (iii) the number of employees (other than principals of the school) to whom, during the financial year, remuneration (other than compensation and other benefits referred to in subparagraph (v)) was paid or payable in their capacity as employees, the total value of which is or exceeds \$100,000 per annum, and the number of those employees in brackets of \$10,000; and
    - (iv) a report, presented in the manner required by the Minister by notice in the *Gazette*, on the total remuneration (including benefits, any compensation, ex gratia payments, any other payments, and any other consideration paid or payable in the school principal's capacity as an employee) paid to a principal of the school; and
    - (v) the total value of any compensation or other benefits paid or payable to persons who ceased to be trustees, committee members, or employees during the financial year in relation to that cessation and the number of persons to whom all or part of that total was payable; and
  - (d) the board's annual financial statements; and
  - (e) a statement in which schools provide an analysis of any variance between the school's performance and the relevant aims, objectives, directions, priorities, or targets set out in the school charter:
- (3) The annual financial statements must be prepared in accordance with generally accepted accounting practice, audited as required by section 87A, and include all of the following:

- (a) a statement of the financial position of the board as at its balance date:
  - (b) a statement of financial performance reflecting the revenue and expenses of the board for the financial year:
  - (c) if required by generally accepted accounting practice, a statement of cash flows reflecting cash flows of the board for the financial year:
  - (d) a statement of the commitments of the board as at the balance date:
  - (e) a statement of the contingent liabilities of the board as at the balance date:
  - (f) a statement of accounting policies:
  - (g) such other statements as are necessary to fairly reflect the financial operations of the board for the financial year and its financial position at the end of the financial year:
  - (h) any other statements that the Secretary determines in consultation with the Auditor-General:
  - (i) in relation to each statement required by paragraphs (a) to (c) and, if appropriate, by paragraph (g), budgeted figures for the financial year:
  - (j) in relation to each statement required by paragraphs (a) to (c), paragraph (d), and paragraph (e) and, if appropriate, by paragraph (g), comparative actual figures for the previous financial year.
- (3A) In addition, a board that is a parent in a Crown entity group must, to the extent required to do so by generally accepted accounting practice, prepare consolidated financial statements in relation to the group for that financial year.
- (4) The annual financial statements must be accompanied by a statement of responsibility that complies with section 155 of the Crown Entities Act 2004 but that is signed by the chair of the board and principal instead of 2 members.
- (5) In subsection (2), **trustee** and **employee** include a person who was a trustee or employee at any time during the applicable financial year but who is no longer a trustee or employee.
- (6) The requirements of this section and section 87A as to annual financial statements also apply to a Crown entity subsidiary of

a board as if the subsidiary were a board and with all necessary modifications.

- (7) Subsection (2)(ca)(iv) and (v) applies in respect of each financial year that ends on or after 31 December 2004.
- (8) The rest of the amendments made to this section by Schedule 6 of the Crown Entities Act 2004 apply as provided in section 198 of that Act.

Section 87(1): amended, on 25 October 2001, by section 23(1)(a) of the Education Standards Act 2001 (2001 No 88).

Section 87(2): inserted, on 8 July 2000, by section 6 of the Education Amendment Act 2000 (2000 No 21).

Section 87(2)(b): amended, on 25 October 2001, by section 23(1)(b) of the Education Standards Act 2001 (2001 No 88).

Section 87(2)(c): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(2)(ca): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(2)(d): inserted, on 25 October 2001, by section 23(2) of the Education Standards Act 2001 (2001 No 88).

Section 87(2)(e): inserted, on 25 October 2001, by section 23(2) of the Education Standards Act 2001 (2001 No 88).

Section 87(3): inserted, on 25 October 2001, by section 23(3) of the Education Standards Act 2001 (2001 No 88).

Section 87(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(4): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(5): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(6): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(7): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87(8): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **87A Audit**

- (1) Each board must submit its annual financial statements to the Auditor-General within 90 days after the end of each financial year.

- (2) The Auditor-General must audit the financial statements and provide an audit report on them to the board.

Section 87A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**87B Report on performance of schools' sector**

- (1) The Minister of Education must in each year, not later than 30 September, prepare and present to the House of Representatives a report on the performance of the schools' sector in the immediately preceding financial year ending on 31 December.
- (2) The report must include information on—
- (a) the performance of the schools' sector in the supply of outputs;
  - (b) the management performance in the schools' sector, including the quality of the management systems and practices in the schools' sector and the management of all the assets used in the schools' sector;
  - (c) the effectiveness of the schools' sector in terms of educational achievement.
- (3) The report—
- (a) must relate to all of the schools owned by the Crown; and
  - (b) may relate to other schools.

Section 87B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**87C Annual financial statements of boards**

- (1) A board must provide its audited annual financial statements to the Secretary no later than 31 May in the year after the previous financial year.
- (2) The Minister must make available (including, without limitation, by electronic means) to a member of Parliament on request from that member of Parliament any statement provided to the Secretary under subsection (1).
- (3) The statement must be made available not later than 1 month after the request was received by the Minister.

Section 87C: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 87C(2): replaced, on 13 June 2013, by section 18 of the Education Amendment Act 2013 (2013 No 34).

Section 87C(3): replaced, on 13 June 2013, by section 18 of the Education Amendment Act 2013 (2013 No 34).

**88 Payment of travel costs and attendance fees**

- (1) The Minister may from time to time, by notice in the *Gazette*, fix a scale of maximum fees and payments to be made to trustees.
- (2) Subject to subsection (3), every trustee may be paid, out of the board's funds and in accordance with the scale, travel costs and attendance fees fixed by the board.
- (3) In determining the attendance fees paid to trustees, a board shall have regard both to loss of income and to the cost of child care.

**88A Rent for teachers' residences**

- (1) A teacher who is provided with a teacher's residence in respect of his or her teaching position must pay rent in accordance with a scheme prescribed by the Minister and notified in the *Gazette*.
- (2) Until a rental scheme under subsection (1) takes effect, rents for teachers' residences must be determined in accordance with the scheme operating immediately before subsection (1) comes into force.

Section 88A: inserted, on 17 May 2006, by section 9 of the Education Amendment Act 2006 (2006 No 19).

**89 Payroll service**

- (1) The Secretary shall ensure that there are established and maintained, within or on behalf of the Ministry, staff and facilities for, and sufficient for, servicing the payrolls of boards (in this section referred to as the **payroll service**).
- (2) Unless authorised by the Secretary not to do so, every board shall use the payroll service for the calculation and payment of the salaries and wages of all employees of the board who are in the education service (within the meaning of the State Sector Act 1988).

- (3) Every board required by subsection (2) to use the payroll service shall keep all records, and give the Secretary all information, necessary to enable it to do so.

**90 Application of Public Finance Act 1989**

*[Repealed]*

Section 90: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**91 Transitional arrangements for payment of teacher salaries**

*[Repealed]*

Section 91: repealed, on 7 December 1992, by section 2(4)(a) of the Education Amendment Act 1992 (1992 No 107).

## **Part 8A**

### **Payment of teacher salaries**

Part 8A: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91A Interpretation**

- (1) In this Part, unless the context otherwise requires,—

**application period** means the period commencing on the commencement of the Education Amendment Act 1992, and ending with 31 December 2015 (as from time to time extended under section 91M(1))

**board** means a board of trustees constituted under Part 9; and, in relation to a school, means the school's board

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**payrolled school** means a school to which section 91C applies

**regular teacher** means a teacher who is not a relieving teacher

**relieving teacher**, at any time, means a teacher employed at that time by a board to undertake some or all of the duties of



a regular teacher who, at that time, is absent from work but remains employed (on salary) by the board

**school** means an institution that is—

- (a) a State school within the meaning of section 2; or
- (b) a special institution within the meaning of section 92

**Secretary** means the chief executive of the Ministry

**teacher** includes the principal of a school, and any deputy or associate principal (however described) of a school.

(2) *[Repealed]*

Section 91A: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91A(1) **application period**: amended, on 1 November 2012, by clause 3 of the Education (Extension of Application Period) Order 2012 (SR 2012/204).

Section 91A(2): repealed, on 15 July 1998, by section 2(2)(a) of the Education Amendment Act 1998 (1998 No 21).

**91B Application**

Section 91C applies to every school other than—

- (a) a school established under section 152 as a correspondence school.
- (b) *[Repealed]*

Section 91B: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91B(b): repealed, on 8 July 2000, by section 7 of the Education Amendment Act 2000 (2000 No 21).

*Payment of salaries*

Heading: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91C Salaries of teachers at certain schools to be paid by the Crown**

Notwithstanding anything in Part 8, the Secretary shall cause to be paid out of public money appropriated by Parliament for the purpose the salaries (in respect of employment during the application period) of all regular teachers employed at pay-rolled schools.

Section 91C: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91C: amended, on 15 July 1998, by section 2(2)(b) of the Education Amendment Act 1998 (1998 No 21).

**91D Agreements to move from central payment of teacher salaries**

*[Repealed]*

Section 91D: repealed, on 8 July 2000, by section 8 of the Education Amendment Act 2000 (2000 No 21).

**91E Payment of salaries of certain teachers out of grants**

*[Repealed]*

Section 91E: repealed, on 15 July 1998, by section 2(1) of the Education Amendment Act 1998 (1998 No 21).

**91F Restrictions on payment of salaries of regular teachers by boards of payrolled schools**

No board shall pay all or any part of the salary of a regular teacher in respect of employment during the application period at a payrolled school it administers unless—

(a) *[Repealed]*

(b) the Minister has consented to the payment, and the board complies with any conditions subject to which the consent was given.

Section 91F: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91F(a): repealed, on 15 July 1998, by section 2(2)(c) of the Education Amendment Act 1998 (1998 No 21).

**91G Relieving teachers**

- (1) Except as provided in subsection (3), boards shall pay the salaries of relieving teachers employed at schools they administer.
- (2) The Governor-General may from time to time, by Order in Council, declare any circumstances to be circumstances in which the employment of a relieving teacher justifies the central payment of the teacher's salary, either—
  - (a) immediately; or
  - (b) after employment for an initial period (specified in the order) of consecutive school days on which the school at which the teacher is employed is open for instruction.

- (3) The Secretary shall cause a relieving teacher's salary to be paid out of public money appropriated by Parliament for the purpose if (and only if), by virtue of an order under subsection (2), the employment to which the payment relates justifies the central payment of the salary.

Section 91G: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

*Limitations on staffing*

Heading: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91H Limitations on appointment and employment of regular teachers at payrolled schools**

- (1) For the purpose of limiting the financial liability of the Crown arising out of its obligation under section 91C to pay the salaries of all regular teachers employed at payrolled schools, the Governor-General shall in every year, by Order in Council, prescribe limitations on the number of regular teachers who may be employed at payrolled schools during the next year.
- (2) An order under subsection (1) may do any 1 or more of the following:
- (a) apply different limitations to different types of school, or to particular schools:
  - (b) impose limitations on the numbers of particular types of teachers who may be employed:
  - (c) set out 1 or more mechanisms by which the applicable limitations are calculated:
  - (d) specify circumstances in which the Secretary may exempt any school or type of school from a limitation, and any conditions applying to such an exemption.

Section 91H: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91H(1): amended, on 8 July 2000, by section 9(1) of the Education Amendment Act 2000 (2000 No 21).

Section 91H(2): replaced, on 8 July 2000, by section 9(2) of the Education Amendment Act 2000 (2000 No 21).

**91I Secretary may grant exemptions in individual cases**

The Secretary may, in the circumstances and in accordance with any conditions specified in an order under section 91H(1), by written notice to a board—

- (a) exempt the board, to any extent specified in the notice, from any limitation prescribed by the order in relation to a school the board administers; or
  - (b) amend or revoke any notice under this section;—
- and the board may appoint and employ teachers at the school accordingly.

Section 91I: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

Section 91I: amended, on 8 July 2000, by section 10 of the Education Amendment Act 2000 (2000 No 21).

**91J Boards to comply with limitations**

Subject to section 91I, the board of a school in relation to which a limitation is prescribed by an order under section 91H(1) shall ensure that the appointment and employment of teachers at the school is at all times during the application period in accordance with the limitation.

Section 91J: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91K Reduction in grants where limitations not complied with**

In determining for the purposes of section 79 the amount of any grant payable to a board in respect of a school, the Minister—

- (a) shall have regard to the extent to which the Secretary has (by virtue of this Part) caused to be paid to teachers employed at the school salaries greater in total than the salaries that would have been payable if the board had complied with sections 91G(1), 91J, and 91L(1); and
- (b) may, after consulting the board, determine for the grant an amount that is (to that extent or some lesser extent) less than it would otherwise have been.

Section 91K: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91L Staffing levels for 1992**

- (1) Subject to subsection (2), the board of a payrolled school shall ensure that at all times before 1 January 1993 there are not employed at the school more regular teachers of any grade than the number of regular teachers of that grade employed there at the close of 18 November 1992.
- (2) The Secretary may, by written notice to a payrolled school's board, authorise an increase in the number of regular teachers of any grade to be employed at the school in 1992; and teachers may be employed at the school accordingly.

Section 91L: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

*Application period may be extended*

Heading: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91M Application period may be extended**

- (1) Subject to subsection (2), the Governor-General may from time to time, by Order in Council, extend the application period to a day specified in the order.
- (2) No order shall be made under subsection (1) after the application period (as from time to time extended) has expired.

Section 91M: inserted, on 7 December 1992, by section 2(1) of the Education Amendment Act 1992 (1992 No 107).

**91N Power of Secretary to employ teachers**

- (1) The Secretary may, in his or her discretion, employ any person to work in a school as a teacher.
- (2) In applying any Order in Council under this Part limiting the number of teachers who may be employed at a school, teachers employed under this section are not to be counted.
- (3) The provisions of Parts 10 and 10A apply in relation to persons employed as teachers under this section as if the Secretary were a school board and with any other necessary modifications.

Section 91N: inserted, on 25 October 2001, by section 24 of the Education Standards Act 2001 (2001 No 88).

## Part 9

### School boards

#### 92 Interpretation

(1) In this Part, unless the context otherwise requires,—

**adult student** means a student who has turned 20

**board** means a board of trustees constituted under this Part; and,—

- (a) in relation to a school or institution, means the board of the school or institution; and
- (b) in relation to a trustee, means the board of which the trustee is a member

**board staff**, in relation to a board on any day, means the people who, on the day, are not students enrolled full-time at a school or institution administered by the board, and who—

- (a) on the day have taken up a permanent appointment to a position in the employment of the board, or a position (at a school or institution administered by the board) in the employment of a body established under this Act or the Education Act 1964, or of the Secretary; or
- (b) during the period of 2 months ending with that day, have been continuously employed in 1 or more such positions

**casual vacancy** means a vacancy in the membership of a board arising under section 104

**combined board** means a board that administers more than 1 school or institution

**commissioner** means a person for the time being appointed under this Act or the School Trustees Act 1989 to act in place of a board; and, in relation to a board, means a commissioner appointed to act in its place

**composite school** has the same meaning as in section 145(1)

**correspondence school** has the same meaning as in section 145(1)

**election year** means a year divisible by 3

**household** does not include hostel

**immediate caregiver**, subject to subsection (3),—

- (a) in relation to a student who usually lives in a household that includes the student's father or mother but not both,

but also includes the spouse or partner of the father or mother, means the spouse or partner; and

- (b) in relation to a student who usually lives in a household that includes the student's father or mother and no spouse or partner of the father or mother, but also includes a person who has turned 20 and has a day-to-day responsibility for the student clearly greater than that of any other person, means that person; and
- (c) in relation to a student who usually lives in a household that does not include the student's father or the student's mother, means any member of the household who has turned 20 and has a day-to-day responsibility for the student clearly greater than that of any other person

**institution**,—

- (a) in relation to a lone board that administers a special institution, means that institution; and
- (b) in relation to a combined board that administers special institutions, means those institutions or any of them; and
- (c) in relation to a trustee of a lone board that administers a special institution, means that institution; and
- (d) in relation to a trustee of a combined board that administers special institutions, means those institutions or any of them

**integrated**, in relation to a school, or a school of a particular class, means for the time being established as an integrated school, or integrated school of that class, under the Private Schools Conditional Integration Act 1975

**intermediate school** has the same meaning as in section 145(1)

**lone board** means a board that administers only 1 school or institution

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**parent**, in relation to any person, means a person who is the person's father, mother, guardian, or immediate caregiver

**partner**, in the phrase "spouse or partner" and in related contexts, means civil union partner or de facto partner

**primary school** has the same meaning as in section 145(1)

**principal**, in relation to a school or institution, means the principal or other chief executive of the school or institution; and except in section 94(1)(c) includes an acting principal

**Review Office** means the Education Review Office

**secondary school** has the same meaning as in section 145(1)

**Secretary** means the chief executive of the Ministry

**special institution** means an institution that is—

- (a) for the time being specified in Schedule 5; or
- (b) a correspondence school; or
- (c) an institution (other than an institution that is part of a school) situated in a health camp, an institution under the control of the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989, or a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001)

**State school** means an institution that is a primary school, a composite school, or a secondary school; and,—

- (a) in relation to a lone board that administers a school, means that school; and
- (b) in relation to a combined board that administers schools, means those schools or any of them; and
- (c) in relation to a trustee of a lone board that administers a school, means that school; and
- (d) in relation to a trustee of a combined board that administers schools, means those schools or any of them

**trustee** means a member of a board; and, in relation to a board, a school, or an institution, means a member of the board, or the board of the school or institution.



- (2) *[Repealed]*
- (3) Notwithstanding subsection (1), for the purposes of this Part, a student who—
  - (a) usually lives in a household that includes the student's father and mother; or
  - (b) usually spends approximately equal time in 2 or more households; or
  - (c) does not usually live in a household,—  
has no immediate caregiver.
- (4) The Governor-General may from time to time, by Order in Council, amend Schedule 5 by—
  - (a) adding the name of an institution to it; or
  - (b) omitting the name of an institution from it; or
  - (c) substituting for the name of an institution any different name.

Compare: 1989 No 3 s 2

Section 92(1) **board**: amended, on 20 May 2010, by section 24(1) of the Education Amendment Act 2010 (2010 No 25).

Section 92(1) **composite school**: inserted, on 1 January 1990, by section 15(3) of the Education Amendment Act 1989 (1989 No 156).

Section 92(1) **correspondence school**: replaced, on 1 January 1990, by section 15(3) of the Education Amendment Act 1989 (1989 No 156).

Section 92(1) **immediate caregiver** paragraph (a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92(1) **immediate caregiver** paragraph (b): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92(1) **intermediate school**: replaced, on 1 January 1990, by section 15(3) of the Education Amendment Act 1989 (1989 No 156).

Section 92(1) **Minister**: replaced, on 1 January 1992, by section 2(4) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 92(1) **Ministry**: inserted, on 1 January 1992, by section 2(4) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 92(1) **partner**: inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92(1) **primary school**: inserted, on 1 January 1990, by section 15(3) of the Education Amendment Act 1989 (1989 No 156).

Section 92(1) **principal**: amended, on 20 May 2010, by section 24(2) of the Education Amendment Act 2010 (2010 No 25).

Section 92(1) **secondary school**: inserted, on 1 January 1990, by section 15(3) of the Education Amendment Act 1989 (1989 No 156).

Section 92(1) **Secretary**: replaced, on 1 January 1992, by section 2(4) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 92(1) **special institution** paragraph (c): amended, on 20 May 2010, by section 24(3) of the Education Amendment Act 2010 (2010 No 25).

Section 92(1) **special institution** paragraph (c): amended, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 92(1) **special institution** paragraph (c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 92(1) **spouse**: repealed, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 92(1) **State school**: amended, on 20 May 2010, by section 24(4) of the Education Amendment Act 2010 (2010 No 25).

Section 92(2): repealed, on 1 January 1990, by section 15(5)(g) of the Education Amendment Act 1989 (1989 No 156).

### **93 Schools and special institutions to have boards of trustees**

- (1) Except as provided in this Act, there shall be 1 board of trustees for every State school.
- (2) Whether or not it is a State school, every special institution shall have 1 board of trustees.
- (3) Notwithstanding subsections (1) and (2), a school or institution does not have to have a board of trustees while a commissioner holds office to act in place of its board of trustees.
- (4) Every board of trustees constituted under the School Trustees Act 1989 shall be deemed to have been constituted under this Act too.

Compare: 1989 No 3 s 4

### **94 Constitution of boards of State schools**

- (1) Subject to sections 94A, 94B, 94C, and 95(1), the board of a State school shall comprise—
  - (a) no more than 7 and no fewer than 3 parent representatives; and
  - (b) the principal of the school or, in the case of a combined board, the principals of the schools administered by the board; and
  - (c) except where the principal is the only member of the school staff, 1 staff representative; and
  - (d) a number (determined by the board) of trustees either—
    - (i) co-opted by the board; or

- (ii) appointed by bodies corporate approved by the board for the purpose; and
  - (e) in the case of a board that administers any integrated school, not more than 4 trustees appointed by the school's proprietors; and
  - (f) in the case of a board that administers a school where students are enrolled full-time in classes above form 3, 1 student representative.
- (2) Notwithstanding subsection (1), but subject to section 95(1), except to the extent that a board has decided otherwise, it shall have—
  - (a) 6 parent representatives, in the case of a board that administers more than 2 schools; and
  - (b) 5 parent representatives, in every other case.

Section 94: replaced, on 1 January 1992, by section 13 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 94(1)(b): replaced, on 8 July 2000, by section 11 of the Education Amendment Act 2000 (2000 No 21).

**94A Proprietors of integrated schools may vary number of trustees they appoint**

- (1) Notwithstanding section 94(1), except as provided in this section, a board that administers any integrated school shall have 4 trustees appointed by the school's proprietors.
- (2) The proprietors of an integrated school may, by written notice to the board, consent to a reduction in the number of trustees the proprietors are entitled to appoint to the board.
- (3) Every notice under subsection (2) shall either—
  - (a) specify that it is to take effect on the occurrence of the earlier of the following events:
    - (i) the going out of office under section 102(8) of trustees of the board;
    - (ii) the appointment under section 78N(2) of a commissioner to act in the board's place; or
  - (b) specify a day on which it is to take effect, and contain the dismissal (with effect on that day) of enough trustees appointed by the proprietors to give effect to the reduction consented to.

- (4) The proprietors of an integrated school may, by written notice to the board, require an increase (to no more than 4) in the number of trustees the proprietors are entitled to appoint to the board.
- (5) A notice under subsection (4) shall take effect on the occurrence of the earlier of the following events:
  - (a) the going out of office under section 102(8) of trustees of the board:
  - (b) the appointment under section 78N(2) of a commissioner to act in the board's place.

Section 94A: inserted, on 1 January 1992, by section 13 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 94A(2): amended, on 19 December 1998, by section 26(a) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 94A(3)(a)(ii): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 94A(4): amended, on 19 December 1998, by section 26(b) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 94A(5)(b): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

#### **94B Boards may alter their own constitutions**

- (1) A board may from time to time, in accordance with this section, decide—
  - (a) to increase to no more than 7 the number of trustees who are parent representatives:
  - (b) to decrease to no fewer than 3 the number of trustees who are parent representatives:
  - (c) to approve a body corporate for the purpose of appointing a specified number of trustees to the board:
  - (d) to modify an approval under paragraph (c) by increasing the number of trustees a body corporate may appoint to the board:
  - (e) in its absolute discretion, and without giving reasons, to modify an approval under paragraph (c) by reducing the number of trustees a body corporate may appoint to the board:
  - (f) in its absolute discretion, and without giving reasons, to withdraw an approval under paragraph (c).

- (g) *[Repealed]*
- (h) *[Repealed]*
- (2) Every decision under subsection (1) shall be made by the board by resolution passed at a meeting of the board open to all parents of students enrolled at the school or schools administered by the board.
- (3) Before making a decision under subsection (1), a board shall take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the board have reasonable notice of—
  - (a) the time, day, and place of the meeting of the board at which the decision is to be made; and
  - (b) the nature of the decision; and
  - (c) the fact that they have a right to attend the meeting.
- (4) Where a board decides to decrease the number of trustees who are parent representatives,—
  - (a) no parent representative shall go out of office; but
  - (b) no casual vacancy for a parent representative shall be filled unless the occurrence of the vacancy has reduced the number of parent representatives on the board to fewer than the decreased number decided by the board.
- (5) Where a board decides to decrease the number of trustees who are parent representatives to a number that is not more than the total number of—
  - (a) co-opted trustees for the time being holding office; and
  - (b) trustees capable of being appointed pursuant to approvals under subsection (1)(c),—all co-opted trustees shall then go out of office as if they had resigned.
- (6) If, when any co-opted trustees have gone out of office under subsection (5) the number of trustees on the board concerned who are parent representatives is not more than the number of trustees capable of being appointed pursuant to approvals under subsection (1)(c),—
  - (a) the approvals under subsection (1)(c) of the organisations by whom they may be appointed shall, starting with the most recent and continuing successively to the least recent, be deemed to have been withdrawn; and

- (b) all trustees appointed by an organisation whose approval has been deemed to have been withdrawn shall then go out of office as if they had resigned,—  
until the number of trustees who are parent representatives is more than the number of trustees capable of being appointed pursuant to approvals under subsection (1)(c).

(7) *[Repealed]*

- (8) Every vacancy on a board caused by a decision to increase the number of members who are parent representatives shall be filled by election under section 105 as if it is a casual vacancy; but is not capable of being filled by selection.

- (9) A board that makes a decision under subsection (1) shall ensure that, as soon as is practicable after making it, the Secretary is given written notice of the nature of the decision and the day on which it was made.

Section 94B: inserted, on 1 January 1992, by section 13 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 94B(1)(g): repealed, on 8 July 2000, by section 12(1) of the Education Amendment Act 2000 (2000 No 21).

Section 94B(1)(h): repealed, on 8 July 2000, by section 12(2) of the Education Amendment Act 2000 (2000 No 21).

Section 94B(7): repealed, on 8 July 2000, by section 12(1) of the Education Amendment Act 2000 (2000 No 21).

Section 94B(8): amended, on 17 May 2006, by section 15(5) of the Education Amendment Act 2006 (2006 No 19).

Section 94B(8): amended, on 8 July 2000, by section 12(3) of the Education Amendment Act 2000 (2000 No 21).

#### **94C Limitations on co-option and appointment of trustees**

(1) *[Repealed]*

- (2) No board shall co-opt a trustee if the effect of the co-option would be that the board did not have more parent representatives than the total number of trustees co-opted by the board or appointed.

(3) No board shall—

- (a) approve a body corporate for the purpose of appointing a specified number of trustees to the board; or  
(b) modify an approval under section 94B(1)(a) by increasing the number of trustees a body corporate may appoint to the board,—

if the effect of the appointment of the maximum number of trustees under such approvals would be that the board could have a number of parent representatives that was not greater than the total number of trustees co-opted by the board or appointed.

- (4) No more than 1 non-permanently appointed member of the board staff may be co-opted on to the board at any one time.

Section 94C: inserted, on 1 January 1992, by section 13 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 94C(1): repealed, on 17 May 2006, by section 10(1) of the Education Amendment Act 2006 (2006 No 19).

Section 94C(2): amended, on 17 May 2006, by section 10(2) of the Education Amendment Act 2006 (2006 No 19).

Section 94C(3): amended, on 17 May 2006, by section 10(2) of the Education Amendment Act 2006 (2006 No 19).

Section 94C(4): inserted, on 17 May 2006, by section 10(3) of the Education Amendment Act 2006 (2006 No 19).

## **95 Boards of correspondence schools and certain other educational institutions**

- (1) The composition of the board of a special institution shall be determined by the Minister by notice in the *Gazette*.
- (2) A notice under subsection (1)—
- (a) may apply to a specified institution or institutions, or to institutions of a specified class or description:
  - (b) subject to subsection (3), may revoke or amend any other such notice.
- (3) No trustee shall go out of office by reason only of the amendment or revocation of a notice under subsection (1).
- (4) One board may administer a number of special institutions.

Compare: 1989 No 3 s 6

## **96 Parent representatives**

- (1) The parent representatives on the lone board of an intermediate school shall be elected by people who are—
- (a) parents of students (other than adult students)—
    - (i) enrolled full-time at the school when the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes; or

- (ii) likely to be enrolled full-time at the school in the year after the year the election is held; or
  - (b) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at the school when the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes.
- (2) The parent representatives on the lone board of any other State school shall be elected by people who are—
  - (a) parents of students (other than adult students) enrolled full-time at the school when the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes; or
  - (b) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at the school when the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes.
- (3) The parent representatives on the combined board of 2 or more State schools shall be elected by people who are—
  - (a) parents of students (other than adult students) enrolled full-time at a school that the board administers when the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes; or
  - (b) parents of students (other than adult students) likely to be enrolled full-time at an intermediate school that the board administers in the year after the year the election is held; or
  - (c) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at a school administered by the board when the roll for the election closes.

Compare: 1989 No 3 s 5(2), (3)

Section 96(1): amended, on 1 January 1992, by section 14(a) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 96(1): amended, on 1 January 1992, by section 14(b) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 96(2): amended, on 1 January 1992, by section 14(a) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 96(2): amended, on 1 January 1992, by section 14(b) of the Education Amendment Act (No 4) 1991 (1991 No 136).



Section 96(3): amended, on 1 January 1992, by section 14(a) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 96(3): amended, on 1 January 1992, by section 14(b) of the Education Amendment Act (No 4) 1991 (1991 No 136).

**97 Staff and student representatives**

- (1) A staff representative on a board shall be a person (other than the principal) who, on the day on which the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes, is a member of the board staff, elected by people (other than principals) who are members of the board staff on that day.
- (2) A student representative on a board shall be a person who, on the day on which the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes, is a student (other than an adult student) enrolled full-time in a class in form 3 or above at a school or institution administered by the board, elected by students (other than adult students) enrolled full-time in a class in form 3 or above at a school or institution administered by the board.

Compare: 1989 No 3 s 5(4), (6)

Section 97(2): amended, on 8 July 2000, by section 13 of the Education Amendment Act 2000 (2000 No 21).

**98 Boards of newly established schools**

- (1) Despite section 94, the trustees of the board of a newly established State school are,—
  - (a) at the option of the Minister,—
    - (i) 5 people appointed by the Minister; or
    - (ii) 5 people elected by the parents of students (other than adult students) likely to be enrolled at the school in the year it opens or the next year; and
  - (b) the principal or principal designate (if any); and
  - (c) not more than 4 people co-opted by the board.
- (2) Subsection (1) continues to apply to the membership of the board until the trustees go out of office under subsection (3).
- (3) A trustee appointed, elected, or co-opted under subsection (1) goes out of office—

- (a) at the close of the day before the date on which the trustees who have been elected under section 101 take office under section 102; or
  - (b) at the close of the day before the date on which the trustees who have been elected, appointed, or co-opted in accordance with a notice issued under section 105A take office.
- (4) Subject to section 103, any trustee appointed, elected, or co-opted under subsection (1) is eligible to be appointed, elected, or co-opted as a trustee.

Section 98: replaced, on 13 June 2013, by section 19 of the Education Amendment Act 2013 (2013 No 34).

## **99 Criteria for selecting co-opted and appointed trustees**

- (1) It is desirable, so far as is reasonably practicable,—
  - (a) that every board should reflect—
    - (i) the ethnic and socio-economic diversity of the student body of the school or institution; and
    - (ii) the fact that approximately half the population of New Zealand is male and half female; and
    - (iii) the character of the school or schools, or institution, it administers; and
    - (iv) the character of the community (whether geographical or otherwise) served by the school or schools, or institution, it administers; and
  - (b) that every board should have available from within its membership expertise and experience in management.
- (2) A board or person, when co-opting or appointing trustees, shall have regard to subsection (1).

Compare: 1989 No 3 s 9

Section 99(1): replaced, on 1 January 1992, by section 15 of the Education Amendment Act (No 4) 1991 (1991 No 136).

## **100 Availability of annual report**

At the same time as a board gives the Secretary the annual report as required by section 87, the board must—

- (a) give notice to the school community, by whatever means the board considers will be most effective, of

where and when a copy of the annual report is available for inspection; and

- (b) ensure that a copy of the annual report is available for inspection at the school by members of the public during school opening hours.

Section 100: replaced, on 17 May 2006, by section 11(1) of the Education Amendment Act 2006 (2006 No 19).

### **101 Elections of trustees**

- (1) Before 1 September in every year, the board of a State school or of a special institution, that is required to have a student representative, must fix a day in September in that year for the holding of an election for a student representative.
- (2) The board of a school or institution to which subsection (1) applies must hold an election of any student representative on the day fixed for that purpose under subsection (1).
- (3) Subject to subsection (5), in every election year a board shall hold 1 or more elections of other elected trustees.
- (4) Elections under subsection (3) must be held,—
  - (a) in the case of a school that is not a correspondence school,—
    - (i) on a date fixed by the board that is within the range of dates for those elections in that election year that is specified by the Minister by notice in the *Gazette*; or
    - (ii) if the Minister has not, by notice in the *Gazette* published on or by 31 October in any year, specified a range of dates for those elections in that election year, on a date fixed by the board that is within the range of dates for those elections in the previous election year; and
  - (b) in the case of a correspondence school, on the second Tuesday in July, unless the board, before 1 April in that year, fixes an earlier date for the election (being a date after 1 April).
- (4A) The notice referred to in subsection (4)(a) may specify different ranges of dates, for elections under subsection (3), for boards that have, and for schools that have not, adopted staggered election cycles under section 101A.

- (5) If—
- (a) the first elections of trustees for the board of a school established or integrated after the commencement of this section; or
  - (b) elections under section 78P—  
are held after 31 October in the year before an election year and before 31 December in the election year, the board shall not hold an election (or, as the case requires, another election) under subsection (3) in the election year.
- (6) Notwithstanding anything in sections 94 to 98, where there are to be held (pursuant to subsection (3) or section 78P, or in respect of a newly established or integrated school or institution) both—
- (a) an election of 1 or more parent representatives on a board; and
  - (b) an election of 1 or more staff representatives on the board,—
- no person may both stand or vote in one of the elections and stand or vote in the other.
- (7) Subject to subsections (8) and (8A), the first elections for and first meetings of boards of schools and institutions established or integrated after the commencement of this Act shall be held on days fixed by the Minister by notice in the *Gazette*.
- (8) The days fixed by the Minister under subsection (7) for the first elections for and first meeting of the board of a school integrated after the commencement of this Act shall be days before the day on which the integration of the school takes effect.
- (8A) If the Minister approves an alternative constitution for a newly established school under section 105A, subsection (7) does not apply and the first elections (if any) for, and the first meeting of, the board of such a school must be held in accordance with a notice under section 105A.
- (9) The first elections (if any) for and first meeting of the board of a special institution (being a special institution that was established before the commencement of this section but that had not had a first election or meeting before that commencement) shall be held on a day or days specified by the Minister by notice in the *Gazette*.

- (10) This section is subject to section 101A (which provides for the election of some parent representatives at the mid-point of an election cycle under this section), and to section 101AB (which provides that elections are not to be held when a school is under notice of closure).

Compare: 1989 No 3 s 11

Section 101(1): replaced, on 8 July 2000, by section 14(1) of the Education Amendment Act 2000 (2000 No 21).

Section 101(2): replaced, on 8 July 2000, by section 14(1) of the Education Amendment Act 2000 (2000 No 21).

Section 101(4): replaced, on 17 May 2006, by section 12 of the Education Amendment Act 2006 (2006 No 19).

Section 101(4)(a): replaced, on 20 May 2010, by section 26(1) of the Education Amendment Act 2010 (2010 No 25).

Section 101(4A): inserted, on 20 May 2010, by section 26(2) of the Education Amendment Act 2010 (2010 No 25).

Section 101(5)(b): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 101(6): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 101(7): amended, on 13 June 2013, by section 20(1) of the Education Amendment Act 2013 (2013 No 34).

Section 101(8A): inserted, on 13 June 2013, by section 20(2) of the Education Amendment Act 2013 (2013 No 34).

Section 101(10): inserted, on 8 July 2000, by section 14(2) of the Education Amendment Act 2000 (2000 No 21).

Section 101(10): amended, on 20 May 2010, by section 26(3) of the Education Amendment Act 2010 (2010 No 25).

### **101A Staggered elections for parent representatives**

- (1) This section and section 101B apply to the election of trustees who are parent representatives.
- (2) A board may decide, in accordance with this section, to adopt a staggered election cycle in which half the number of its parent representatives are elected at an election held at a mid-term election, and the remainder are elected at an election held in an election year.
- (3) For the purposes of subsection (2), if there is an odd number of parent representatives on the board, **half the number of its parent representatives** means the highest whole number less than half the total number of parent representatives.

- (4) A board that has decided to adopt a staggered election cycle must—
  - (a) hold a mid-term election in the month that is 18 months after the month in which the election in the preceding election year was held; and
  - (b) conduct every mid-term election in accordance with the provisions of this Part and any regulations under this Act relating to the election of trustees (modified as necessary to give effect to this section and section 101B).
- (5) If the board's decision under subsection (2) is made at a time when the next election due to be held is in an election year, the board must ensure that at that election the nomination forms and voting papers indicate which nominees are standing for 18 months and which are standing for 3 years.
- (6) If the board's decision under subsection (2) is made within 18 months after an election in an election year, the board must decide which of its parent representatives will stand down at the mid-term election; and that decision must be by consensus of the parent representatives or, if consensus cannot be reached, by ballot of all the parent representatives.
- (7) Every parent representative who, in accordance with subsection (6), is to stand down at a mid-term election, goes out of office at the close of the day before the day on which the successor takes office following the election.
- (8) A board that has a staggered election cycle may decide to revert to holding elections only in election years. In that case, at the next election held in an election year, all the parent representatives go out of office in accordance with section 102(8).

Section 101A: inserted, on 8 July 2000, by section 15 of the Education Amendment Act 2000 (2000 No 21).

#### **101AB Election not to be held when school under notice of closure**

Nothing in this Act requires or permits the board of any school or special institution to hold an election for a student representative or other elected trustee if the date for the election calculated in accordance with section 101 or 101A (as the case may be) is after the date of any notice in the *Gazette* that, in ac-

cordance with section 154(2), specifies a day for the school's closure.

Section 101AB: inserted, on 20 May 2010, by section 27 of the Education Amendment Act 2010 (2010 No 25).

**101B Consultation requirements for staggered elections of parent representatives**

- (1) Every decision under section 101A(2) must be made by the board by resolution passed at a meeting of the board open to all parents of students enrolled at the school or schools administered by the board.
- (2) Before making a decision under section 101A(2), a board must take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the board have reasonable notice of—
  - (a) the time, day, and place of the meeting of the board at which the decision is to be made; and
  - (b) the nature of the decision; and
  - (c) the fact that they have a right to attend the meeting.

Section 101B: inserted, on 8 July 2000, by section 15 of the Education Amendment Act 2000 (2000 No 21).

**102 Term of office**

- (1) Elected trustees take office 7 days after their election, unless otherwise provided in this section.
- (2) Trustees elected for a board replacing a commissioner take office when the commissioner's appointment ends.
- (3) *[Repealed]*
- (4) No trustee shall be co-opted until the board has a vacancy for a co-opted trustee; and a co-opted trustee shall take office when co-opted.
- (5) A trustee appointed when the board has a vacancy for a trustee appointed by the body or person concerned takes office on appointment.
- (6) Within 6 months before an appointed trustee's term of office expires, the person or body by whom or which the trustee was appointed (or the successor to that person or body) may appoint a trustee to succeed that trustee (or reappoint that trustee); but—

- (a) the newly appointed trustee shall not take office until the day on which elected trustees take office under subsection (1); and
  - (b) if on that day the person or body concerned is no longer entitled to appoint a successor to the trustee holding office when the newly appointed trustee was appointed, the newly appointed trustee's appointment shall be deemed to have been void.
- (7) A trustee elected under section 101(2) shall go out of office 7 days after the day on which a further election under the said section 101(2) is held at the school or schools concerned.
- (8) Subject to subsection (9), all elected trustees (other than a trustee elected under section 101(2)) holding office at the close of the day before the day on which trustees take office under subsection (1) shall then go out of office.
- (8A) Subject to subsection (9), the appointment or co-option of a trustee may be for a term not exceeding 3 years.
- (9) If—
  - (a) the first elections of trustees for a board; or
  - (b) elections under section 78P,—are held in an election year before 1 May, no trustee shall go out of office under subsection (8) or subsection (8A) in the election year.
- (10) A board may, when co-opting a trustee, specify a term of office for the trustee; and in that case—
  - (a) if the term expires before the trustee goes out of office under subsection (8A), the trustee shall then go out of office; but
  - (b) otherwise the trustee shall go out of office under that subsection.
- (11) This section is subject to sections 101A and 104.

Compare: 1989 No 3 s 12

Section 102(1): replaced, on 17 May 2006, by section 13(1) of the Education Amendment Act 2006 (2006 No 19).

Section 102(2): amended, on 20 May 2010, by section 28 of the Education Amendment Act 2010 (2010 No 25).

Section 102(3): repealed, on 17 May 2006, by section 13(2) of the Education Amendment Act 2006 (2006 No 19).



Section 102(6): amended, on 8 July 2000, by section 16(1) of the Education Amendment Act 2000 (2000 No 21).

Section 102(6)(a): amended, on 15 December 1994, by section 3(2)(b) of the Education Amendment Act 1994 (1994 No 148).

Section 102(7): amended, on 8 July 2000, by section 16(3)(a) of the Education Amendment Act 2000 (2000 No 21).

Section 102(8): amended, on 8 July 2000, by section 16(3)(b) of the Education Amendment Act 2000 (2000 No 21).

Section 108(8): amended, on 15 December 1994, by section 3(2)(c) of the Education Amendment Act 1994 (1994 No 148).

Section 102(8A): inserted, on 8 July 2000, by section 16(2) of the Education Amendment Act 2000 (2000 No 21).

Section 102(9): amended, on 8 July 2000, by section 16(3)(c) of the Education Amendment Act 2000 (2000 No 21).

Section 102(9): amended, on 15 December 1994, by section 3(2)(d) of the Education Amendment Act 1994 (1994 No 148).

Section 102(9)(b): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 102(10)(a): amended, on 8 July 2000, by section 16(3)(d) of the Education Amendment Act 2000 (2000 No 21).

Section 102(11): amended, on 8 July 2000, by section 16(3)(e) of the Education Amendment Act 2000 (2000 No 21).

### **103 Certain persons ineligible to be trustees**

(1) A person who—

(a) *[Repealed]*

(b) *[Repealed]*

(c) is an undischarged bankrupt; or

(d) is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or

(da) *[Repealed]*

(db) is ineligible to be a trustee under section 103A(2); or

(dc) is subject to a property order under the Protection of Personal and Property Rights Act 1988; or

(dd) is a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—

- (i) competence to manage his or her own affairs in relation to his or her property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
  - (de) is a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person; or
  - (e) is not a New Zealand citizen, and is—
    - (i) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
    - (ii) a person obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time (being a time that, when specified, was less than 12 months); or
    - (iii) treated for the purposes of that Act as being unlawfully in New Zealand—
- may not become an elected, appointed, or co-opted trustee.
- (2) *[Repealed]*
- (2A) *[Repealed]*
- (3) Any permanently appointed member of the board staff may, if otherwise eligible for election, be elected as a staff representative; but no permanently appointed member of the board staff may be otherwise elected to the board or be appointed or co-opted on to the board.
- (4) A non-permanently appointed member of the board staff may, if otherwise eligible, be elected, appointed, or co-opted on to the board.
- (5) No person who has been appointed returning officer for an election of trustees is eligible to be nominated as a candidate in the election.

Compare: 1989 No 3 s 13

Section 103(1)(a): repealed, on 8 July 2000, by section 17 of the Education Amendment Act 2000 (2000 No 21).

Section 103(1)(b): repealed, on 10 September 2008, by section 4(2) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 103(1)(c): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 103(1)(d): replaced, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 103(1)(da): repealed, on 17 May 2006, by section 14(1) of the Education Amendment Act 2006 (2006 No 19).

Section 103(1)(db): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 103(1)(dc): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 103(1)(dd): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 103(1)(de): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 103(1)(e): replaced, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 103(2): repealed, on 8 July 2000, by section 17 of the Education Amendment Act 2000 (2000 No 21).

Section 103(2A): repealed, on 17 May 2006, by section 14(2) of the Education Amendment Act 2006 (2006 No 19).

Section 103(3): replaced, on 17 May 2006, by section 14(2) of the Education Amendment Act 2006 (2006 No 19).

Section 103(4): replaced, on 17 May 2006, by section 14(2) of the Education Amendment Act 2006 (2006 No 19).

### **103A Financial interests that disqualify persons from being trustees**

(1) In this section,—

**contract**, in relation to a board,—

- (a) means a contract made by any person directly with the board; and
- (b) includes any relationship with the board that is intended to constitute a contract but is not an enforceable contract; but
- (c) does not include any contract for the employment of any person as an officer or employee of the board

**company** means a company incorporated under the Companies Act 1993 or any former Companies Act or a soci-

ety incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act

**subcontract**, in relation to any contract made by a board,—

- (a) means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and
  - (b) includes any subsidiary transaction relating to any such contract or subcontract.
- (2) A person is not capable of being a trustee of a board or a member of a committee of a board, if the total of all payments made or to be made by or on behalf of the board in respect of all contracts made by it in which that person is concerned or interested exceeds in any financial year—
- (a) the amount determined for the purpose by the Secretary, in consultation with the Auditor-General, by notice in the *Gazette*; or
  - (b) in the absence of an amount determined under paragraph (a), \$25,000.
- (3) For the purposes of subsection (2), a trustee or a member of a committee of a board is deemed to be concerned or interested in a contract made by a board with a company, if—
- (a) the trustee owns, whether directly or through a nominee, 10% or more of the issued capital of the company or of any other company controlling that company; or
  - (b) the trustee is the managing director or the general manager (by whatever names they are called) of the company.
- (4) For the purposes of this section, a company is deemed to control another company if it owns 50% or more of the issued capital of that other company or is able to control the exercise of 50% or more of the total voting powers exercisable by all the members of that other company.
- (5) Despite anything in this section,—
- (a) a person is not disqualified under this section if the Secretary approves the contract at the request of the board, whether or not the contract is already entered into; and

- (b) the Secretary may, by notice in the *Gazette*, issue guidelines setting out the basis on which applications for approval under paragraph (a) will be considered.

Section 103A: inserted, on 25 October 2001, by section 16 of the Education Standards Act 2001 (2001 No 88).

### **103B Requirements before appointment**

Before a person is elected, co-opted, or appointed as a trustee, the person must confirm to the governing board that he or she is, to the best of his or her knowledge, eligible to be a trustee, having regard to the grounds of ineligibility in section 103 or section 103A.

Section 103B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **104 When casual vacancies arise**

- (1) When an elected, appointed, or co-opted trustee—
  - (a) dies; or
  - (b) resigns by written notice to the board; or
  - (c) without the prior leave of the board, is absent from 3 consecutive meetings of the board; or
  - (d) becomes a person who (in terms of section 103(1)) may not become an elected, appointed, or co-opted trustee,—  
the trustee's office becomes vacant.
- (1A) If a property order is made in respect of a trustee under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders),—
  - (a) subsection (1)(d) does not apply to the trustee by virtue only of the making of that order; but
  - (b) while the order remains in force, the trustee is deemed to have been granted leave of absence by the board and is not capable of acting as a trustee during that period.
- (2) When a trustee elected by the board staff ceases to be a member of the board staff, the trustee's office becomes vacant.
- (3) On any day when—
  - (a) already 1 co-opted trustee is a member of the board staff; and

- (b) a second co-opted trustee becomes a member of the board staff,—  
the second trustee's office becomes vacant.
- (4) When the board of an integrated school receives a written notice from the school's proprietors dismissing any trustee appointed by them, the trustee's office becomes vacant.
- (5) When a trustee elected by students ceases to be enrolled full-time at the school or institution, the trustee's office becomes vacant.
- (6) If—
  - (a) at any election of trustees fewer persons are elected than there are vacancies to be filled; and
  - (b) the board is not then dissolved,—  
every unfilled vacancy is a casual vacancy, and shall be deemed to have arisen on the day on which the elected trustees take office.

Compare: 1989 No 3 s 14

Section 104(1A): inserted, on 10 September 2008, by section 4(3) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 104(6): amended, on 19 December 1998, by section 28 of the Education Amendment Act (No 2) 1998 (1998 No 118).

### **105 Filling casual vacancies of elected trustees**

- (1) Subject to subsections (2) to (9), every casual vacancy for an elected trustee shall be filled by the election of a trustee, in the same manner as that in which the vacating trustee was elected, for the residue of the vacating trustee's term.
- (2) If no nominations are received for the election of a trustee by students, or no trustee is elected at such an election, the vacancy shall not be filled until the next election required to be held by section 101(2) or section 78P.
- (3) Where a casual vacancy for an elected trustee occurs during any period of 6 months commencing on 1 October in a year before an election year, the board may, not later than 28 days after it occurs, resolve not to fill it; and in that case it shall not be filled.

- (4) When a casual vacancy for an elected trustee occurs at any other time, the board must resolve, within 8 weeks of the vacancy occurring, whether to—
  - (a) hold an election to fill the vacancy; or
  - (b) fill the vacancy by selection.
- (4A) *[Repealed]*
- (5) If the board resolves to fill the vacancy by selection it must, within 14 days of the resolution, publish a notice in a newspaper circulating in the area stating that there is a vacancy and that the board proposes to fill it by selection.
- (6) A board may not resolve to fill a casual vacancy by selection if the effect would be that the number of elected parent representatives on the board is less than, or equal to, the number of parent representatives on the board who have not been elected.
- (7) Despite resolving to fill a vacancy by selection, the board must hold an election to fill the vacancy if, within 28 days of the publication of the notice referred to in subsection (5), a total of at least 10% of the people entitled to vote in an election for trustees advises the board, in writing, that they wish the vacancy to be filled by an election.
- (8) An election to fill a casual vacancy for an elected trustee must be held,—
  - (a) if the board resolved under subsection (4)(a) to hold an election, on the 15th Friday after the date on which the vacancy occurred, or on any earlier date fixed by the board at least 6 weeks before the election date; or
  - (b) if the board holds an election as a result of a request under subsection (7), on the tenth Friday after receiving the request, or on any earlier date fixed by the board at least 6 weeks before the election date.
- (9) If the board resolved under subsection (4) to fill a casual vacancy by selection, then, once the last date for lodging a request under subsection (7) has passed, the board must select a person within 6 weeks of that date, and the person selected takes office on the day of selection by the board.
- (10) This Act applies to a trustee selected under this section to fill a casual vacancy of an elected trustee as if the person had been

elected, and every reference to an elected trustee (except in subsection (6)) includes a reference to a trustee so selected.

Section 105 heading: amended, on 17 May 2006, by section 15(1) of the Education Amendment Act 2006 (2006 No 19).

Section 105(1): amended, on 17 May 2006, by section 15(2) of the Education Amendment Act 2006 (2006 No 19).

Section 105(2): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 105(3): amended, on 15 December 1994, by section 3(3) of the Education Amendment Act 1994 (1994 No 148).

Section 105(4): replaced, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(4A): repealed, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(5): replaced, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(6): replaced, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(7): replaced, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(8): replaced, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(9): inserted, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

Section 105(10): inserted, on 17 May 2006, by section 15(3) of the Education Amendment Act 2006 (2006 No 19).

#### **105A Minister may approve alternative constitution in certain cases**

- (1) The Minister may from time to time, by notice in the *Gazette*, approve an alternative constitution under this section for the board of a State school, or a combined board of State schools.
- (1A) The Minister may not approve an alternative constitution for a board unless the Minister has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the board.
- (1B) Subject to subsections (1A) and (1C), the Minister may not approve an alternative constitution unless—
  - (a) 1 of the following applies:
    - (i) the Chief Review Officer, in a written report, recommends that the Minister consider devising an alternative constitution; or



- (ii) 20% or more of the parents of children enrolled at the school or schools have requested an alternative constitution; or
    - (iii) the board has requested an alternative constitution; and
  - (b) the Minister has consulted such persons or organisations as the Minister considers appropriate.
- (1C) Subsection (1B) does not apply if—
- (a) the alternative constitution is the successor constitution for a board that was appointed or elected under section 98(1); or
  - (b) the alternative constitution is approved for a combined board before the date specified in a notice under section 110(1); or
  - (c) the alternative constitution is for the board of a continuing school and the Minister has given notice under section 156A(4)(b).
- (2) In the case of an integrated school, the Minister must consult with the proprietor of the school when conducting the consultation required under subsection (1)(b).
- (3) A constitution approved under this section applies instead of a constitution under section 94.
- (4) A notice under this section must establish a board comprising 1 or more persons who are to be elected or appointed as trustees in the manner specified in the notice; and the notice may (without limitation)—
- (a) set out a procedure for any election, appointment, or co-option of trustees:
  - (b) set out the manner in which vacancies are to be filled:
  - (c) provide for the appointment of returning officers and set out their functions:
  - (d) set out other formal and procedural provisions for the purposes of any election, appointment, or co-option of trustees.
- (5) While a notice that approves an alternative constitution under this section is in force, sections 94, 94A, 94B, 95, 96, 97, 98, 99, 101, 102, 104, and 105 do not apply in respect of the board concerned and the schools governed by it.

- (6) In their application to a board that has an alternative constitution under this section, the other sections and any schedules of this Act relating to boards must be read subject to this section and subject also to all modifications necessary to give effect to this section.

Section 105A: inserted, on 8 July 2000, by section 18 of the Education Amendment Act 2000 (2000 No 21).

Section 105A(1): replaced, on 13 June 2013, by section 21 of the Education Amendment Act 2013 (2013 No 34).

Section 105A(1A): inserted, on 13 June 2013, by section 21 of the Education Amendment Act 2013 (2013 No 34).

Section 105A(1B): inserted, on 13 June 2013, by section 21 of the Education Amendment Act 2013 (2013 No 34).

Section 105A(1C): inserted, on 13 June 2013, by section 21 of the Education Amendment Act 2013 (2013 No 34).

**106 Commissioner may be appointed if board inactive or trustees too few**

*[Repealed]*

Section 106: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**107 Minister may dissolve board for cause, and direct appointment of commissioner**

*[Repealed]*

Section 107: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**108 Consultation with proprietors of integrated school**

*[Repealed]*

Section 108: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**109 Commissioners**

*[Repealed]*

Section 109: repealed, on 25 October 2001, by section 22 of the Education Standards Act 2001 (2001 No 88).

**109A Provisions relating to board with staggered election cycle where commissioner appointed**

- (1) This section applies if a commissioner has been appointed in place of a board that has, or had decided to have, a staggered election cycle, and the commissioner has appointed a date under section 78P for the holding of elections of trustees for a new board.
- (2) Despite anything in section 102, the nomination forms and voting forms for the election must show which nominees are standing only until the next election, and which are standing until the election after the next election.
- (3) Despite anything in section 102, trustees who are elected only until the next election go out of office at the close of the day before the day on which the successor takes office following the election.
- (4) If the date that the commissioner has appointed under section 78P is a date that is within 6 months before the date on which an election is due to be held, the board does not have to hold an election on that date and this section applies as if that election were not due to be held.

Section 109A: inserted, on 8 July 2000, by section 19 of the Education Amendment Act 2000 (2000 No 21).

Section 109A(1): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

Section 109A(4): amended, on 25 October 2001, by section 82(1) of the Education Standards Act 2001 (2001 No 88).

**110 Boards may combine**

- (1) Subject to section 111, if satisfied that—
  - (a) each of the boards concerned has made reasonable efforts to consult the parents of students (other than adult students) enrolled full-time at its school or schools (or institution or institutions) about combining with the other boards; and
  - (b) the consultation that has in fact taken place has been adequate in all the circumstances; and

- (ba) *[Repealed]*
  - (c) *[Repealed]*
  - (d) *[Repealed]*
  - (e) the proposed combined board is appropriate in all the circumstances,—  
the Minister may, by notice in the *Gazette*, establish a single board (called a **combined board**) to administer all the schools or institutions concerned, with effect on a date specified in the notice.
- (2) Subject to subsection (3), this Act shall apply to a combined board as if—
- (a) the board had been in existence immediately before the day on which the notice establishing it was published; and
  - (b) every trustee had resigned on that day.
- (3) Until the day specified in the notice establishing a combined board,—
- (a) it shall have no powers, functions, duties, or rights; and
  - (b) the existing boards shall continue in existence as if the combined board had not been established.
- (4) On the day specified in the notice establishing a combined board, all rights, assets, liabilities, and debts of the existing boards shall become rights, assets, liabilities, and debts of the combined board.

Section 110(1): amended, on 17 May 2006, by section 16(1) of the Education Amendment Act 2006 (2006 No 19).

Section 110(1)(ba): repealed, on 13 June 2013, by section 22 of the Education Amendment Act 2013 (2013 No 34).

Section 110(1)(c): repealed, on 19 December 1998, by section 30 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 110(1)(d): repealed, on 19 December 1998, by section 30 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 110(3)(b): amended, on 17 May 2006, by section 16(2) of the Education Amendment Act 2006 (2006 No 19).

Section 110(4): amended, on 17 May 2006, by section 16(2) of the Education Amendment Act 2006 (2006 No 19).

**110A Minister may combine boards at establishment**

- (1) A Minister may, by notice in the *Gazette*, establish a combined board for 2 or more schools that are newly established under section 146.
- (2) The combined board is the board of a newly established school for the purposes of section 98.

Section 110A: inserted, on 20 May 2010, by section 29 of the Education Amendment Act 2010 (2010 No 25).

**111 Restrictions on combining**

- (1) No board that administers a special institution may combine with a board that does not.
- (2) *[Repealed]*
- (3) No board that administers an integrated school may combine with a board that does not.
- (4) No board that administers an integrated school may combine with any other board unless all the schools they administer have the same proprietors.

Section 111(2): repealed, on 8 July 2000, by section 21 of the Education Amendment Act 2000 (2000 No 21).

**112 Minister may split combined board**

- (1) If satisfied, after consulting the Review Office and the board concerned, that in all the circumstances it is appropriate for a combined board to be split, the Minister may, by notice in the *Gazette*, establish 2 or more boards for the schools or institutions the combined board administers, with effect on a date specified in the notice.
- (2) If any of the boards established by a notice under subsection (1) is a combined board, the notice shall specify the schools or institutions it is to administer.
- (3) Subject to subsection (4) and section 112A, this Act shall apply to a board established by a notice under subsection (1) as if—
  - (a) the board had been in existence immediately before the day on which the notice was published; and
  - (b) every trustee had resigned on the day.
- (4) Until the day specified in a notice under subsection (1) establishing 2 or more boards,—

- (a) the boards established shall have no powers, functions, duties, or rights; and
- (b) the combined board they replace shall continue in existence as if they had not been established.

Section 112(3): amended, on 20 May 2010, by section 30 of the Education Amendment Act 2010 (2010 No 25).

### **112A Splitting boards that were combined at establishment**

- (1) A Minister who, under section 112(1), is splitting a board that was combined under section 110A at establishment for 2 or more schools may designate 1 of the boards established under section 112(1) as being identical to the board that was established under section 110A, except that it need not be a combined board.
- (2) A board that is designated under subsection (1) is to be treated, for the purposes of section 98, as if it were the board of a newly established school.
- (3) This section overrides section 112(3)(b) and (4)(a).

Section 112A: inserted, on 20 May 2010, by section 31 of the Education Amendment Act 2010 (2010 No 25).

### **113 Property held in trust**

- (1) Where any property is, on the day a notice under section 112(1) is published, held in trust by the combined board of the schools or institutions to which the notice relates, the following provisions apply:
  - (a) the board shall, within 28 days of the day specified in the notice, notify Public Trust of the existence and nature of the trust; and Public Trust shall forthwith notify the Secretary:
  - (b) Public Trust shall take all reasonable steps to try to consult the board, within 70 days of the day specified in the notice, as to—
    - (i) how the property should vest; and
    - (ii) the extent (if any) to which the trust should otherwise be modified:
  - (c) on the 70th day after the day specified in the notice the property shall vest in Public Trust:

- (d) as soon as is practicable after becoming aware that the property has vested, Public Trust, after consulting the boards established by the notice, as to—
    - (i) how the property should vest; and
    - (ii) the extent (if any) to which the trust concerned should otherwise be modified,—shall devise and send to the Solicitor-General a scheme to modify the trust.
- (2) Where any property is, on the day a notice under section 112(1) is published, held in trust for the combined board of the schools or institutions to which the notice relates (otherwise than by the board), the following provisions apply:
  - (a) the person who holds the property shall, within 28 days of the day specified in the notice, notify Public Trust of the existence and nature of the trust; and Public Trust shall forthwith notify the Secretary:
  - (b) Public Trust shall take all reasonable steps to try to consult the person, within 70 days of the day specified in the notice, as to—
    - (i) which of the boards established by the notice the property (or any part of it) should be held for; and if more than 1, how; and
    - (ii) the extent (if any) to which the trust should otherwise be modified:
  - (c) on the 70th day after the day specified in the notice the property shall vest in Public Trust:
  - (d) as soon as is practicable after becoming aware that the property has vested, Public Trust, after consulting the boards established by the notice, as to—
    - (i) whether all or any of the property should be held for them and if so which of it, which of them, and in what proportions; and
    - (ii) the extent (if any) to which the trust should otherwise be modified,—Public Trust shall devise and send to the Solicitor-General a scheme to modify the trust.
- (3) Where, on the day a notice under section 112(1) is published, any trust (being a trust established by an enactment, instrument, or will, that requires or requests the trustees to consult,

notify, or act only with the approval or concurrence of, a combined board of the schools or institutions to which a notice under section 112(1) relates) exists, the following provisions apply:

- (a) the trustees may apply to Public Trust for directions as to which boards established by the notice should act (jointly or severally) in place of the combined board; and in that case Public Trust shall devise and send to the Solicitor-General draft directions to the trustees; and
  - (b) the trustees shall not take any action for which consultation, notification, approval, or concurrence, is required or requested except in accordance with—
    - (i) directions approved under this section; or
    - (ii) directions given by the Solicitor-General in circumstances that appear to constitute an emergency; or
    - (iii) the Charitable Trusts Act 1957.
- (4) Within 90 days (or any longer period the Solicitor-General and Public Trust in any case, before the expiration of that period, agree) of being notified of a scheme or draft directions under this section, the Solicitor-General may, by written notice to Public Trust,—
- (a) approve the scheme or directions (as originally notified by Public Trust, or with amendments agreed by Public Trust); or
  - (b) suggest amendments to the scheme or directions; or
  - (c) direct that the scheme should not proceed, or that the directions should not be given; and in that case the matter shall be dealt with under the Charitable Trusts Act 1957.
- (5) If within 90 days (or any longer period agreed under subsection (4)) of being notified of a scheme or draft directions under this section, the Solicitor-General does not under that subsection approve the scheme or directions, or direct that the scheme or directions should not proceed, the Solicitor-General shall be deemed to have approved the scheme or directions.
- (6) If the Solicitor-General approves a scheme under this section, Public Trust shall, in accordance with it,—



- (a) by notice in the *Gazette*, modify the trust concerned; and
  - (b) take all steps necessary to effect any necessary transfers of the property concerned.
- (7) If the Solicitor-General approves any draft directions under this section,—
  - (a) Public Trust shall give them to the trustees concerned; and
  - (b) they shall have effect according to their tenor.
- (8) Every scheme, draft direction, and suggested and agreed amendment, under this section shall be such that, in the opinion of Public Trust or the Solicitor-General (as the case may be),—
  - (a) it best gives effect to the intentions of the testator, settlor, or other person or body by whom or which the trust concerned was established; and
  - (b) subject to paragraph (a), it effects the minimum change necessary to enable the trust concerned to operate satisfactorily in the light of—
    - (i) the splitting of the former combined board; and
    - (ii) the establishment of the new boards concerned; and
    - (iii) any transfers of property effected or to be effected.
- (9) The reasonable costs of Public Trust in acting under this section shall be paid out of money appropriated by Parliament for the purpose.

Compare: 1989 No 3 s 19

Section 113(1)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(1)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(1)(c): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(1)(d): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(2)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(2)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(2)(c): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(2)(d): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(3)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(4)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(6): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(7)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(8): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 113(9): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

#### **114 Allocation of employees after combined board split**

Every notice under section 112(1) shall specify one of the boards it establishes as the residual employer of the employees of the combined board to which it relates; and—

- (a) subject to paragraph (b), the people who were, immediately before the day specified in the notice, employees of the combined board shall on that day become employees of the board specified; and their service in the employment of the combined board shall be treated for all purposes as service in the employment of the board specified; and
- (b) before that day, the Secretary may, by written notice to any employee of the combined board, specify one of the boards the notice establishes as the board by which the employee is to become employed; and in that case, if the employee is still employed by the combined board immediately before that day,—
  - (i) the employee shall on that day become an employee of the board specified; and
  - (ii) the employee's service in the employment of the combined board shall be treated for all purposes

as service in the employment of the board specified.

Compare: 1989 No 3 s 21

**115 Transfer of assets of split combined board**

- (1) Subject to sections 113 and 114,—
  - (a) all rights, assets, liabilities and debts that a combined board split by a notice under section 112 had immediately before the day specified in the notice shall be deemed to have become rights, assets, liabilities, and debts of the boards established by the notice; and
  - (b) any property that, immediately before it became an asset of a board under this section, was subject to a trust, shall vest in the board subject to the trust.
- (2) Subject to sections 113 and 114, if any dispute arises as to whether any right, asset, liability, or debt has, under subsection (1), become a right, asset, liability, or debt of one board or another, the dispute shall be referred to the Secretary; and
  - (a) the Secretary shall attempt by mediation to bring the parties to the dispute to an agreement; but
  - (b) where, in the Secretary's opinion, further mediation is unlikely to achieve agreement, the Secretary shall determine the dispute, and the determination shall be final.

Compare: 1989 No 3 s 22

**116 Each school to be represented on combined board**

- (1) In an election for parent representatives on a combined board,—
  - (a) each candidate shall be nominated in respect of 1 school or institution the board administers; and
  - (b) the highest polling candidate nominated in respect of each school or institution shall become a trustee, regardless of the votes cast for the other candidates.
- (2) *[Repealed]*

Section 116(1)(a): amended, on 19 December 1998, by section 31(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 116(2): repealed, on 19 December 1998, by section 31(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

**116A Appointment of principal of combined board**

The powers conferred on a combined board by section 65 include the power to appoint 1 person to be the principal of 2 or more schools administered by the board.

Section 116A: inserted, on 8 July 2000, by section 22 of the Education Amendment Act 2000 (2000 No 21).

**117 Other provisions applying to boards**

The provisions set out in Schedule 6 apply to boards.

Compare: 1989 No 3 s 18

**118 Regulations**

- (1) Subject to section 116, the Governor-General may, by Order in Council, make regulations prescribing either or both of the following matters:
  - (a) the manner in which elections of trustees are to be held;
  - (b) subject to subsection (3), the manner in which returning officers are to be appointed for the purpose of the election of trustees.
- (2) Regulations made under this Act may—
  - (a) provide for persons forbidden by section 101(6) to participate in 2 elections to choose the election in which they prefer to stand, vote, or both; and
  - (b) provide for persons who do not exercise their choice within the time or in the manner provided for to be restricted to standing, voting, or both, in only 1 election; and
  - (c) require a person who has chosen or been restricted to 1 election to continue to be restricted to elections of the kind concerned if elections are later held to fill casual vacancies.
- (3) No person who has been nominated for election to a board is eligible to be appointed returning officer for the election.

Compare: 1989 No 3 s 20

**119 Savings**

Every reference in any—

- (a) Act, regulation, or other enactment; or

- (b) contract, agreement, deed, instrument, application, lease, licence, notice, award, or other document entered into, made, granted, given, or executed before 18 May 1989,—

to the school committee, committee of management, or board of governors of a primary, secondary, composite, or special school shall be read as a reference to the school's board.

Compare: 1989 No 3 s 22(3)(b)

## Part 10

### Teacher registration

#### 120 Interpretation

In this Part and Schedule 7, unless the context otherwise requires,—

**authorisation**, in relation to any person, means the entry of the person's name on the list of authorised people; and **to authorise** has a corresponding meaning

**early childhood education and care service** means—

- (a) a free kindergarten that is an early childhood service whose licence permits no child to attend for a period of more than 4 hours on any day; and
- (b) any other early childhood service that is declared by regulations made under section 69(2) of the Education Standards Act 2001 to be an early childhood education and care service for the purposes of this Part

**early childhood service** means a licensed early childhood service (as defined in section 309)

**employer** means any one of the following who employs, or intends to employ, 1 or more teachers or authorised persons in a teaching position:

- (a) the board of trustees of a State school:
- (ab) the sponsor of a partnership school kura hourua:
- (b) the managers of a school registered under section 35A:
- (c) the person or body who appoints staff at an early childhood education and care service:
- (d) the Secretary, in his or her capacity as an employer under section 91N

**free kindergarten** means an early childhood education and care centre (as defined in section 309) controlled by a free kindergarten association founded for the purpose of establishing and maintaining a kindergarten or kindergartens

**general education system** means the system of education provided in—

- (a) registered schools (as defined in section 2); and
- (b) early childhood services; and
- (c) other educational institutions and services established or deemed to have been established, or provided, under this Act or the Education Act 1964

**list of authorised people** means the list kept under section 130F

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**partnership school kura hourua** has the meaning given by section 2(1)

**practising certificate** means a certificate issued under section 130(1A) or (6)

**professional leader** means,—

- (a) in the case of a school other than a partnership school kura hourua, the principal;
- (ab) in the case of a partnership school kura hourua, the person to whom the sponsor has assigned the role of supervising teaching practice;
- (b) in the case of an early childhood service, the professional leader of the service;
- (c) in the case of any other educational institution, the chief executive or person occupying an equivalent position

**register** means the list kept under section 128

**registration**, in relation to any person, means the entry of the person's name on the register; and **to register** has a corresponding meaning

**satisfactory recent teaching experience**, in relation to any person at any time, means—

- (a) an uninterrupted period of employment of 2 years (or some shorter period or periods approved by the Teachers Council for the person) in a teaching position or teaching positions in the general education system; or
- (b) a period of employment of 2 years (or some shorter period or periods approved by the Teachers Council for the person), in a position (or positions) that (or each of which) was in the Teachers Council's opinion equivalent to a teaching position, in an educational institution in New Zealand approved by the Teachers Council for the purposes of this Part—

satisfactorily completed by the person during the 5 years before that time

**sponsor** has the meaning given by section 2(1)

**Teachers Council** means the New Zealand Teachers Council established under Part 10A

**teaching position** means a position in the general education system that—

- (a) requires its holder to instruct students; or
- (b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or
- (c) is the professional leader of an early childhood service or other educational institution.

Section 120 **authorisation**: inserted, on 1 January 1997, by section 10(1) of the Education Amendment Act 1996 (1996 No 98).

Section 120 **authorisation**: amended, on 21 December 2010, by section 13 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 120 **early childhood education and care service**: inserted, on 1 February 2002, by section 25(1) of the Education Standards Act 2001 (2001 No 88).

Section 120 **early childhood education and care service** paragraph (a): replaced, on 17 May 2006, by section 17(1) of the Education Amendment Act 2006 (2006 No 19).

Section 120 **early childhood education and care service** paragraph (b): replaced, on 17 May 2006, by section 17(1) of the Education Amendment Act 2006 (2006 No 19).

Section 120 **early childhood service**: replaced, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 120 **employer**: inserted, on 1 February 2002, by section 25(1) of the Education Standards Act 2001 (2001 No 88).

Section 120 **employer** paragraph (ab): inserted, on 13 June 2013, by section 23(1) of the Education Amendment Act 2013 (2013 No 34).

Section 120 **employer** paragraph (c): replaced, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 120 **free kindergarten**: inserted, on 1 February 2002, by section 25(1) of the Education Standards Act 2001 (2001 No 88).

Section 120 **free kindergarten**: amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 120 **general education system**: replaced, on 1 February 2002, by section 25(2) of the Education Standards Act 2001 (2001 No 88).

Section 120 **list of authorised people**: inserted, on 1 January 1997, by section 10(1) of the Education Amendment Act 1996 (1996 No 98).

Section 120 **Minister**: replaced, on 1 January 1992, by section 2(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 120 **partnership school kura hourua**: inserted, on 13 June 2013, by section 23(4) of the Education Amendment Act 2013 (2013 No 34).

Section 120 **practising certificate**: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120 **professional leader**: inserted, on 1 February 2002, by section 25(3) of the Education Standards Act 2001 (2001 No 88).

Section 120 **professional leader** paragraph (a): amended, on 13 June 2013, by section 23(2) of the Education Amendment Act 2013 (2013 No 34).

Section 120 **professional leader** paragraph (ab): inserted, on 13 June 2013, by section 23(3) of the Education Amendment Act 2013 (2013 No 34).

Section 120 **registered private school**: repealed, on 1 February 2002, by section 25(6) of the Education Standards Act 2001 (2001 No 88).

Section 120 **Registration Board**: repealed, on 1 February 2002, by section 25(6) of the Education Standards Act 2001 (2001 No 88).

Section 120 **satisfactory recent teaching experience**: inserted, on 1 January 1997, by section 3(2) of the Education Amendment Act 1996 (1996 No 98).

Section 120 **satisfactory recent teaching experience** paragraph (a): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120 **satisfactory recent teaching experience** paragraph (b): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120 **school authority**: repealed, on 1 February 2002, by section 25(6) of the Education Standards Act 2001 (2001 No 88).

Section 120 **school board**: repealed, on 1 February 2002, by section 25(6) of the Education Standards Act 2001 (2001 No 88).

Section 120 **sponsor**: inserted, on 13 June 2013, by section 23(4) of the Education Amendment Act 2013 (2013 No 34).



Section 120 **State school**: repealed, on 1 February 2002, by section 25(6) of the Education Standards Act 2001 (2001 No 88).

Section 120 **Teachers Council**: inserted, on 1 February 2002, by section 25(5) of the Education Standards Act 2001 (2001 No 88).

Section 120 **teaching position**: inserted, on 1 January 1997, by section 3(2) of the Education Amendment Act 1996 (1996 No 98).

Section 120 **teaching position** paragraph (b): replaced, on 1 February 2002, by section 25(4) of the Education Standards Act 2001 (2001 No 88).

Section 120 **teaching position** paragraph (c): inserted, on 1 February 2002, by section 25(4) of the Education Standards Act 2001 (2001 No 88).

*Restrictions on appointment and employment of  
teaching staff*

Heading: inserted, on 1 January 1997, by section 4 of the Education Amendment Act 1996 (1996 No 98).

**120A Restrictions on appointment of teachers**

- (1) An employer must not appoint to a teaching position—
  - (a) any person—
    - (i) whose registration has been cancelled; and
    - (ii) who has not since been registered again; or
  - (b) any person whose practising certificate is suspended under section 139AU or 139AW(1)(d); or
  - (c) any person whose authorisation has been cancelled, and who has not since—
    - (i) been authorised again; or
    - (ii) been registered as a teacher; or
  - (d) any person whose limited authority to teach is suspended under section 139AU or 139AW(1)(d).
- (2) No employer, other than a sponsor, shall permanently appoint to any teaching position any person who does not hold a practising certificate.
- (3) *[Repealed]*

Section 120A: inserted, on 1 January 1997, by section 4 of the Education Amendment Act 1996 (1996 No 98).

Section 120A(1): replaced, on 21 December 2010, by section 14 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 120A(2): amended, on 13 June 2013, by section 24 of the Education Amendment Act 2013 (2013 No 34).

Section 120A(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120A(3): repealed, on 1 February 2002, by section 26 of the Education Standards Act 2001 (2001 No 88).

### **120B Restrictions on continued employment of teachers**

- (1) An employer must not continue to employ in a teaching position—
  - (a) any person—
    - (i) whose registration has been cancelled; and
    - (ii) who has not since been registered again; or
  - (b) any person whose practising certificate is suspended under section 139AW(1)(d); or
  - (c) any person whose authorisation has been cancelled, and who has not since—
    - (i) been authorised again; or
    - (ii) been registered as a teacher; or
  - (d) any person whose limited authority to teach is suspended under section 139AW(1)(d).
- (2) No employer, other than a sponsor, shall continue to employ in any teaching position any person who holds neither a practising certificate nor an authorisation, if that person is not under the general supervision of a person who holds a practising certificate.
- (3) No employer, other than a sponsor, shall in any calendar year continue to employ in any teaching position any person who holds neither a practising certificate nor an authorisation, if the sum of—
  - (a) the period or periods for which that person has already during that year been employed by the employer in a teaching position or positions; and
  - (b) any period or periods (of which the employer is aware) for which that person has already during that year been employed by any other employer in a teaching position or positions; and
  - (c) any period or periods (of which the employer is aware) for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service,—is not less than the period specified in subsection (4).
- (4) The period referred to in subsection (3) is—

- (a) 20 half-days; or
- (b) any greater number of half-days the Teachers Council has allowed in any particular case,—  
each being a half-day on which the school or early childhood education and care service at which the person was then employed was open for instruction.

(5) *[Repealed]*

Section 120B: inserted, on 1 January 1997, by section 4 of the Education Amendment Act 1996 (1996 No 98).

Section 120B(1): replaced, on 21 December 2010, by section 15 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 120B(2): amended, on 13 June 2013, by section 25(1) of the Education Amendment Act 2013 (2013 No 34).

Section 120B(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(3): amended, on 13 June 2013, by section 25(2) of the Education Amendment Act 2013 (2013 No 34).

Section 120B(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(3)(a): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(3)(b): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(3)(c): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 120B(3)(c): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(4): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 120B(4)(b): amended, on 17 May 2006, by section 18 of the Education Amendment Act 2006 (2006 No 19).

Section 120B(5): repealed, on 1 February 2002, by section 27 of the Education Standards Act 2001 (2001 No 88).

**120C Restrictions on activities of teachers whose practising certificate or limited authority to teach subject to interim suspension**

- (1) This subsection applies to a person employed in a teaching position if—
  - (a) he or she holds a practising certificate that is suspended under section 139AU; or

- (b) he or she has a limited authority to teach that is suspended under section 139AU.
- (2) While subsection (1) applies to a person, his or her employer—
  - (a) must ensure that he or she does not carry out any of the duties of the teaching position concerned; and
  - (b) if the person is employed at a registered school (within the meaning of section 2(1)) or an early childhood education and care service, must take all reasonably practicable steps to ensure that he or she does not undertake any activities that might bring him or her into contact with students enrolled at the school or, as the case may be, children who attend the service.
- (3) While subsection (1) applies to a person, he or she must not carry out any of the duties of the teaching position concerned.

Section 120C: inserted, on 21 December 2010, by section 16 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Teacher registration*

Heading: inserted, on 1 January 1997, by section 10(2) of the Education Amendment Act 1996 (1996 No 98).

## **121 Applications for registration as teacher**

Any person may apply to the Teachers Council, on a form provided by the Teachers Council for the purpose and signed by the applicant, for registration as a teacher.

Section 121: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 121 compare note: repealed, on 20 May 2010, by section 32 of the Education Amendment Act 2010 (2010 No 25).

## **122 Full registration**

The Teachers Council shall register an applicant under section 121 if satisfied that the applicant—

- (a) is of good character; and
- (b) is fit to be a teacher; and
- (c) is satisfactorily trained to teach; and
- (d) has satisfactory recent teaching experience.

Section 122: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 122(c): replaced, on 23 July 1990, by section 26(2) of the Education Amendment Act 1990 (1990 No 60).

Section 122(d): replaced, on 1 January 1997, by section 3(3) of the Education Amendment Act 1996 (1996 No 98).

Section 122 compare note: repealed, on 20 May 2010, by section 33 of the Education Amendment Act 2010 (2010 No 25).

### **123 Provisional registration**

- (1) Subject to subsections (2) and (3), the Teachers Council shall register an applicant under section 121 who is not eligible for registration under section 122 or section 124 if satisfied that the applicant—
  - (a) is of good character; and
  - (b) is fit to be a teacher; and
  - (c) is satisfactorily trained to teach; and
  - (d) either—
    - (i) has not previously been registered; or
    - (ii) is likely to be a satisfactory teacher.
- (2) Where the Teachers Council registers a teacher under subsection (1), it shall ensure that the registration shows that the teacher's registration is provisional only.
- (3) Where, before a teacher's registration under subsection (1) expires or is cancelled, the Teachers Council is satisfied that the teacher has satisfactory recent teaching experience, it shall confirm the registration and amend the entry in the register so as to make clear that the registration has been confirmed.
- (4) *[Repealed]*

Section 123(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 123(1)(c): replaced, on 23 July 1990, by section 26(3) of the Education Amendment Act 1990 (1990 No 60).

Section 123(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 123(3): replaced, on 1 January 1997, by section 3(4) of the Education Amendment Act 1996 (1996 No 98).

Section 123(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 123(4): repealed, on 25 June 1993, by section 10(3) of the Education Amendment Act 1993 (1993 No 51).

**124 Registration of experienced teachers**

- (1) Subject to subsections (2) and (3), the Teachers Council shall register an applicant under section 121 who is not eligible for registration under section 122 if satisfied that the applicant—
- (a) is of good character; and
  - (b) is fit to be a teacher; and
  - (c) is satisfactorily trained to teach; and
  - (d) either—
    - (i) has not previously been registered under this section; or
    - (ii) is likely to be a satisfactory teacher; and
  - (e) either—
    - (i) has previously been registered (or has been deemed to have been registered) under section 122; or
    - (ii) has had adequate and suitable teaching experience.
- (2) Where the Teachers Council registers a teacher under subsection (1), it shall ensure that the registration shows that the teacher's registration is subject to confirmation.
- (3) Where, before a teacher's registration under subsection (1) expires or is cancelled,—
- (a) the Teachers Council is satisfied that the teacher—
    - (i) is familiar enough with current curricula and procedures in the general education system; and
    - (ii) is a satisfactory teacher; and
  - (b) either—
    - (i) a year has passed since the registration; or
    - (ii) more than 3 months has passed since the registration, and the professional leader of the school, early childhood service, or other educational institution within the general education system at which the teacher is employed so recommends,—
- the Teachers Council shall confirm the registration, and amend the entry in the register so as to make clear that the registration has been confirmed.

(4) *[Repealed]*

Section 124(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124(1)(c): replaced, on 23 July 1990, by section 26(4) of the Education Amendment Act 1990 (1990 No 60).

Section 124(1)(e)(ii): amended, on 23 July 1990, by section 25 of the Education Amendment Act 1990 (1990 No 60).

Section 124(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124(3)(a): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124(3)(b)(ii): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124(4): repealed, on 25 June 1993, by section 10(3) of the Education Amendment Act 1993 (1993 No 51).

**124A Determining whether or not training satisfactory**

- (1) In determining whether or not a person is satisfactorily trained to teach, the Teachers Council may take into account any relevant matters.
- (2) In determining whether or not a person is satisfactorily trained to teach, the Teachers Council shall take into account—
  - (a) the person's qualifications; and
  - (b) whether or not the person has satisfactorily completed training recognised by the Teachers Council as suitable for people who want to teach.
- (3) Subsection (2) does not affect the generality of subsection (1).

Section 124A: inserted, on 23 July 1990, by section 26(1) of the Education Amendment Act 1990 (1990 No 60).

Section 124A(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124A(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 124A(2)(b): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

**124B Determining good character and fitness to be teacher**

- (1) For the purpose of determining whether a person is of good character and fit to be a teacher, the Teachers Council must obtain a Police vet of the person.
- (2) Subsection (1) does not limit any other matters that the Teachers Council may take into account in determining character and fitness to be a teacher.

Section 124B: inserted, on 1 February 2002, by section 28 of the Education Standards Act 2001 (2001 No 88).

**125 Determining whether or not employment satisfactorily completed**

- (1) In determining whether or not a period of employment was satisfactorily completed by a person, the Teachers Council may take into account any relevant matters.
- (2) In determining whether or not a period of employment at a school, early childhood service, or other educational institution in New Zealand was satisfactorily completed by a person, the Teachers Council may take into account—
  - (a) the views of the professional leader of the school, early childhood service, or other educational institution; or
  - (b) if the person was the professional leader of a school, early childhood service, or other educational institution, the views of his or her employer.
- (3) Subsection (2) does not affect the generality of subsection (1).

Section 125: replaced, on 1 January 1997, by section 5 of the Education Amendment Act 1996 (1996 No 98).

Section 125(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 125(2): replaced, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

**126 Appeals from decisions of Teachers Council**

- (1) A person who is dissatisfied with all or any part of a decision of the Teachers Council under sections 122, 123, 124, 129(1)(a) or (b), or 130 (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teachers Council or any longer period the court, on



application made before or after the end of the period, allows, appeal to a District Court against the decision.

- (2) *[Repealed]*
- (3) The court shall hear the appeal as soon as is practicable, and may confirm, reverse, or modify the decision concerned, or may refer the matter back to the Teachers Council in accordance with rules of court, or may give any decision that the Teachers Council could have given.
- (4) Nothing in this section gives the court power to review any part of the Teachers Council's decision that the appellant has not appealed against.
- (5) Subject to any order of the court, every decision of the Teachers Council continues in force and has effect pending the determination of an appeal against it.
- (6) On any appeal under this section, the court may order the Teachers Council or the appellant to pay the costs incurred by the other party in respect of the appeal.
- (7) The Teachers Council or the appellant may, with the leave of the High Court or the Court of Appeal, appeal to the Court of Appeal against any decision on a question of law made by the District Court on an appeal under this section.

Section 126 heading: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(1): amended, on 17 May 2006, by section 19(1) of the Education Amendment Act 2006 (2006 No 19).

Section 126(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(1): amended, on 1 January 1997, by section 6(a) of the Education Amendment Act 1996 (1996 No 98).

Section 126(1): amended, on 1 January 1997, by section 6(b) of the Education Amendment Act 1996 (1996 No 98).

Section 126(2): repealed, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

Section 126(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(4): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(5): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(6): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(7): amended, on 17 May 2006, by section 19(2) of the Education Amendment Act 2006 (2006 No 19).

Section 126(7): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 126(7): amended, on 15 August 1991, by section 3(4) of the Judicature Amendment Act 1991 (1991 No 60).

### **127 Expiry of teacher registration**

- (1) A teacher's registration expires,—
- (a) in the case of a registration under section 124(1) that has not earlier been confirmed under section 124(3), after 3 years;
  - (b) in the case of the registration of a teacher who has never held a practising certificate, after 5 years;
  - (c) in the case of a provisional registration under section 123(1) that has not earlier been confirmed under section 123(3), after—
    - (i) 5 years; or
    - (ii) if the Teachers Council has, before the expiration of 5 years, allowed the teacher a further year, 6 years;
  - (d) in the case of the registration of a teacher who has held a practising certificate but no longer holds one, on the fifth anniversary of the expiry of the practising certificate most recently issued to the teacher;
  - (e) when the teacher dies.
- (2) When a teacher's registration expires, the teacher's name must be removed from the register kept under section 128.

Section 127: replaced, on 17 May 2006, by section 20 of the Education Amendment Act 2006 (2006 No 19).

### **127A Voluntary deregistration**

- (1) The Teachers Council must deregister a person if—
- (a) the Teachers Council receives a written request from the person seeking deregistration; and
  - (b) the Teachers Council is satisfied that the person is not the subject of an investigation under Part 10A.
- (2) This section applies to both teachers and holders of limited authorities to teach.

Section 127A: inserted, on 17 May 2006, by section 21 of the Education Amendment Act 2006 (2006 No 19).

**128 Teachers Council to keep register**

- (1) For the purposes of this Part, the Teachers Council shall keep a list of people for the time being registered as teachers.
- (2) If the Teachers Council is satisfied that any of the information contained in the register is incorrect, the Council must ensure that the error is corrected.

Section 128 heading: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 128(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 128(2): inserted, on 17 May 2006, by section 22 of the Education Amendment Act 2006 (2006 No 19).

Section 128 compare note: repealed, on 20 May 2010, by section 34 of the Education Amendment Act 2010 (2010 No 25).

**128A Matching of register information and information about payment of teacher salaries at payrolled schools**

- (1) The purpose of this section is to facilitate the exchange of information between the Ministry and the Teachers Council for the purposes of enabling—
  - (a) the Teachers Council, in regard to people employed in teaching positions, to identify—
    - (i) the person's employer; and
    - (ii) the person's registration status; and
  - (b) the Ministry, in regard to regular teachers and relieving teachers in receipt of salaries at payrolled schools, to identify their salary entitlement or eligibility, if any, for an allowance on the basis of their registration, if any.
- (2) For the purpose set out in subsection (1)(a), the Teachers Council may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,—
  - (a) require the Secretary to supply all or any of the following information in regard to all or any regular teachers and relieving teachers in receipt of salaries at payrolled schools:
    - (i) surname:

- (ii) first name:
    - (iii) date of birth:
    - (iv) gender:
    - (v) address:
    - (vi) the school at which the person is employed:
    - (vii) payroll number:
    - (viii) registration number; and
  - (b) compare the information supplied under paragraph (a) with the information contained in the register.
- (3) For the purpose set out in subsection (1)(b), the Secretary may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teachers Council,—
- (a) require the Teachers Council to supply all or any of the following information in regard to all or any people registered as teachers:
    - (i) surname:
    - (ii) first name:
    - (iii) date of birth:
    - (iv) gender:
    - (v) address:
    - (vi) the school at which the person is employed:
    - (vii) registration number:
    - (viii) registration expiry date:
    - (ix) registration classification; and
  - (b) compare the information supplied under paragraph (a) with the information held by the Ministry in regard to regular teachers and relieving teachers in receipt of salaries at payrolled schools.
- (4) In this section, **Ministry**, **payrolled school**, **regular teacher**, **relieving teacher**, **school**, and **Secretary** have the same meanings as in section 91A.

Section 128A: inserted, on 20 May 2010, by section 35 of the Education Amendment Act 2010 (2010 No 25).

Section 128A(1)(b): amended, on 21 December 2010, by section 17(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 128A(2)(a): amended, on 21 December 2010, by section 17(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 128A(3)(b): amended, on 21 December 2010, by section 17(3) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 128A(4): amended, on 21 December 2010, by section 17(4) of the Education Amendment Act (No 3) 2010 (2010 No 134).

**129 Cancellation of registration as teacher and cancellation of limited authority to teach**

- (1) The Teachers Council must cancel a person's registration or limited authority to teach, if—
  - (a) the Teachers Council is satisfied on reasonable grounds that,—
    - (i) in the case of a teacher, the teacher no longer satisfies the requirements for registration as a teacher (as set out in section 122); or
    - (ii) in the case of an authorised person, the person no longer satisfies the requirements for holding a limited authority to teach (as set out in section 130B(2)); or
  - (b) the Teachers Council is satisfied on reasonable grounds that the registration or authorisation was effected by mistake or obtained by fraud; or
  - (c) the Disciplinary Tribunal has ordered, under section 139AW(1)(g), that the registration or limited authority to teach be cancelled; or
  - (d) the Teachers Council has ordered, under section 139AZCB(b), that the registration or limited authority to teach be cancelled.
- (2) The Teachers Council may not cancel a teacher's registration or an authorised person's limited authority to teach under subsection (1)(a) or (b) without first—
  - (a) taking all reasonable steps to ensure that the teacher or authorised person is given notice of the reasons for the proposed cancellation; and
  - (b) giving the teacher or authorised person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- (3) The fact that a teacher's registration or an authorised person's limited authority to teach has been cancelled does not prevent the teacher or authorised person from again being registered or being given a limited authority to teach.

- (4) If a person's registration is ordered to be cancelled under section 139AZCB(b), and the person later applies for registration or for a limited authority to teach, he or she must be treated as a person who has not held a practising certificate for 5 years.
- (5) The Teachers Council must take all reasonable steps to ensure that employers are informed of the name of every person whose registration or limited authority to teach is cancelled—
  - (a) under this section; or
  - (b) as a result of the Teachers Council refusing to renew the person's registration, or to grant a limited authority to teach, on the ground that the person is not of good character or is not fit to be a teacher.

Section 129: replaced, on 17 May 2006, by section 23 of the Education Amendment Act 2006 (2006 No 19).

Section 129(1)(d): amended, on 21 December 2010, by section 18(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 129(4): amended, on 21 December 2010, by section 18(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **129A Reclassification of teacher's registration**

- (1) The Teachers Council may, instead of cancelling a teacher's registration under section 129(1)(a), reclassify the registration if the Teachers Council is satisfied that the only requirement that the teacher does not meet is the requirement for recent teaching experience (as required by section 122(d)).
- (2) If a teacher's registration is reclassified, the registration must show that it is subject to confirmation; and this Act applies as if the teacher were registered under section 124(1).

Section 129A: inserted, on 17 May 2006, by section 24 of the Education Amendment Act 2006 (2006 No 19).

### **130 Practising certificates**

- (1) Any person may apply to the Teachers Council, on a form provided by the Council, for a practising certificate.
- (1A) The Teachers Council must issue a practising certificate to every applicant who—
  - (a) is registered as a teacher; and
  - (b) has had a satisfactory Police vet within the past 3 years.

- (2) A teacher's practising certificate shall show clearly that the teacher is—
  - (a) fully registered; or
  - (b) registered subject to confirmation; or
  - (c) provisionally registered.
- (3) Where a teacher's registration under section 123(1) or section 124(1) is confirmed, the teacher may obtain, in place of a current practising certificate showing that the teacher is registered subject to confirmation or is provisionally registered, a practising certificate showing that the teacher is fully registered.
- (4) Unless it is sooner cancelled or expires—
  - (a) a practising certificate issued under subsection (3) expires when the practising certificate in place of which it was issued would have expired:
  - (b) except as provided in paragraph (a), a practising certificate issued to a teacher who already holds a current practising certificate expires on the third anniversary of the day on which the certificate already held expires:
  - (c) a practising certificate issued to a teacher who does not already hold a current practising certificate expires on the third anniversary of the day it is issued:
  - (d) a practising certificate expires when the holder's registration expires.
- (5) A practising certificate expires when its holder's registration is cancelled.
- (6) If a teacher applies to renew his or her practising certificate, the Teachers Council may issue a renewed practising certificate only if it is satisfied that the teacher—
  - (a) continues to meet the criteria for registration; and
  - (b) has satisfactory recent teaching experience; and
  - (c) has had a satisfactory Police vet within the past 3 years; and
  - (d) has completed satisfactory professional development during the past 3 years.
- (7) This subsection applies to a renewed practising certificate issued to a person if—
  - (a) the practising certificate he or she already holds when the renewed certificate is issued is suspended under section 139AU; or

- (b) he or she does not already hold a practising certificate when the renewed certificate is issued; but—
  - (i) the practising certificate he or she last held was suspended under section 139AU when it expired; and
  - (ii) its suspension was not due to expire until a time after the issue of the renewed certificate.
- (8) A renewed practising certificate to which subsection (7) applies must be treated as being suspended under section 139AU; and its suspension expires when the suspension of the previous practising certificate held by its holder would have expired.

Section 130(1): replaced, on 1 February 2002, by section 30(1) of the Education Standards Act 2001 (2001 No 88).

Section 130(1A): inserted, on 1 February 2002, by section 30(1) of the Education Standards Act 2001 (2001 No 88).

Section 130(6): inserted, on 1 February 2002, by section 30(2) of the Education Standards Act 2001 (2001 No 88).

Section 130(7): inserted, on 21 December 2010, by section 19 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 130(8): inserted, on 21 December 2010, by section 19 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Limited authority to teach*

Heading: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

#### **130A Purpose of limited authority to teach**

Where any person has skills and experiences that are appropriate to advance the learning of a student or group of students in any particular institution, but who may not have a specific qualification normally associated with teaching, and provided that person meets the tests set out in section 130B, that person shall on application to the Teachers Council, be granted a limited authority to teach.

Section 130A: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130A: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).



**130B Limited authority to teach**

- (1) Any person may apply to the Teachers Council, on a form provided by it for the purpose, for limited authority to teach.
- (2) The Teachers Council shall authorise an applicant if (and only if) satisfied that the applicant—
  - (a) is of good character; and
  - (b) is fit to be a teacher; and
  - (c) is likely to be a satisfactory teacher.
- (3) Subject to subsection (2), and subsection (2) of section 130E, a person who has previously been authorised may be authorised again, whether before or after the expiry or cancellation of the previous authorisation.

Section 130B: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130B(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130B(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

**130C Determining character and likely teaching ability**

- (1) In determining—
  - (a) whether or not a person is of good character; or
  - (b) whether or not a person is fit to be a teacher; or
  - (c) whether or not a person is likely to be a satisfactory teacher,—the Teachers Council shall take into account and give due weight to—
  - (d) the purpose of the limited authority to teach as set out in section 130A; and
  - (e) the views of the professional leader of the school, early childhood service, or other educational institution at which the person has been employed; and
  - (f) if the person is the professional leader of a school, early childhood service, or other educational institution, the views of his or her employer; and
  - (g) any relevant skills and experiences of the applicant; and
  - (h) any other relevant matters.

- (2) For the purpose of determining whether a person is of good character and fit to be a teacher, the Teachers Council must obtain a Police vet of the person.
- (3) Subsection (2) does not limit any other matters that the Teachers Council may take into account in determining good character and fitness to be a teacher.

Section 130C: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130C(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130C(1)(e): replaced, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130C(1)(f): replaced, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Sections 130C(2): inserted, on 1 February 2002, by section 31 of the Education Standards Act 2001 (2001 No 88).

Sections 130C(3): inserted, on 1 February 2002, by section 31 of the Education Standards Act 2001 (2001 No 88).

### **130D Appeals from decisions**

- (1) Any person who is dissatisfied with all or any part of a decision of the Teachers Council under section 130B (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teachers Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to a District Court.
- (2) Subsections (3) to (7) of section 126 apply to every appeal under subsection (1) of this section as if it is an appeal under subsection (1) of that section.

Section 130D: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130D(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

### **130E Period of authorisation**

- (1) Subject to subsection (2), a teacher's authorisation expires after 12 months.
- (2) Notwithstanding subsection (1), the Teachers Council may grant the authorisation for a period longer than 12 months.

Section 130E: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130E heading: replaced, on 17 May 2006, by section 25 of the Education Amendment Act 2006 (2006 No 19).

Section 130E(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

### **130F Teachers Council to keep list**

The Teachers Council shall keep a list of people for the time being authorised.

Section 130F: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130F heading: amended, on 1 February 2002, pursuant to section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130F: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

### **130G Cancellation of authorisation**

*[Repealed]*

Section 130G: repealed, on 1 September 2004, by section 32 of the Education Standards Act 2001 (2001 No 88).

### **130H Fees and costs**

- (1) The Teachers Council may from time to time by notice in the *Gazette*, with the written approval of the Minister, fix fees for the granting of limited authority to teach.
- (2) Notwithstanding anything in this Act, the Teachers Council may refuse to grant any person a limited authority to teach until the appropriate fee has been paid.
- (3) Where the Teachers Council cancels a limited authority to teach, it may, by written notice to the person concerned, require the person to pay the Teachers Council any reasonable costs specified in the notice that were incurred by the Teachers Council in dealing with the proposal to cancel the authority or with the cancellation itself.
- (4) The Teachers Council may recover from any person as a debt due to it costs required by subsection (3) to be paid to the Teachers Council by that person.

Section 130H: inserted, on 1 January 1997, by section 8 of the Education Amendment Act 1996 (1996 No 98).

Section 130H(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130H(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130H(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 130H(4): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

### *Teacher Registration Board*

*[Repealed]*

Heading: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

## **131 Teacher Registration Board**

*[Repealed]*

Section 131: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

## **132 Membership of Registration Board**

*[Repealed]*

Section 132: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

## **133 Certain people ineligible to be members**

*[Repealed]*

Section 133: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

## **134 Co-opted members**

*[Repealed]*

Section 134: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

## **135 Powers of Registration Board**

*[Repealed]*

Section 135: repealed, on 1 February 2002, by section 33 of the Education Standards Act 2001 (2001 No 88).

**135A Teachers Council may disclose certain information**

The management of any registered early childhood centre that is not an early childhood education and care service may ask the Teachers Council to comment on any person who is a prospective employee; and in that case the Teachers Council may—

- (a) make in respect of that person any inquiry it might have made if that person had applied for registration as a teacher;
- (b) disclose to the management any information it holds or has obtained about that person.

Section 135A: inserted, on 1 January 1997, by section 12 of the Education Amendment Act 1996 (1996 No 98).

Section 135A heading: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 135A: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 135A(b): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

**136 Teachers Council may charge fees and impose costs**

- (1) The Teachers Council may from time to time by notice in the *Gazette*, with the written approval of the Minister, fix fees for registration as a teacher or for the issue of practising certificates; and different fees may be fixed—
  - (a) in respect of registration effected in different circumstances; and
  - (b) for practising certificates of different kinds.
- (2) Notwithstanding anything in this Act, the Teachers Council may refuse to register a person as a teacher or issue a practising certificate until the appropriate fee has been paid.
- (3) Where the Teachers Council cancels a teacher's registration it may, by written notice to the teacher, require the teacher to pay the Teachers Council any reasonable costs specified in the notice that were incurred by the Teachers Council in dealing with the proposal to cancel the registration or with the cancellation itself.
- (4) The Teachers Council may recover from a teacher as a debt due to it costs required under subsection (3) to be paid to the Teachers Council by the teacher.

Section 136 heading: amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 136(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 136(2): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 136(3): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 136(4): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

### **137 Offences**

- (1) Every person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, who—
- (a) makes to the Teachers Council any statement as to any person's qualifications or experience that would amount to perjury if made on oath in judicial proceedings; or
  - (b) not being a registered teacher uses, or permits to be used, in connection with the person's name or business, the words "registered teacher", or any words or initials intended or likely to make any other person believe that the person is a registered teacher; or
  - (c) wilfully makes, or causes to be made, a false entry in or falsification of the register or a practising certificate; or
  - (d) falsely represents a document that is not a practising certificate to be a practising certificate; or
  - (e) falsely represents a document that is not a limited authority to teach to be a limited authority to teach; or
  - (f) is appointed to or continues to be employed in a position, knowing that the appointment or employment is contrary to section 120A or section 120B; or
  - (fa) being the employer of a person to whom section 120C(1) applies, fails or refuses to ensure that the person does not carry out any of the duties of the teaching position in which he or she is employed; or
  - (fb) being the employer of a person to whom section 120C(1) applies, fails or refuses to take all reasonably practicable steps to ensure that the person does not undertake any activities that might bring him or her

- into contact with students enrolled at the school or, as the case may be, children who attend the service; or
- (fc) being a person to whom section 120C(1) applies, carries out any of the duties of the teaching position in which he or she is employed; or
  - (g) *[Repealed]*
  - (h) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of an employer other than a sponsor in a teaching position after the sum of—
    - (i) the period or periods for which that person has already during that year been employed by the employer in a teaching position or positions; and
    - (ii) any period or periods for which that person has already during that year been employed by any other employer in a teaching position or positions; and
    - (iii) any period or periods for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service,—is not less than 20 half-days, or any greater number of half-days the Teachers Council has allowed that person (each being a half-day on which a school or early childhood education and care service at which the person was then employed was open for instruction); or
  - (i) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of the employer at an early childhood education and care service as a teacher after the sum of—
    - (i) the period or periods for which that person has already during that year been employed by the employer as a teacher; and
    - (ii) any period or periods for which that person has already during that year been employed by an employer at any other early childhood education and care service as a teacher; and

- (iii) any period or periods for which that person has during that year been employed in a teaching position by the employer at a State school,—  
is not less than 20 half-days, or any greater number of half-days the Teachers Council has allowed that person (each being a half-day on which an early childhood education and care service or school at which the person was then employed was open for instruction).
- (2) Every person commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who appoints any person to a position, or continues to employ any person in a position, knowing that the appointment or employment is contrary to section 120A or section 120B.
- Section 137(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
- Section 137(1): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).
- Section 137(1)(a): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).
- Section 137(1)(d): replaced, on 1 January 1997, by section 10(3) of the Education Amendment Act 1996 (1996 No 98).
- Section 137(1)(e): replaced, on 1 January 1997, by section 10(3) of the Education Amendment Act 1996 (1996 No 98).
- Section 137(1)(f): replaced, on 1 January 1997, by section 10(3) of the Education Amendment Act 1996 (1996 No 98).
- Section 137(1)(f): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).
- Section 137(1)(fa): inserted, on 21 December 2010, by section 20 of the Education Amendment Act (No 3) 2010 (2010 No 134).
- Section 137(1)(fb): inserted, on 21 December 2010, by section 20 of the Education Amendment Act (No 3) 2010 (2010 No 134).
- Section 137(1)(fb): amended, on 13 June 2013, by section 26(1) of the Education Amendment Act 2013 (2013 No 34).
- Section 137(1)(fc): inserted, on 21 December 2010, by section 20 of the Education Amendment Act (No 3) 2010 (2010 No 134).
- Section 137(1)(g): repealed, on 1 February 2002, by section 34(1) of the Education Standards Act 2001 (2001 No 88).
- Section 137(1)(h): inserted, on 1 January 1997, by section 10(3) of the Education Amendment Act 1996 (1996 No 98).
- Section 137(1)(h): amended, on 13 June 2013, by section 26(2) of the Education Amendment Act 2013 (2013 No 34).
- Section 137(1)(h): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).



Section 137(1)(h)(i): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(1)(h)(ii): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(1)(h)(iii): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 137(1)(h)(iii): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(1)(i): inserted, on 1 January 1997, by section 10(3) of the Education Amendment Act 1996 (1996 No 98).

Section 137(1)(i): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 137(1)(i): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(1)(i)(i): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 137(1)(i)(ii): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 137(1)(i)(ii): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(1)(i)(iii): amended, on 1 February 2002, by section 82(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(2): inserted, on 1 February 2002, by section 34(2) of the Education Standards Act 2001 (2001 No 88).

Section 137(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 137 compare note: repealed, on 20 May 2010, by section 36 of the Education Amendment Act 2010 (2010 No 25).

### **138 Council to notify cancellations**

*[Repealed]*

Section 138: repealed, on 1 September 2004, by section 35 of the Education Standards Act 2001 (2001 No 88).

### **138A Notification of convictions**

*[Repealed]*

Section 138A: repealed, on 1 September 2004, by section 36 of the Education Standards Act 2001 (2001 No 88).

### **138B Notification by certain employers**

*[Repealed]*

Section 138B: repealed, on 1 September 2004, by section 36 of the Education Standards Act 2001 (2001 No 88).

**139 Transitional provisions**

- (1) This Act shall apply to any period of registration as a teacher under the Education Act 1964 as if it was a period of registration under this Act.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) For the purposes only of sections 122 to 124, employment before the commencement of this section in a registered school (within the meaning of the Education Act 1964) shall be deemed to have been employment in the general education system.

Section 139(2): repealed, on 8 August 1991, by section 3(2)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

Section 139(3): repealed, on 8 August 1991, by section 3(2)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

Section 139(4): repealed, on 8 August 1991, by section 3(2)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

**Part 10A****New Zealand Teachers Council**

Part 10A: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AA Purpose of Part**

The purpose of this Part is to provide professional leadership in teaching, enhance the professional status of teachers in schools and early childhood education, and contribute to a safe and high quality teaching and learning environment for children and other learners.

Section 139AA: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AB Interpretation**

- (1) In this Part, unless the context otherwise requires,—  
**authorised person** means the holder of an authority  
**authority** means a limited authority to teach given under Part 10

**Complaints Assessment Committee** means the Complaints Assessment Committee established by rules

**disciplinary body** means either or both of the Complaints Assessment Committee and the Disciplinary Tribunal

**Disciplinary Tribunal** means the Disciplinary Tribunal established by rules

**rules** means rules made under section 139AJ

**serious misconduct** means conduct by a teacher—

- (a) that—
  - (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
  - (ii) reflects adversely on the teacher's fitness to be a teacher; and
- (b) is of a character or severity that meets the Teachers Council's criteria for reporting serious misconduct

**teacher** includes—

- (a) a registered teacher; and
- (b) a former registered teacher; and
- (c) an authorised person; and
- (d) a former authorised person.

- (2) Terms in this Part that are defined in section 120 have the meanings given to them by that section.

Section 139AB: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AB(1) **authorised person**: replaced, on 21 December 2010, by section 21 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AB(1) **authority**: inserted, on 21 December 2010, by section 21 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Teachers Council*

Heading: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

#### **139AC New Zealand Teachers Council established**

- (1) The New Zealand Teachers Council (**Teachers Council**) is established.
- (2) The Teachers Council is owned by the Crown.

- (3) The Teachers Council is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (4) The Crown Entities Act 2004 applies to the Teachers Council except to the extent that this Act expressly provides otherwise.
- (5) The members of the Teachers Council are the board for the purposes of the Crown Entities Act 2004.

Section 139AC: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **139AD Composition of Teachers Council**

- (1) The Teachers Council comprises 11 members, as follows:
  - (a) 4 members appointed by the Minister:
  - (b) 4 elected members (each of whom must be a registered teacher holding a current practising certificate), being—
    - (i) 1 teacher representing the early childhood sector, elected by teachers from that sector; and
    - (ii) 1 teacher representing the primary sector, elected by teachers from that sector; and
    - (iii) 1 teacher representing the secondary sector, elected by teachers from that sector; and
    - (iv) 1 principal, elected by principals:
  - (c) 1 person appointed by the Minister on the nomination of the New Zealand Educational Institute:
  - (d) 1 person appointed by the Minister on the nomination of the New Zealand Post Primary Teachers' Association:
  - (e) 1 person appointed by the Minister on the nomination of the New Zealand School Trustees Association.
- (1A) The Minister must appoint one of the members appointed under subsection (1)(a) as chairperson, despite clause 1 of Schedule 5 of the Crown Entities Act 2004.
- (2) The elected members of the Teachers Council must be elected in accordance with rules made under section 139AJ(1)(a) by registered teachers who each hold a current practising certificate.
- (3) The first elections for the elected members must be held as soon as practicable after the commencement of this section but, until the date on which the elected members take office following those elections, the positions of the elected members must be filled by persons appointed by the Minister.

- (4) In order to provide for the staggered turnover of members, the Minister may specify, when appointing members to hold office when this section comes into force, which members are to hold office for 3 years (which is the standard term of office), and which are to hold office for 18 months.
- (5) An elected member becomes a member of the Council on the date fixed by the Council as the date on which elected members take office.
- (6) The term of office of every elected member is 3 years.
- (7) Despite subsection (6), every elected member continues in office until his or her successor comes into office.

Section 139AD: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AD(1)(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AD(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AD(5): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AD(6): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AD(7): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **139AE Functions of Teachers Council**

The functions of the Teachers Council are as follows:

- (a) to provide professional leadership to teachers and others involved in schools and early childhood education:
- (b) to encourage best teaching practice:
- (c) to carry out the functions under Part 10 relating to teacher registration:
- (d) to determine standards for teacher registration and the issue of practising certificates:
- (e) to establish and maintain standards for qualifications that lead to teacher registration:
- (f) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes on the basis of the standards referred to in paragraph (e):
- (g) to develop a code of ethics for teachers, after consultation with the State Services Commissioner and after

having regard to any code of conduct issued by him or her under section 57 of the State Sector Act 1988:

- (h) to exercise the disciplinary functions in this Part relating to teacher misconduct and reports of teacher convictions:
- (i) to set the criteria for reporting serious misconduct and for reporting on competence issues:
- (j) to exercise the functions in this Part relating to teacher competence:
- (k) to co-ordinate a system providing for the vetting by the Police of all teachers:
- (l) to identify research priorities and, where appropriate, to promote and sponsor research according to those priorities:
- (m) to exercise any other functions conferred on it by this Act, any other enactment, or the Minister in accordance with section 112 of the Crown Entities Act 2004.

Section 139AE: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AE(g): replaced, on 25 January 2005, by section 18 of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 139AE(k): amended, on 20 May 2010, by section 37 of the Education Amendment Act 2010 (2010 No 25).

Section 139AE(m): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **139AF Powers of Teachers Council**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) The Teachers Council may not charge a commercial rate for any goods and services that it provides unless the Minister has given his or her approval.
- (4) The Teachers Council may, by notice in the *Gazette*, fix fees for all or any of the following:
  - (a) any addition or alteration to a person's registration as a teacher:
  - (b) any addition or alteration to, or extension of, a person's limited authority to teach:
  - (c) any addition or alteration to a person's practising certificate:

- (d) inspection of the register of registered teachers or any other register or any other documents kept by the Teachers Council that are open to inspection:
- (e) the supply of a copy of any entry in a register or other document referred to in paragraph (d):
- (f) any other matter for which this Act provides that the Teachers Council may charge fees.

Section 139AF: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AF(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AF(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AF(3): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **139AG Ministerial directions**

- (1) The Minister may not give directions to the Council in respect of its functions under section 139AE(a) and (b) (which relate to professional leadership and best teaching practice).
- (2) Subsection (1) is an exception to section 104 of the Crown Entities Act 2004.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*

Section 139AG: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AG(1): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AG(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AG(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AG(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 139AG(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **139AH Advisory groups**

- (1) The Teachers Council must establish—
  - (a) an early childhood advisory group; and

- (b) a Maori-medium advisory group.
- (2) The Council may establish any other advisory groups, whether on an ongoing basis or for a fixed term.
- (3) The Council must determine the membership of advisory groups, and their terms of reference, budget, and other matters necessary to ensure their efficient and effective operation.
- (4) The Council must have regard to advice given by an advisory group about any matter within its area of expertise.

Section 139AH: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

### **139AI Code of ethics**

- (1) The code of ethics prepared under this section is binding on all teachers who hold a practising certificate and on all authorised persons.
- (2) The Teachers Council must, as soon as practicable after the first elected members of the Council take office, prepare a code of ethics for teachers.
- (3) When preparing the code of ethics (and any amendments to it), the Teachers Council must take all reasonable steps to consult with those who will be bound by it.
- (4) The code of ethics must be signed by the chairperson of the Teachers Council and—
  - (a) notice of it must be given in the *Gazette*; and
  - (b) the notice must say where copies of the code may be obtained free of charge; and
  - (c) the notice must give the date on which the code comes into force, which must be a date on or after the date of the *Gazette* notice; and
  - (d) the Teachers Council must take all reasonable steps to ensure that those bound by the code hear of it and are able to obtain copies of it.
- (5) The Council may amend the code of ethics, and every amendment—
  - (a) must be notified in the *Gazette*; and
  - (b) forms part of the code on the date specified in the notice as the date on which it will come into force.

Section 139AI: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).



**139AJ Teachers Council to make rules**

- (1) The Teachers Council must, as soon as practicable after the commencement of this section, make rules providing for—
  - (a) the conduct of elections for elected members and the establishment of rolls for the election of each elected member; and
  - (b) a Complaints Assessment Committee to—
    - (i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
    - (ii) carry out any other function, and exercise any power given under this Act or delegated to it by the Teachers Council; and
  - (c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and
  - (d) the practices and procedures of the disciplinary bodies; and
  - (e) the procedures of the Teachers Council for dealing with reports received under the mandatory reporting provisions in sections 139AK, 139AL, 139AM, 139AN, and 139AP; and
  - (f) the procedures relating to Police vets, and in particular the rights of persons who are vetted; and
  - (g) the amendment and replacement of rules made under this subsection, including any consultation requirements.
- (2) The Teachers Council may make rules for any other purpose relating to the performance of its functions.
- (3) When preparing rules (and any amendments to them), the Teachers Council must take all reasonable steps to consult with those affected by the rules.
- (4) When rules are made under this section,—
  - (a) notice of them must be given in the *Gazette*; and
  - (b) the notice must say where copies of the rules may be obtained free of charge; and
  - (c) the notice must give the date on which the rules come into force, which must be a date on or after the date of the *Gazette* notice; and

- (d) the Teachers Council must take all reasonable steps to ensure that those affected by the rules hear of them and are able to obtain copies of them.
- (5) 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.

Section 139AJ: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AJ(5): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **139AJA Delegations**

- (1) The Council may not delegate any of its functions or powers—
  - (a) to make rules:
  - (b) relating to deregistration:
  - (c) to appoint a chief executive.
- (2) This section applies despite section 73 of the Crown Entities Act 2004.

Section 139AJA: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **139AJB Chief executive**

The Council must from time to time appoint a chief executive, on terms and conditions agreed between the Council and the person appointed, in accordance with section 117 of the Crown Entities Act 2004.

Section 139AJB: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **139AJC Superannuation**

- (1) Any person who, immediately before becoming an employee of the Council, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed for the purpose of that Act to be employed in the Government service so long as he or she continues to be an employee of the Council.

- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Council were Government service.
- (3) Nothing in subsection (2) entitles a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Council is the controlling authority.

Section 139AJC: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Mandatory reporting*

Heading: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

#### **139AK Mandatory reporting of dismissals and resignations**

- (1) When an employer dismisses a teacher for any reason, the employer must immediately report the dismissal to the Teachers Council.
- (2) An employer must immediately report to the Teachers Council when a teacher resigns from a teaching position if, within the 12 months preceding the resignation, the employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher's competence.
- (3) Every report under this section must be in writing, and must include,—
  - (a) in the case of a report of dismissal, the reason for the dismissal; and
  - (b) in the case of a report of a resignation,—
    - (i) a description of the conduct or competency issues that the employer had been concerned about; and
    - (ii) a report of what action (if any) the employer had taken with respect to the conduct or competency issues.

Section 139AK: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AL Mandatory reporting of complaints received about former employees**

- (1) The former employer of a teacher must immediately report to the Teachers Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives a complaint about the teacher's conduct or competence while he or she was an employee.
- (2) Every report under this section—
  - (a) must be in writing; and
  - (b) must set out the nature of the complaint; and
  - (c) may include any additional information that the employer considers relevant.
- (3) A former employer must not report a complaint under this section if—
  - (a) it is satisfied that the complaint is malicious, vexatious, or without any foundation; or
  - (b) the complaint is about competence, and the complaint does not meet the Teachers Council's criteria for reporting about competence issues.

Section 139AL: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AM Mandatory reporting of possible serious misconduct**

- (1) The employer of a teacher must immediately report to the Teachers Council if it has reason to believe that the teacher has engaged in serious misconduct.
- (2) Every report under this section must—
  - (a) be in writing; and
  - (b) include a description of the conduct of the teacher that the employer believes to be serious misconduct; and
  - (c) include a description of what action (if any) the employer has taken in relation to it.

Section 139AM: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AN Mandatory reporting of failure to reach required level of competence**

- (1) The employer of a teacher must immediately report to the Teachers Council if it is satisfied that, despite undertaking

competency procedures with the teacher, the teacher has not reached the required level of competence.

- (2) Every report under this section must—
  - (a) be in writing; and
  - (b) include a description of the competency issues leading to the report; and
  - (c) include a description of the action that the employer has taken in relation to it.

Section 139AN: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

#### **139AO Offence to fail to report**

- (1) An employer or former employer commits an offence and is liable on conviction to a fine not exceeding \$5,000 if it fails without reasonable justification to report to the Teachers Council as required under any of sections 139AK, 139AL, 139AM, or 139N.
- (2) It is a defence to a charge under subsection (1) against the former employer of a teacher if the former employer proves that it believed on reasonable grounds that, by virtue of section 139AL(3), it was not required to report to the Teachers Council.

Section 139AO: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AO(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **139AP Mandatory reporting of convictions**

- (1) Every teacher who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Teachers Council.
- (2) Failure to report a conviction to the Teachers Council in accordance with subsection (1) is misconduct that may give rise to disciplinary proceedings.
- (3) The Registrar of every court must, unless the court expressly orders otherwise in a particular case, report to the Teachers Council when a person whom the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more.

- (4) If the Registrar has reported a conviction to the Teachers Council under subsection (3), then, if that conviction is subsequently quashed, the Registrar must notify the Teachers Council of that fact.

Section 139AP: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

### *Disciplinary functions*

Heading: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

#### **139AQ Disciplinary bodies**

- (1) The constitution of the disciplinary bodies must be set out in the rules, and those rules must be consistent with this section.
- (2) Both disciplinary bodies may have members who are not members of the Teachers Council.
- (3) Both disciplinary bodies may operate in panels, and more than 1 panel of each body may operate at any one time.
- (3A) Both disciplinary bodies must include at least 1 member of the Teachers Council.
- (3B) The Disciplinary Tribunal must include at least 1 person who is selected from a list, prepared by the Minister after consultation with the Teachers Council, of people who are neither members of the Teachers Council, nor teachers, employers, or members of an employing body.
- (3C) The majority of members on the Disciplinary Tribunal, and on every panel of the Disciplinary Tribunal, must be registered teachers.
- (4) No member of the Complaints Assessment Committee may be a member of the Disciplinary Tribunal.
- (5) Rules must provide for the replacement of any member of a disciplinary body who, in relation to a particular complaint,—
- (a) made the complaint; or
  - (b) is otherwise in a position of conflict of interest.
- (6) When performing their functions and exercising their powers, the disciplinary bodies must act in accordance with the rules of natural justice.

Section 139AQ: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AQ(2): replaced, on 17 May 2006, by section 27 of the Education Amendment Act 2006 (2006 No 19).

Section 139AQ(3): replaced, on 17 May 2006, by section 27 of the Education Amendment Act 2006 (2006 No 19).

Section 139AQ(3A): inserted, on 17 May 2006, by section 27 of the Education Amendment Act 2006 (2006 No 19).

Section 139AQ(3B): inserted, on 17 May 2006, by section 27 of the Education Amendment Act 2006 (2006 No 19).

Section 139AQ(3C): inserted, on 17 May 2006, by section 27 of the Education Amendment Act 2006 (2006 No 19).

### **139AR Complaints of misconduct**

- (1) A person who wishes to make a complaint about the conduct of a teacher must first make the complaint to the teacher's employer, unless one of the circumstances in subsection (2)(a) to (d) applies.
- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the conduct of a teacher—
  - (a) if the complaint is about a teacher who is not currently employed by an employer; or
  - (b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
  - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
  - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a report of any action that the employer or former employer has taken in relation to it.

Section 139AR: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

### **139AS Complaints and reports relating to teacher conduct**

- (1) The Teachers Council must refer to the Complaints Assessment Committee—

- (a) every report received by it under any of sections 139AK, 139AL, or 139AM that relates to teacher conduct; and
  - (b) *[Repealed]*
  - (c) every complaint received by it under section 139AR.
- (2) In relation to a complaint received under section 139AR from a person other than the current employer of the teacher concerned,—
  - (a) if the Complaints Assessment Committee considers that the complaint should have been sent first to the teacher's employer, it must refer the matter to the employer; and
  - (b) in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (3) An employer to whom a complaint is referred under subsection (2), or who is required to provide information in the course of an investigation by the Complaints Assessment Committee, must report to the Committee as required by it.

Section 139AS: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AS(1)(a): amended, on 17 May 2006, by section 28(1) of the Education Amendment Act 2006 (2006 No 19).

Section 139AS(1)(b): repealed, on 17 May 2006, by section 28(2) of the Education Amendment Act 2006 (2006 No 19).

### **139AT Powers of Complaints Assessment Committee**

- (1) The Complaints Assessment Committee may investigate any complaint or report referred to it under section 139AS.
- (2) Following an investigation, the Complaints Assessment Committee may, in respect of any matter other than a conviction to which section 139AV relates, do any of the following:
  - (a) dismiss the matter, or resolve to take it no further;
  - (b) refer the teacher concerned to a competency review;
  - (c) refer the teacher concerned to an impairment process which may involve either or both of the following:
    - (i) assessment of an impairment;
    - (ii) assistance with an impairment;
  - (d) by agreement with the teacher and the person who made the complaint or report, do any of the following:



- (i) censure the teacher:
  - (ii) impose conditions on the teacher's practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
  - (iii) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
  - (iv) annotate the register or the list of authorised persons in a specified manner.
- (3) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing.
- (4) The Complaints Assessment Committee must refer a matter concerning a teacher to the Disciplinary Tribunal if it is satisfied on reasonable grounds that—
  - (a) the teacher has engaged in serious misconduct; and
  - (b) the matter should be referred to the Disciplinary Tribunal.
- (5) If a matter is referred to the Disciplinary Tribunal under subsection (4), a notice must be sent to the teacher concerned setting out the charge of misconduct against him or her.

Section 139AT: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AT(2): amended, on 17 May 2006, by section 29(1) of the Education Amendment Act 2006 (2006 No 19).

Section 139AT(2)(c): replaced, on 20 May 2010, by section 38 of the Education Amendment Act 2010 (2010 No 25).

Section 139AT(2)(d): replaced, on 17 May 2006, by section 29(2) of the Education Amendment Act 2006 (2006 No 19).

Section 139AT(4): replaced, on 17 May 2006, by section 29(3) of the Education Amendment Act 2006 (2006 No 19).

Section 139(5): inserted, on 17 May 2006, by section 29(3) of the Education Amendment Act 2006 (2006 No 19).

### **139AU Interim suspension until matter about or involving possible serious misconduct concluded**

- (1) At any time between when the Complaints Assessment Committee receives a complaint or receives or becomes aware of a report that is about or involves a teacher's possible serious misconduct and when the matter is concluded (as specified in

section 139AUA(6)), the Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.

(1A) *[Repealed]*

(2) On an application under subsection (1) for an interim suspension, the chairperson of the Disciplinary Tribunal may, either with or without a hearing, suspend the teacher's practising certificate or authority.

Section 139AU: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AU heading: amended, on 21 December 2010, by section 22(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AU heading: amended, on 20 May 2010, by section 39(1) of the Education Amendment Act 2010 (2010 No 25).

Section 139AU(1): replaced, on 21 December 2010, by section 22(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AU(1A): repealed, on 21 December 2010, by section 22(3) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AU(2): replaced, on 20 May 2010, by section 39(4) of the Education Amendment Act 2010 (2010 No 25).

Section 139AU(2): amended, on 21 December 2010, by section 22(4) of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **139AUA Duration of interim suspension**

- (1) The duration of an interim suspension under section 139AU is initially until the earliest of the following occurs:
- (a) the expiry of a period, specified by the chairperson of the Disciplinary Tribunal, that is less than 3 months;
  - (b) the expiry of a period of 3 months after the interim suspension commences;
  - (c) any conditions specified by the chairperson of the Disciplinary Tribunal are met;
  - (d) the interim suspension is otherwise lifted or revoked, for example, as the result of a review under subsection (2).
- (2) The chairperson of the Disciplinary Tribunal must review his or her initial interim suspension decision, if the teacher—
- (a) requests him or her to do so at any time during the initial interim period of suspension; and

- (b) provides a written explanation or statement in support of the request.
- (3) The Disciplinary Tribunal may renew an interim suspension under section 139AU for further successive periods of no more than 3 months each, if, at the end of the relevant period of interim suspension,—
  - (a) the matter has not been concluded; and
  - (b) the interim suspension has not been otherwise lifted or revoked, for example, as the result of an appeal against it under subsection (4).
- (4) A teacher whose practising certificate or authority is subject to an interim suspension under section 139AU that is renewed under subsection (3) may, at any time during a further period of interim suspension, make representations in respect of the interim suspension to the Disciplinary Tribunal at a hearing, if he or she believes that there is an unreasonable delay in concluding the matter.
- (5) A hearing under subsection (4) is a hearing before the Disciplinary Tribunal, and sections 139AX to 139AZB apply to it.
- (6) For the purposes of this section and section 139AU, a matter is concluded when the latest of the following occurs in relation to the complaint or report:
  - (a) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AT(2)(a) to (d):
  - (b) the Complaints Assessment Committee has carried out whatever action it decides to take under section 139AV(2)(a) to (d):
  - (c) the Disciplinary Tribunal has carried out whatever action it decides to take under section 139AW(1)(a) to (i), if the Complaints Assessment Committee has referred the matter to the Disciplinary Tribunal under any of sections 139AT(3) or (4) or 139AV(3).

Section 139AUA: inserted, on 20 May 2010, by section 40 of the Education Amendment Act 2010 (2010 No 25).

Section 139AUA(6): amended, on 21 December 2010, by section 23(a) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AUA(6): amended, on 21 December 2010, by section 23(b) of the Education Amendment Act (No 3) 2010 (2010 No 134).

**139AV Investigation by Complaints Assessment Committee of reports of convictions**

- (1) Every report of the conviction of a teacher for an offence punishable by 3 months' or more imprisonment that is received by, or comes to the attention of, the Teachers Council must be investigated by the Complaints Assessment Committee.
- (2) Following the investigation of such a conviction, the Complaints Assessment Committee may do any of the following:
  - (a) dismiss the matter, or resolve to take it no further:
  - (b) refer the teacher concerned to a competency review:
  - (c) refer the teacher concerned to an impairment process which may involve either or both of the following:
    - (i) assessment of an impairment:
    - (ii) assistance with an impairment:
  - (d) by agreement with the teacher, do any of the following:
    - (i) censure the teacher:
    - (ii) impose conditions on the teacher's practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
    - (iii) annotate the register or the list of authorised persons in a specified manner.
- (3) If the Complaints Assessment Committee considers that the conviction may warrant action by the Disciplinary Tribunal, it must refer the report to the Disciplinary Tribunal for a hearing.

Section 139AV: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AV heading: amended, on 17 May 2006, by section 30(1) of the Education Amendment Act 2006 (2006 No 19).

Section 139AV(2): replaced, on 17 May 2006, by section 30(2) of the Education Amendment Act 2006 (2006 No 19).

Section 139AV(2)(c): replaced, on 20 May 2010, by section 41 of the Education Amendment Act 2010 (2010 No 25).

**139AW Powers of Disciplinary Tribunal**

- (1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:
  - (a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2):

- (b) censure the teacher:
  - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
  - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
  - (e) annotate the register or the list of authorised persons in a specified manner:
  - (f) impose a fine on the teacher not exceeding \$3,000:
  - (g) order that the teacher's registration or authority be cancelled (*see* section 129(1)):
  - (h) require any party to the hearing to pay costs to any other party:
  - (i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing.
- (2) Despite subsection (1), following a hearing that arises out of a report under section 139AP of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in paragraphs (d), (f), (h), or (i) of subsection (1).
- (3) A fine imposed on a teacher, and a sum ordered to be paid to the Teachers Council under subsection (1)(i), are recoverable as debts due to the Teachers Council.

Section 139AW: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AW(1)(g): replaced, on 17 May 2006, by section 32 of the Education Amendment Act 2006 (2006 No 19).

### **139AX Evidence at hearings**

- (1) The Disciplinary Tribunal may—
- (a) receive evidence on oath (and for that purpose an officer or employee of the Teachers Council may administer an oath); and
  - (b) permit a person appearing as a witness before it to give evidence by written statement, and verify that statement by oath.
- (2) A hearing before the Disciplinary Tribunal is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961 (which relates to punishment for perjury).

Section 139AX: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

### **139AY Powers of Disciplinary Tribunal in relation to witnesses**

- (1) The Disciplinary Tribunal may require a person to do either or both of the following:
  - (a) attend and give evidence at a hearing of the Disciplinary Tribunal;
  - (b) produce any documents, records, or other information in his or her custody or control that relate to the subject matter of the hearing, whether specified by the Disciplinary Tribunal or not.
- (2) A requirement under subsection (1) must be in writing signed by the chairperson of the Disciplinary Tribunal.
- (3) A person required to attend a hearing is entitled to be paid, by the party calling the person (or, if called on the volition of the Disciplinary Tribunal itself, by the Teachers Council), witnesses' fees, allowances, and travelling expenses, according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations apply accordingly.

Section 139AY: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AY(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **139AZ Offences**

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$500 who, without lawful justification, fails or refuses—
  - (a) to attend and give evidence when required by the Disciplinary Tribunal; or
  - (b) to answer truly and fully any question put to him or her by a member of the Disciplinary Tribunal; or
  - (c) to produce any document, record, or other information as required by the Disciplinary Tribunal.
- (2) A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if, without lawful excuse, he or

she breaches an order made by the Disciplinary Tribunal under rules made under section 139AJ that—

- (a) provide for a hearing to be held in private; or
- (b) provide for evidence at a hearing to be given in private; or
- (c) impose restrictions on the publication of any information relating to a particular hearing.

Section 139AZ: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AZ heading: amended, on 17 May 2006, by section 33(1) of the Education Amendment Act 2006 (2006 No 19).

Section 139AZ(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 139AZ(2): inserted, on 17 May 2006, by section 33(2) of the Education Amendment Act 2006 (2006 No 19).

Section 139AZ(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **139AZA Privileges and immunities**

- (1) Every person who does any of the following has the same privileges as witnesses have in a court:
  - (a) provides documents, things, or information to a disciplinary body;
  - (b) produces documents or things to a disciplinary body;
  - (c) gives evidence to, or answers questions by, a disciplinary body.
- (2) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court.
- (3) If a person is represented at a hearing before the Disciplinary Tribunal by a person other than a barrister or solicitor,—
  - (a) any communications between the person and the representative in relation to the hearing are as privileged as they would have been if the representative had been a barrister or solicitor; and
  - (b) the representative is a counsel for the purposes of subsection (2).

Section 139AZA: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AZB Appeals**

- (1) The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 139AU(2) or section 139AW, or a decision by the Teachers Council made under section 139AZCB, may appeal that decision to a District Court.
- (1A) The Complaints Assessment Committee may, with the leave of the Teachers Council, appeal to a District Court against a decision of the Disciplinary Tribunal made under section 139AU(2) or section 139AW.
- (2) An appeal under this section must be made within 28 days of receipt of written notice of the decision, or any longer period that the court allows.
- (3) Subsections (3) to (7) of section 126 apply to every appeal under this section as if it were an appeal under subsection (1) of section 126.

Section 139AZB: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AZB(1): replaced, on 17 May 2006, by section 34 of the Education Amendment Act 2006 (2006 No 19).

Section 139AZB(1): amended, on 21 December 2010, by section 24 of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139AZB(1A): inserted, on 17 May 2006, by section 34 of the Education Amendment Act 2006 (2006 No 19).

*Review of competence*

Heading: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AZC Complaints about competence**

- (1) A person who wishes to make a complaint about a teacher's competence must first make the complaint to the teacher's employer, unless one of the circumstances in subsection (2)(a) to (d) applies.
- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the competence of a teacher—
  - (a) if the complaint is about a teacher who is not currently employed by an employer; or



- (b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
  - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
  - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a description of the competency issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.
- (4) If the Teachers Council considers that a complaint under this section should have been sent first to the teacher's employer, it must refer the matter to the employer; and in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (5) When the Teachers Council refers a complaint to an employer, the employer must report as required by the Teachers Council.
- (6) If the Teachers Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Teachers Council may investigate the complaint.
- (7) When a complaint about competence is made by a member of the Teachers Council, that member may not be involved in any investigation of the complaint.
- (8) *[Repealed]*

Section 139AZC: inserted, on 1 September 2004, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AZC(8): repealed, on 21 December 2010, by section 25 of the Education Amendment Act (No 3) 2010 (2010 No 134).

### **139AZCA Investigation of mandatory reports about competence**

- (1) When investigating a report under section 139AK or 139AN about a teacher's competence, the Teachers Council may ask the teacher's employer or former employer for information in addition to the information supplied in the report.

- (2) When the Teachers Council asks an employer or former employer for information under subsection (1), the employer or former employer must provide the information as requested by the Teachers Council.
- (3) When a report is made under section 139AK or 139AN by a member of the Teachers Council, that member must not be involved in any investigation of the report.

Section 139AZCA: inserted, on 21 December 2010, by section 26 of the Education Amendment Act (No 3) 2010 (2010 No 134).

**139AZCB Powers of Teachers Council after finding required level of competence not attained**

Following an investigation of a complaint under section 139AZC, or following receipt of a report under section 139AK or 139AN and any investigation of the report, the Teachers Council may, if satisfied that the teacher has not attained the required level of competence,—

- (a) do any 1 or more of the following:
  - (i) impose conditions on the teacher's practising certificate or authority:
  - (ii) refer the teacher to an impairment process which may involve either or both of the following:
    - (A) assessment of an impairment:
    - (B) assistance with an impairment:
  - (iii) annotate the register or the list of authorised persons in a specified manner, in relation to any action taken under subparagraph (i); or
- (b) order that the teacher's registration or authority be cancelled (*see* section 129(1)).

Section 139AZCB: inserted, on 21 December 2010, by section 26 of the Education Amendment Act (No 3) 2010 (2010 No 134).

*Police vetting*

Heading: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

**139AZD Teachers Council must co-ordinate Police vetting**

- (1) The Teachers Council must establish a system for co-ordinating Police vetting, in relation to—

- (a) teacher registration and the issue of practising certificates; and
  - (b) the granting of limited authorities to teach.
- (2) A copy of the result of the Police vet of a person must be given to both the person or body that requested it and the person who is the subject of the vet.
- (3) *[Repealed]*
- (4) The Teachers Council must establish internal procedures for dealing with Police vets requested for its own purposes, which must, in particular,—
  - (a) identify the person or office-holder within the Council to whom Police vets must be sent; and
  - (b) ensure that strict confidentiality is observed for Police vets.
- (5) The Teachers Council may not take adverse action in relation to a person who is the subject of a Police vet until—
  - (a) the person has validated the information contained in the vet; or
  - (b) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Section 139AZD: inserted, on 1 February 2002, by section 37(1) of the Education Standards Act 2001 (2001 No 88).

Section 139AZD(1): replaced, on 20 May 2010, by section 43(1) of the Education Amendment Act 2010 (2010 No 25).

Section 139AZD(3): repealed, on 20 May 2010, by section 43(2) of the Education Amendment Act 2010 (2010 No 25).

Section 139AZD(4): amended, on 20 May 2010, by section 43(3) of the Education Amendment Act 2010 (2010 No 25).

## **Part 11**

### **Miscellaneous**

#### **139A No corporal punishment in early childhood services or registered schools**

- (1) No person who—
  - (a) is employed by a board (within the meaning of section 2(1)) at or in respect of a school or institution administered by the board; or

- (b) is employed by the managers of a school registered under section 35A at or in respect of the school; or
- (ba) is employed by the sponsor of a partnership school kura hourua at or in respect of the school; or
- (c) is employed at an early childhood service (as defined in section 309); or
- (d) owns, manages, or controls an early childhood service (as so defined),—

shall use force, by way of correction or punishment, towards any student or child enrolled at or attending the school, institution, or service.

(2) No person who is supervising or controlling—

- (a) on behalf of a board (within the meaning of section 2(1)) any student enrolled at or attending a school or institution administered by the board; or
- (b) on behalf of the managers of a school registered under section 35A any student enrolled at or attending the school; or
- (ba) on behalf of a sponsor of a partnership school kura hourua any student enrolled at or attending the school; or
- (c) on behalf of the service provider of an early childhood service (as defined in section 309) any child enrolled at or attending the service,—

shall use force, by way of correction or punishment, towards the student or child.

Section 139A: inserted, on 23 July 1990, by section 28(1) of the Education Amendment Act 1990 (1990 No 60).

Section 139A heading: amended, on 1 December 2008, by section 26(1) of the Education Amendment Act 2006 (2006 No 19).

Section 139A(1): amended, on 1 December 2008, by section 26(3) of the Education Amendment Act 2006 (2006 No 19).

Section 139A(1): amended, on 21 June 2007, by section 6(2) of the Crimes (Substituted Section 59) Amendment Act 2007 (2007 No 18).

Section 139A(1)(b): amended, on 21 December 2010, by section 27(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139A(1)(ba): inserted, on 13 June 2013, by section 27(1) of the Education Amendment Act 2013 (2013 No 34).

Section 139A(1)(c): replaced, on 1 December 2008, by section 26(2) of the Education Amendment Act 2006 (2006 No 19).

Section 139A(1)(d): replaced, on 1 December 2008, by section 26(2) of the Education Amendment Act 2006 (2006 No 19).

Section 139A(2): amended, on 21 June 2007, by section 6(2) of the Crimes (Substituted Section 59) Amendment Act 2007 (2007 No 18).

Section 139A(2)(b): amended, on 21 December 2010, by section 27(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 139A(2)(ba): inserted, on 13 June 2013, by section 27(2) of the Education Amendment Act 2013 (2013 No 34).

Section 139A(2)(c): replaced, on 1 December 2008, by section 26(4) of the Education Amendment Act 2006 (2006 No 19).

### **139AAA Surrender and retention of property**

- (1) This section applies if a teacher or an authorised staff member has reasonable grounds to believe that a student has hidden or in clear view on or about the student's person, or in any bag or other container under the student's control, an item that is likely to—
  - (a) endanger the safety of any person; or
  - (b) detrimentally affect the learning environment.
- (2) If this section applies, the teacher or authorised staff member may require the student to produce and surrender the item.
- (3) If the item is stored on a computer or other electronic device, the teacher or authorised staff member may require the student—
  - (a) to reveal the item;
  - (b) to surrender the computer or other electronic device on which the item is stored.
- (4) A teacher or an authorised staff member may do either or both of the following to an item surrendered under this section:
  - (a) retain the item for a reasonable period;
  - (b) dispose of the item (if appropriate).
- (5) A teacher or an authorised staff member may retain a computer or other electronic device surrendered under subsection (3)(b) for a reasonable period.
- (6) If an item or a computer or other electronic device is retained under this section, it must be stored in an appropriate manner.
- (7) At the end of any period of retention, any computer or other electronic device, or any item that is not disposed of under subsection (4)(b), must be—
  - (a) returned to the student; or
  - (b) passed to another person or agency, as appropriate.

- (8) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under section 139AAH.
- (9) In this section and sections 139AAB to 139AAI, unless the context otherwise requires,—
- authorised staff member** means an employee of a board who is authorised by that board,—
- (a) when used in this section, to exercise powers under this section; and
- (b) when used in section 139AAB, to exercise powers under that section
- item** includes information stored in electronic form
- student** includes a person under the supervision of a teacher, whether or not the person is enrolled at the school at which the teacher is employed
- teacher** means a person employed at a State school in a teaching position (within the meaning of section 120).
- (10) An authorisation referred to in the definition of authorised staff member in subsection (9) must be in writing and may be subject to conditions.

Section 139AAA: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

### 139AAB Searches of clothing and bags or other containers

- (1) This section applies if—
- (a) a teacher or an authorised staff member has reasonable grounds to believe that a student has on or about the student's person, or in any bag or other container under the student's control, a harmful item; and
- (b) the teacher or authorised staff member has required the student to produce and surrender the harmful item under section 139AAA and the student has refused to produce and surrender it.
- (2) If this section applies, the teacher or authorised staff member may do any of the following:
- (a) require the student to remove any outer clothing, except where the student has no other clothing, or only under-clothing, under that outer clothing:

- (b) require the student to remove any head covering, gloves, footwear, or socks:
  - (c) require the student to surrender the bag or other container.
- (3) The teacher or authorised staff member may search any clothing or footwear removed, and any bag or other container surrendered, under subsection (2).
- (4) If, during a search under this section, the teacher or authorised staff member finds a harmful item or an item that is likely to detrimentally affect the learning environment, the item may be seized by the teacher or authorised staff member and section 139AAA(4) to (7) apply with any necessary modifications.
- (5) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under section 139AAH.
- (6) In this section, section 139AAD, and section 139AAF,—  
**harmful item** means an item that a teacher or an authorised staff member has reasonable grounds to believe poses an immediate threat to the physical or emotional safety of any person  
**outer clothing** includes, without limitation, any coat, jacket, jumper, or cardigan  
**socks** does not include tights or stockings.

Section 139AAB: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

#### **139AAC Restrictions on searches under section 139AAB**

- (1) A teacher or an authorised staff member who carries out a search under section 139AAB must carry out the search with decency and sensitivity and in a manner that affords the student the greatest degree of privacy and dignity consistent with the purpose of the search.
- (2) Unless impracticable, a search under section 139AAB must be carried out—
  - (a) by a teacher or an authorised staff member who is of the same sex as the student; and

- (b) in the presence of the student and another teacher or authorised staff member who is of the same sex as the student.
- (3) Unless impracticable, a search under section 139AAB must not be carried out in the view of any person other than the person carrying out the search, the student, and another teacher or authorised staff member.
- (4) A teacher or an authorised staff member who carries out a search under section 139AAB must—
  - (a) return any clothing or footwear removed and any bag or other container surrendered as soon as the search is completed; and
  - (b) keep a written record of any items seized under section 139AAB(4).

Section 139AAC: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

#### **139AAD Limitations on sections 139AAA and 139AAB**

- (1) Nothing in section 139AAA or 139AAB permits a teacher or staff member—
  - (a) to search any student; or
  - (b) to use physical force against a student; or
  - (c) to require a student to provide a bodily sample (but a teacher or staff member may encourage a student to participate in a voluntary drug treatment programme that involves testing of bodily samples).
- (2) Nothing in section 139AAA or 139AAB permits a teacher or an authorised staff member to have a dog with him or her for the purpose of exercising a power under that section.
- (3) The powers set out in sections 139AAA and 139AAB may not be exercised in relation to 2 or more students together unless the teacher or authorised staff member has reasonable grounds to believe that each student has an item specified in section 139AAA(1) or a harmful item on or about his or her person, or in any bag or other container under his or her control.
- (4) Nothing in subsection (1) limits or affects sections 15 and 17 of this Act or sections 41, 48, and 59 of the Crimes Act 1961.
- (5) In this section,—



**rub-down search** means a search in which the person conducting the search—

- (a) runs or pats his or her hand over the body of the person being searched, whether outside or inside the clothing of the person being searched;
- (b) inserts his or her hand inside any pocket or pouch in the clothing of the person being searched

**search**, in relation to a student, includes—

- (a) a strip search; and
- (b) a rub-down search

**strip search** means a search where the person conducting the search requires the person being searched to—

- (a) remove any of the latter person's clothing other than outer clothing, head covering, gloves, footwear, or socks; or
- (b) raise, lower, or open all or any part of the latter person's clothing.

Section 139AAD: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

### **139AAE Prohibitions on searches by contractors**

- (1) A contractor may not—
  - (a) exercise any power in section 139AAA or 139AAB; or
  - (b) search a student.
- (2) However, a contractor may bring a dog that is trained for the purpose of searching to a school and use the dog for the purpose of searching school property (including lockers, desks, or other receptacles provided to students for storage purposes).
- (3) In this section, **contractor** has the meaning given by section 78CA(2).

Section 139AAE: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

### **139AAF Refusal to reveal, produce, or surrender item**

- (1) If a student refuses to reveal, produce, or surrender an item or computer or other electronic device under section 139AAA(2) or (3), a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour,

that the teacher or authorised staff member considers reasonable.

- (2) If a student refuses to remove any outer clothing, head covering, gloves, footwear, or socks or to surrender a bag or other container under section 139AAB(2), a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour, that the teacher or authorised staff member considers reasonable.

Section 139AAF: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

### **139AAG Power to search storage containers not affected**

Nothing in section 139AAA or 139AAB limits or affects any power to search any locker, desk, or other receptacle provided to students for storage purposes.

Section 139AAG: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

### **139AAH Rules about surrender and retention of property and searches**

- (1) The Secretary must make rules (which must be consistent with this Act) regulating the practice and procedure to be followed by boards, principals, teachers, and authorised staff members under sections 139AAA to 139AAF, including, without limitation, rules—
- (a) providing for the keeping of written records relating to the use of the powers under section 139AAA; and
  - (b) prescribing requirements relating to the keeping of written records under section 139AAB; and
  - (c) prescribing the procedure for authorising staff members to exercise powers or carry out functions under sections 139AAA to 139AAI; and
  - (d) specifying the circumstances in which items may be disposed of under section 139AAA(4)(b); and
  - (e) setting out requirements for the storage of items and computers and other electronic devices under section 139AAA(6); and

- (f) making provision for the return of items and computers and other electronic devices under section 139AAA(7)(a).
- (2) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 139AAH: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

#### **139AAI Guidelines about surrender and retention of property and searches**

- (1) The Secretary must issue guidelines for the exercise of powers and carrying out of functions under sections 139AAA to 139AAH.
- (2) Boards, principals, teachers, and authorised staff members must have regard to guidelines issued under subsection (1).

Section 139AAI: inserted, on 1 January 2014, by section 28 of the Education Amendment Act 2013 (2013 No 34).

#### **139B Building Act 2004**

- (1) Where any person making an inspection under this Act believes that any building or sitework does not comply with the Building Act 2004, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.
- (2) For the purposes of this section, the terms **building**, **sitework**, and **territorial authority**, have the meanings ascribed to them by the Building Act 2004.

Section 139B: inserted, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

Section 139B heading: amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 139B(1): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 139B(2): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

**139C Offence of insulting, abusing, or intimidating staff**

- (1) Every person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, who intentionally insults, abuses, or intimidates a teacher or member of staff of a school—
- (a) within the presence or hearing of any student of the school; and
  - (b) while on school premises, or in any other place where students of the school are assembled for school purposes.
- (2) However, no student of the school may be charged with an offence under subsection (1).

Compare: 1964 No 135 s 195

Section 139C: inserted, on 17 May 2006, by section 36 of the Education Amendment Act 2006 (2006 No 19).

Section 139C(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**139D School transport**

- (1) The Secretary for Education may assist in the provision of school transport by doing any of the following:
- (a) paying schools to provide school transport to their students;
  - (b) arranging transport providers to provide school transport;
  - (c) contributing to the cost of parents providing school transport.
- (2) In this section,—

**school** means registered schools, early childhood services (as defined in section 120), and certified playgroups

**school transport** means the transport of students to and from school, to and from any educational activity approved by the Secretary, or both.

Compare: 1964 No 135 ss 201A–201D

Section 139D: inserted, on 17 May 2006, by section 36 of the Education Amendment Act 2006 (2006 No 19).

**139E Bonds for trainee teachers**

- (1) The Minister may enter into an agreement under this section with any person who undertakes teacher training.
- (2) The agreement must provide for—
  - (a) payment by the Minister to the person of an amount of money on condition that the person will work in New Zealand as a teacher, on completion of the teacher training, for a specified period; and
  - (b) an undertaking by the person that, if he or she defaults on the condition, he or she will repay (in full or on a pro-rata basis, as determined under the agreement) the amount paid under the agreement.
- (3) The Minister may require that the agreement be signed by a guarantor for the person, in which case the guarantor is jointly and severally liable with the person under the agreement.

(4) *[Repealed]*

Compare: 1964 No 135 s 197

Section 139E: inserted, on 17 May 2006, by section 36 of the Education Amendment Act 2006 (2006 No 19).

Section 139E(4): repealed, on 20 September 2007, by section 4 of the Education Amendment Act 2007 (2007 No 52).

**140 Initial appointment of primary teachers**

*[Repealed]*

Section 140: repealed, on 19 December 1998, by section 32 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**141 Consequential amendments to Private Schools  
Conditional Integration Act 1975**

The Private Schools Conditional Integration Act 1975 is hereby consequentially amended in the manner indicated in Schedule 8.

**142 Other consequential amendments, repeals, revocations,  
and savings**

- (1) The provisions of the Education Act 1964 specified in Schedule 9 are hereby consequentially amended in the manner indicated in it.

- (2) The enactments specified in Schedule 10 are hereby consequentially amended in the manner indicated in it.
- (3) The enactments specified in Schedule 11 are hereby consequentially repealed.
- (4) The regulations specified in Schedule 12 are hereby consequentially revoked.
- (5) The repeal by subsection (3) of section 12 of the Education Amendment Act 1932–33 does not affect the proviso to section 2 of the Wellington College and Girls' High School Act 1887.

**143 Education boards and secondary schools councils abolished**

- (1) Every education board and secondary schools council established, or deemed to have been established, under the Education Act 1964 is hereby abolished.
- (2) All rights, assets, liabilities, and debts that an education board or secondary schools council had immediately before the commencement of this section shall be deemed to have become rights, assets, liabilities, and debts of the Minister.
- (3) *[Repealed]*
- (4) Notwithstanding subsection (2), where rights and liabilities under a contract of an education board or secondary schools council have become rights and liabilities of the Minister, the Minister may, by notice in writing to the other party or parties to the contract and to the board or boards concerned, declare the board or boards to be successors to the education board or secondary schools council in relation to the contract; and in that case, all the Minister's rights and liabilities under the contract shall be deemed to have become rights and liabilities of the board or boards.
- (5) For the avoidance of doubt, it is hereby declared that the Minister may, without further authority than this section, give or transfer to, or vest in, the board of a school formerly administered by an education board or secondary schools council any asset (including land)—
  - (a) formerly owned by the education board or secondary schools council; and
  - (b) vested in the Minister by subsection (2),—

unincumbered, or subject to any incumbrance.

Section 143(3): repealed, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 143(5): inserted, on 23 July 1990, by section 29 of the Education Amendment Act 1990 (1990 No 60).

**144 Department of Education abolished**

(1) The Department of Education that existed immediately before the commencement of this Part is hereby abolished.

(2) All references in—

- (a) any Act, regulation, or other enactment, passed, made or enacted before the commencement of this Part; or
- (b) any contract, agreement, deed, instrument, application, licence, notice, or other document entered into, made, granted, given, or executed before that commencement,—

to the Department of Education, or to the Director-General or Director of Education, shall be read, respectively, as references to the Ministry or the Secretary.

**144A Secretary may require information for proper administration of Act**

(1) The Secretary may, by written notice to—

- (a) the board of any State school (within the meaning of section 2(1)); or
- (ab) the sponsor of any partnership school kura hourua; or
- (b) the service provider who operates any licensed early childhood service (within the meaning of section 309) or any certificated playgroup; or
- (c) the managers of any school registered under section 35A,—

require the board, sponsor, service provider, or managers to give the Secretary, within a time specified in the notice, any information specified in the notice; and the board, sponsor, service provider, or managers shall within that time give the Secretary in writing all information so required that is reasonably necessary or desirable for the Secretary to have for the proper administration of this Act.

- (1A) Information required by the Secretary under this section that identifies individuals may be used only for the following purposes:
- (a) statistical purposes;
  - (b) ensuring that institutions and students receive relevant resourcing;
  - (c) monitoring, and ensuring students' rights in respect of, enrolment and attendance.
- (2) For the purposes of the provisions of this Act relating to the registration and inspection of private schools, the following information is relevant to the question of whether or not a school meets the criteria for registration as a private school:
- (a) information that is required under subsection (1) to be given to the Secretary; and
  - (b) information that is reasonably necessary or desirable for the Secretary to have for the proper administration of this Act.

Section 144A: inserted, on 23 July 1990, by section 30 of the Education Amendment Act 1990 (1990 No 60).

Section 144A heading: amended, on 25 October 2001, by section 38(1) of the Education Standards Act 2001 (2001 No 88).

Section 144A(1): amended, on 13 June 2013, by section 29(2) of the Education Amendment Act 2013 (2013 No 34).

Section 144A(1): amended, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 144A(1): amended, on 25 October 2001, by section 38(2) of the Education Standards Act 2001 (2001 No 88).

Section 144A(1)(ab): inserted, on 13 June 2013, by section 29(1) of the Education Amendment Act 2013 (2013 No 34).

Section 144A(1)(b): replaced, on 1 December 2008, by section 57 of the Education Amendment Act 2006 (2006 No 19).

Section 144A(1)(c): amended, on 21 December 2010, by section 28(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 144A(1A): inserted, on 25 October 2001, by section 38(3) of the Education Standards Act 2001 (2001 No 88).

Section 144A(2): replaced, on 21 December 2010, by section 28(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

#### **144B Purpose of sections 144C to 144E**

The purpose of sections 144C to 144E is to help ensure the safety of students who board at hostels.



Section 144B: inserted, on 25 October 2001, by section 39 of the Education Standards Act 2001 (2001 No 88).

**144C Regulations about school hostels**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) adopting minimum standards that apply to hostel premises and facilities:
  - (b) adopting codes of practice relating to the management of hostels:
  - (c) prescribing offences for failing to comply with minimum standards or codes of practice adopted by regulations, and providing for a penalty on conviction for any such offence to be a fine not exceeding \$10,000:
  - (d) providing for exemptions from the application of minimum standards or codes of practice:
  - (e) prescribing a system of licensing for hostels, which may include provisions—
    - (i) providing for different sorts of licences:
    - (ii) setting out the conditions to be met before a licence may be issued:
    - (iii) prescribing the circumstances in which conditions may be imposed on a licence:
    - (iv) setting out the conditions or type of conditions that may attach to a licence:
    - (v) prohibiting students from boarding at an unlicensed hostel:
    - (vi) prohibiting the payment of a boarding bursary, or any government subsidy relating to the cost of boarding at a hostel, in respect of a student boarding at an unlicensed hostel:
    - (vii) prescribing offences for failure to comply with all or any licence conditions, and providing for a penalty on conviction for any such offence to be a fine not exceeding \$10,000:
    - (viii) providing for the suspension or cancellation of any licence:
    - (ix) establishing a licensing body:

- (x) prescribing fees payable on application for, or renewal of, a licence, and for the return or refund of any fees in specified circumstances:
  - (f) establishing a complaints procedure relating to complaints by students, parents, or boards, about hostels:
  - (g) providing for any other matters necessary or expedient for giving effect to the purpose described in section 144B.
- (2) Regulations made under subsection (1) may relate to all hostels, individual hostels, hostels of specified classes, or parts of hostels.

Section 144C: inserted, on 25 October 2001, by section 39 of the Education Standards Act 2001 (2001 No 88).

Section 144C(1)(a): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 144C(1)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 144C(1)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 144C(1)(e)(vii): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **144D Inspection of hostels**

- (1) An authorised person may at any reasonable time do any or all of the following:
  - (a) enter any hostel premises and inspect the premises and facilities:
  - (b) inspect, and make and remove copies of, any information relating to the management of the hostel:
  - (c) require any person at a hostel to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the hostel.
- (2) An authorised person may exercise the powers in subsection (1) only for the purpose of monitoring compliance with minimum standards, codes of practice, licences, or licence conditions.
- (3) The person in charge (or apparent charge) of the hostel must, if an authorised person requests it, co-operate in allowing the authorised person access to the premises, facilities, and infor-

mation relating to the management of the hostel, including assisting the authorised person to copy (in usable form) any information required for the inspection.

- (4) The person in charge (or apparent charge) of a hostel commits an offence and is liable upon conviction to a fine not exceeding \$5,000 if he or she fails, without reasonable excuse, to comply with subsection (3).
- (5) An authorised person may not enter or inspect the room or sleeping area of a student accommodated at the hostel unless—
  - (a) the authorised person believes on reasonable grounds that entry or inspection is necessary for a purpose specified in subsection (2); and
  - (b) prior notice of the inspection is given to the student, and the purpose of the inspection is explained; and
  - (c) the student is present during the inspection.

Section 144D: inserted, on 25 October 2001, by section 39 of the Education Standards Act 2001 (2001 No 88).

Section 144D(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **144E Authorised person for purpose of section 144D**

- (1) The Minister may, by notice in writing, appoint any person as an authorised person for the purpose of exercising the powers in section 144D.
- (2) An authorisation under subsection (1) must state—
  - (a) the name of the authorised person; and
  - (b) the powers that he or she may exercise under section 144D; and
  - (c) the date on which the authorisation was given, and the date (if any) on which it expires.
- (3) When an authorised person is exercising powers under section 144D, he or she must carry a copy of his or her authorisation, and must show it,—
  - (a) on entering a hostel to be inspected, to the person in charge, or apparent charge, of the hostel; and
  - (b) if the authorised person wishes to speak to any person in connection with the inspection, to that person.

Section 144E: inserted, on 25 October 2001, by section 39 of the Education Standards Act 2001 (2001 No 88).

## Part 12

### Establishment of schools

Part 12: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

#### 145 Interpretation

(1) In this Part, unless the context otherwise requires,—

**board** means a board of trustees constituted under Part 9; and, in relation to a State school, means the school's board

**composite school** means a school established under section 146 as a composite school

**correspondence school** means a school for the time being designated under section 152(1) as a correspondence school

**integrated school** means a school for the time being established as an integrated school under the Private Schools Conditional Integration Act 1975

**intermediate department** means a department established under section 149

**intermediate school** means a school established under section 146 as an intermediate school

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**primary school** means a school established under section 146 as a primary school or an intermediate school

**secondary school** means a school established under section 146 as a secondary school

**Secretary** means the chief executive of the Ministry

**single sex school** means a school maintained wholly or principally for students of one sex; and includes a school declared by notice under section 146A to be a boys' school or a girls' school

**State school** means a school that is a primary, composite, or secondary school

**teachers college** means a college established under section 106 of the Education Act 1964.

- (2) For the purposes of this Act,—
- (aa) every school—
    - (i) that was, or is deemed by this subsection to have been, established under section 146; and
    - (ii) that immediately before the commencement of the Education Amendment Act 1991 was a secondary school; and
    - (iii) at which no male students (or female students) were enrolled in 1990,—  
shall be deemed to have been established as a girls' school (or a boys' school) under section 146:
  - (a) every school other than a composite school that was, on 31 December 1989, a primary school within the meaning of section 2(1) of the Education Act 1964 shall be deemed to have been established under section 146 as a primary school:
  - (b) every school other than a composite school that was, on 31 December 1989, a secondary school within the meaning of section 2(1) of the Education Act 1964 shall be deemed to have been established under section 146 as a secondary school:
  - (c) every department that was, on 31 December 1989, an intermediate department within the meaning of section 2(1) of the Education Act 1964 shall be deemed to have been established under section 149 as an intermediate department:
  - (d) every school other than a composite school that was, on 31 December 1989, an intermediate school within the meaning of section 2(1) of the Education Act 1964 shall be deemed to have been established under section 146 as an intermediate school:
  - (e) every school that was, on 31 December 1989, a composite school within the meaning of section 2(1) of the Education Act 1964 shall be deemed to have been established under section 146 as a composite school.

Section 145: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 145(1) **community education convener**: repealed, on 20 June 1991, by section 11(3) of the Education Amendment Act 1991 (1991 No 43).

Section 145(1) **correspondence school**: inserted, on 19 December 1998, by section 33 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 145(1) **Minister**: replaced, on 1 January 1992, by section 2(5) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 145(1) **Ministry**: replaced, on 1 January 1992, by section 2(5) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 145(1) **single sex school**: inserted, on 25 October 2001, by section 40 of the Education Standards Act 2001 (2001 No 88).

Section 145(2)(aa): inserted, on 20 June 1991, by section 9(3) of the Education Amendment Act 1991 (1991 No 43).

#### **146 Minister may establish schools**

- (1) Subject to section 157 and to subsection (2), the Minister may by notice in the *Gazette*—
  - (a) describing the place where the school is to be located; and
  - (ab) in the case of a secondary school, specifying whether it is a boys' school, a girls' school, or a co-educational school; and
  - (b) specifying a name for the school,—establish a new school.
- (2) Every new school established under this section shall be established as a primary, intermediate, secondary, or composite school; and the notice establishing it shall specify which class of school it is.
- (3) A notice under subsection (1) establishing a new school may specify the class levels for which education may be given at the school and may provide for different class levels to be phased in over a specified period or periods.
- (4) A notice under subsection (1) establishing a new primary school may designate the school as a contributing school.

Section 146: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 146(1)(ab): inserted, on 20 June 1991, by section 9(2) of the Education Amendment Act 1991 (1991 No 43).

Section 146(3): inserted, on 19 December 1998, by section 34 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 146(4): inserted, on 19 December 1998, by section 34 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**146A Single sex schools**

- (1) Subject to section 157, the Minister may, by notice in the *Gazette*, declare any school to be a boys' school, a girls' school, or a co-educational school.
- (2) The declaration shall come into effect on the day 5 months after the first day of August after the notice is published.
- (3) Subject to section 157(2), the Minister may, by notice in the *Gazette*, limit, in relation to a specified single sex school,—
  - (a) in the case of a boys' school, the number of girls who may enrol at it, or the proportion of the total roll of the school that may be girls:
  - (b) in the case of a girls' school, the number of boys who may enrol at it, or the proportion of the total roll of the school that may be boys.
- (4) In setting limits on a school under subsection (3), the Minister must have regard to the necessity of safeguarding the single-sex nature of the school.

Section 146A: inserted, on 20 June 1991, by section 9(1) of the Education Amendment Act 1991 (1991 No 43).

Section 146A(1): amended, on 17 May 2006, by section 37 of the Education Amendment Act 2006 (2006 No 19).

Section 146A(3): inserted, on 25 October 2001, by section 41 of the Education Standards Act 2001 (2001 No 88).

Section 146A(4): inserted, on 25 October 2001, by section 41 of the Education Standards Act 2001 (2001 No 88).

**147 Names of State schools**

- (1) Subject to subsections (2) and (4), the name of a State school established after 31 December 1989 shall be the name specified in the notice establishing it.
- (2) Subject to subsection (4), the name of a State school whose class has been changed under section 153 shall be the name specified in the last notice changing its class.
- (3) Subject to subsections (2) and (4), the name of a State school established before 1 January 1990 shall be the name it had on 1 December 1989.

- (4) With the Secretary's written consent, the board of a State school may, subject to section 155(6), by resolution, change the school's name.
- (5) The Secretary shall not withhold consent to the change of a State school's name unless satisfied that the proposed new or amended name is inappropriate.

Section 147: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 147(5): amended, on 1 January 1992, by section 21 of the Education Amendment Act (No 4) 1991 (1991 No 136).

#### **148 Normal schools, etc**

- (1) Subject to section 157, the Minister may by notice in the *Gazette*—
  - (a) designate 1 or more specified primary schools as normal or model schools for providers of pre-service teacher education:
  - (b) designate within a specified primary school a normal or model school, or model class, for providers of pre-service teacher education:
  - (c) revoke any designation under this section.
- (2) Nothing in subsection (1) applies to an integrated school.
- (3) Every school that was on 31 December 1989 designated a normal or model school under section 72 of the Education Act 1964 shall be deemed to have been designated a normal school under this section.
- (4) Every normal or model school, or model class, that was on 31 December 1989 designated within a primary school under section 72 of the Education Act 1964 shall be deemed so to have been designated under this Act.

Compare: 1964 No 135 s 72

Section 148: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 148(1)(a): amended, on 19 December 1998, by section 35 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 148(1)(b): amended, on 19 December 1998, by section 35 of the Education Amendment Act (No 2) 1998 (1998 No 118).



**149 Intermediate departments**

Subject to section 157, the Minister may, by notice in the *Gazette*,—

- (a) establish an intermediate department—
  - (i) within a composite school that is not an integrated school; or
  - (ii) to form part of a secondary school that is not an integrated school; or
- (b) disestablish any intermediate department.

Compare: 1964 No 135 s 73

Section 149: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

**150 Contributing schools**

- (1) Subject to section 157, and to section 33 of the Private Schools Conditional Integration Act 1975, the Minister shall from time to time determine which primary schools are to be contributing schools.
- (2) Where the Minister determines that a primary school is to be or cease to be a contributing school, the Minister shall give the board of the primary school written notice of the determination.
- (3) Subject to subsection (4), while a primary school is a contributing school, the board shall limit the education given at the school to the education described in the syllabus for—
  - (a) classes not higher than standard 4; and
  - (b) where the Minister so allows in a notice under subsection (2), classes not higher than form 1.
- (4) If satisfied that there are enrolled at a contributing school students whose education at the school is wholly or in part bilingual, the Minister may, by written notice to the board specifying the languages concerned, permit the board to give education to such students in accordance with conditions specified in the notice.
- (5) Every school that was on 31 December 1989 a contributing school of any other school under section 74 of the Education Act 1964 shall be deemed so to have been designated under subsection (1).

- (6) This section applies to a school designated as a contributing school under section 146(4) as if the school had become a contributing school under subsection (1) and the Minister had given the school's board the appropriate notice under subsection (2).
- (7) In determining that a school should be or should cease to be a contributing school, the Minister may provide for the provision of education at specified class levels to be phased in or phased out (as the case may require) over a specified period or periods.

Compare: 1964 No 135 s 74

Section 150: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 150(1): amended, on 20 June 1991, by section 10(1)(a) of the Education Amendment Act 1991 (1991 No 43).

Section 150(2): amended, on 20 June 1991, by section 10(1)(b) of the Education Amendment Act 1991 (1991 No 43).

Section 150(6): inserted, on 19 December 1998, by section 36 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 150(7): inserted, on 19 December 1998, by section 36 of the Education Amendment Act (No 2) 1998 (1998 No 118).

### **151 Provision of education at composite schools**

Subject to section 157, and to section 33 of the Private Schools Conditional Integration Act 1975, the Minister may from time to time, by written notice to the board of a composite school, require the board to provide education for the class levels specified in the notice; and the board must provide education at the school accordingly.

Section 151: replaced, on 19 December 1998, by section 37 of the Education Amendment Act (No 2) 1998 (1998 No 118).

### **152 Correspondence schools**

- (1) Subject to subsection (2), the Minister may, by notice in the *Gazette*,—
  - (a) when establishing the school, or at any other time, designate a State school that is not an integrated school as a correspondence school; or
  - (b) at any time, remove a designation under paragraph (a).

- (2) The Minister shall not designate a school as a correspondence school, or cancel a designation as a correspondence school, without having regard to the education of people unable conveniently to get tuition from a suitable State school that is not a correspondence school.
- (3) Subject to sections 102(7) and 104, where an existing State school is designated as a correspondence school, its board shall continue in office as constituted until a day specified by the Minister in the notice in the *Gazette* under section 95(1) determining the composition of its board, but shall go out of office on that day.
- (4) With the consent of the Minister, a correspondence school may provide early childhood education.
- (5) The school that was, immediately before the commencement of the Education Amendment Act 1989, a correspondence school shall be deemed to have been—
  - (a) established under section 146 as a composite school; and
  - (b) designated under subsection (1) as a correspondence school.

Compare: 1964 No 135 s 105

Section 152: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

### **153 Minister may change class of school**

- (1) Subject to section 157, the Minister may, by notice in the *Gazette*,—
  - (a) declare a composite school to be a primary, intermediate, or secondary school; or
  - (b) declare a primary, intermediate, or secondary school to be a composite school; or
  - (c) declare an intermediate school to be a primary or secondary school; or
  - (d) declare a primary or secondary school to be an intermediate school.
- (1A) The Minister may, by notice in the *Gazette*, specify the class levels for which education must be given at a school (whether it is an existing school or a school whose class has been

changed under subsection (1)) and provide for class levels to be phased in over a specified period or periods.

- (2) Nothing in subsection (1) applies to an integrated school.
- (3) A notice under subsection (1), shall specify a day (not earlier than the end of the term after the term during which the notice is published) on which it is to take effect; and the school shall become a school of the class concerned, and cease to be a school of the class it was, on the day specified.
- (4) Subject to sections 102(7) and 104, where an existing State school becomes a school of a different class, its board shall continue in office as constituted until the close of the seventh day after the first election following its change of class.

Section 153: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 153(1A): inserted, on 19 December 1998, by section 38(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 153(4): amended, on 17 May 2006, by section 11(2) of the Education Amendment Act 2006 (2006 No 19).

#### **154 Closure of schools**

- (1) Subject to section 157, and to section 17 of the Private Schools Conditional Integration Act 1975, where, after consulting the board of a State school, the Minister is satisfied that it should be closed, the Minister may, by written notice to the board, ask the board if it has any arguments in favour of the school's staying open.
- (2) The Minister may, after considering all arguments (if any) received from the board within 28 days after it got notice under subsection (1), by notice in the *Gazette* specifying a day on which the school will close, close the school; and the school shall cease to be established on the day specified.
- (2A) If the board of a State school at any time advises or indicates to the Minister in writing that it agrees to or does not oppose the proposed closure of the school, the Minister may (despite anything in subsection (1) or subsection (2) and regardless of whether the Minister has formally begun or completed the necessary consultation under subsection (1)) close the school by notice under subsection (2) at any time on or after receiving the board's written advice.

- (3) Where a school is closed under this section,—
  - (a) its board shall thereupon be deemed to have been dissolved; and
  - (b) all assets, liabilities, and debts that the board had immediately before dissolution shall be deemed to have become assets, liabilities, and debts of the Minister.
- (3A) Without limiting the rights or privileges conferred on the Minister by subsection (3)(b), the following provisions apply to property that was, immediately before dissolution, held by the board in trust for the benefit of the school:
  - (a) the Minister may at any time apply to Public Trust to devise a scheme to modify the trust for the benefit of another school:
  - (b) if the Minister applies under paragraph (a) to Public Trust, subsections (2) to (7) of section 156C apply with any necessary modifications (as if the property were property to which that section applies).
- (4) A school that has been closed may not be reopened, except by being established again under this Act.

Section 154: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 154(2A): inserted, on 19 December 1998, by section 39(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 154(3A): inserted, on 19 December 1998, by section 39(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 154(3A)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 154(3A)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

#### **154A Minister may redesignate, or remove designation from, schools**

- (1) The Minister may, by notice in the *Gazette*, and after consultation with the board of the affected school, do any of the following:
  - (a) designate a State school that is not a Kura Kaupapa Maori or a designated character school as a Kura Kaupapa Maori or a designated character school:
  - (b) remove the designation of a Kura Kaupapa Maori and redesignate it as a designated character school:

- (c) remove the designation of a designated character school and redesignate it as a Kura Kaupapa Maori;
  - (d) remove the designation of a Kura Kaupapa Maori or a designated character school while keeping the school established as a State school.
- (2) The designation or removal of designation of a school under this section takes effect on the date specified in the notice under subsection (1) and, on and from that date,—
  - (a) section 155 applies to a school that is designated as a Kura Kaupapa Maori; and
  - (b) section 156 applies to a school that is designated as a designated character school; and
  - (c) section 155 ceases to apply to a school that has its designation as a Kura Kaupapa Maori removed; and
  - (d) section 156 ceases to apply to a school that has its designation as a designated character school removed.
- (3) The notice under subsection (1) may prescribe a new name for the redesignated school.
- (4) Section 155 applies in respect of a school that is, or is to be, redesignated as a Kura Kaupapa Maori in the same way as it would apply if the school were being established as a Kura Kaupapa Maori.
- (5) No school may have its designation as a Kura Kaupapa Maori removed unless the Minister has first consulted with te kaitiaki o Te Aho Matua (as identified under section 155B).
- (6) No State school may be designated as a Kura Kaupapa Maori unless the Minister has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A).
- (7) Section 156 applies in respect of a school that is, or is to be, redesignated as a designated character school in the same way as it would apply if the school were being established as a designated character school.

Section 154A: inserted, on 17 May 2006, by section 38 of the Education Amendment Act 2006 (2006 No 19).

## **155 Kura Kaupapa Maori**

- (1) When establishing a State school the Minister may, by notice in the *Gazette*, designate the school under this section.

- (2) The Minister has absolute discretion to refuse to establish a school under this section.
- (3) The Minister may not establish a school under this section unless satisfied that—
  - (a) the parents of at least 21 people who would, if the school were established, be entitled to free enrolment there, want there to be established a school—
    - (i) in which te reo Maori (the Maori language) is the principal language of instruction; and
    - (ii) in which the charter of the school requires the school to operate in accordance with Te Aho Matua (as defined in section 155A); and
    - (iii) that has the special characteristics (if any) set out in its charter that will give the school a particular character (in this section called **special characteristics**); and
  - (b) if a school of that type is established, students enrolled at the school will get an education of a kind not available at any other State school that children of the parents concerned can conveniently attend.
- (3A) The Minister may not establish a State school as a Kura Kaupapa Maori unless he or she has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua (as defined in section 155A).
- (4) A notice under subsection (1) must—
  - (a) specify the name of the school, which must at all times begin with the words “Te Kura Kaupapa Maori o”; and
  - (b) state that the school will operate in accordance with Te Aho Matua; and
  - (c) summarise any special characteristics of the school; and
  - (d) specify the constitution of the board of the school.
- (5) After consultation with the board, the Minister may from time to time, by notice in the *Gazette*, amend the name of the school (but not so as to omit the words “Te Kura Kaupapa Maori o”), its special characteristics, or the constitution of the board.
- (6) Unless specifically provided otherwise, this Act and the Education Act 1964 apply to every school established under this section as if it were not so established.

- (7) The board of a school established under this section must ensure that—
  - (a) te reo Maori is the principal language of instruction at the school; and
  - (b) the school operates in accordance with Te Aho Matua.
- (8) The board may refuse to enrol any person whose parents do not accept that the school operates in accordance with Te Aho Matua.
- (9) A school established under this section may have an enrolment scheme, but—
  - (a) the Secretary must from time to time, by written notice to the board, fix a maximum roll for the school; and
  - (b) the board must ensure that the number of students enrolled at the school is not more than the maximum roll.

Section 155: replaced, on 17 July 1999, by section 2 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

Section 155(3A): inserted, on 17 May 2006, by section 39 of the Education Amendment Act 2006 (2006 No 19).

### **155A Te Aho Matua**

- (1) Te Aho Matua is a statement that sets out an approach to teaching and learning that applies to schools designated under section 155.
- (2) The official version of Te Aho Matua is the statement (including any gazetted amendments) in te reo Maori that is—
  - (a) prepared by te kaitiaki o Te Aho Matua (as defined in section 155B); and
  - (b) published in the *Gazette* under the authority of the Minister.
- (3) The Minister may from time to time authorise the reprinting of all, or the amendment of any part, of Te Aho Matua in the *Gazette*, but only if asked to do so by te kaitiaki o Te Aho Matua.
- (4) When all, or an amendment to any part, of Te Aho Matua is published in the *Gazette*, the Minister must ensure that an explanation in English of Te Aho Matua, or of the amendment (as the case may be), is published in the same *Gazette*.



- (5) The explanation must be one that te kaitiaki o Te Aho Matua has approved as being an accurate interpretation of the meaning of the Maori text.

Section 155A: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

**155B Te kaitiaki o Te Aho Matua**

Te kaitiaki o Te Aho Matua is the body commonly known as Te Runanga Nui o Nga Kura Kaupapa Maori o Aotearoa, being the most suitable to be responsible for determining the content of Te Aho Matua, and for ensuring that it is not changed to the detriment of Maori.

Section 155B: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

**155C Application of section 155**

After the commencement of the Education (Te Aho Matua) Amendment Act 1999, the Minister may establish a school as a Kura Kaupapa Maori only in accordance with section 155 as substituted by that Act.

Section 155C: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

**155D Provisions applying to Kura Kaupapa Maori established before commencement of Education (Te Aho Matua) Amendment Act 1999**

- (1) In this section and section 155E,—  
**existing Kura** means a Kura Kaupapa Maori established under section 155 before the commencement of the Education (Te Aho Matua) Amendment Act 1999  
**new section 155** means section 155 as substituted by the Education (Te Aho Matua) Amendment Act 1999.
- (2) After the commencement of this section, existing Kura remain established as Kura Kaupapa Maori even if they would not be entitled to be established under new section 155.
- (3) Subsections (6), (7)(a), and (9) of new section 155 apply to all existing Kura.
- (4) In relation to an existing Kura other than one acknowledged under section 155E, the Minister may from time to time,

after consultation with the board of the Kura, by notice in the *Gazette*, amend—

- (a) the aims, purposes, and objectives of the Kura; or
  - (b) the constitution of the board.
- (5) In relation to an existing Kura other than one acknowledged under section 155E, the board of the Kura may refuse to enrol any person whose parents do not accept that the school operates in accordance with the school's aims, purposes, and objectives.

Section 155D: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

#### **155E Acknowledgment of adoption of Te Aho Matua**

- (1) The Minister may from time to time, after consultation with the board of an existing Kura, by notice in the *Gazette*, acknowledge that the Kura operates in accordance with Te Aho Matua, and must, in the notice,—
- (a) replace the aims, purposes, and objectives of the Kura by a statement that the school will operate in accordance with Te Aho Matua (as referred to in new section 155(4)(b)); and
  - (b) summarise any special characteristics of the school (as referred to in new section 155(4)(c)).

- (2) On publication of a notice under subsection (1), the Kura becomes subject to all the relevant provisions of new section 155.

Section 155E: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

#### **155F Protection of term Kura Kaupapa Maori**

- (1) No registered school may use the term Kura Kaupapa Maori in its name unless the school is established under section 155.
- (2) Subsection (1) does not apply to a registered school that, immediately before the commencement of this section, is not established under section 155 but uses the term Kura Kaupapa Maori in its name.

Section 155F: inserted, on 17 July 1999, by section 3 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

**156 Designated character schools**

- (1) Subject to subsection (2), the Minister may, by notice in the *Gazette* when establishing the school, designate a State school as a designated character school.
- (2) The Minister shall not establish a school as a designated character school unless satisfied that—
  - (a) the parents of at least 21 people who would, if the school were established, be entitled to free enrolment there, want the school to be established; and
  - (b) the parents want the school to have a character that is in some specific way or ways different from the character of ordinary State schools; and
  - (c) the parents have given the Minister a clear written description and explanation (expressed in the form of aims, purposes, and objectives for the school) of the way or ways; and
  - (d) students at a school with such a character would get an education of a kind that—
    - (i) differs significantly from the education they would get at an ordinary State school; and
    - (ii) is not available at any other State school that children of the parents concerned can conveniently attend; and
  - (e) it is desirable for students whose parents want them to do so to get such an education.
- (3) The Minister may in the Minister's absolute discretion refuse to establish a designated character school.
- (4) The notice establishing a designated character school shall specify the aims, purposes, and objectives that constitute its designated character; and every charter and proposed charter for the school shall be deemed to contain them.
- (5) The notice shall also specify the constitution of the school's board.
- (6) The Minister may from time to time, after consultation with the board of a designated character school, by notice in the *Gazette* amend—
  - (a) the aims, purposes, and objectives that constitute the school's designated character; or
  - (b) the constitution of its board.

- (7) The Secretary must from time to time, by written notice to the designated character school, fix a maximum roll of the school, and—
- (a) the board must ensure that the number of students enrolled at the school is not more than the maximum roll; and
  - (b) the board may refuse the enrolments of people whose parents do not accept the aims, purposes, and objectives that constitute the school's designated character.
- (8) Except as provided in this section and section 11PB, this Act and the Education Act 1964 shall apply to every designated character school as if it is not a designated character school.

Section 156: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 156(7): replaced, on 19 December 1998, by section 6(3)(a) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 156(8): amended, on 8 July 2000, by section 26(5) of the Education Amendment Act 2000 (2000 No 21).

Section 156(8): amended, on 19 December 1998, by section 6(3)(b) of the Education Amendment Act (No 2) 1998 (1998 No 118).

#### 156A Minister may merge schools

- (1) Subject to sections 156B and 157, the Minister may, by notice in the *Gazette*, merge 1 or more State schools (**merging schools**) that are not integrated schools with another State school (the **continuing school**) that is not an integrated school, if the Minister is satisfied that—
- (a) each board of a school concerned has made reasonable efforts to consult the parents of students (other than adult students) enrolled full-time at the school about the proposed merger; and
  - (b) the consultation that has taken place has been adequate in all the circumstances; and
  - (c) the creation of a single school by the proposed merger is appropriate in the circumstances.
- (2) A notice under subsection (1) takes effect on a day (not earlier than the end of the term after the term during which the notice is published) specified in the notice, and has effect as follows:
- (a) the merging schools are part of the continuing school:

- (b) if the continuing school and each merging school are not already administered by a single board,—
    - (i) the board of each merging school is dissolved; and
    - (ii) all rights, assets, liabilities, and debts of each merging school are vested in the board of the continuing school;
  - (c) the continuing school is a school of the class specified in the notice and provides education for the student class levels specified in the notice.
- (3) A notice under subsection (1) does not affect the name of the continuing school.
- (4) Before a notice under subsection (1) takes effect, the Minister must give notice in the *Gazette* of whether—
- (a) during the period between a date specified in the notice and the date on which new trustees take office following an election (the **interim period**), the board of the continuing school is to be—
    - (i) the board of the continuing school plus co-opted trustees representing each merging school (a **continuing board**); or
    - (ii) a board appointed by the Minister (an **appointed board**); or
  - (b) the board of the continuing school is to have an alternative constitution approved under section 105A.

Section 156A: replaced, on 13 June 2013, by section 30 of the Education Amendment Act 2013 (2013 No 34).

#### **156AB Election or appointment of boards of continuing schools**

- (1) If the notice under section 156A(4) provides that the board of the continuing school is to be a continuing board,—
- (a) the board of the continuing school must, within 28 days after the date of that notice, co-opt at least 1 trustee in respect of each of the merging schools so that each merging school is represented on the continuing board; and
  - (b) each of those co-opted trustees holds office until the end of the interim period (unless replaced earlier); and

- (c) section 94C (which limits the co-option and appointment of trustees) does not apply to trustees co-opted for an interim period.
- (2) If the notice under section 156A(4) provides that the board of the continuing school is to be an appointed board,—
  - (a) the notice must specify the constitution of the appointed board during the interim period, including how many trustees (if any) the board may co-opt; and
  - (b) the Minister is not bound by section 94 in determining the constitution of the appointed board.
- (3) When a board is appointed by the Minister,—
  - (a) the trustees of the continuing school go out of office at the close of the day before the start of the interim period; and
  - (b) the trustees of the appointed board take office on the date of the start of the interim period.
- (4) A continuing board or an appointed board may make decisions and exercise powers during the interim period both for the purposes of the continuing school before the merger and for the purpose of providing and preparing for the continuing school after the merger has taken effect.
- (5) Unless the board of the continuing school was (immediately before the merger took effect) a combined board established under section 110, an appointed board or a continuing board that replaces it must hold elections for a new board on a day that is not later than 3 months after the date the merger takes effect.
- (6) If an appointed board or a continuing board is required by subsection (5) to hold elections for a new board, all its elected, appointed, and co-opted trustees holding office immediately before the election day go out of office on the close of the day before the date on which the newly elected trustees are to take office.
- (7) If the merger takes effect after 31 October in the year before an election year and before 31 December in that election year, a board that is required to hold an election under subsection (5) does not have to hold the election until the next election year.

Section 156AB: inserted, on 13 June 2013, by section 30 of the Education Amendment Act 2013 (2013 No 34).

**156AC Alternative constitutions for continuing schools**

- (1) If a notice under section 156A(4) provides that the board of the continuing school is to have an alternative constitution approved under section 105A, the notice must specify the date on which the alternative constitution is to take effect.
- (2) The date in subsection (1) must be before the date that the notice under section 156A(1) takes effect.
- (3) The trustees of the continuing school go out of office at the close of the day before the date specified under subsection (1).
- (4) A board established under section 105A may make decisions and exercise powers both for the purposes of the continuing school before the merger and for the purpose of providing and preparing for the continuing school after the merger has taken effect.

Section 156AC: inserted, on 13 June 2013, by section 30 of the Education Amendment Act 2013 (2013 No 34).

**156B Restrictions on mergers in certain cases**

- (1) A Kura Kaupapa Maori established after the commencement of the Education (Te Aho Matua) Amendment Act 1999 may not merge or be merged with another Kura Kaupapa Maori or other school unless the schools involved in the merger—
  - (a) operate in accordance with Te Aho Matua; and
  - (b) use te reo Maori as the principal language of instruction.
- (2) Any other Kura Kaupapa Maori may merge with another school only if both schools use te reo Maori as the principal language of instruction and have the same aims, purposes, and objectives.
- (3) A designated character school may not merge or be merged with another designated character or other school unless the schools involved in the merger have the same aims, purposes, and objectives, being the aims, purposes, and objectives that constitute the way in which the character of each school is different from the character of ordinary State schools.

Section 156B: replaced, on 17 July 1999, by section 4 of the Education (Te Aho Matua) Amendment Act 1999 (1999 No 79).

**156C Property held in trust**

- (1) This section applies to any property that, immediately before 2 or more schools merged under section 156A, was held in trust—
  - (a) by the board of 1 (or more) of those schools; or
  - (b) for the benefit of—
    - (i) 1 (or more) of those schools; or
    - (ii) the students or former students of 1 (or more) of those schools,—by any other person or body.
- (2) All property to which this section applies continues to be subject to the trust concerned; but the person or body in whom it is vested may at any time apply to Public Trust to devise a scheme to modify the trust in the light of the merger of the schools concerned.
- (3) If satisfied that adequate arrangements have been made to meet the costs of doing so, Public Trust shall—
  - (a) in consultation with the board concerned, devise; and
  - (b) notify the Solicitor-General of,—a scheme to modify any trust in respect of which Public Trust has received an application under this section.
- (4) Where Public Trust notifies the Solicitor-General of a scheme under this section,—
  - (a) the Solicitor-General may, by written notice to Public Trust,—
    - (i) approve the scheme (as originally notified by Public Trust or with amendments agreed by Public Trust after consultation with the board concerned); or
    - (ii) suggest amendments to it; or
    - (iii) direct that it should not proceed; and
  - (b) if the Solicitor-General directs that it should not proceed, the matter may be dealt with under the Charitable Trusts Act 1957.
- (5) If, within 90 days of being notified of a scheme under this section, the Solicitor-General does not suggest amendments to it or direct that it should not proceed, the Solicitor-General shall be deemed to have approved it.



- (6) Where the Solicitor-General approves a scheme notified under this section, the trust concerned shall have effect accordingly.
- (7) The Solicitor-General shall not approve a scheme under this section unless satisfied that—
  - (a) it modifies the trust concerned so as best to give effect to the intentions of the testator, settlor, or other person or body by whom or which the trust was established; and
  - (b) subject to paragraph (a), it effects the minimum change necessary to enable the trust to operate successfully in the light of the merger of the schools concerned.

Section 156C: inserted, on 25 June 1993, by section 12 of the Education Amendment Act 1993 (1993 No 51).

Section 156C(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 156C(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 156C(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 156C(4)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 156C(4)(a)(i): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **157 Consultations**

- (1) *[Repealed]*
- (2) The Minister shall not—
  - (aa) declare a school to be a boys' school, a girls' school, or a co-educational school under section 146A(1); or
  - (ab) set limits by notice under section 146A(3) on the number of girls who may attend a boys' school, or boys who may attend a girls' school; or
  - (a) designate a primary school as a normal or model school under section 148(1)(a); or
  - (b) designate a normal or model school or model class within a primary school under section 148(1)(b); or
  - (c) revoke under paragraph (c) of subsection (1) of section 148 a designation under that subsection; or
  - (d) establish or disestablish an intermediate department under section 149; or

- (e) determine under section 150(1) that a particular school is to be or cease to be a contributing school; or
  - (f) limit under section 151 the education given at a composite school; or
  - (g) change under section 153(1) the class of a school—without consulting the board of the school concerned.
- (3) The Minister shall not—
- (a) establish a school under section 146(1); or
  - (aa) declare a school to be a boys' school, a girls' school, or a co-educational school under section 146A(1); or
  - (b) establish or disestablish an intermediate department under section 149; or
  - (c) determine under section 150(1) that a primary school is to be or cease to be a contributing school; or
  - (d) limit under section 151 the education given at a composite school; or
  - (e) change under section 153(1) the class of a school; or
  - (f) close a school under section 154; or
  - (fa) redesignate, or remove a designation from, a school under section 154A; or
  - (g) merge any school or schools with another under section 156A,—
- without first consulting the boards of all State schools whose rolls might, in the opinion of the Minister, be affected if the Minister takes that action.

(4) *[Repealed]*

Section 157: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).

Section 157(1): repealed, on 20 June 1991, by section 11(2) of the Education Amendment Act 1991 (1991 No 43).

Section 157(2)(aa): inserted, on 20 June 1991, by section 9(4) of the Education Amendment Act 1991 (1991 No 43).

Section 157(2)(ab): inserted, on 25 October 2001, by section 42 of the Education Standards Act 2001 (2001 No 88).

Section 157(2)(e): amended, on 20 June 1991, by section 10(2) of the Education Amendment Act 1991 (1991 No 43).

Section 157(3)(aa): inserted, on 20 June 1991, by section 9(5) of the Education Amendment Act 1991 (1991 No 43).

Section 157(3)(c): replaced, on 20 June 1991, by section 10(3) of the Education Amendment Act 1991 (1991 No 43).

Section 157(3)(f): replaced, on 1 January 1992, by section 23 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 157(3)(fa): inserted, on 17 May 2006, by section 41 of the Education Amendment Act 2006 (2006 No 19).

Section 157(3)(g): inserted, on 1 January 1992, by section 23 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 157(4): repealed, on 20 June 1991, by section 11(2) of the Education Amendment Act 1991 (1991 No 43).

### **157A Community education forums**

The Minister may at any time appoint a person to—

- (a) convene within a specified area public meetings relating to any action the Minister proposes to consider taking under this Part; and
- (b) advise the Minister on the views expressed at the meetings;—

and in that case the Minister may refuse to consider whether or not to take the action without—

- (c) giving the person reasonable time to convene the meetings and advise the Minister; and
- (d) considering any advice the person gives the Minister in that time.

Section 157A: inserted, on 20 June 1991, by section 11(1) of the Education Amendment Act 1991 (1991 No 43).

### **158 Provision by one board of tuition for students enrolled at school administered by another**

- (1) By agreement between the boards concerned,—
  - (a) students enrolled at one State school may receive tuition at or from another; and
  - (b) notwithstanding section 79, the board of the school at which the students are enrolled may pay the board of the school giving that tuition for that tuition.
- (2) If satisfied that facilities at a State school were provided or constructed for the use of students enrolled at several State schools, the Minister may, by written notice to the school's board, require the board (in accordance with arrangements specified in the notice) to do either or both of the following:

- (a) allow the board of another State school to use the facilities for the tuition of students enrolled at the other school:
  - (b) provide in or by means of those facilities tuition for students enrolled at another State school.
- (3) A notice under subsection (2) shall provide for the making of payments by the board of the school at which the students required to be provided with tuition are enrolled to the board of the school whose facilities are to be used; and payments shall, notwithstanding section 79, be made in accordance with the provisions of the notice.
- (4) *[Repealed]*  
Section 158: inserted, on 1 January 1990, by section 14 of the Education Amendment Act 1989 (1989 No 156).  
Section 158(4): repealed, on 19 December 1998, by section 41(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

## Part 12A

### Partnership schools kura hourua

Part 12A: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### 158A Interpretation

In this Part, unless the context otherwise requires,—

**body** means a body corporate, corporation sole, or limited partnership

**composite partnership school kura hourua** means a partnership school kura hourua designated as a composite partnership school kura hourua by notice under section 158B

**partnership school contract** has the meaning given by section 2(1)

**primary partnership school kura hourua** has the meaning given by section 2(1)

**secondary partnership school kura hourua** means a partnership school kura hourua designated as a secondary partnership school kura hourua by notice under section 158B

**sponsor** has the meaning given by section 2(1).

Section 158A: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

*Approval and operation of partnership schools  
kura hourua*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158B Minister may approve sponsors**

- (1) The Minister may by notice in the *Gazette* approve a body to be a sponsor of a partnership school kura hourua.
- (2) The Minister has absolute discretion to refuse to approve a body to be a sponsor under subsection (1).
- (3) A notice under subsection (1) must include—
  - (a) the name of the sponsor; and
  - (b) the place where the school is to be located; and
  - (c) the name of the school; and
  - (d) whether the school is to be a primary, secondary, or composite partnership school kura hourua; and
  - (e) the class levels for which education may be given at the school; and
  - (f) any religious, philosophical, or other distinguishing characteristic of the school; and
  - (g) whether all or any (and if so, which) class levels of the school are to be single-sex.
- (4) A notice under subsection (1) may provide for different class levels to be phased in over a specified period or specified periods.

Section 158B: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158C Minister must appoint advisory group**

- (1) The Minister must appoint an advisory group, consisting of 1 or more members, for the purpose of advising the Minister in relation to—
  - (a) the approval of sponsors under section 158B; and
  - (b) the educational performance of partnership schools kura hourua.

- (2) The members of the advisory group must be appointed by the Minister, on terms and conditions to be determined by the Minister, by written notice to each member.
- (3) The Minister may define and vary the terms of reference of the advisory group as the Minister thinks fit.
- (4) The advisory group must comply with any terms of reference determined by the Minister under subsection (3).
- (5) The advisory group may determine its own procedure.
- (6) Every member of an advisory group appointed under subsection (1) is entitled—
  - (a) to receive remuneration not within paragraph (b) for services as a member of the advisory group at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her duties as a member of the advisory group.
- (7) For the purposes of subsection (6), **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.

Section 158C: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158D Partnership school contracts**

- (1) The Minister may from time to time, in the name and on behalf of the Crown, enter into a contract with a sponsor for the operation, by that sponsor, of a partnership school kura hourua.
- (2) A partnership school contract must be for a fixed term.
- (3) A partnership school contract must provide for—
  - (a) objectives and performance standards for the sponsor in relation to the operation of the school; and
  - (b) reporting requirements of the sponsor in relation to—
    - (i) the objectives and performance standards of the sponsor under the contract; and
    - (ii) any relevant national standards published under section 60A(1)(ba); and

- (c) the maximum roll of the school; and
  - (d) the number or percentage of teaching positions (within the meaning of section 120) that must be filled by registered teachers or holders of limited authority to teach; and
  - (e) the curriculum to be taught at the school; and
  - (f) the qualifications to be offered by the school (if it is a secondary or composite partnership school kura hōrua); and
  - (g) a procedure for the independent review of complaints against the school; and
  - (h) powers of intervention in the school by the Minister and the Secretary; and
  - (i) the termination of the contract for breach of contract; and
  - (j) the obligations of the sponsor, in the event of the termination or expiry of the contract, to co-operate with the Minister and to comply with any instructions issued by the Minister in order to ensure the orderly and efficient transfer of the operation of the school.
- (4) A partnership school contract may contain other provisions, as agreed between the Minister and the sponsor, that are not inconsistent with—
- (a) this Act; or
  - (b) any regulations made under this Act.

Section 158D: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

### **158E Complaints**

- (1) A person who refers a complaint about a sponsor to the Ombudsman may refer a complaint to a reviewer in respect of the same matter.
- (2) Subsection (1) applies—
  - (a) irrespective of whether or not the Ombudsman's investigation is complete at the time of the referral to the reviewer; and
  - (b) if that investigation is complete at the time of the referral to the reviewer, irrespective of the outcome of that investigation.

- (3) A person who refers a complaint to a reviewer about a matter that is within the jurisdiction of the Ombudsman may refer a complaint to the Ombudsman in respect of the same matter.
- (4) Subsection (3) applies—
  - (a) irrespective of whether or not the reviewer's investigation is complete at the time of the referral to the Ombudsman; and
  - (b) if that investigation is complete at the time of the referral to the Ombudsman, irrespective of the outcome of that investigation.
- (5) Subsection (3) is subject to section 17 of the Ombudsmen Act 1975.
- (6) In this section,—  
**Ombudsman** means an Ombudsman appointed under the Ombudsmen Act 1975  
**reviewer** means the person or body responsible under a partnership school contract for the independent review of complaints against a partnership school kura hourua.  
Section 158E: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158F Prohibitions on operation of partnership schools kura hourua**

- (1) A body that is not approved to be a sponsor under section 158B may not operate or purport to operate a partnership school kura hourua.
- (2) A sponsor may not operate a partnership school kura hourua unless there is in place a partnership school contract between the Minister and the sponsor.

Section 158F: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158G Sponsor's duties**

- A sponsor of a partnership school kura hourua must—
- (a) provide a safe physical and emotional environment for students; and
  - (b) ensure that the school delivers a curriculum that is in line with any foundation curriculum policy statements published under section 60A(1)(aa); and



- (c) assign the functions of the principal under the sections specified in section 158U(1) to an appropriately qualified person or to appropriately qualified persons; and
- (d) assign the role of supervising teaching practice to an appropriately qualified person; and
- (e) at intervals specified in the partnership school contract, inform parents of—
  - (i) the progress of their children at the school; and
  - (ii) any barriers to progress.

Section 158G: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158H Sponsor to control management of partnership school kura hourua**

- (1) A sponsor of a partnership school kura hourua must perform the sponsor's functions and exercise the sponsor's powers in such a way as to ensure that every student at the school is able to attain his or her highest possible standard in educational achievement.
- (2) A sponsor of a partnership school kura hourua has complete discretion to control the management of the school as the sponsor thinks fit.
- (3) Subsection (2) is subject to any enactment, the general law of New Zealand, and the partnership school contract.

Section 158H: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158I School rules**

- (1) A sponsor of a partnership school kura hourua may make any rules the sponsor thinks necessary or desirable for the control and management of the school.
- (2) Subsection (1) is subject to any enactment, the general law of New Zealand, and the partnership school contract.

Section 158I: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158J Sponsor's power to delegate**

- (1) A sponsor may delegate any of the functions or powers of the sponsor under this Act, either generally or specifically, to any person or group of persons.
- (2) A delegation under this section must be in writing.
- (3) The sponsor must not delegate the general power of delegation.
- (4) The sponsor must not delegate the functions of the sponsor in sections 13 to 18 (as applied by section 158U, with the exception of sections 16 and 17D) and any rules made under section 18AA (as applied by section 158V) to the person to whom the sponsor has assigned the functions of the principal in those sections and rules.
- (5) A delegate to whom any functions or powers of a sponsor are delegated may,—
  - (a) unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the sponsor; and
  - (b) delegate the function or power only—
    - (i) with the prior written consent of the sponsor; and
    - (ii) subject to the same restrictions and with the same effect as if the subdelegate were the delegate.
- (6) A delegate who purports to perform a function or exercise a power under a delegation—
  - (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
  - (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.
- (7) No delegation in accordance with this Act—
  - (a) affects or prevents the performance of any function or the exercise of any power by the sponsor; or
  - (b) affects the responsibility of the sponsor for the actions of any delegate acting under the delegation; or
  - (c) is affected by any change in the constitution of the sponsor.

- (8) A delegation may be revoked at will by written notice to the delegate.
- (9) A delegation under subsection (5)(b) may be revoked at will by written notice of the delegate to the subdelegate.

Section 158J: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158K Annual financial statements of partnership schools kura hourua**

- (1) On a date specified in the partnership school contract, a sponsor of a partnership school kura hourua must give to the Secretary annual financial statements relating to the school for the year ending on a date specified in the contract.
- (2) The financial statements must be prepared in accordance with the partnership school contract.
- (3) The financial statements must have been audited by a chartered accountant.

Section 158K: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158L Partnership school kura hourua may participate in school risk management scheme**

- (1) A sponsor may, with the consent of the Secretary, participate in a school risk management scheme established under section 78D(2).
- (2) Sections 78D to 78G, any regulations made under section 78F, and any legal instrument by which a school risk management scheme is established apply to any sponsor that participates in the scheme as if it were a participating school board.

Section 158L: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158M Intervention in partnership school kura hourua by Secretary**

- (1) This section applies if the Secretary has reasonable grounds to believe—
  - (a) that—

- (i) there exists in respect of a partnership school kura hourua an emergency affecting the education or welfare of its students; or
    - (ii) there is an imminent threat of such an emergency; and
  - (b) that the sponsor of the school is unwilling or unable to immediately deal with that emergency or, as the case requires, that threat to the satisfaction of the Secretary.
- (2) If this section applies, the Secretary may take over the management of the school from the sponsor for any period that the Secretary considers necessary in order to deal with the emergency or threatened emergency, and for that purpose the Secretary—
- (a) has and may exercise and perform, in respect of the school, all of the powers and functions that would otherwise be exercisable or performed by the sponsor:
  - (b) has all other powers necessary or desirable.
- (3) If the Secretary takes over the management of a school under this section, the Secretary must immediately give written notice to the sponsor of that action, and of the reasons for that action.
- (4) This section applies despite anything in any partnership school contract, and nothing in this section limits or affects—
- (a) any other right or remedy available to the Secretary or the Crown, whether under any partnership school contract or otherwise; or
  - (b) any liability of the sponsor under the partnership school contract or otherwise.
- (5) Neither the Secretary, nor the Crown, nor any other person acting by or under the authority of the Secretary is under any civil or criminal liability for anything the Secretary or any such person may do or fail to do in the course of the exercise or performance or intended exercise or performance of any powers or functions under this section, unless it is shown that the Secretary or that other person acted, or failed to act, in bad faith.

Section 158M: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

*Enrolment in partnership schools kura hourua*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158N Enrolment in partnership schools kura hourua**

- (1) If a partnership school kura hourua receives more applications than there are places at the school, the order of priority in which applicants are to be offered places at the school is as follows:
  - (a) first priority must be given to any applicant who is the sibling of a current student of the school:
  - (b) second priority must be given to any student who is the sibling of a former student of the school:
  - (c) third priority must be given to all other applicants.
- (2) If there are more applicants in any of the priority groups than there are places available, selection within the priority group must be by ballot.
- (3) If 2 or more siblings apply for places at the school at the same time, the applications of those siblings must be dealt with as a single application for the purposes of the ballot.
- (4) In this section, **sibling** has the meaning given by section 11F(3).

Section 158N: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158O Equal rights to primary and secondary education in partnership schools kura hourua**

- (1) People who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at partnership schools kura hourua as people who do not.
- (2) Nothing in subsection (1) affects or limits—
  - (a) those provisions of Part 2 and this Part that relate to the suspension, expulsion, and exclusion of students from partnership schools kura hourua; and
  - (b) section 158N (enrolment in partnership schools kura hourua).

Section 158O: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158P Special education in partnership schools kura hourua**

Despite sections 5 and 6 (as applied by section 158U), if the Secretary and the person's parents agree,—

- (a) a person with special educational needs who is under 21 and who turns 14 in any year may, in any later year, be or continue to be enrolled at a primary partnership school kura hourua, or in a class below form 3 at a composite partnership school kura hourua; and
- (b) a person under 21 with special educational needs may be or continue to be enrolled at a secondary partnership school kura hourua, or in a class above form 2 at a composite partnership school kura hourua, who, in the opinion of the Secretary,—
  - (i) has not completed the work of form 2; and
  - (ii) has not completed work equivalent to the work of form 2; and
- (c) a person under 21 with special educational needs may be or continue to be enrolled at a secondary partnership school kura hourua, or in a class above form 2 at a composite partnership school kura hourua, on or after 1 January after the person's 19th birthday.

Section 158P: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

*Multiple timetable arrangements*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158Q Multiple timetable arrangements in partnership schools kura hourua**

- (1) A sponsor may run a multiple timetable arrangement at a partnership school kura hourua for a specified period if the sponsor is satisfied that the arrangement is appropriate in the circumstances.
- (2) A sponsor must take all reasonable steps to notify every affected student and his or her parents in writing of—
  - (a) the multiple timetable arrangement; and
  - (b) the time periods for each day during which the affected student's timetable will run.

- (3) In this section, **affected student** and **multiple timetable arrangement** have the meanings given by section 25(8).

Section 158Q: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

### *Exclusions*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158R Secretary's powers when student younger than 16 is excluded from partnership school kura hourua**

- (1) If the Secretary is satisfied that the sponsor of a partnership school kura hourua has excluded a student who is younger than 16 from the school under section 15(1)(c) (as applied by section 158U), and that no person to whom the sponsor has assigned the functions of the principal under section 15(5) (as so applied) has arranged for the student to attend another school, the Secretary must,—
- (a) if satisfied that it is appropriate for the student to return to the school from which the student has been excluded, lift the exclusion; or
  - (b) arrange for and, if necessary, direct the board of a State school (that is not an integrated school) to enrol the student at the State school; or
  - (c) arrange for and, if necessary, direct a sponsor of another partnership school kura hourua to enrol the student at the other school; or
  - (d) direct a parent of the student to enrol the student at a correspondence school.
- (2) The Secretary may not give a direction under subsection (1)(b), or lift an exclusion under subsection (1)(a), unless the Secretary has also made all reasonable attempts to consult the student, the student's parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.
- (3) The Secretary may not give a direction under subsection (1)(c) unless—
- (a) the student's parents agree; and

- (b) the Secretary has made all reasonable attempts to consult the student, the sponsor, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.
- (4) If the sponsor of the school from which the student has been excluded is also the sponsor of another school, the Secretary (in exercising the power conferred by subsection (1)(c)) may direct the sponsor to enrol the student at that other school.
- (5) A board must comply with a direction under subsection (1)(b), and the direction overrides the provisions of any enrolment scheme the school may have in place.
- (6) A sponsor must comply with a direction under subsection (1)(c), and the direction overrides the provisions of any enrolment scheme the school may have in place.

Section 158R: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158S Re-enrolment by partnership school kura hourua of student excluded or expelled**

- (1) The sponsor of a partnership school kura hourua from which a student has ever been excluded or expelled (whether under section 15 or 17 as applied by section 158U) may refuse to enrol the student at the school (unless, in the case of an exclusion, the Secretary has lifted the exclusion under section 158R(1)(a)).
- (2) Subject to sections 16(1)(ba) and 158R(1)(c), the sponsor of a partnership school kura hourua may refuse to enrol a student who is for the time being excluded or expelled (whether under section 15 or 17 as applied by section 158U) from a State school or another partnership school kura hourua.
- (3) The Secretary may, in the case of a student who has turned 16, direct the sponsor of another partnership school kura hourua to enrol the student at the school if—
  - (a) the student has been expelled from a partnership school kura hourua under section 17 (as so applied); and
  - (b) the student's parents agree to the enrolment; and
  - (c) the Secretary has made all reasonable attempts to consult the student, the sponsor, and any other person or



organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.

- (4) The Secretary may, in the case of a student who has turned 16, direct the board of a State school to enrol the student at the school if—
- (a) the student has been expelled from a partnership school kura hourua under section 17 (as so applied); and
  - (b) the Secretary has made all reasonable attempts to consult the student, the student's parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or be able to advise on or help with, the student's education or welfare.

Section 158S: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

### *Courses and visits*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158T Courses and visits outside partnership school kura hourua premises**

A sponsor of a partnership school kura hourua may authorise any students to do any of the following outside the school premises:

- (a) undertake courses of education; or
- (b) obtain work experience; or
- (c) make visits.

Section 158T: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

### *Application of Act to partnership schools kura hourua*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158U Application of this Act to partnership schools kura hourua**

- (1) Sections 4 to 6, 13 to 15, 17 to 17C, 18 to 19, 25A (except subsection (1B)), 25AA, 25B, 27, 33, 78C to 78CD, and 139AAA to 139AAI (except section 139AAE(1)(a)) apply to partnership schools kura hourua with any necessary modifications.
- (2) In their application to partnership schools kura hourua under subsection (1), sections 4 to 6, 13 to 15, 17 to 17C, 18 to 19, 25A (except subsection (1B)), 25AA, 25B, 27, 33, 78C to 78CD, and 139AAA to 139AAI (except section 139AAE(1)(a)) must be read as if—
  - (a) any references to a State school were references to a partnership school kura hourua; and
  - (b) any references to a board or a board of a State school were references to a sponsor; and
  - (c) any references to a principal were references to the person or persons to whom a sponsor has assigned the function or functions of the principal under the section in question; and
  - (d) any references to a primary school were references to a primary partnership school kura hourua; and
  - (e) any references to a secondary school were references to a secondary partnership school kura hourua; and
  - (f) any references to a composite school were references to a composite partnership school kura hourua.
- (3) In its application to partnership schools kura hourua under subsection (1), section 17B must also be read as if the reference to a meeting of the board were a reference to a meeting with the sponsor.
- (4) In its application to partnership schools kura hourua under subsection (1), section 25AA must also be read as if references to the health curriculum were references to the health curriculum delivered by a partnership school kura hourua.
- (5) In their application to partnership schools kura hourua under subsection (1), sections 139AAA to 139AAI must also be read as if the definition of **teacher** in section 139AAA(9) were replaced with the following definition:

**teacher** means—

- (a) a person holding a teaching position (within the meaning of section 120) at a partnership school kura hourua; or
- (b) a person to whom the sponsor of the partnership school kura hourua has assigned any of the functions of the principal.

Section 158U: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158V Application of Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 to partnership schools kura hourua**

- (1) The Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (except rule 3) apply to partnership schools kura hourua with any necessary modifications.
- (2) In their application to partnership schools kura hourua under subsection (1), the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 must be read as if—
  - (a) any references to a State school were references to a partnership school kura hourua; and
  - (b) any references to a board or a board of a State school were references to a sponsor; and
  - (c) any references to a principal were references to the person to whom a sponsor has assigned the function or functions of the principal under the rules.

Section 158V: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

*Application of other Acts to partnership schools  
kura hourua*

Heading: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

**158W Application of New Zealand Bill of Rights Act 1990 to partnership schools kura hourua**

Section 3(b) of the New Zealand Bill of Rights Act 1990 applies to the following persons when performing functions under this Act or in relation to a partnership school contract:

- (a) a sponsor of a partnership school kura hourua:
- (b) a person employed by a sponsor of a partnership school kura hourua in a position at the school:
- (c) a person who works at a partnership school kura hourua under contract.

Section 158W: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158X Application of Privacy Act 1993 to partnership schools kura hourua**

When performing functions under this Act or a partnership school contract, a sponsor of a partnership school kura hourua is to be treated as a public sector agency for the purposes of sections 35 and 36 of the Privacy Act 1993.

Section 158X: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

#### **158Y Official Information Act 1982 not to apply to partnership schools kura hourua**

The Official Information Act 1982 does not apply to a sponsor of a partnership school kura hourua when the sponsor is performing functions under this Act or a partnership school contract.

Section 158Y: inserted, on 13 June 2013, by section 31 of the Education Amendment Act 2013 (2013 No 34).

### **Part 13**

#### **General provisions relating to tertiary education**

Part 13: inserted, on 23 July 1990, by section 35 of the Education Amendment Act 1990 (1990 No 60).

Part 13 heading: replaced, on 1 January 2003, by section 5 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **159AAA Object of provisions relating to tertiary education**

- (1) The object of this Part, Parts 13A to 18, and Part 19 (which relate to tertiary education), and of the provisions of Parts 18A and 20 to 24 that relate to tertiary education, is to foster and develop a tertiary education system that—

- (a) fosters, in ways that are consistent with the efficient use of national resources, high quality learning and research outcomes, equity of access, and innovation; and
  - (b) contributes to the development of cultural and intellectual life in New Zealand; and
  - (c) responds to the needs of learners, stakeholders, and the nation, in order to foster a skilled and knowledgeable population over time; and
  - (d) contributes to the sustainable economic and social development of the nation; and
  - (e) strengthens New Zealand's knowledge base and enhances the contribution of New Zealand's research capabilities to national economic development, innovation, international competitiveness, and the attainment of social and environmental goals; and
  - (f) provides for a diversity of teaching and research that fosters, throughout the system, the achievement of international standards of learning and, as relevant, scholarship.
- (2) In making decisions under this Part, Parts 13A to 18, and Part 19, and under the provisions of Parts 18A and 20 to 24 that relate to tertiary education, the Minister, the Commission, the Qualifications Authority, and Careers New Zealand must take into account the objects specified in subsection (1), so far as is practicable in the circumstances.

Section 159AAA: inserted, on 1 January 2003, by section 6 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159AAA(2): amended, on 30 August 2011, by section 16 of the Education Amendment Act 2011 (2011 No 66).

## 159 Interpretation

- (1) In this Part and Part 13A to Part 24, and in Schedules 13 to 17, unless the context otherwise requires,—

**academic year** means a period of 12 months commencing on 1 January

**accreditation** means an accreditation granted by the Qualifications Authority under section 250

**approved programme** means a programme approved by the Qualifications Authority under section 249

**approved programme or training scheme** means an approved programme or approved training scheme

**approved training scheme** means a training scheme approved by the Qualifications Authority under section 251

**award** means—

- (a) a certificate, diploma, degree, or other qualification that is listed on the Qualifications Framework; or
- (b) a certificate or other document granted in recognition of a student's achievement and completion of a training scheme; or
- (c) a certificate granted in recognition of a student's achievement in scholarship examinations at secondary education

**chief executive**, in relation to an institution, means the person who, by whatever name the person is called, is the chief executive of the institution and includes a person for the time being performing the duties of the chief executive of the institution

**college of education** means, subject to subsection (3), a body referred to in section 162(1)(b) or a body established as a college of education under section 162(2)

**combined council** means a body constituted under section 222AM

**Commission** means the Tertiary Education Commission established under section 159C

**constituents**, in relation to an institution, means the people who (by virtue of section 163) constitute it

**council**, in relation to an institution, means the body that governs the institution in accordance with section 165

**designated polytechnic**,—

- (a) after 28 February 2010 and before 1 May 2010, means a polytechnic designated for the purposes of Part 15A by the Governor-General by Order in Council;
- (b) on or after 1 May 2010, means any polytechnic

**domestic student**, at any time, means a person who is then—

- (a) a New Zealand citizen; or
- (b) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or

- (c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not international students

**enrol** includes admit and **enrolment** and **enrolled** have corresponding meanings

**equivalent full-time student formula** means the formula of that name that is based on the student workload that would normally be carried out by a full-time student in a single academic year

**existing institution** means—

- (a) a body specified in Part 1 or Part 2 of Schedule 13; or
- (b) a body that was established immediately before the day on which the Education Amendment Act 1990 received the Royal assent, or is established on or after that day and before 1 January 1991, as a polytechnic, institute of technology, technical institute or community college under the Education Act 1964

**existing non-university institution** means an existing institution other than a body specified in Part 1 of Schedule 13

**functions**, except where the expression occurs in a provision setting out the functions of a body, includes duties

**funding approval** means a decision made by the Commission under section 159YA to fund (in whole or in part) some or all of the tertiary education programmes and activities described in an organisation's proposed plan under section 159P(d)(i) and (ii)

**give public notice** means to publish a notice in the *Gazette* that—

- (a) gives notice of the fact that something has been made, approved, or done; and
- (b) includes information about how or where the public can see and obtain a copy of the thing that has been made, approved, or done

**government training establishment** means any establishment that is—

- (a) a Crown entity (within the meaning of section 10 of the Crown Entities Act 2004) for the time being approved by the Minister for the purposes of this definition; or

- (b) a department (within the meaning of the Public Finance Act 1989) for the time being approved by the Minister for the purposes of this definition; or
- (c) the New Zealand Defence Force constituted by section 11(1) of the Defence Act 1990; or
- (d) the New Zealand Police

**grant**, in relation to an award, includes confer and issue

**industry training organisation** means a body corporate for the time being recognised under section 5 or section 8(1) of the Industry Training and Apprenticeships Act 1992

**institution** means—

- (a) a college of education; or
- (b) a polytechnic; or
- (ba) a specialist college; or
- (c) a university; or
- (d) a wananga

**international student** has the meaning given in section 2(1)

**land** includes any legal or equitable estate or interest in, or right, power or privilege over, or in connection with, land

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**personal property** includes money

**plan** means a plan in relation to which funding approval has been given

**polytechnic** means, subject to subsection (3),—

- (a) a body that was established immediately before the day on which the Education Amendment Act 1990 received the Royal assent, or is established on or after that day and before 1 January 1991, as a polytechnic, institute of technology, technical institute or community college under the Education Act 1964; or
- (b) a body established as a polytechnic under section 162(2)



**polytechnic council**—

- (a) means the council of a polytechnic; and
- (b) includes a combined council

**private training establishment** means an establishment, other than an institution, that provides post-school education or vocational training

**proceeding** means any legal or administrative proceeding, and includes an arbitration

**programme**, in relation to an institution within the meaning of section 249(1), means a programme of study or training leading to a qualification listed on the Qualifications Framework

**proposed plan** means a proposed plan in relation to which an organisation is seeking funding approval

**Qualifications Authority** means the New Zealand Qualifications Authority established by Part 20

**Qualifications Framework** means the framework referred to in section 248

**reconstitution day**,—

- (a) in relation to a polytechnic designated for the purposes of Part 15A by the Governor-General by Order in Council, means the day on which the order comes into force;
- (b) in relation to any other polytechnic, means 1 May 2010

**Regional Employment and Access Council** means a council of that name established under section 7 of the Access Training Scheme Act 1988

**registered establishment** means a private training establishment that has been granted registration by the Qualifications Authority under Part 18, other than a registration that has been cancelled

**Secretary** means the chief executive of the Ministry

**specialist college** means, subject to subsection (3), a body established as a specialist college under section 162(2)

**staff**, in relation to an institution, does not include the chief executive of the institution

**student member**, in relation to the council of an institution, means a member of that council referred to in section 171(2)(e)

**tertiary education provider** means all or any of the following, but does not include an industry training organisation:

- (a) an institution:
- (b) a registered establishment:
- (c) a government training establishment:
- (d) any other person or body that provides, or proposes to provide, tertiary education and that is funded through non-departmental output classes from Vote Education (for example, community education providers)

**tertiary education strategy** means the latest strategy document issued under section 159AA

**training scheme** means study or training that—

- (a) leads to an award; but
- (b) does not, of itself, lead to an award of a qualification listed on the Qualifications Framework

**university** means, subject to subsection (3), a body referred to in section 162(1)(a) or a body established as a university under section 162(2)

**University Grants Committee** means the University Grants Committee established under Part 1 of the Universities Act 1961

**Vice-Chancellor**, in relation to a university, means the chief executive of the university, by whatever name called

**Vice-Chancellors Committee** means the New Zealand Vice-Chancellors Committee established by Part 19

**wananga** means, subject to subsection (3), a body established as a wananga under section 162(2).

(2) In the absence of proof to the contrary,—

- (a) a certificate signed by the chief executive of the Ministry of Foreign Affairs and Trade that on a specified day, or for a specified period, a specified person was or was not, or will or will not be, in New Zealand to study under an assistance programme administered by the New Zealand Government; or
- (b) a certificate signed by the Secretary that on a specified day, or for a specified period, a specified person was or was not, or will or will not be, in New Zealand to study

under an exchange programme approved by the New Zealand Government,—

is, for the purposes of the definitions of assisted student and exempt student in subsection (1), conclusive evidence of the matter certified; and judicial notice shall be taken of the signature on any such certificate of the chief executive or (as the case may be) the Secretary.

- (3) The definitions of the terms college of education, polytechnic, specialist college, university and wananga do not apply for the purposes of subsections (1), (2), and (4) of section 162.
- (4) The Governor-General may, by Order in Council, make regulations prescribing criteria that the holder of a residence class visa granted under the Immigration Act 2009 must satisfy in order to fulfil the requirements of paragraph (b) of the definition of domestic student in subsection (1).
- (5) Regulations made under subsection (4),—
  - (a) if made on or before 30 June in any year, expire on the close of December of that year unless they are expressly confirmed by Act of Parliament passed during that year; and
  - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year unless they are expressly confirmed by Act of Parliament passed before the end of that following year.
- (6) The expiry of regulations made under subsection (4) does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.

Section 159: inserted, on 23 July 1990, by section 35 of the Education Amendment Act 1990 (1990 No 60).

Section 159(1): amended, on 1 January 2003, by section 7(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **accreditation**: replaced, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **approval**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **approved nationally recognised course**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **approved programme**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **approved programme or training scheme**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **approved training scheme**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **assisted student**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **association**: repealed, on 1 January 2003, by section 7(5) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **association of students**: repealed, on 8 July 2000, by section 26(6) of the Education Amendment Act 2000 (2000 No 21).

Section 159(1) **award**: replaced, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **charter**: repealed, on 1 January 2008, by section 6(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **Chief Review Officer**: repealed, on 25 June 1993, by section 26(1) of the Education Amendment Act 1993 (1993 No 51).

Section 159(1) **combined council**: inserted, on 18 December 2009, by section 4 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 159(1) **Commission**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **constituents**: inserted, on 18 December 2009, by section 4 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 159(1) **course of study or training**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **designated polytechnic**: inserted, on 18 December 2009, by section 4 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 159(1) **domestic student**: replaced, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 159(1) **domestic student**: amended, on 30 August 2011, by section 17(3) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **exempt student**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **foreign student**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **funding approval**: inserted, on 1 January 2008, by section 6(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **give public notice**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **government training establishment**: replaced, on 25 June 1993, by section 13(1) of the Education Amendment Act 1993 (1993 No 51).

Section 159(1) **government training establishment** paragraph (a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159(1) **industry training organisation**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **industry training organisation**: amended, on 23 April 2014, by section 23 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 159(1) **institution** paragraph (ba): inserted, on 1 January 2003, by section 7(4) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **international student**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **Minister**: replaced, on 1 January 1992, by section 2(5) of the Education Amendment Act No (4) 1991 (1991 No 136).

Section 159(1) **Ministry**: replaced, on 1 January 1992, by section 2(5) of the Education Amendment Act No (4) 1991 (1991 No 136).

Section 159(1) **nationally recognised award**: repealed, on 30 August 2011, by section 17(1) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **New Zealand apprenticeship committee**: repealed, on 20 May 2010, by section 44 of the Education Amendment Act 2010 (2010 No 25).

Section 159(1) **plan**: inserted, on 1 January 2008, by section 6(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **polytechnic council**: inserted, on 18 December 2009, by section 4 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 159(1) **profile**: repealed, on 1 January 2008, by section 6(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **programme**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **proposed plan**: inserted, on 1 January 2008, by section 6(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **Qualifications Framework**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(1) **reconstitution day**: inserted, on 18 December 2009, by section 4 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 159(1) **specialist college**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **statement of tertiary education priorities**: repealed, on 1 January 2008, by section 6(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **tertiary education provider**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **tertiary education strategy**: inserted, on 1 January 2003, by section 7(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(1) **tertiary education strategy**: amended, on 1 January 2008, by section 6(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159(1) **training scheme**: inserted, on 30 August 2011, by section 17(2) of the Education Amendment Act 2011 (2011 No 66).

Section 159(2)(a): amended, on 1 July 1993, pursuant to section 9(2) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 159(3): amended, on 1 January 2003, by section 7(6) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(4): inserted, on 1 January 2003, by section 7(7) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(4): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 159(5): inserted, on 1 January 2003, by section 7(7) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159(6): inserted, on 1 January 2003, by section 7(7) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### **159AA Tertiary education strategy**

- (1) The Minister must, from time to time, issue a tertiary education strategy that sets out—
  - (a) the Government's long-term strategic direction for tertiary education; and
  - (b) the Government's current and medium-term priorities for tertiary education.
- (2) The part of the tertiary education strategy that sets out the Government's long-term strategic direction for tertiary education must address the following:
  - (a) economic goals:
  - (b) social goals:
  - (c) environmental goals:
  - (d) the development aspirations of Maori and other population groups.
- (3) Before issuing a tertiary education strategy, the Minister must consult with—
  - (a) those stakeholders in the tertiary education sector that he or she considers ought to be consulted; and
  - (b) the Commission.

- (4) As soon as practicable after issuing a tertiary education strategy, the Minister must give public notice of it.

Section 159AA: replaced, on 1 January 2008, by section 7 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159AB Importance of tertiary education strategy**

In exercising their functions under this Act or any other enactment, the Commission, the Qualifications Authority, and Careers New Zealand must have regard to the tertiary education strategy.

Section 159AB: inserted, on 1 January 2003, by section 8 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159AB: amended, on 30 August 2011, by section 18 of the Education Amendment Act 2011 (2011 No 66).

**159AC Revocation and replacement or amendment of tertiary education strategy**

- (1) The Minister may, at any time, revoke and replace, or amend, a tertiary education strategy.
- (2) Before revoking and replacing, or significantly amending, a tertiary education strategy, the Minister must consult with—
- (a) those stakeholders in the tertiary education sector that he or she considers ought to be consulted; and
  - (b) the Commission.
- (3) As soon as practicable after revoking and replacing, or significantly amending, a tertiary education strategy, the Minister must give public notice of the revocation and replacement, or amendment.
- (4) An amendment forms part of the tertiary education strategy it amends.

Section 159AC: replaced, on 1 January 2008, by section 9 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159AD Roles within tertiary education sector**

- (1) The Ministry is the Minister's principal policy adviser on tertiary education matters.
- (2) The Qualifications Authority (or, in the case of universities, the New Zealand Vice-Chancellors Committee) is the body

primarily responsible for quality assurance matters in the tertiary education sector.

- (3) This section is for the avoidance of doubt.

Section 159AD: inserted, on 1 January 2003, by section 8 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159AD(1): replaced, on 21 December 2010, by section 29 of the Education Amendment Act (No 3) 2010 (2010 No 134).

#### **159AE Ministry may hold and disseminate information**

Any information collected and held by the Commission, the Qualifications Authority, or Careers New Zealand may be held by the Ministry on behalf of the relevant agency and be disclosed by the Ministry to—

- (a) the agency on whose behalf it is held; and
- (b) any other person or agency that is entitled to receive it.

Section 159AE: inserted, on 1 January 2003, by section 8 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159AE: amended, on 30 August 2011, by section 19 of the Education Amendment Act 2011 (2011 No 66).

#### **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 powers or functions 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.



Section 159AF: inserted, on 1 January 2003, by section 8 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## **Part 13A**

### **Tertiary Education Commission**

Part 13A: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### *Preliminary provisions*

Heading: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **159A Purpose of Part**

The purpose of this Part is to establish—

- (a) a Tertiary Education Commission (the **Commission**); and
- (b) a framework for planning, funding, and monitoring in the tertiary education sector that primarily, but not exclusively, relates to funding organisations via plans.

Section 159A: replaced, on 1 January 2008, by section 12 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **159ABA Outline of framework for planning, funding, and monitoring in tertiary education sector**

- (1) This section—
  - (a) sets out a general outline of the framework for planning, funding, and monitoring in the tertiary education sector; and
  - (b) is by way of explanation only.
- (2) If any other section in this Act conflicts with this section, the other section prevails.
- (3) The following steps describe, in general terms, how the framework for planning, funding, and monitoring in the tertiary education sector works:
  - (a) the Minister determines the design of funding mechanisms and whether funding under those mechanisms is via plans;
  - (b) the Commission develops the details of how to implement funding mechanisms:

- (c) the Commission issues guidance on what must be contained in proposed plans:
- (d) the Commission identifies criteria for assessing proposed plans:
- (e) an organisation prepares a proposed plan—
  - (i) in consultation with the stakeholders the organisation considers ought to be consulted and any other persons specified by the Commission; and
  - (ii) in a manner consistent with the Commission's guidance:
- (f) the organisation submits its proposed plan to the Commission:
- (g) the Commission applies assessment criteria to the proposed plan and decides whether or not to give funding approval:
- (h) if the proposed plan is given funding approval, the Commission determines the amount of funding payable to the organisation by applying the appropriate funding mechanism:
- (i) if an organisation's proposed plan receives funding approval, the Commission monitors the organisation's performance to determine if it is achieving, or has achieved, the outcomes it has specified in its plan.

Section 159ABA: inserted, on 1 January 2008, by section 12 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

### 159B Definition of organisation

- (1) In this Part, unless the context otherwise requires, **organisation** means—
  - (a) a tertiary education provider:
  - (b) an industry training organisation:
  - (c) a person or body that provides tertiary education-related services and is identified in accordance with subsection (2) as an organisation for the purposes of this Part.
- (2) The Minister may, by notice in the *Gazette*, identify organisations for the purpose of this Part, and may do so by describing a type of person or body that is an organisation, or by naming individual persons or bodies as organisations.

Section 159B: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### *Establishment of Commission*

Heading: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **159C Establishment of Commission**

- (1) A Tertiary Education Commission is established.
- (2) The Commission is owned by the Crown.
- (3) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (4) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- (5) The members of the Commission are the board for the purposes of the Crown Entities Act 2004.

Section 159C: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **159D Composition of Commission**

- (1) The Commission comprises at least 6, but not more than 9, members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004 after consultation with the Minister of Maori Affairs.
- (2) At least 2 months before appointing a member, the Minister must advertise his or her intention to appoint a member and must seek responses from interested persons.
- (3) Subsection (2) does not apply if the Minister appoints as a member a person who, immediately before the appointment, was a member of the Transition Tertiary Education Commission.
- (4) When appointing members of the Commission, the Minister must have regard to the need for its members to collectively have a breadth of experience and expertise, and depth of knowledge, regarding areas of the tertiary education sector.
- (5) Subsection (4) does not limit section 29 of the Crown Entities Act 2004.

Section 159D: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159D(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159D(2): amended, on 1 January 2008, by section 13 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159D(4): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159D(5): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **159E Charging**

The Commission may not charge a commercial rate for any goods and services that it provides unless the Minister has given his or her approval.

Section 159E: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Functions of Commission*

Heading: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### **159F Functions of Commission**

- (1) The functions of the Commission are—
- (a) to give effect to the tertiary education strategy by—
    - (i) prescribing and publishing guidance on the content of, and processes associated with seeking funding approval for, proposed plans; and
    - (ii) prescribing and publishing guidance on the criteria the Commission will use to assess proposed plans; and
    - (iii) assessing proposed plans and deciding whether they will receive funding approval by applying the relevant assessment criteria; and
    - (iv) determining the amount of funding payable to organisations by applying the appropriate funding mechanisms; and
    - (v) allocating funding to organisations that have plans; and

- (vi) allocating funding to organisations that are not required to have plans in order to receive funding; and
  - (vii) prescribing what plan summaries must contain for the purposes of public inspection; and
  - (viii) building the capability of organisations; and
  - (b) to provide advice to the Minister on the activities and performance of tertiary education organisations and the tertiary education sector generally; and
  - (ba) to develop details of how to implement funding mechanisms; and
  - (bb) to implement funding mechanisms; and
  - (c) to provide advice to the Minister on the implementation of policy and on the operational implications of new policy initiatives; and
  - (d) to monitor the performance of organisations that receive funding from the Commission including by measuring performance against specified outcomes; and
  - (da) to undertake any functions that the Minister directs the Commission to undertake under section 159J; and
  - (e) to undertake any functions delegated to the Commission, including (without limitation) functions relating to the funding of organisations other than under section 159YA or 159ZC; and
  - (f) to undertake any other function given by this Act, the Industry Training Act 1992, the Modern Apprenticeship Training Act 2000, or any other enactment.
  - (g) *[Repealed]*
- (2) In addition, the Commission may provide information and other tertiary-related services to the Crown, provided that these functions are consistent with the Commission's statement of intent and are consistent with, and do not displace, any of its functions under subsection (1).

Section 159F: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159F(1)(a): replaced, on 1 January 2008, by section 14(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(b): replaced, on 21 December 2010, by section 30(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 159F(1)(ba): inserted, on 1 January 2008, by section 14(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(bb): inserted, on 1 January 2008, by section 14(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(c): replaced, on 21 December 2010, by section 30(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 159F(1)(d): replaced, on 1 January 2008, by section 14(4) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(da): inserted, on 1 January 2008, by section 14(4) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(e): amended, on 1 January 2008, by section 14(5) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159F(1)(g): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **159G Principles guiding how Commission operates**

In performing its functions, the Commission must, in addition to complying with section 159AB,—

- (a) comply with any direction of the Minister given under section 103 of the Crown Entities Act 2004; and
- (b) work closely with the stakeholders of tertiary education providers and industry training organisations; and
- (c) work closely with tertiary education providers and industry training organisations.

Section 159G: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159G(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **159H Minister may review performance of Commission**

*[Repealed]*

Section 159H: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **159I Delegation of functions or powers of Minister**

- (1) The Minister may, either generally or specifically, delegate to the Commission all or any of the Minister's functions and powers under this Act (other than those referred to in section 159L) or any other Act, including functions or powers delegated to the Minister under this Act or any other Act.
- (2) A delegation under this section must be in writing.

- (3) No delegation under this section may include the power to delegate under this section.
- (4) The power of the Minister to delegate under this section—
  - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
  - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given, or conditions imposed, by the Minister, the Commission may exercise any functions or powers delegated to the Commission under this section in the same manner and with the same effect as if they had been conferred on the Commission directly by this section and not by delegation.
- (6) If the Commission purports to act under any delegation under this section, the Commission is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (7) A delegation does not affect or prevent the exercise of any function or power by the Minister, or affect the responsibility of the Minister for the actions of any person acting under the delegation.

Section 159I: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159I(1): replaced, on 1 January 2008, by section 15 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **159J Minister may direct Commission**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) Every direction under section 103 of the Crown Entities Act 2004 must be consistent with the tertiary education strategy and the functions of the Commission.
- (3A) The Minister may, in accordance with section 112 of the Crown Entities Act 2004, direct the Commission to undertake additional functions that are consistent with the Commission's objectives.

- (4) The Minister may not direct the Commission to provide or deny funding under section 159YA or 159ZC to any specified organisation.
- (5) *[Repealed]*
- (6) If the Minister gives a direction to the Commission, the Commission must include in its annual report for every year to which the direction relates a report on how the Commission has responded to it.

Section 159J: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 159J(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159J(2): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159J(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159J(3A): inserted, on 1 January 2008, by section 16(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159J(4): amended, on 1 January 2008, by section 16(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159J(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159J(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159J(6): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **159K Application of Commerce Act 1986**

Despite section 6 of the Commerce Act 1986, nothing in that Act applies to the Commission except to the extent that the Commission engages in supplying goods and services for which it charges.

Section 159K: inserted, on 1 January 2003, by section 9 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### **159KA Chief executive**

- (1) The Commission must appoint a chief executive in accordance with section 117 of the Crown Entities Act 2004.
- (2) The chief executive must not be a member of the Commission.
- (3) The Commission must act independently when appointing the chief executive.



- (4) The Commission must monitor and evaluate the performance of the chief executive.

Section 159KA: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**159KB Responsibilities of chief executive**

The chief executive must—

- (a) ensure the efficient and effective administration of the affairs of the Commission; and
- (b) act in accordance with lawful policies and directions given to him or her by the Commission.

Section 159KB: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**159KBA Monitoring and reporting function of chief executive in relation to institutions**

The chief executive of the Commission—

- (a) must, on an ongoing basis, monitor institutions that receive funding under this Part in order to assess whether the operation or long-term viability of any of those institutions is at risk; and
- (b) may report from time to time to the Minister on the outcome of that monitoring.

Section 159KBA: inserted, on 1 January 2008, by section 17 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159KC Declaration of interests**

- (1) A person who is proposed to be appointed as chief executive must declare any interests (within the meaning of that term in section 10 of the Crown Entities Act 2004) to the Commission before accepting appointment to the position of chief executive.
- (2) If the chief executive has any direct or indirect interest in any transaction or other matter listed in section 62 of the Crown Entities Act 2004, he or she must disclose that interest to the Commission.

Section 159KC: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**159KD Superannuation**

- (1) Any person who, immediately before becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service so long as he or she continues to be an employee of the Commission.
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Commission were Government service.
- (3) Subsection (1) does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Commission is the controlling authority.

Section 159KD: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**159KE Statement of intent**

- (1) The Commission must include the following information in its statement of intent:
  - (a) a general description of the things that the Commission proposes to do, achieve, or work towards during the period covered by the statement of intent, which—
    - (i) must be consistent with the tertiary education strategy and the Commission's functions; and
    - (ii) must include a summary of the nature and scope of the Commission's proposed operations; and
    - (iii) may cover both financial and non-financial matters; and
  - (b) a general description of the Commission's proposed strategies and activities for giving effect to, or achieving, the things referred to in paragraph (a), including a list of the intended principal activities of the Commission and how they relate to the things referred to in paragraph (a); and

- (c) *[Repealed]*
- (d) a general description of the manner in which the Commission proposes to operate and, in particular,—
  - (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
  - (ii) what capability it needs to do its work, and how it will develop that capability; and
  - (iii) how it proposes to manage its risks.
- (e) *[Repealed]*
- (2) The Commission need not include in its statement of intent the information required in section 141(1) and (2)(a) to (c) of the Crown Entities Act 2004.
- (3) *[Repealed]*
- (4) The Minister may, in relation to the Commission, exercise his or her powers under section 147(1) of the Crown Entities Act 2004 as if that section included a reference to subsection (1)(a); and that section applies accordingly.

Section 159KE: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159KE(1)(a)(i): amended, on 1 January 2008, by section 18 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 159KE(1)(c): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 159KE(1)(d)(iii): amended, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 159KE(1)(e): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 159KE(2): amended, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 159KE(3): repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

Section 159KE(4): amended, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

### **159KEA Statement of performance expectations**

- (1) The statement of performance expectations that the Commission is required to provide to its responsible Minister under section 149I of the Crown Entities Act 2004—

- (a) must be consistent with the tertiary education strategy; and
  - (b) may relate to more than 1 financial year.
- (2) The grouping of outputs in the statement of performance expectations must be done so that, in the case of outputs funded by appropriation, a group of outputs does not contain outputs funded from more than 1 appropriation in the Estimates.

Section 159KEA: inserted, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

### **159KF Annual report**

- (1) The Commission must include in its annual report a description of how the Commission is monitoring, and how it will report on, progress in giving effect to the tertiary education strategy.
- (2) This section does not limit section 151 of the Crown Entities Act 2004.

Section 159KF: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 159KF(1): amended, on 1 January 2008, by section 19 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

### **159KG Certain powers must not be delegated**

- (1) The Commission must not delegate any of the following powers:
  - (a) the power to appoint a chief executive; or
  - (b) any other power that the Minister specifies by notice in writing to the Commission.
- (2) This section applies despite section 73 of the Crown Entities Act 2004.

Section 159KG: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Funding mechanisms*

Heading: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159L Minister determines design of funding mechanisms**

- (1) The Minister must, from time to time, determine the design of the funding mechanisms that the Commission must use to fund organisations.
- (2) Without limiting subsection (1), in making a determination under that subsection, the Minister must—
  - (a) identify the general form and essential components of each funding mechanism; and
  - (b) indicate which of the funding mechanisms relates to—
    - (i) funding to be paid by the Commission under section 159YA (relating to funding organisations via plans); and
    - (ii) funding to be paid by the Commission under section 159ZC (relating to funding organisations under this Part other than via plans); and
    - (iii) other types of funding (if any).
- (3) Without limiting subsection (1), in making a determination under that subsection, the Minister may—
  - (a) specify the amount of money, or the proportion of an amount of money, available under any particular funding mechanism; and
  - (b) provide for funding to different groups of organisations or types of organisation; and
  - (c) provide for different versions of, or modifications to, a funding mechanism when applying it to different groups of organisations or types of organisation; and
  - (d) specify conditions that the Commission must attach to funding that is provided under any funding mechanism including, without limitation, conditions setting limits on the fees that an organisation may charge domestic students; and
  - (e) provide for funding that targets particular groups of students.

Section 159L: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159M Restrictions on design of funding mechanisms**

In determining a design for a funding mechanism under section 159L, the Minister may not—

- (a) identify a specified organisation or organisations to which funding is to be provided or denied under any funding mechanism; or
- (b) specify conditions under section 159L(3)(d) that set limits on the fees that organisations may charge domestic students until 2 months after the date on which the Minister has published a notice in the *Gazette* that—
  - (i) states that the Minister proposes to specify conditions of that kind; and
  - (ii) sets out the proposed conditions; and
  - (iii) invites submissions on the proposed conditions; and
  - (iv) specifies the date by which submissions must be received, which must be a date no later than 21 days after the date of the *Gazette* notice.

Section 159M: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **159N Funding mechanisms consistent with quality assurance principle**

Every funding mechanism must be consistent with the principle that receiving public funds is dependent on an organisation meeting the quality assurance requirements in this Act.

Section 159N: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **159O Commission to implement funding mechanisms**

The Commission must—

- (a) develop the details of how to implement the Minister's determination of the design of funding mechanisms under section 159L; and
- (b) implement the funding mechanisms.

Section 159O: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### *Requirements for, and content of, proposed plans*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159P Requirements for proposed plans**

A proposed plan must—

- (a) describe how an organisation will give effect to the Government's current and medium-term priorities as described in the tertiary education strategy; and
- (b) describe how an organisation will address the needs of its stakeholders (including, without limitation, students enrolled with the organisation); and
- (c) describe an organisation's mission and role for the term of the plan; and
- (d) set out a description of all—
  - (i) tertiary education programmes run by the organisation for which the organisation is seeking funding under section 159YA and specify the amount of funding sought in relation to those programmes; and
  - (ii) activities (including, without limitation, programmes and initiatives that will be undertaken by the organisation in order to build its capability) for which the organisation is seeking funding under section 159YA and specify the amount of funding sought in relation to those activities; and
- (e) describe an organisation's proposed outcomes (including, without limitation, in relation to the tertiary education programmes and activities described in paragraph (d)(i) and (ii) in relation to which funding is sought) and the performance indicators that the organisation will use to measure whether those outcomes have been achieved; and
- (f) set out a description of all tertiary education programmes run by the organisation other than those in relation to which funding is sought.

Section 159P: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159Q Exemption from certain requirements for proposed plans**

- (1) The Commission may, by notice in writing, exempt an organisation from having to comply with the requirements in section 159P(f).

- (2) The Commission may not exercise the power in subsection (1) in relation to an institution.
- (3) Before exempting an organisation under subsection (1), the Commission must consider—
  - (a) the amount of funding sought by the organisation; and
  - (b) the amount of funding already received by the organisation; and
  - (c) the type and size of the organisation; and
  - (d) the effective operation of the tertiary education system; and
  - (e) the Government's current and medium-term priorities as described in the tertiary education strategy; and
  - (f) any other matters the Commission considers relevant.

Section 159Q: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159R Content of, and processes for submitting, proposed plans prescribed by Commission**

- (1) The Commission must prescribe and give public notice of—
  - (a) the content of organisations' proposed plans (being the particular matters that proposed plans must address or include in order to meet the requirements in section 159P); and
  - (b) the kinds of background or supplementary information that the Commission requires an organisation to provide in relation to a proposed plan; and
  - (c) the timetable and process for the submission of proposed plans to the Commission.
- (2) When prescribing matters under subsection (1), the Commission may include—
  - (a) standard content, as well as different content applying to different organisations, groups of organisations, or types of organisation; and
  - (b) different information, timetables, and processes for different organisations, groups of organisations, or types of organisation.
- (3) Notices given under subsection (1) may be—
  - (a) given at different times; and
  - (b) amended by the Commission.



- (4) The Commission must give public notice of a significant amendment made under subsection (3)(b).

Section 159R: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159S Commission may exempt organisation from complying with certain matters**

The Commission may, by notice in writing, exempt an organisation from complying with any of the matters it has prescribed under section 159R(1).

Section 159S: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Submitting proposed plan*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159T Who must submit proposed plan**

- (1) An organisation that is seeking funding from the Commission under a funding mechanism that provides for funding via plans must submit a proposed plan.
- (2) Subsection (1) does not apply to an organisation that is exempt under section 159U.

Section 159T: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159U Exemption from requirement to submit proposed plan**

- (1) The Commission may, by notice in writing, exempt an organisation, a group of organisations, or a type of organisation that is seeking funding under a funding mechanism that provides for funding via plans from the requirement, in section 159T(1), to submit a proposed plan.
- (2) The Commission may not exercise the power in subsection (1) in relation to an institution.
- (3) The Commission may exempt an organisation, a group of organisations, or a type of organisation under subsection (1) for a specified period that the Commission considers appropriate.

Section 159U: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159V Frequency of submitting proposed plans**

An organisation that is required to submit a proposed plan must submit a proposed plan to the Commission—

- (a) at least once every 3 years; or
- (b) if the Commission directs, at more frequent intervals specified by the Commission.

Section 159V: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159W Submitting combined proposed plan**

The Commission may permit more than 1 organisation to prepare and submit a combined proposed plan if the Commission considers it appropriate.

Section 159W: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Preparing and consulting on proposed plans*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159X Preparing and consulting on proposed plans**

- (1) An organisation that is required to submit a proposed plan must prepare the proposed plan in accordance with this Part (including, unless it is exempt under section 159S, complying with the matters prescribed by the Commission under section 159R).
- (2) A proposed plan must be prepared in consultation with—
  - (a) the stakeholders that the organisation considers ought to be consulted; and
  - (b) any other person or group of persons that the Commission stipulates.
- (3) An organisation must develop the content of its proposed plan in collaboration with the Commission, including collaborating with the Commission about ways in which the organisation can implement the matters prescribed by the Commission under section 159R.
- (4) After completing the requirements in subsections (1) to (3), an organisation must submit its proposed plan to the Commission.

Section 159X: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Assessment of proposed plans and giving of  
funding approval*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159Y Criteria for assessing proposed plans**

- (1) The Commission must prescribe and give public notice of the criteria that the Commission will use to assess proposed plans to determine if they will receive funding approval.
- (2) The prescribed criteria must include, without limitation, criteria for assessing—
  - (a) how an organisation contributes to the Government's current and medium-term priorities described in the tertiary education strategy; and
  - (b) the tertiary education programmes and activities of an organisation in relation to which funding is sought under section 159YA; and
  - (c) the performance indicators used in measuring whether the specified outcomes relating to those tertiary education programmes and activities are being or have been achieved; and
  - (d) the extent and nature of an organisation's consultation over its proposed plan.
- (3) When prescribing matters under subsection (1), the Commission may include standard criteria, as well as different criteria applying to different organisations, groups of organisations, or types of organisation.
- (4) Notices given under subsection (1) may be—
  - (a) given at different times; and
  - (b) amended by the Commission.
- (5) The Commission must give public notice of a significant amendment made under subsection (4)(b).

Section 159Y: replaced, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YA Commission's assessment of proposed plans, giving of funding approval, and payment of funding**

- (1) The Commission must assess whether a proposed plan will receive funding approval by applying the assessment criteria prescribed under section 159Y.
- (2) After applying the assessment criteria, the Commission may decide to—
  - (a) fund (in whole or in part) all of the tertiary education programmes and activities described in the proposed plan under section 159P(d)(i) and (ii) in relation to which funding is sought; or
  - (b) fund (in whole or in part) some of the tertiary education programmes and activities described in the proposed plan under section 159P(d)(i) and (ii) in relation to which funding is sought; or
  - (c) not fund any of the tertiary education programmes or activities described in the proposed plan under section 159P(d)(i) and (ii) in relation to which funding is sought.
- (3) Before deciding not to fund some or any, or part of some or any, of the tertiary education programmes or activities described in the proposed plan under section 159P(d)(i) and (ii) in relation to which funding is sought, the Commission must—
  - (a) notify the organisation of its proposed decision; and
  - (b) give the organisation a reasonable opportunity to be heard.
- (4) The Commission must give its reasons to the affected organisation if it decides not to fund some or any, or part of some or any, of the tertiary education programmes or activities described in the proposed plan under section 159P(d)(i) and (ii) in relation to which funding is sought.
- (5) In deciding to give funding approval, the Commission must—
  - (a) specify the date from which that funding approval has effect; and
  - (b) determine the amount of funding payable to the organisation by applying the appropriate funding mechanism; and
  - (c) arrange for the payment to the organisation of the amount of funding determined under paragraph (b).

Section 159YA: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YB Commission may decline to assess proposed plan**

- (1) The Commission may decline to assess a proposed plan under section 159YA if the Commission is satisfied on reasonable grounds that the proposed plan does not adequately satisfy the requirements of this Part (including, unless the organisation is exempt under section 159S, complying with the matters prescribed by the Commission under section 159R).
- (2) Before making a decision to decline to assess an organisation's proposed plan, the Commission must discuss with the organisation why the proposed plan does not adequately satisfy the requirements of this Part.
- (3) The Commission must give its reasons to the affected organisation if it declines to assess the organisation's proposed plan.

Section 159YB: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YC Conditions on receiving funding under section 159YA**

- (1) It is a condition of an organisation receiving funding under section 159YA that the organisation will supply to the Commission or Ministry, from time to time as required by the Commission or Ministry, and in a form specified by the Commission or Ministry, any financial, statistical, or other information that the Commission or Ministry requires the organisation to supply.
- (2) The Commission may give funding approval subject to conditions, but only if the conditions are—
  - (a) conditions the Minister has determined the Commission must attach to funding under section 159L(3)(d); or
  - (b) conditions that the Commission considers necessary to ensure that the specified outcomes in a plan that relate to tertiary education programmes and activities in relation to which funding is being given are being achieved or will be achieved.
- (3) The Commission may at any time (including during a funding period) amend any condition imposed under subsection (2).

- (4) The amendment to the condition takes effect when the organisation has been given reasonable notice of it.

Section 159YC: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YD Accountability for funding received under section 159YA**

- (1) An organisation (other than an institution) that receives funding under section 159YA must ensure that—
- (a) it keeps records, in a form consistent with that required by the Commission, for the period to which the funding relates, that fully and fairly show—
    - (i) the transactions, assets, liabilities, and funds of the organisation that are or were affected by the funding; and
    - (ii) whether any conditions on which the funding approval was given have been complied with; and
  - (b) the records are available for inspection by the Commission at all reasonable times.
- (2) As soon as practicable after the end of any year in which an organisation (other than an institution) receives funding under section 159YA, the organisation must provide the Commission with—
- (a) a financial report of the organisation for that year, including a statement of financial performance, a statement of financial position, a statement of movements in equity, a statement of cash flows, and a statement of service performance that compares the performance of the organisation with the outcomes specified in the organisation's plan as measured by the performance indicators specified in the organisation's plan; and
  - (b) any financial reports, or statistical or other information, required by the Commission; and
  - (c) any information necessary to demonstrate compliance with any condition attached to the funding.
- (3) A report required under subsection (2)(a) must be prepared in accordance with generally accepted accounting practice and must be audited by an independent chartered accountant.

- (4) The Commission may exempt any organisation, group of organisations, or types of organisation from complying with 1 or more of the requirements set out in subsections (2) and (3).
- (5) In exercising the powers conferred on it by subsection (4), the Commission must have regard to—
  - (a) the amount of funding sought by the organisation; and
  - (b) the amount of funding received by the organisation; and
  - (c) the type and size of the organisation; and
  - (d) any other matters that the Commission considers relevant.
- (6) Section 203 sets out the accountability requirements for institutions.

Section 159YD: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

### *Expiry of funding approval*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **159YE Expiry of funding approval**

- (1) Every plan that has funding approval must specify the date on which funding approval expires (the **expiry date**), which must be a date determined by the Commission that is no later than 3 years after the date on which the funding approval takes effect.
- (2) Funding approval expires on the expiry date, unless funding approval is earlier revoked under this Part.
- (3) Despite subsection (2), if, on the expiry date, an organisation is discussing a proposed plan with the Commission or the proposed plan is awaiting funding approval under this Part, the funding approval for the existing plan continues in effect until the earlier of the following dates:
  - (a) the date that is 6 months after the expiry date of the existing funding approval; or
  - (b) the date that funding approval for the proposed plan comes into effect.

Section 159YE: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YF Effect of expiry of funding approval**

The effect of the expiry of funding approval is that—

- (a) the plan to which funding approval relates expires; and
- (b) the Commission must cease payment, or cease any or all further payments, of funding under section 159YA in respect of that plan.

Section 159YF: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Suspension or revocation of funding given under  
section 159YA*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YG Commission may suspend or revoke funding given under section 159YA**

- (1) The Commission may suspend or revoke some or all funding given under section 159YA if it is satisfied on reasonable grounds that—
  - (a) an organisation has not complied, or is not complying, with a condition on which funding has been given under section 159YA; or
  - (b) when measured against performance indicators, the organisation has not achieved, or is not achieving, an outcome anticipated in its plan for a tertiary education programme or activity in relation to which funding has been given under section 159YA; or
  - (c) the organisation has not provided, or is not providing, adequate and timely information required by the Commission or Ministry under section 159YC.
- (2) Before deciding whether to suspend or revoke some or all funding given under section 159YA, the Commission must—
  - (a) notify the organisation of the specific matters of concern; and
  - (b) give the organisation a reasonable opportunity to be heard.
- (3) The Commission must give its reasons to an organisation if it decides to suspend or revoke some or all funding given under section 159YA.



- (4) The Commission must advise an organisation of the following matters if it decides to suspend some or all funding given under section 159YA:
- (a) the date on which the suspension will end and, as a consequence, some or all funding will be revoked; and
  - (b) what action the organisation must take in order to have the suspension lifted and avoid some or all funding being revoked.
- (5) A suspension must be for a period that the Commission considers reasonable, having considered—
- (a) the specific matters referred to in subsection (2)(a); and
  - (b) the action referred to in subsection (4)(b).

Section 159YG: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YH Extending suspension of funding**

- (1) The date on which a suspension ends under section 159YG(4)(a) may be extended by the Commission.
- (2) The Commission must advise an organisation of the following matters if it decides to extend the date on which a suspension will end:
- (a) the date on which the extended suspension will end and, as a consequence, some or all funding for all or part of the plan will be revoked; and
  - (b) what action the organisation must take in order to have the extended suspension lifted and avoid some or all funding for all or part of the plan being revoked.
- (3) An extension of a suspension must be for a period that the Commission considers reasonable, having considered—
- (a) the specific matters referred to in section 159YG(2)(a); and
  - (b) the action referred to in section 159YG(4)(b).

Section 159YH: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YI Effect of suspending or revoking funding given under section 159YA**

- (1) The effect of suspending funding given under section 159YA is that the Commission must cease payment, or cease any or

all further payments, of funding given under section 159YA in respect of the plan or part of the plan in relation to which funding has been suspended.

- (2) The effect of revoking funding given under section 159YA is that—
- (a) the plan or part of the plan to which the funding relates is revoked; and
  - (b) the Commission must cease payment, or cease any or all further payments, of funding under section 159YA in respect of the plan or part of the plan in relation to which funding has been revoked.

Section 159YI: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YJ Review of decision by delegate to suspend or revoke funding given under section 159YA**

- (1) Subsection (2) applies to an organisation in relation to which a person has exercised any of the following powers under a delegation from the Commission under section 73 of the Crown Entities Act 2004:
- (a) suspending funding under section 159YG; or
  - (b) revoking funding under section 159YG; or
  - (c) extending the suspension of funding under section 159YH.
- (2) An organisation to which this subsection applies may ask the Commission to review the decision of the delegate.

Section 159YJ: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Amending or replacing plans*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YK Organisation may seek approval for significant amendment, or replacement, of plan**

- (1) In this section and sections 159YL to 159YN, **significant amendment** means an amendment to a plan that relates to—

- (a) a tertiary education programme or an activity in relation to which funding has been given under section 159YA; or
  - (b) any of the performance indicators that an organisation uses to measure whether proposed outcomes for tertiary education programmes or activities in relation to which funding has been given under section 159YA are being or have been achieved.
- (2) An organisation may, at any time, ask the Commission to approve a significant amendment to, or the replacement of, a plan.
- (3) An organisation that proposes to make a significant amendment to, or to replace, a plan must consult with—
  - (a) the stakeholders that the organisation considers ought to be consulted; and
  - (b) any other person or group that the Commission stipulates.
- (4) An organisation that proposes a significant amendment to, or replacement of, a plan must prepare the significant amendment or replacement in collaboration with the Commission, including collaborating with the Commission about ways in which the organisation can implement the matters prescribed by the Commission under subsection (5).
- (5) The Commission may prescribe the requirements for the following in relation to a significant amendment to, or a replacement of, a plan:
  - (a) the content of the significant amendment or replacement (which may be the same as the matters prescribed by the Commission under section 159R);
  - (b) criteria for assessing the significant amendment or replacement (which may be the same as those prescribed by the Commission under section 159Y).
- (6) In applying the requirements in subsection (5) in order to determine whether or not to approve a significant amendment to, or replacement of, a plan, the Commission must take into account—
  - (a) the extent of the significant amendment or replacement; and

- (b) the impact of the significant amendment or replacement on the needs of the stakeholders and any other persons consulted by the organisation under subsection (3).
- (7) The Commission may, at any time, require an organisation to review a plan with a view to amending or replacing it.
- (8) Nothing in this section prohibits an organisation from making an amendment to a plan that is not a significant amendment.

Section 159YK: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YL Effect of significant amendment or replacement of plan under section 159YK**

- (1) If the Commission approves a significant amendment to a plan, the significant amendment—
  - (a) forms part of the plan it amends; and
  - (b) takes effect on the date specified by the Commission.
- (2) If the Commission approves a replacement plan under section 159YK, the replacement plan—
  - (a) takes effect on the date specified by the Commission; and
  - (b) is treated as revoking the plan it replaces.

Section 159YL: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YM Commission may make significant amendment to plan**

- (1) The Commission may, at any time, on its own initiative, propose a significant amendment to an organisation's plan if it is satisfied that the significant amendment is reasonably necessary to ensure accountability for public funding.
- (2) If the Commission proposes a significant amendment to an organisation's plan under subsection (1), it must prepare it in collaboration with the organisation (including giving the organisation a reasonable period to consult the stakeholders it considers ought to be consulted).
- (3) After collaborating with the organisation on the proposed significant amendment, the Commission must, if it decides to proceed with the significant amendment, determine the content of the significant amendment and give the organisation a reasonable opportunity to make submissions on it.

- (4) After considering any submissions made by the organisation, the Commission may—
- (a) approve the proposed significant amendment (with further amendment if necessary); or
  - (b) abandon the proposed significant amendment.

Section 159YM: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YN Effect of significant amendment made to plan under section 159YM**

A significant amendment made to a plan under section 159YM—

- (a) forms part of the plan it amends; and
- (b) takes effect on the date specified by the Commission.

Section 159YN: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Plan summary*

Heading: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159YO Summary of plans**

- (1) The Commission must prescribe and give public notice of the matters that an organisation that has a plan must include in a plan summary.
- (2) An organisation that has a plan must ensure that—
  - (a) a plan summary is available for inspection by the public; and
  - (b) copies of that plan summary may be obtained either at no cost or no more than a reasonable cost; and
  - (c) the plan summary contains the matters prescribed under subsection (1).

Section 159YO: inserted, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159Z Profiles must be publicly available**

*[Repealed]*

Section 159Z: repealed, on 1 January 2008, by section 20 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Funding by Commission*  
*[Repealed]*

Heading: repealed, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZA Minister must determine design of funding mechanisms**  
*[Repealed]*

Section 159ZA: repealed, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZB Approval of profiles for funding purposes**  
*[Repealed]*

Section 159ZB: repealed, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Funding under this Part other than via plans*

Heading: inserted, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZC Funding other than via plans**

- (1) If a funding mechanism provides for funding for an organisation other than via plans, the Commission may, under this section, fund that organisation in accordance with that funding mechanism.
- (2) Nothing in subsection (1) limits the Commission's powers to fund organisations in other ways under a delegated authority or another enactment.

Section 159ZC: replaced, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZD Conditions on funding received under section 159ZC**

- (1) It is a condition of receiving funding under section 159ZC that the recipient will supply to the Commission or Ministry, from time to time as required by the Commission or Ministry, and in a form specified by the Commission or Ministry, any financial, statistical, or other information that the Commission or Ministry requires the organisation to supply.
- (2) The Commission may impose conditions on funding received by an organisation under section 159ZC, but only if the Min-

ister has provided that, under the funding mechanism under which that funding is provided,—

- (a) any or specified conditions may be imposed; or
  - (b) specified conditions must be imposed.
- (3) The Commission may at any time (including during a funding period) amend any condition imposed under subsection (2).
- (4) An amendment to a condition takes effect when the organisation has been given reasonable notice of it.

Section 159ZD: replaced, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZE Accountability for funding received under section 159ZC**

- (1) An organisation (other than an institution) that receives funding under section 159ZC must ensure that—
- (a) it keeps records, in a form consistent with that required by the Commission, for the period to which the funding relates, that fully and fairly show—
    - (i) the transactions, assets, liabilities, and funds of the organisation that are or were affected by the funding; and
    - (ii) whether any conditions on which the grant was made have been complied with; and
  - (b) the records are available for inspection by the Commission at all reasonable times.
- (2) As soon as practicable after the end of any year in which an organisation (other than an institution) receives funding under section 159ZC, the organisation must provide the Commission with—
- (a) a financial report of the organisation for that year, including a statement of financial performance, a statement of financial position, a statement of movements in equity, a statement of cash flows, and a statement of service performance that compares the performance of the organisation with the outcomes agreed with the Commission as measured by any performance indicators agreed with the Commission; and
  - (b) any financial reports, or statistical or other information, required by the Commission; and

- (c) any information necessary to demonstrate compliance with any condition attached to the funding.
- (3) A report required under subsection (2)(a) must be prepared in accordance with generally accepted accounting practice and must be audited by an independent chartered accountant.
- (4) The Commission may exempt any organisation, group of organisations, or type of organisation from complying with 1 or more of the requirements set out in subsections (2) and (3).
- (5) In exercising the powers conferred on it by subsection (4), the Commission must have regard to—
  - (a) the amount of funding sought by the organisation; and
  - (b) the amount of funding received by the organisation; and
  - (c) the type and size of the organisation; and
  - (d) any other matters that the Commission considers relevant.
- (6) Section 203 sets out the accountability requirements for institutions.

Section 159ZE: replaced, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZF Commission may suspend or revoke funding given under section 159ZC**

- (1) The Commission may suspend or revoke payment, or any or all further payments, of any funding given to an organisation under section 159ZC if the Commission is satisfied on reasonable grounds that the organisation—
  - (a) has not complied, or is not complying, with a condition on which the funding was given; or
  - (b) is not providing, or has not provided, adequate and timely information required by the Commission or Ministry under section 159ZD.
- (2) Before deciding whether to suspend or revoke payment under subsection (1), the Commission must—
  - (a) notify the organisation of the specific matters of concern; and
  - (b) give the organisation a reasonable opportunity to be heard.
- (3) The Commission must give its reasons to an organisation if it decides to suspend or revoke the organisation's funding.



- (4) The Commission must specify the following matters if it decides to suspend funding under subsection (1):
- (a) the date on which the suspension will end and, as a consequence, the funding will be revoked; and
  - (b) what action the organisation must take in order to have the suspension lifted and avoid funding being revoked.

Section 159ZF: replaced, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZG Extending suspension of funding**

- (1) The date on which a suspension ends under section 159ZF(4)(a) may be extended by the Commission.
- (2) The Commission must advise an organisation of the following matters if it decides to extend the date on which a suspension will end:
- (a) the date on which the extended suspension will end and, as a consequence, funding will be revoked; and
  - (b) what action the organisation must take in order to have the extended suspension lifted and avoid funding being revoked.
- (3) An extension of a suspension must be for a period that the Commission considers reasonable having considered—
- (a) the specific matters referred to in section 159ZF(2)(a); and
  - (b) the action referred to in section 159ZF(4)(b).

Section 159ZG: inserted, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**159ZH Review of decision made by delegate to suspend or revoke funding under section 159ZC**

- (1) Subsection (2) applies to an organisation in relation to which a person has exercised any of the following powers under a delegation from the Commission under section 73 of the Crown Entities Act 2004:
- (a) suspending the organisation's funding under section 159ZF; or
  - (b) revoking the organisation's funding under section 159ZF; or

- (c) extending the suspension of the organisation's funding under section 159ZG.
- (2) An organisation to which this subsection applies may ask the Commission to review the decision of the delegate.

Section 159ZH: inserted, on 1 January 2008, by section 21 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

## Part 14

### Establishment and disestablishment of tertiary institutions

Part 14: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

#### 160 Object

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.

Section 160: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

#### 161 Academic freedom

- (1) 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.
- (2) For the purposes of this section, **academic freedom**, in relation to an institution, means—
  - (a) 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:
  - (b) the freedom of academic staff and students to engage in research:
  - (c) the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:

- (d) the freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning;
  - (e) the freedom of the institution through its chief executive to appoint its own staff.
- (3) In exercising their academic freedom and autonomy, institutions shall act in a manner that is consistent with—
  - (a) 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
  - (b) the need for accountability by institutions and the proper use by institutions of resources allocated to them.
- (4) 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.

Section 161: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

## **162 Establishment of institutions**

- (1) Upon the commencement of this section, this Act has effect as if—
  - (a) each body specified in Part 1 of Schedule 13 was established as a university under subsection (2); and
  - (b) each body specified in Part 2 of that schedule was established as a college of education under subsection (2); and
  - (c) each body that, immediately before that commencement, was established as a polytechnic, institute of technology, technical institute or community college under the Education Act 1964, was established as a polytechnic under subsection (2),—and a reference in any other Act to an institution established under this Act shall be read as including a reference to a body referred to in paragraph (a), paragraph (b), or paragraph (c).
- (2) Subject to subsections (3) to (5), the Governor-General may, by Order in Council made on the written recommendation of

- the Minister, establish a body as a college of education, a polytechnic, a specialist college, a university, or a wananga, as the Governor-General considers appropriate.
- (3) Before deciding whether or not to recommend to the Governor-General the making of an Order in Council under subsection (2), the Minister shall—
- (a) give the Qualifications Authority a reasonable period in which to give advice to the Minister on the matter and consider any advice so given; and
  - (ab) satisfy himself or herself that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole; and
  - (b) consult with such institutions, organisations representing institutions, and other relevant bodies, as the Minister considers appropriate.
- (4) In recommending to the Governor-General under subsection (2) that a body should be established as a college of education, a polytechnic, a specialist college, a university, or a wananga, the Minister shall take into account—
- (a) that universities have all the following characteristics and other tertiary institutions have 1 or more of those characteristics:
    - (i) they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence:
    - (ii) their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge:
    - (iii) they meet international standards of research and teaching:
    - (iv) they are a repository of knowledge and expertise:
    - (v) they accept a role as critic and conscience of society; and
  - (b) that—
    - (i) a college of education is characterised by teaching and research required for the pre-school, compulsory and post-compulsory sectors of education, and for associated social and educational service roles:

- (ii) a polytechnic is characterised by a wide diversity of continuing education, including vocational training, that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning, and by research, particularly applied and technological research, that aids development:
  - (ia) a specialist college is characterised by teaching and (if relevant) research of a specialist nature that maintains, enhances, disseminates, and assists in the application of knowledge and expertise:
  - (iii) a university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of, knowledge, develops intellectual independence, and promotes community learning:
  - (iv) a wananga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Maori (Maori tradition) according to tikanga Maori (Maori custom).
- (5) The Minister may, on the recommendation of the council of the institution concerned, change the name of an institution by notice published in the *Gazette*.

Section 162: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

Section 162(2): amended, on 1 January 2003, by section 10(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 162(3)(ab): inserted, on 1 January 2003, by section 10(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 162(4): amended, on 1 January 2003, by section 10(3) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 162(4)(b)(ia): inserted, on 1 January 2003, by section 10(4) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**163 Constitution of institutions**

- (1) Each body referred to in paragraph (b) or paragraph (c) of section 162(1) shall consist of its governing body, the chief executive, the teaching staff, general staff, the graduates and students, and such other people as the governing body may from time to time determine.
- (2) Each Order in Council establishing an institution shall make provision for determining the people who are to constitute the institution.

Section 163: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

**164 Disestablishment of institutions**

- (1) Subject to this section, the Governor-General may, by Order in Council made on the written recommendation of the Minister, disestablish an institution.
- (2) The Governor-General shall not disestablish a university established under section 162 unless the House of Representatives has passed a resolution approving the disestablishment of the university.
- (3) The Minister shall not recommend the disestablishment of an institution unless the Minister—
  - (a) is satisfied on reasonable grounds that there are good reasons to do so; and
  - (ab) is satisfied that the disestablishment is in the interests of the tertiary education system and the nation as a whole; and
  - (b) specifies the reasons in the recommendation.
- (4) When an institution is, or 2 or more institutions are, disestablished, the Governor-General may, by Order in Council made on the written recommendation of the Minister, incorporate the disestablished institution or any 1 or more of the disestablished institutions in another institution, whether the other institution is—
  - (a) an existing institution or a new institution established for the purpose;
  - (b) an institution of the same class as the disestablished institution or institutions or an institution of a differ-

- ent class from it or them (for example, a disestablished polytechnic may be incorporated in a university).
- (5) Before deciding whether or not to recommend the making of an Order in Council under subsection (1) or subsection (4), or both subsections (1) and (4), the Minister shall—
- (a) give to the council of the institution or the councils of the institutions concerned, and to every other body that the Minister considers is likely to be directly affected, written notice—
    - (i) setting out the action that the Minister is considering whether to take and the reasons for that action; and
    - (ii) inviting each council or other body to make a written submission to the Minister in relation to the matter; and
  - (b) publish such notices as the Minister considers appropriate inviting members of the public to make written submissions in relation to the matter; and
  - (c) consider any submissions made within a reasonable period in response to the notices referred to in paragraphs (a) and (b).
- (6) If an Order in Council is made under subsection (1) or subsection (4), or both subsections (1) and (4), the Minister must present to the House of Representatives a copy of the Order in Council and a statement of the reasons for the making of the Order in Council.

Section 164: inserted, on 23 July 1990, by section 36 of the Education Amendment Act 1990 (1990 No 60).

Section 164(2): amended, on 25 October 2001, by section 43 of the Education Standards Act 2001 (2001 No 88).

Section 164(3)(ab): inserted, on 1 January 2003, by section 11 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 164(4): replaced, on 23 May 1998, by section 3(1) of the Education Amendment Act 1998 (1998 No 21).

Section 164(5): amended, on 23 May 1998, by section 3(2) of the Education Amendment Act 1998 (1998 No 21).

Section 164(6): amended, on 23 May 1998, by section 3(3) of the Education Amendment Act 1998 (1998 No 21).

## **Part 15**

### **Administration of tertiary institutions**

Part 15: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

#### *Councils*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

#### **165 Institutions to be governed by councils**

- (1) After the commencement of this section,—
- (a) the governing body of each institution shall be a council constituted in accordance with this Part; and
  - (b) a reference in any law to the council or other governing body of an institution shall be construed, except in relation to matters that occurred before that commencement, as a reference to the council of that institution as so constituted.
- (1A) On and after its reconstitution day,—
- (a) subsection (1)(a) does not apply to a polytechnic; and
  - (b) except in relation to matters that occurred before the commencement of this section, a reference in any law to the council or other governing body of an institution must, in relation to the polytechnic, be construed as a reference to its council as constituted under this Part or Part 15A (as the case requires).
- (2) Subject to section 193(2), all acts or things done in the name of, or on behalf of, an institution with the authority of, or of a delegate of, the council or the chief executive shall be deemed to have been done by the institution.

Section 165: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 165(1A): inserted, on 1 March 2010, by section 5 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **166 Incorporation**

- (1) Each body that is established as a university under section 162(2) after the commencement of section 162, and each college of education, polytechnic, specialist college, or wananga,



is a body corporate with perpetual succession and a common seal; and is capable of—

- (a) holding real and personal property; and
- (b) suing and being sued; and
- (c) otherwise doing and suffering all that bodies corporate may do and suffer.

- (2) This section does not limit the generality of section 192(1).

Section 166: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 166(1): amended, on 1 January 2003, by section 12 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **167 Affixing of council's common seal**

- (1) The council of an institution may, in writing under the institution's common seal, authorise any member or members of the council, or any member or members of the staff of the institution, to execute documents, or documents of a specified class or description, or specified documents, on behalf of the institution.
- (2) Subject to subsection (6), an authority under subsection (1) may be given—
- (a) unconditionally, or subject to any conditions the council thinks fit;
  - (b) to a specified member or members of the council or a specified member or members of the staff of the institution;
  - (c) to a member or members of the staff of the institution of a specified class or description;
  - (d) to the holder or holders for the time being of a specified office or offices of or in the institution;
  - (e) to the holder or holders for the time being of offices of a specified class or description of or in the institution.
- (3) The institution's common seal shall not be affixed to any document except—
- (a) pursuant to a resolution of the council; or
  - (b) by virtue of, and in accordance with, an authority under subsection (1).
- (4) The affixing of the institution's common seal pursuant to a resolution of the council shall be countersigned—

- (a) in the case of the affixing of the common seal to an award, by 1 member; or
  - (b) in any other case, by at least 2 members.
- (5) The affixing of the institution's common seal by virtue of an authority under subsection (1) shall be countersigned in accordance with the authority.
- (6) An authority under subsection (1) shall provide for the affixing of the institution's common seal to be countersigned by at least 2 people.
- (7) The affixing of the institution's common seal on a document is conclusive proof of the authority of the people who affixed it to do so.

Section 167: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

### *Constitution of councils*

Heading: inserted, on 23 July 1990, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **168 Constitutions of councils of existing institutions**

*[Repealed]*

Section 168: repealed, on 18 December 2009, by section 6 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

## **169 Constitutions of councils of new institutions**

- (1) For the purpose of advising the Minister as to the constitution for the council of a body that is, or is to be, established under section 162(2), the Minister shall appoint a committee (in this section referred to as an **establishment committee**) consisting of 3 persons.
- (2) The establishment committee shall recommend to the Minister a constitution for the council that is, in the opinion of that committee, appropriate for the institution and complies with the requirements of section 171.
- (3) When the establishment committee has recommended a constitution for the council in accordance with subsection (2), the Minister shall, by notice published in the *Gazette*, determine the constitution of the council in accordance with the recommendation.

- (4) Subsections (1) to (3) do not apply to the constitution for the council of a body that is, or is to be, established under section 162(2) as a polytechnic (for which sections 222AA and 222AM provide).

Section 169: inserted, on 23 July 1990, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 169(4): inserted, on 1 March 2010, by section 7 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **170 Amendment of constitution**

- (1) If, after the constitution of a council has been determined, the council recommends to the Minister that the constitution be amended in a manner that complies with the requirements of section 171, the Minister shall, by notice published in the *Gazette*, amend the constitution in accordance with the recommendation.
- (2) Subsection (1) does not apply to the council of a designated polytechnic.

Section 170: inserted, on 23 July 1990, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 170(2): inserted, on 1 March 2010, by section 8 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **171 Requirements as to constitutions of councils**

- (1) The council of an institution shall consist of not fewer than 12 nor more than 20 members.
- (2) Subject to subsection (1), the council of an institution shall include—
- (a) 4 persons appointed by the Minister:
  - (b) the chief executive of the institution:
  - (c) at least 1, but not more than 3, permanent members of the academic staff of the institution elected by the permanent members of that staff:
  - (d) at least 1, but not more than 3, permanent members of the general staff of the institution elected by the permanent members of that staff:
  - (e) at least 1, but not more than 3, persons who must be appointed following an election (conducted in accordance with statutes made by the council) by the students at the institution:

- (ea) *[Repealed]*
- (f) having regard to the courses provided by the institution—
  - (i) 1 person appointed in accordance with the council's constitution after consultation by the person or body making the appointment with the central organisation of employers within the meaning of the Labour Relations Act 1987:
  - (ii) 1 person appointed in accordance with the council's constitution after consultation by the person or body making the appointment with the central organisation of workers within the meaning of the Labour Relations Act 1987:
  - (iii) if the governing body or the establishment committee, as the case may be, considers it appropriate for professional bodies to be represented on the council, 1 or more persons appointed in accordance with the council's constitution to represent those bodies.
- (3) The constitution of a council may, in addition to providing for the council to include the persons mentioned in subsection (2) but subject to subsection (1), contain any 1 or more of the following provisions:
  - (a) a provision allowing the council to co-opt as members not more than a specified number of persons:
  - (b) a provision allowing the appointment, in accordance with the provision, as members of not more than a specified number of persons:
  - (c) a provision allowing the election, in accordance with the provision, as members of not more than a specified number of persons.
- (4) It is desirable that the council of an institution should reflect so far as is reasonably practicable,—
  - (a) the ethnic and socio-economic diversity of the communities served by the institution; and
  - (b) the fact that approximately half the population of New Zealand is male and half the population is female.
- (5) The Minister, when appointing members of a council, and a council, when co-opting or appointing members, shall have re-

- gard to subsection (4) and shall strive to ensure that the council has a sufficient number of members with expertise in management to enable the council properly to perform its functions.
- (6) A person is not eligible for appointment, election, or co-option as a member of a council, if,—
- (a) *[Repealed]*
  - (b) the person is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
  - (ba) the person is a person in respect of whom a personal order has been made under that Act that reflects adversely on his or her—
    - (i) competence to manage his or her own affairs in relation to his or her property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
  - (c) the person is a bankrupt who has not obtained his or her order of discharge or whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled.
- (7) The constitution of a council shall contain a provision limiting the number of occasions on which a person may be appointed, elected or co-opted as a member of the council but, subject to any such provision, a person is not ineligible for appointment, election or co-option as a member of a council merely because the person has previously been a member of that council.
- (8) *[Repealed]*
- (8A) *[Repealed]*
- (9) No act or proceeding of, or of any committee of, a council is invalidated because of—
- (a) a defect in the appointment, election or co-option of a member of the council or of the committee; or
  - (b) a disqualification of a member of the council or of the committee; or
  - (c) a defect in the convening of a meeting; or
  - (d) a vacancy or vacancies in the membership of the council or of the committee.

- (10) In this section **permanent member**, in relation to the academic or general staff of an institution, means a member of that staff—
- (a) who is employed, either on a full-time or part-time basis—
    - (i) for a period ending, unless sooner terminated, on his or her reaching a specified age; or
    - (ii) until he or she retires or resigns; or
  - (b) who has been employed, whether under a contract for a specified period or otherwise, and either on a full-time or part-time basis, for at least 3 months; or
  - (c) who has been employed, whether under a contract for a specified period or otherwise, and either on a full-time or part-time basis, for less than 3 months and whose employment is, in the opinion of the chief executive of the institution, likely to continue for at least 3 months from the date of commencement of that employment.
- (11) The members of the staff of an institution who are to be regarded as the academic staff of the institution, and the members of the staff of an institution who are to be regarded as the general staff of the institution, for the purposes of an election of members of the council of the institution by the staff of the institution or for the purposes of membership of the council by persons so elected, shall, if there are no statutes of the institution dealing with the matter, be determined by the chief executive of the institution.
- (12) Subsections (1) to (11) do not apply to the constitution of the council of a designated polytechnic (for which sections 222AA and 222AM provide).

Section 171: inserted, on 23 July 1990, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 171(2)(e): replaced, on 1 January 2012, by section 5 of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

Section 171(2)(ea): repealed, on 8 July 2000, by section 24(1) of the Education Amendment Act 2000 (2000 No 21).

Section 171(6)(a): repealed, on 25 October 2001, by section 44(1) of the Education Standards Act 2001 (2001 No 88).

Section 171(6)(b): replaced, on 10 September 2008, by section 4(4) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 171(6)(ba): inserted, on 10 September 2008, by section 4(4) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 171(8): repealed, on 8 July 2000, by section 24(2) of the Education Amendment Act 2000 (2000 No 21).

Section 171(8A): repealed, on 8 July 2000, by section 24(2) of the Education Amendment Act 2000 (2000 No 21).

Section 171(12): inserted, on 1 March 2010, by section 9 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

## **172 Transitional provisions relating to an institution's first council**

*[Repealed]*

Section 172: repealed, on 18 December 2009, by section 10 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

## **173 Term of office**

- (1) Subject to this section, members of the council of an institution who are appointed, or (not being student members) are elected, hold office for 4 years.
- (2) Subject to this section, a student member holds office for 1 year.
- (3) Subject to this section, a member co-opted by the council holds office for such period, not exceeding 4 years, as the council determines in relation to the member concerned.
- (4) Each of the members first appointed (otherwise than under section 172) to the council, and each of the members (other than a student member) first elected to the council, holds office for either 2 years or 4 years, as the council determines in relation to the member concerned at, or within 3 months (or such further period as the Minister allows) after, its first meeting.
- (5) The term of office of a member of a council who is appointed, elected or co-opted commences on whichever is the latest of the following:
  - (a) the date of the appointment, election or co-option:
  - (b) in the case of a member who was appointed or elected as mentioned in section 171(2) and whose predecessor in office did not cease to hold office before the expiration of his or her term of office, the expiration of that term:
  - (c) the date of commencement of this section.

- (6) Notwithstanding subsections (1), (2), and (4), if the term of office of a member of a council who was appointed or elected as mentioned in section 171(2) expires before a successor is appointed or elected, the member continues in office until a successor is appointed or elected.
- (7) This section has effect subject to sections 172, 174, and 176.
- (8) Subsections (1) to (7) do not apply to the term of office of a member of the council of a designated polytechnic (for which section 222AE provides).

Section 173: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 173(8): inserted, on 1 March 2010, by section 11 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **174 Vacation of office**

- (1) A member of a council may resign as a member by written notice signed by the member and given to the chief executive.
- (1A) Subsection (1) does not apply to—
  - (a) the chief executive of an institution that is not a designated polytechnic; or
  - (b) the chief executive of a designated polytechnic who has been appointed by its council pursuant to a statute requiring it to appoint the chief executive a member of its council.
- (2) A member of the council of an institution who was elected as mentioned in paragraph (c) or paragraph (d) of section 171(2) ceases to hold office as a member if he or she—
  - (a) being a member referred to in section 171(2)(c), ceases to be a permanent member of the academic staff of the institution; or
  - (b) being a member referred to in section 171(2)(d), ceases to be a permanent member of the general staff of the institution.
- (2A) Subsection (2) does not apply to the council of a designated polytechnic.
- (3) The council may, by resolution, dismiss a member of a council (other than the chief executive) as a member if the member—
  - (a) is declared bankrupt; or



- (b) becomes subject to a property order under the Protection of Personal and Property Rights Act 1988 (other than an order under section 30 of that Act); or
  - (ba) becomes subject to a personal order under that Act that reflects adversely on his or her—
    - (i) competence to manage his or her own affairs in relation to his or her property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
  - (c) fails to attend 3 consecutive meetings of the council without having given to the chief executive prior notice of his or her inability to attend the meeting concerned; or
  - (d) without reasonable excuse, fails to comply with section 175.
- (3A) The council may, by resolution, suspend a member of the council (other than the chief executive) as a member if the member becomes subject to a property order made under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders).
- (3B) If a member is suspended under subsection (3A),—
- (a) the suspension has effect as if the member had been granted leave of absence; and
  - (b) the member is not capable of acting as a member during the period of suspension; and
  - (c) the suspension continues until the property order made under section 30 of the Protection of Personal and Property Rights Act 1988 ceases to be in force (but this does not affect any powers of the council under subsection (3) in respect of the member).
- (4) The chief executive shall send to the member concerned a letter setting out the terms of the resolution dismissing or suspending the member.

Section 174: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 174(1): amended, on 1 March 2010, by section 12(1) of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 174(1A): inserted, on 1 March 2010, by section 12(2) of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 174(2A): inserted, on 1 March 2010, by section 12(3) of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 174(3)(b): replaced, on 10 September 2008, by section 4(5) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 174(3)(ba): inserted, on 10 September 2008, by section 4(5) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 174(3A): inserted, on 10 September 2008, by section 4(6) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 174(3B): inserted, on 10 September 2008, by section 4(6) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 174(4): amended, on 10 September 2008, by section 4(7) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

## **175 Disclosure of interest**

- (1) A member of, or of a committee of, a council who has an interest in a matter being considered or about to be considered by the council or committee, as the case may be, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council or committee.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the council or committee and the member shall not unless the council decides otherwise—
  - (a) be present during any deliberation of the council or committee with respect to that matter; or
  - (b) take part in any decision of the council or committee with respect to that matter.
- (3) For the purposes of this section, a person has an interest in a matter if, and only if, the matter relates to the conditions of service of the person as the chief executive or a member of the staff of the institution concerned or the person has any other direct or indirect pecuniary interest in the matter.

Section 175: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**176 Casual vacancies**

- (1) If the office of a member of a council becomes vacant before the end of the member's term of office, a person shall, subject to subsection (2), be appointed, elected or co-opted to the vacant office by the same procedure as that by which the member whose office became vacant became a member.
- (2) If the vacancy occurs within 3 months before the end of the member's term of office, the council may decide that the vacancy need not be filled under this section.
- (3) A member appointed, elected or co-opted under this section holds office for the period commencing on the date of the appointment, election or co-option and ending at the expiration of the term of office of the member whose office became vacant.
- (4) Notwithstanding subsection (3), if the term of office of a member referred to in that subsection who was appointed or elected as mentioned in section 171(2) expires before a successor is appointed or elected, the member continues in office until a successor is appointed or elected.
- (5) This section has effect subject to section 174.

Section 176: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**177 Chairperson and deputy chairperson**

- (1) At the first meeting of a council the council shall elect one of its members to be the chairperson, and another of its members to be the deputy chairperson, of the council.
- (2) Whenever a vacancy subsequently occurs in the office of chairperson or deputy chairperson of the council, the council shall elect one of its members to fill the vacant office.
- (3) A member of the council who is the chief executive of the institution, a member of the staff of the institution or a student member is not eligible for election as the chairperson or deputy chairperson of the council.
- (4) The chairperson and deputy chairperson of a council each hold office, subject to this section, for 1 year but are eligible for re-election.

- (5) Notwithstanding subsection (4), if the term of office of the chairperson or deputy chairperson of a council expires before a successor is elected, the chairperson or deputy chairperson, as the case may be, continues in office until a successor is elected.
- (6) The chairperson or deputy chairperson of a council—
- (a) may resign as chairperson or deputy chairperson by written notice signed by him or her and given to the chief executive; and
  - (b) ceases to hold office as chairperson or deputy chairperson if—
    - (i) he or she ceases to be a member of the council; or
    - (ii) he or she becomes the chief executive, a member of the staff or a student of the institution; or
    - (iii) the council passes a resolution to the effect that it has no confidence in the chairperson or deputy chairperson, as the case may be.
- (7) The chairperson of the council of a university may be referred to as the Chancellor or by such other title as the council determines and the chairperson of the council of an institution other than a university may be referred to by such title (other than Chancellor or another title that includes the word Chancellor) as the council determines.
- (8) The deputy chairperson of the council of a university may be referred to as the Pro-Chancellor or by such other title as the council determines and the deputy chairperson of the council of an institution other than a university may be referred to by such title (other than Pro-Chancellor or another title that includes the word Chancellor) as the council determines.
- (9) Subsections (1) to (8) do not apply to the chairperson and deputy chairperson of the council of a designated polytechnic (for which section 222AG provides).

Section 177: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 177(9): inserted, on 1 March 2010, by section 13 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**178 Meetings of councils**

- (1) The chairperson of a council may convene meetings to be held at such places and times as he or she determines.
- (2) It is the duty of the chairperson of a council to convene such meetings as he or she thinks necessary for the efficient performance of the functions of the council.
- (3) If so requested by written notice by not fewer than 5 members of a council, the chairperson of the council shall convene a meeting.
- (4) If there is no chairperson of a council or for any reason the chairperson is not available, the deputy chairperson of the council has the powers and duties of the chairperson under subsections (1) to (3) and references in those subsections to the chairperson shall be construed as references to the deputy chairperson.
- (5) No business shall be transacted at a meeting unless a majority of the members then holding office are present.
- (6) The chairperson shall preside at all meetings at which he or she is present.
- (7) If the chairperson is not present at a meeting but the deputy chairperson is present, the deputy chairperson shall preside.
- (8) If neither the chairperson nor the deputy chairperson is present at a meeting, the members present shall appoint one of their number to preside.
- (9) Every question before a meeting shall be decided by a majority of the votes cast on it by the members present.
- (10) At a meeting the member presiding has a deliberative vote on every question, and on any question where the deliberative votes for and against are equal also has a casting vote.
- (11) Except as provided by this section, a council shall determine its own procedures.

Section 178: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**179 Fees and allowances**

- (1) A member of a council other than the chief executive may be paid fees at such rates (not exceeding maximum rates fixed

by the Minister in accordance with the fees framework) as the council determines.

- (2) A member of a council of an institution is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the entity, for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (3) For the purposes of this section, **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, including statutory entities and their subsidiaries and tertiary education institutions.

Section 179: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Functions and duties of councils*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **180 Functions of councils**

- (1) The functions of the council of an institution are—
  - (a) to appoint a chief executive in accordance with the State Sector Act 1988, and to monitor and evaluate his or her performance:
  - (b) to prepare and submit a proposed plan if the institution is seeking funding under a funding mechanism that provides for funding via plans:
  - (c) if the institution has a plan,—
    - (i) to ensure that the institution is managed in accordance with that plan; and
    - (ii) to determine policies to implement that plan:
  - (d) to determine, subject to the State Sector Act 1988, the policies of the institution in relation to the management of its affairs:
  - (e) to undertake planning relating to the institution's long-term strategic direction.

(2) *[Repealed]*

Section 180: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 180(1)(a): amended, on 25 October 2001, by section 45 of the Education Standards Act 2001 (2001 No 88).

Section 180(1)(b): replaced, on 1 January 2008, by section 22(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 180(1)(c): replaced, on 1 January 2008, by section 22(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 180(1)(d): replaced, on 1 January 2008, by section 22(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 180(1)(e): replaced, on 1 January 2008, by section 22(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 180(2): repealed, on 1 January 2008, by section 22(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**181 Duties of councils**

It is the duty of the council of an institution, in the performance of its functions and the exercise of its powers,—

- (a) to strive to ensure that the institution attains the highest standards of excellence in education, training, and research:
- (b) to acknowledge the principles of the Treaty of Waitangi:
- (c) to encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities with particular emphasis on those groups in those communities that are under-represented among the students of the institution:
- (d) to ensure that the institution does not discriminate unfairly against any person:
- (e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:
- (f) to ensure that proper standards of integrity, conduct, and concern for—
  - (i) the public interest; and
  - (ii) the well-being of students attending the institution—are maintained.

Section 181: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 181(e): replaced, on 25 October 2001, by section 46 of the Education Standards Act 2001 (2001 No 88).

## **182 Determination of policy**

- (1) In determining the policy of an institution with respect to any matter relating to the institution, the council of the institution shall consult with any board, committee, or other body established within the institution that has responsibility for giving advice in relation to, or for giving effect to, the policy of the institution with respect to that matter.
- (2) The council of an institution shall establish an academic board consisting of the institution's chief executive, and members of the staff and students of the institution, to—
  - (a) advise the council on matters relating to courses of study or training, awards, and other academic matters; and
  - (b) exercise powers delegated to it by the council.
- (3) The academic board shall be deemed for the purposes of section 222 to be a committee appointed by the council under section 193(2)(i).
- (4) Without limiting the generality of subsection (1), the council of an institution shall not make any decision or statute in respect of any academic matter referred to in subsection (2) unless it has requested the advice of the academic board and considered any advice given by the academic board.
- (5) Without derogating from the duties of the council of an institution under subsections (1) and (4), a decision or statute made by the council is not invalid merely because of a failure of the council to comply with either of those subsections.

Section 182: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **183 Personal liability**

No member of the council of an institution is personally liable for any act done or omitted by the member or by the council—

- (a) in good faith; and



- (b) in pursuance or intended pursuance of the functions of the institution or of the council.

Section 183: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

*Charters*  
*[Repealed]*

Heading: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**184 Each institution to have charter**

*[Repealed]*

Section 184: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**184A Interim arrangements for charters**

*[Repealed]*

Section 184A: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**185 Consultations**

*[Repealed]*

Section 185: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**186 Consideration of proposed charter or amendment**

*[Repealed]*

Section 186: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**187 Power of Minister to initiate amendment of charter**

*[Repealed]*

Section 187: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**188 Approval of charter or amendment**

*[Repealed]*

Section 188: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**189 What happens if institution has no charter***[Repealed]*

Section 189: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**190 Mandatory requirements for charter***[Repealed]*

Section 190: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**191 Charter to be available for inspection***[Repealed]*

Section 191: repealed, on 1 January 2004, by section 15 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

*Profiles*  
*[Repealed]*

Heading: repealed, on 1 January 2008, by section 23 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**191A Each institution to have a profile***[Repealed]*

Section 191A: repealed, on 1 January 2008, by section 23 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

*Powers of institutions and councils*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**192 Powers of institutions**

- (1) Subject to subsection (2), an institution has—
- (a) the rights, powers, and privileges of a natural person; and
  - (b) the power to issue debentures; and
  - (c) the power to grant floating charges on the institution's undertaking or property, or any of it; and
  - (d) the power to do any other thing it is authorised to do by this Act, by any other enactment, or by any rule of law.

- (2) None of the rights, powers, or privileges of an institution shall be exercised except for the purpose of performing—
  - (a) functions characteristic of institutions of the class to which the institution belongs; or
  - (aa) in the case of an institution that incorporates another institution or other institutions under section 164(4), functions characteristic of institutions of the class to which the incorporating institution belongs and functions characteristic of institutions of the class or classes to which the incorporated institution or institutions belong; or
  - (b) functions of a kind that, in the opinion of the institution's council,—
    - (i) may conveniently, and without disadvantage to the performance of those characteristic functions, be performed in association with those functions; and
    - (ii) are appropriate for institutions of the class to which the institution belongs or, in the case of an institution that incorporates another institution or other institutions under section 164(4), are appropriate for institutions of the classes represented in the institution.
- (3) Paragraphs (b) to (d) of subsection (1) do not affect the generality of paragraph (a) of that subsection.
- (4) Subject to subsection (5), an institution shall not exercise any of the following powers without the written consent of the Secretary:
  - (a) the power to sell or otherwise dispose of assets or interests in assets:
  - (b) the power to mortgage or otherwise charge assets or interests in assets:
  - (c) the power to grant leases of land or buildings or parts of buildings:
  - (d) the power to borrow, issue debentures, or otherwise raise money.
- (5) Subsection (4) does not prohibit an institution, without the consent of the Secretary, from—
  - (a) selling or otherwise disposing of, or mortgaging or otherwise charging, an asset or an interest in an asset,

where the value of the asset or interest does not exceed an amount determined by the Minister or an amount ascertained in accordance with a formula determined by the Minister:

- (b) granting a lease for a term that does not exceed, and when added to any term for which the lease may be renewed does not exceed, 15 years:
  - (c) borrowing, issuing debentures, or otherwise raising money, where the amount to be borrowed, the amount of the debentures, or the amount to be raised, does not exceed an amount determined by the Minister or ascertained in accordance with a formula determined by the Minister.
- (6) A determination by the Minister under this section may relate to all institutions, institutions of a specified class or description, or a specified institution or institutions, and shall be made after the Minister has consulted the institution or institutions concerned.
- (7) Where the Secretary consents under subsection (4) to the exercise of a power by an institution, the council shall comply with any conditions imposed by the Secretary and shall tell the Secretary when the transaction has been completed and how the proceeds, if any, of the transaction have been dealt with.
- (8) Subject to subsection (11), the powers to grant awards conferred on an institution by this Act or any other enactment—
- (a) in the case of nationally recognised awards, are subject to any reasonable requirements made by the Qualifications Authority in the performance of its functions under this Act; and
  - (b) in any case, do not extend, without the consent of that Authority, to granting an award that is described as a degree or the description of which includes the words bachelor, master, or doctor.
- (9) Subsection (8)(b) does not apply in relation to the granting of an award by a university.
- (10) Any consent by the Qualifications Authority under subsection (8)(b) may be withdrawn, after consultation with the council of the institution concerned, with effect from a date not earlier

than 1 January next following the giving of notice of the withdrawal to that institution.

- (11) Nothing in this Act prevents an institution that was in existence immediately before the commencement of this section—
- (a) from granting during the 2 years following that commencement an award of a kind or description that the institution, or the governing body of that institution, was entitled to grant immediately before that commencement; or
  - (b) from granting after that period an award to a person in consequence of the person's having completed a programme of study or training that the person commenced to undertake before the end of that period.

Section 192: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 192(2)(aa): inserted, on 23 May 1998, by section 4(1) of the Education Amendment Act 1998 (1998 No 21).

Section 192(2)(b)(ii): amended, on 23 May 1998, by section 4(2) of the Education Amendment Act 1998 (1998 No 21).

Section 192(5)(b): amended, on 1 January 2008, by section 24 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 192(11)(b): amended, on 30 August 2011, by section 20 of the Education Amendment Act 2011 (2011 No 66).

### **193 Powers of councils**

- (1) The council of an institution has all powers reasonably necessary to enable it to perform its functions efficiently and effectively.
- (2) Except where they are exercised by delegation under this Act, the following powers of an institution shall be exercised only by the institution's council:
- (a) to provide courses of study or training, admit students (including provisionally and *ad eundem statum*) and grant awards:
  - (b) to grant fellowships, scholarships, bursaries, or prizes:
  - (c) to authorise the making of grants or loans out of the money of the institution to the chief executive, to members of the staff or students of the institution, or to any association of staff or students, on such terms and conditions as the council thinks fit and guarantee loans made

- by other persons to the chief executive or members of the staff of the institution for housing purposes:
- (d) to accept gifts, devises, and bequests made to the institution, whether on trust or otherwise:
  - (e) to agree to the disestablishment of the institution and its incorporation in another institution of the same class or a different class (for example, the council of a polytechnic may agree to the disestablishment of the polytechnic and its incorporation in a university):
  - (ea) to agree to the incorporation in the institution of another institution or other institutions, whether of the same class as itself or a different class from itself (for example, the council of a university may agree to the incorporation of a polytechnic in the university):
  - (f) to arrange for the manufacture of, and distribute (whether by way of sale or otherwise), any article or thing bearing a mark, symbol or writing that is associated with the institution:
  - (g) to arrange for the provision of (whether by sale or otherwise) goods and services to staff or students of the institution or other persons using, or otherwise attending at, facilities of the institution:
  - (h) to prescribe fees payable by students of the institution or any of them:
  - (i) to establish boards or other bodies within the institution to give advice to the council:
  - (j) to do anything incidental to the exercise of any of the preceding powers.
- (3) The council of an institution has power to appoint committees consisting of such persons, whether or not members of the council, as the council determines to exercise such powers as are delegated to them under section 222 and such powers as are conferred on them by statutes made by the council, and to alter, discharge, and reconstitute committees so appointed.

Section 193: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 193(2)(e): replaced, on 23 May 1998, by section 5 of the Education Amendment Act 1998 (1998 No 21).

Section 193(2)(ea): inserted, on 23 May 1998, by section 5 of the Education Amendment Act 1998 (1998 No 21).

#### **194 Statutes**

- (1) The council of an institution may make statutes, not inconsistent with this Act or the State Sector Act 1988, with respect to any of the following matters:
- (a) the good government and discipline of the institution:
  - (b) the imposition, by or on behalf of the council, of penalties upon staff or students of the institution for contravention of or failure to comply with a statute with respect to a matter referred to in paragraph (a):
  - (c) the election of members of the council by the staff of the institution including—
    - (i) the persons who are to be regarded as members of the academic staff, and the persons who are to be regarded as members of the general staff, for the purposes of such an election; and
    - (ii) the determination of questions arising in relation to the conduct or the result of such an election:
  - (d) the persons who are to be regarded as being, or having been, students of the institution for the purposes of the election of a student member of the council or for the purposes of membership of the council as a student member and, in the case of an election of a student member to which section 171(8)(a) does not apply, any other matters relating to the election including the determination of questions arising in relation to the conduct or the result of the election:
  - (e) subject to Part 16, the enrolment of persons in courses of study or training of the institution or the admission of persons to examinations of the institution:
  - (f) subject to Part 16, the courses of study and training of the institution:
  - (g) subject to section 192(8), the awards that may be granted by the council and the requirements for those awards:
  - (h) the granting by the council of fellowships, scholarships, bursaries, and prizes:
  - (i) the provision of superannuation or retirement benefits for, or in respect of, the chief executive or members of the staff of the institution:

- (j) any other matter required or permitted by this Act to be provided for by statutes.
- (2) If the council of an institution makes a statute under subsection (1)(b) providing for the imposition of penalties upon staff or students of the institution, the statute shall provide for the council, if so requested by a member of the staff or a student upon whom a penalty is imposed, to review, or arrange for the review of, the amount of the penalty, the imposition of the penalty, or both.

Section 194: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

### **195 Trust property**

Notwithstanding anything contained in this Act or any other enactment relating to the institution, any real or personal property held by an institution upon trust shall be dealt with in accordance with the powers and duties of the institution as trustee.

Section 195: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

### *Institutions at risk*

Heading: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

### **195A Criteria for risk assessment of institutions**

- (1) The Secretary must, after consulting institution councils, determine—
  - (a) criteria for assessing the level of risk to the operation and long-term viability of institutions; and
  - (b) criteria for assessing the level of risk to the education performance of the students enrolled at polytechnics.
- (1A) In the case of criteria for assessing the level of risk to the education performance of the students enrolled at polytechnics, the requirement to consult institution councils applies to polytechnic councils only.
- (1B) The Secretary may under subsection (1) determine criteria for assessing the level of risk to the operation and long-term viability of polytechnics only; and in that case,—



- (a) the requirement to consult institution councils applies to polytechnic councils only; and
  - (b) the criteria determined may be in addition to, or instead of, those determined for other institutions.
- (2) The Secretary must publish criteria determined under subsection (1) in the *Gazette*.
- (3) Criteria determined under this section must be reviewed at least once in every 2 years following the date of their publication in the *Gazette*.

Section 195A: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

Section 195A(1): replaced, on 18 December 2009, by section 14 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 195A(1A): inserted, on 18 December 2009, by section 14 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

Section 195A(1B): inserted, on 18 December 2009, by section 14 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **195B Institutions to provide information if required**

- (1) The chief executive of the Commission may, if he or she has reasonable grounds to believe that an institution may be at risk, by written notice to the council of an institution, require the council to provide either or both of the following:
  - (a) specified information about the operation, management, or financial position of the institution at a given time;
  - (b) reports at specified intervals on specific aspects of the operation, management, or financial position of the institution.
- (2) If the chief executive of the Commission requires information under subsection (1), the information required must be information that relates to the risks to the institution that the chief executive of the Commission is concerned about.
- (3) A council that receives a notice under subsection (1) must provide the chief executive of the Commission with the required information within or at the time or times specified in the notice.
- (4) The chief executive of the Commission may revoke or amend any notice given under subsection (1).

- (5) In this section, **Commission** means the Tertiary Education Commission established under section 159C.

Section 195B: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

Section 195B(1): amended, on 1 January 2008, by section 25(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 195B(2): amended, on 1 January 2008, by section 25(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 195B(3): amended, on 1 January 2008, by section 25(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 195B(4): amended, on 1 January 2008, by section 25(4) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 195B(5): replaced, on 1 January 2008, by section 25(5) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **195C Minister may appoint Crown observer**

- (1) If the Minister considers on reasonable grounds that the operation or long-term viability of an institution is at risk, he or she may appoint a Crown observer to the council of the institution.
- (2) A Crown observer may not be appointed to the council of an institution unless the Minister has first—
  - (a) consulted with the council; and
  - (b) advised the council that he or she is considering appointing a Crown observer; and
  - (c) given the council an opportunity to comment on the proposal.
- (3) Every appointment under this section must be in writing and must state the date on which it takes effect.
- (4) A Crown observer may—
  - (a) attend any meeting of the council or committee of the council of the institution to which he or she is appointed; and
  - (b) offer advice to the council, or any committee or member of the council; and
  - (c) report to the Minister on any matter raised or discussed at any meeting that he or she attends as a Crown observer.
- (5) A Crown observer must at all times maintain confidentiality with respect to council affairs, except as authorised by paragraph (c) of subsection (4).

- (6) A Crown observer is not a member of the council or any committee of the council, and may not—
- (a) vote on any matter; or
  - (b) exercise any of the powers, or perform any of the functions or duties, of a member of the council.

Section 195C: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

**195D Minister may dissolve council and appoint commissioner**

- (1) The Minister may, by written notice, dissolve the council of an institution and appoint a commissioner to act in place of the council if the Minister believes on reasonable grounds that—
- (a) there is a serious risk to the operation or long-term viability of the institution; and
  - (b) other methods of reducing the risk either have failed or appear likely to fail.
- (2) For the purpose of subsection (1), there is a serious risk to the operation or long-term viability of an institution if—
- (a) the institution is, or is at risk of being, unable to pay its debts as they become due in the normal course of business; and
  - (b) according to the criteria published under section 195A(2), there is a serious level of risk to the operation or long-term viability of the institution.
- (3) A notice under subsection (1) must specify—
- (a) the date when the dissolution and appointment take effect; and
  - (b) the name of the person appointed as commissioner.
- (4) The Minister may not exercise the power under subsection (1) in relation to an institution unless he or she has first—
- (a) consulted with the council of the institution and any other interested parties over the possible need to dissolve the council and appoint a commissioner; and
  - (b) following that consultation, given the council written notice of his or her preliminary decision that the council should be dissolved and a commissioner appointed in its place; and
  - (c) allowed the council at least 21 days in which to respond to the preliminary decision; and

- (d) considered any submissions made by the council about why the preliminary decision should not be confirmed.
- (5) As soon as practicable after giving a notice under subsection (1), the Minister must—
  - (a) publish a copy of it in the *Gazette*; and
  - (b) present a copy of it to the House of Representatives.
- (6) When a commissioner is appointed under this section, the Minister must review the appointment at least once in every 12 months following the appointment.
- (7) As soon as the Minister is satisfied (following an annual review or at any other time) that the risk that gave rise to the appointment of the commissioner has reduced to such an extent that it is appropriate that the institution be administered by a council, a new council must be appointed in accordance with the constitution of the council most recently notified in the *Gazette*.
- (8) A commissioner's appointment ends on the close of the day before a new council takes office.

Section 195D: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

Section 195D(7): amended, on 20 May 2010, by section 45 of the Education Amendment Act 2010 (2010 No 25).

#### **195DA Protection of commissioners**

A commissioner appointed under section 195D(1) is not personally liable for an act he or she has done or omitted to do, or for any loss arising from that act or omission, if he or she was acting—

- (a) in good faith; and
- (b) in the course of carrying out his or her powers, functions, or duties.

Section 195DA: inserted, on 1 January 2008, by section 26 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **195E Powers and functions of commissioner**

- (1) A commissioner appointed under section 195D has all the powers, functions, and duties of the council that he or she is appointed to replace, and must exercise those powers and perform those functions and duties in accordance with this

Act (having particular regard to sections 160 and 161) and, in the case of an institution that has a plan, that plan.

- (2) A commissioner replaces all council members who serve on any committee of the council that he or she is appointed to replace.
- (3) Anything that, if done by or on behalf of a council, is required to be signed by 2 or more members of the council, may be done by the commissioner's signature alone.

Section 195E: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

Section 195E(1): amended, on 1 January 2008, by section 27 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

#### **195F Minister to appoint advisory committee**

- (1) If the Minister appoints a commissioner under section 195D, the Minister must also appoint an advisory committee for the purpose of advising and supporting the commissioner in the exercise of the commissioner's functions, duties, and powers.
- (2) The Minister may appoint up to 5 persons to be members of an advisory committee and must ensure that the composition of the committee reasonably reflects the community of the institution as represented by its council at the time of the council's dissolution.
- (3) Members of an advisory committee may be paid fees at the same rates as were paid to members of the council at the time of its dissolution.
- (4) The commissioner must have regard to any advice given by an advisory committee.
- (5) For the purposes of section 222(1) (which is about delegations by the council to committees), an advisory committee is deemed to be a committee appointed under section 193(3).

Section 195F: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

#### **195G Review of operation of sections 195A to 195F**

No later than 5 years from the date on which sections 195A to 195F come into force, the Minister must—

- (a) review, in consultation with interested parties, the operation of sections 195A to 195F; and

- (b) prepare a report of the review that includes recommendations on whether any amendment to those sections is necessary or desirable; and
- (c) present a copy of the report to the House of Representatives.

Section 195G: inserted, on 25 October 2001, by section 47 of the Education Standards Act 2001 (2001 No 88).

### *Chief executive and staff*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **196 Duties of chief executive**

- (1) The academic and administrative affairs of an institution shall be managed by the chief executive of the institution.
- (2) A person who held office as chief executive of an institution immediately before the commencement of this section (whether by virtue of an appointment made as required by section 35 of the State Sector Amendment Act (No 2) 1989 or otherwise) shall, unless the term of office of the person would, apart from this Act, have ended on that commencement, be deemed to have been appointed to that office on that commencement by the council of the institution in accordance with section 180(a) for the unexpired portion of his or her term of office and on the same terms and conditions as those on which the person was employed immediately before that commencement.
- (3) The chief executive of a university may be referred to as the Vice-Chancellor or by such other title as the council of the university determines and the chief executive of an institution other than a university may be referred to by such title (other than Vice-Chancellor or another title that includes the word “Chancellor”) as the council of the institution determines.

Section 196: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **197 Delegation by chief executive**

- (1) The chief executive of an institution may from time to time, either generally or particularly, by writing delegate to the aca-

- demical board or to any member of the staff of the institution any of the functions or powers of the chief executive under this Act or any other Act including functions or powers delegated to the chief executive under an Act other than this Act.
- (2) Where the chief executive of an institution has, pursuant to subsection (1), delegated any functions or powers to the academic board or to a member of the staff of the institution, that board or member may, with the prior approval in writing of the chief executive, by writing signed by at least 2 members of that board or by the member, as the case may be, delegate such of those functions or powers as the chief executive approves to any other member of the staff of the institution.
  - (3) Subject to any general or special directions given or conditions imposed by the chief executive, the person to whom any functions or powers are delegated under this section may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
  - (4) The power of a chief executive to delegate under this section—
    - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the chief executive's functions or powers; but
    - (b) does not limit any power of delegation conferred on the chief executive by any other Act.
  - (5) A person purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
  - (6) A delegation under subsection (1) to the academic board shall be deemed to be a delegation to the persons from time to time constituting that board.
  - (7) A delegation under this section to a member of the staff may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
  - (8) A delegation under this section does not affect or prevent the performance of any function or the exercise of any power by a

chief executive, or affect the responsibility of a chief executive for the actions of any person acting under the delegation.

- (9) A delegation under this section is revocable in writing at will and, until it is revoked, continues in force according to its tenor, notwithstanding that the person by whom it was made may have ceased to hold office, and continues to have effect as if made by the successor in office of that person.

Section 197: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

### **198 Transitional provisions for employment of staff**

- (1) A person who was a member of the staff of an institution immediately before the commencement of this section shall, after that commencement, unless the employment of the person would, apart from this Act, have ended on that commencement, be, by force of this subsection, in the employment of the chief executive of the institution, on the same terms and conditions as those on which the person was employed immediately before that commencement, until the person's employment terminates or is terminated in accordance with those terms and conditions.
- (2) The terms and conditions of employment of a person to whom subsection (1) applies shall remain in force until varied either individually or through a collective agreement.
- (3) This section has effect subject to the Employment Relations Act 2000 and the State Sector Act 1988.

Section 198: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 198(2): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 198(3): amended, on 2 October 2000, pursuant to section 241 of the Employment Relations Act 2000 (2000 No 24).

### *Bulk funding* *[Repealed]*

Heading: repealed, on 1 January 2004, by section 17(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).



## **199 Grants to institutions**

*[Repealed]*

Section 199: repealed, on 1 January 2004, by section 17(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

### *Finance*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **200 Bank accounts**

- (1) The council of an institution may establish, maintain and operate bank accounts in the name of the institution at any registered bank or any registered building society with which a Crown entity may establish, maintain, or operate a bank account under section 158 of the Crown Entities Act 2004.
- (2) As soon as is practicable after receiving any money, the council shall pay it into one or other of the institution's bank accounts.
- (3) The council shall properly authorise every withdrawal and payment of money from any of the institution's bank accounts.

Section 200: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 200(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **201 Proper accounts to be kept**

Section 168(1) and (2) of the Crown Entities Act 2004 applies to a council of an institution.

Section 201: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **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 thinks will—
    - (i) enable the institution to carry out the functions characteristic of an institution of the class to which the institution belongs; and

- (ii) in the case of an institution that has a plan, enable the institution to achieve the outcomes set out in that plan; 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 subsection (1)(a).

Section 201A: inserted, on 1 January 2004, by section 18 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 201A(1)(a): replaced, on 1 January 2008, by section 28 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

## 201B Gifts

- (1) Any money or property that is gifted to an institution may be accepted or disclaimed by the council of the institution in accordance with section 167 of the Crown Entities Act 2004.
- (2) A limitation in this Act or the Crown Entities Act 2004 (such as a limitation on the form in which property may be held) does not apply during a period that is reasonable in the circumstances.

Section 201B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## 202 Application of money

The money of an institution shall be applied only—

- (a) in payment or discharge of the expenses, charges, obligations or liabilities incurred or undertaken by or on behalf of the institution; or
- (b) *[Repealed]*
- (c) *[Repealed]*
- (d) in payment of any remuneration or allowances payable to members of the council or of committees of the council or to the chief executive or members of the staff of the institution; or
- (e) in making any other payments that are required or permitted by this Act or any other enactment to be made out of the money of the institution.

Section 202: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 202(b): repealed, on 1 January 2003, by section 45(2)(a) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 202(c): repealed, on 1 February 2011, by section 18 of the Research, Science, and Technology Act 2010 (2010 No 131).

**203 Institutions are Crown entities**

- (1) Every institution is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) However, that Act applies to tertiary education institutions only to the extent that subsection (3) provides.
- (3) The provisions of that Act set out in Schedule 4 of that Act and Schedule 13A of this Act apply to tertiary education institutions and their Crown entity subsidiaries (within the meaning of that Act).
- (4) Section 65I(1) and (2) of the Public Finance Act 1989 applies, with all necessary modifications, to tertiary education institutions and, accordingly, every institution must invest in the same manner that Treasury invests money under that section.
- (5) No instruction issued by the Minister of Finance under section 80A of the Public Finance Act 1989 applies to an institution.
- (6) The financial year of an institution is an academic year.
- (7) The members of the council of an institution are the board for the purposes of the Crown Entities Act 2004.

Section 203: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

*Miscellaneous provisions*

Heading: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**204 Transfer of assets and liabilities on commencement**

- (1) In the case of an existing non-university institution,—
  - (a) all real and personal property that, immediately before the commencement of this section, was vested in the then governing body of the institution (including property held on trust) is, by force of this subsection, vested in the institution subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and

- (b) the institution becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities and obligations of the previous governing body that existed immediately before that commencement.
- (2) Where any land vests in an institution under this section, the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she may require, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of this section.
- (3) Any contract or other instrument subsisting, or any proceeding pending, immediately before the commencement of this section to which the then governing body of an existing non-university institution was a party has effect after that commencement as if—
  - (a) the institution is substituted for the previous governing body as a party to the contract, other instrument or proceeding; and
  - (b) any reference in the contract or other instrument, or in a pleading, affidavit or other document in the proceeding, to the previous governing body in its capacity as a party to the contract, other instrument or proceeding is (except in relation to matters that occurred before that commencement) a reference to the institution.
- (4) Any statutes, regulations, or bylaws made by the governing body, or the Senate, Professorial Board or other board, committee or authority of an institution and in force immediately before the commencement of this section continue in force after that commencement, so far as they are capable of application and with any necessary modifications, as if they are statutes made by the council of the institution.
- (5) Any rulings, decisions or other acts of authority of any relevant authority or person that, immediately before the commencement of this section, applied in relation to an institution but were capable of being repealed, replaced, or amended by an appropriate authority or officer of that institution continue to apply after that commencement, so far as they are capable of application and with any necessary modifications, but may be

repealed, replaced, or amended after that commencement by the chief executive of the institution, subject to the State Sector Act 1988.

- (6) All statutes or regulations of the Senate of the University of New Zealand or any committee or board of that Senate or University or of the Chancellor or Vice-Chancellor or any officer of that University, so far as they were subsisting immediately before the commencement of this section by virtue of section 53(1) of the Universities Act 1961 and were applicable in relation to a university that is an institution to which subsection (4) of this section applies, shall be deemed to be, in their application in relation to that university, statutes, or regulations to which that subsection applies.
- (7) All rulings, decisions, or other acts of authority of the Senate of the University of New Zealand or any committee or board of that Senate or University or of the Chancellor or Vice-Chancellor or any officer of that University, so far as they were subsisting immediately before the commencement of this section by virtue of section 53(1) of the Universities Act 1961 and were applicable in relation to a university that is an institution to which subsection (5) of this section applies, shall be deemed to be, in their application in relation to that university, rulings, decisions, or other acts of authority to which that subsection applies.

Section 204: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **205 Taxes and duties in relation to property of existing institutions**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
  - (a) the previous governing body of each existing non-university institution, and that existing non-university institution, shall be deemed to be the same person with effect on and from the date on which the real and personal property of the previous governing body vests in that institution pursuant to section 204(1); and

- (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the previous governing body of that institution so vests in that institution, all transactions entered into by, and acts of, the previous governing body before the vesting effected by section 204(1) shall be deemed to have been entered into by, or to be those of, that institution and to have been entered into or performed by that institution at the time when they were entered into or performed by the previous governing body.
- (2) For the purposes of determining whether—
  - (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or
  - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—shares held by the previous governing body of an existing non-university institution in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 204(1) shall be treated as having been acquired by that institution at the time when they were acquired by the previous governing body.
- (3) The vesting of all the real and personal property of the previous governing body of an existing non-university institution in that institution pursuant to section 204(1) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 205: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 205(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 205(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 205(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 205(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 205(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 205(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 205(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **206 Transfer of Crown assets and liabilities to institutions**

- (1) Notwithstanding any Act, rule of law, or agreement, the Minister may, on behalf of the Crown, do any 1 or more of the following:
  - (a) transfer to an institution assets and liabilities of the Crown (being assets and liabilities relating to the activities to be carried on by the institution):
  - (b) vest in an institution any rights conferred by designations under operative district schemes applying to land transferred to the institution:
  - (c) grant to an institution leases, licences, easements, permits, or rights of any kind in respect of any assets or liabilities of the Crown,—on any terms and conditions the Minister agrees with the institution's chief executive.
- (2) The Minister shall, within 12 sitting days after taking any action under subsection (1)(a) and (b), lay before the House of Representatives a copy of the document by which the action was taken.

- (3) Assets that are fixed to, or are under or over, any land may be transferred to an institution pursuant to this section whether or not any interest in the land is also transferred; but, where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.
- (4) Any asset or liability of the Crown may be transferred to an institution pursuant to this section whether or not any Act or agreement relating to the asset or liability permits such a transfer or requires any consent to such a transfer.
- (5) Where a transfer of the kind described in subsection (4) takes place,—
  - (a) the transfer does not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown or the institution under any Act or agreement:
  - (b) if the transfer is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister:
  - (c) the laying before the House of Representatives of any document relating to the transfer shall be deemed to be notice of the transfer, and any third party shall after the date of the document deal with the institution in place of the Crown:
  - (d) the Crown remains liable to any third party as if the asset or liability had not been transferred:
  - (e) any satisfaction or performance by the institution in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown:
  - (f) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the institution shall be deemed to be also to the benefit of the Crown.
- (6) No provision in any agreement limiting the Crown's right to sell any assets to third parties, or for determining the consideration for the sale of any assets to third parties, or obliging the Crown to account to any person for the whole or part of the proceeds of sale by the Crown of any assets to third parties, or obliging the Crown to pay a greater price than otherwise by



reason of or as a consequence of the sale of any assets to third parties, shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this section or pursuant to such an agreement or transfer.

(7) Where—

- (a) land, interests in land, licences, permits, or rights created on terms and conditions wholly or partly set out in any Act are transferred to an institution pursuant to this section; and
- (b) the Governor-General has by Order in council declared that this subsection shall apply in respect of that land or those interests, licences, permits, or rights—

then, whether or not the Act is repealed, such of the terms and conditions set out in the Act as are specified in the Order in Council (with all necessary modifications) shall continue to apply in respect of that land or those interests, licences, permits, or rights after the transfer unless the institution and the holders of that land or those interests, licences, permits, or rights otherwise agree.

(8) *[Repealed]*

(9) *[Repealed]*

- (10) Where any requirement has been made under section 43 or section 118 of the Town and Country Planning Act 1977, or under section 168 of the Resource Management Act 1991, in respect of any work which has been transferred to an institution pursuant to this Act, the procedures specified in the Town and Country Planning Act 1977, or in the Resource Management Act 1991, (as the case may be) may be completed as if a Minister of the Crown continued to be financially responsible for the work and as if the work were a public work.

Section 206: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 206(2): amended, on 1 January 2008, by section 29 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 206(8): repealed, on 23 July 1993, by section 2 of the Education Amendment Act (No 2) 1993 (1993 No 77).

Section 206(9): repealed, on 23 July 1993, by section 2 of the Education Amendment Act (No 2) 1993 (1993 No 77).

Section 206(10): amended, on 20 May 2010, by section 46(a) of the Education Amendment Act 2010 (2010 No 25).

Section 206(10): amended, on 20 May 2010, by section 46(b) of the Education Amendment Act 2010 (2010 No 25).

## **207 Provisions relating to transfer of land**

- (1) Notwithstanding any other provision of this Act, Crown land within the meaning of the Land Act 1948 and any lands of the Crown other than lands registered under the Land Transfer Act 1952 that are to be transferred to an institution shall—
  - (a) be identified by an adequate legal description, or on plans lodged in the office of the Chief Surveyor for the land district in which the land is situated (being plans certified as correct for the purposes of this section by that Chief Surveyor); and
  - (b) be approved by the Governor-General in Council and vest in the institution pursuant to and on a date specified in an Order in Council made for the purposes of this section.
- (2) Notwithstanding any other provision of this Act, no land that is subject to—
  - (a) a lease or licence pursuant to section 66 or section 66AA of the Land Act 1948; or
  - (b) reservation from sale or disposition under section 58 of the Land Act 1948—shall be transferred to an institution pursuant to section 206(1) of this Act.
- (3) All land that is subject to the Land Act 1948 or the Forests Act 1949 and that is transferred to an institution pursuant to this Act shall cease to be subject to the Land Act 1948 or the Forests Act 1949, as the case may be, from the date of that transfer, unless otherwise expressly provided by this Act or any other Act.
- (4) Nothing in sections 40 to 42 of the Public Works Act 1981 shall apply to the transfer of land to an institution pursuant to this Act; but sections 40 and 41 of that Act shall after that transfer apply to that land as if the institution were the Crown and the land had not been transferred pursuant to section 206 of this Act.

- (5) Nothing in this Act or in any transfer of land to an institution pursuant to section 206 shall derogate from the provisions of—
- (a) section 3 of the Petroleum Act 1937:
  - (b) section 8 of the Atomic Energy Act 1945:
  - (c) section 3 of the Geothermal Energy Act 1953:
  - (d) sections 6 and 8 of the Mining Act 1971:
  - (e) sections 5 and 261 of the Coal Mines Act 1979:
  - (f) sections 10 and 11 of the Crown Minerals Act 1991:
  - (g) section 354 of the Resource Management Act 1991.

Section 207: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 207(5)(f): inserted, on 20 May 2010, by section 47 of the Education Amendment Act 2010 (2010 No 25).

Section 207(5)(g): inserted, on 20 May 2010, by section 47 of the Education Amendment Act 2010 (2010 No 25).

## **208 Title to land**

- (1) A District Land Registrar shall, on written application by any person authorised by the Minister and on payment of the prescribed fee,—
- (a) register an institution as the proprietor, in substitution for the Crown, of the estate or the interest of the Crown in any land that is incorporated in the register or otherwise registered in the land registry office of the land registration district concerned and that is transferred to the institution pursuant to section 206; and
  - (b) make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this section.
- (2) The powers conferred by subsection (1) may be exercised in respect of an estate or interest that is incorporated in the register by virtue of a lease or licence that has expired or has been determined.
- (3) A District Land Registrar shall, on written application by any person authorised by the Minister and on payment of the prescribed fee, issue a certificate of title for land vested in an institution pursuant to section 207(1) in form No 1 in Schedule 1 of the Land Transfer Act 1952, amended as appropriate.

- (4) As soon as registration is accomplished in accordance with subsection (1) or a certificate of title is issued in accordance with subsection (3), the institution shall, except where the interest acquired is either an easement in gross or an estate as lessee or mortgagee, be deemed to be seised of an estate in fee simple in possession in respect of that land.
- (5) Applications in accordance with subsections (1) and (3) shall specify the name of the institution and the date of the approval under section 207(1)(b) of the land to be transferred, together with a description of the land sufficient to identify it and, in the case of applications under subsection (3), a certificate by the Chief Surveyor for the district concerned as to the correctness of the description.

Section 208: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **209 Land certification**

- (1) Before a District Land Registrar issues a certificate of title in respect of any land vested in an institution pursuant to section 207(1), the District Land Registrar shall either receive under the hand of or request from the Director-General within the meaning of section 2 of the Survey Act 1986 or any Chief Surveyor a certificate in the form set out in Schedule 2 of the Land Act 1948 as to the legal description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the District Land Registrar considers appropriate.
- (2) Where any land that has been vested in an institution pursuant to section 207(1) and for which no certificate of title has been issued in the name of that institution, is to be transferred to any other person, the District Land Registrar shall, before issuing a certificate of title, either receive under the hand of or request from the Director-General within the meaning of section 2 of the Survey Act 1986 or any Chief Surveyor a certificate in the form set out in Schedule 2 of the Land Act 1948 as to the legal description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the District Land Registrar considers appropriate.

Section 209: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 209(1): amended, on 1 July 1996, by section 5 of the Survey Amendment Act 1996 (1996 No 55).

Section 209(2): amended, on 1 July 1996, by section 5 of the Survey Amendment Act 1996 (1996 No 55).

**210 Maori land claims**

The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land—

- (a) by the Crown to an institution; or
- (b) by an institution to any other person.

Section 210: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**211 District Land Registrar to register necessary memorial**

- (1) Where any land or interest in land is transferred to an institution under section 206 or vested in an institution by an Order in Council made under section 215, the District Land Registrar shall, without fee, note on the certificate of title the words “Subject to section 212 of the Education Act 1989 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation)”.
- (2) Subsection (1) does not apply in relation to any piece of land or interest in land that is excluded from section 212 by subsection (2) or subsection (3) of that section.

Section 211: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**212 Resumption of land on recommendations of Waitangi Tribunal**

- (1) Where the Waitangi Tribunal has, under section 8A(2)(a) of the Treaty of Waitangi Act 1975, recommended the return to Maori ownership of any land or interest in land transferred to an institution under section 206 or vested in an institution by an Order in Council made under section 215, that land or interest in land shall, if the recommendation has been confirmed with or without modifications under section 8B of that Act, be

resumed by the Crown in accordance with section 213 of this Act and returned to Maori ownership.

- (2) This section does not apply in relation to any piece of land that, at the date of its transfer to an institution under section 206 or the date of its vesting in an institution by an Order in Council made under section 215, was subject to—
  - (a) a deferred payment licence issued under the Land Act 1948; or
  - (b) a lease under which the lessee had the right of acquiring the fee simple.
- (3) This section does not apply in relation to any piece of land or interest in land in respect of which a certificate issued under section 8E(1) of the Treaty of Waitangi Act 1975 has been registered.

Section 212: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

### **213 Resumption of land to be effected under Public Works Act 1981**

- (1) Where section 212 requires any land or interest in land to be resumed by the Crown, the Minister of Lands shall acquire that land or interest in land under Part 2 of the Public Works Act 1981 as if it were land or an interest in land required for both Government work and a public work and Parts 2, 4, 5, 6, and 7 of that Act and Schedules 1, 3, 4, and 5 of that Act shall, subject to any necessary modifications, apply accordingly.
- (2) The existence on the certificate of title to any land or interest in land acquired pursuant to subsection (1) of a memorial under section 211 shall not be taken into account in any assessment of compensation made under the Public Works Act 1981 in relation to the acquisition of that land or interest in land.
- (3) The power conferred by this section does not include the power to acquire or take and to hold under section 28 of the Public Works Act 1981 any interest in land described in section 8A(6) of the Treaty of Waitangi Act 1975.

Section 213: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

**214 Resumption of Wahi Tapu**

- (1) Where the Governor-General is satisfied that any land or interest in land held by an institution, being land or an interest in land transferred to that institution under section 206 or vested in that institution by an Order in Council made under section 215, is Wahi Tapu, being land of special spiritual, cultural, or historical tribal significance, the Governor-General may, by Order in Council published in the *Gazette*, declare—
  - (a) that that land or interest shall be resumed by the Crown on a date specified in the Order in Council; and
  - (b) that, on the date of its resumption pursuant to the Order in Council, that land or interest in land shall be no longer liable to resumption under section 212.
- (2) Where any land or interest in land is to be resumed pursuant to subsection (1)(a),—
  - (a) the institution shall transfer the land or interest in land to the Crown on the date specified in the Order in Council; and
  - (b) the Crown shall pay to the institution in respect of the land or interest in land the compensation that would have been payable to the institution if, on the date specified in the Order in Council made under subsection (1), the land or interest in land had, pursuant to section 213, been acquired by the Minister of Lands under Part 2 of the Public Works Act 1981.
- (3) Every memorandum of transfer executed pursuant to an Order in Council made under subsection (1)—
  - (a) shall recite that it is so executed; and
  - (b) shall give both the date of the Order in Council and the date of its publication in the *Gazette*.
- (4) Upon its resumption pursuant to subsection (1), the land or interest in land shall be dealt with in accordance with an agreement made between the Crown and the relevant tribe or, if they fail to agree, in accordance with any recommendation of the Waitangi Tribunal pursuant to an application made under section 6 of the Treaty of Waitangi Act 1975.
- (5) A resumption of land or of an interest in land pursuant to subsection (1)(a) is not a subdivision of land within the meaning of section 218 of the Resource Management Act 1991.

Section 214: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 214(5): replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

## **215 Orders in Council relating to transfer of assets and liabilities**

- (1) For the purpose of facilitating the transfer of assets and liabilities to an institution pursuant to section 206, the Governor-General may from time to time, by Order in Council, do any 1 or more of the following:
- (a) vest in or impose on an institution any asset or liability (other than land to which section 207(1) applies), or any class of any such asset or liability, that the institution has agreed to have transferred to it:
  - (b) vest land in an institution for the purposes of section 207(1):
  - (c) declare that a reference to the Crown or a Minister, officer, employee, department, or instrument of the Crown in any or all regulations, orders, notices, or documents shall be deemed to be or to include a reference to an institution specified in the order:
  - (d) declare that an institution shall assume or continue to have the rights and obligations of the Crown or a Minister, officer, employee, department, or instrument of the Crown in respect of applications for rights, objections, or proceedings before any court, authority, or other person, being rights and obligations that the institution has agreed to assume:
  - (e) declare that sections 294 to 294I of the Local Government Act 1974 (which relate to reserve contributions, development levies, and contributions to certain regional works) shall not apply to specified developments, being developments that the Minister has agreed to transfer to an institution pursuant to section 206:
  - (f) declare, in respect of any assets or liabilities transferred to an institution pursuant to section 206, that the institution shall be deemed to have specified rights or obligations in respect of those assets or liabilities, being rights or obligations that are required in respect of those assets



- or liabilities as a result of the change of ownership or responsibility from the Crown to the institution:
- (g) declare that any Order in Council made under this section shall be deemed to be notice to all persons, and that specific notice need not be given to any authority or other person:
  - (h) direct any authority or other person to register or record any such vesting or declaration.
- (2) Every Order in Council made under this section may be made on such terms and conditions as the Governor-General thinks fit, and shall have effect according to its tenor.

Section 215: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **216 Interpretation relating to transfer of assets and liabilities**

- (1) In this section and in sections 206 to 215, unless the context otherwise requires,—

**agreement** includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written, express or implied, and whether or not enforceable at law

**assets** means any real or personal property of any kind, whether or not subject to rights, and without limiting the generality of the above includes—

- (a) any estate or interest in any land, including all rights of occupation of land or buildings:
- (b) all buildings, vehicles, plant, equipment, and machinery, and any rights therein:
- (c) all livestock, products from livestock, and crops:
- (d) all securities within the meaning of the Securities Act 1978:
- (e) all rights of any kind, including rights under Acts, deeds, agreements, or licences, planning rights, water rights, and clean air licences, and all applications for and objections against applications for such rights:
- (f) all patents, trade marks, designs, copyright, and other intellectual property rights whether enforceable by Act or rule of law:
- (g) goodwill, and any business undertaking:
- (h) all natural gas, petroleum, and other hydrocarbons

**institution** includes a subsidiary of an institution

**liabilities** includes—

- (a) liabilities and obligations under any Act or agreement; and
- (b) deposits and other debt securities within the meaning of the Securities Act 1978; and
- (c) contingent liabilities

**rights** includes powers, privileges, interests, licences, approvals, consents, benefits, and equities of any kind, whether actual, contingent, or prospective

**transfer** includes—

- (a) assign and convey; and
  - (b) vest by Order in Council; and
  - (c) confer estates in fee simple of land held by the Crown, whether in allodium or otherwise; and
  - (d) grant leases, rights, and interests in any real or personal property; and
  - (e) in the case of liabilities, the assumption of the liabilities by an institution.
- (2) In this section and in sections 206 to 215, a reference to **transfer**, **authorise**, or **grant** includes entering into an agreement to transfer, authorise, or grant, as the case may be.
- (3) This section and sections 206 to 215 shall have effect, and assets and liabilities may be transferred pursuant to those sections, notwithstanding any restriction, prohibition, or other provision contained in any Act, rule of law, or agreement that would otherwise apply.

Section 216: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **217 Effect of disestablishment**

- (1) Where an institution is disestablished, the following provisions of this section have effect.
- (2) The institution and the council of the institution cease to exist.
- (3) A person who would, but for the disestablishment of the institution, have been entitled to be granted an award of the institution is entitled to be granted a like award,—

- (a) if the institution is incorporated in another institution, of the other institution; or
  - (b) otherwise, of such institution as the Secretary directs.
- (4) A person who has partially completed a programme at the disestablished institution leading to an award is entitled to enrol in a similar programme at,—
  - (a) if the institution is incorporated in another institution, the other institution; or
  - (b) otherwise, such other institution as the Secretary directs to enrol the person,—and to be granted such status, and such credit for work performed at the disestablished institution, as the council of the other institution, after consulting the Qualifications Authority, considers appropriate.
- (5) If the disestablished institution is, immediately upon its disestablishment, incorporated in another institution,—
  - (a) all real and personal property that, immediately before the disestablishment, was vested in the disestablished institution (including property held on trust) is, by force of this subsection, vested in the other institution subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and
  - (b) the other institution becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities, and obligations of the disestablished institution that existed immediately before its disestablishment.
- (6) If the disestablished institution is not, immediately upon its disestablishment, incorporated in another institution,—
  - (a) all real and personal property that, immediately before the disestablishment was vested in the council of the disestablished institution (including property held on trust) is, by force of this subsection, vested in the Minister subject to all charges, encumbrances, estates, or interests, and the provisions of any enactment, affecting that property; and
  - (b) the Minister becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities, and obli-

gations of the council of the disestablished institution that existed immediately before its disestablishment.

- (7) Where any real or personal property that was held by a disestablished institution on trust vests in the Minister under subsection (6)(a), the Minister may appoint another institution to be the trustee of that property.
- (8) Where any land vests in an institution or in the Minister under this section, the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she may require, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of this section.
- (9) Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the disestablishment of an institution to which the institution was a party has effect after the disestablishment as if—
  - (a) the institution in which the disestablished institution is incorporated or the Minister, as the case may be, is substituted for the disestablished institution as a party to the contract, other instrument or proceeding; and
  - (b) any reference in the contract or other instrument, or in a pleading, affidavit or other document in the proceeding, to the disestablished institution in its capacity as a party to the contract, other instrument or proceeding is (except in relation to matters that occurred before the disestablishment) a reference to the institution in which the disestablished institution is incorporated or the Minister, as the case may be.
- (10) Notwithstanding subsection (2), the council of the disestablished institution shall continue in existence for the purpose of complying, or facilitating compliance, with Part 4 of the Crown Entities Act 2004 and section 220 of this Act in relation to any academic year of the institution and,—
  - (a) if the institution is incorporated in another institution, the council of the other institution; or
  - (b) otherwise, the Secretary,—

shall give to the council of the disestablished institution any assistance that that council requires for the purpose of complying with its obligations under those provisions and is responsible for paying any expenses incurred by that council (including remuneration and expenses of members of that council) in so complying.

Section 217: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 217(4): amended, on 30 August 2011, by section 21 of the Education Amendment Act 2011 (2011 No 66).

Section 217(10): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

**218 Taxes and duties where disestablished institution incorporated into other institution**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
  - (a) a disestablished institution referred to in section 217(5) and the other institution referred to in that section shall be deemed to be the same person with effect on and from the date on which the real and personal property of the disestablished institution vests in the other institution pursuant to that section; and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the disestablished institution so vests in the other institution, all transactions entered into by, and acts of, the disestablished institution before the vesting effected by section 217(5) shall be deemed to have been entered into by, or to be those of, the other institution and to have been entered into or performed by the other institution at the time when they were entered into or performed by the disestablished institution.
- (2) For the purposes of determining whether—
  - (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or

- (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—  
shares held by a disestablished institution in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 217(5) shall be treated as having been acquired by the other institution referred to in that section at the time when they were acquired by the disestablished institution.
- (3) The vesting of all the real and personal property of a disestablished institution in another institution pursuant to section 217(5) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 218: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 218(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 218(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 218(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 218(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 218(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 218(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 218(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 218(3): amended, on 20 May 1999, by section 7 of the Stamp Duty Abolition Act 1999 (1999 No 61).

## **219 Taxes and duties in other cases**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
  - (a) a disestablished institution referred to in section 217(6) and the Minister shall be deemed to be the same person with effect on and from the date on which the real and personal property of the disestablished institution vests in the Minister pursuant to that section; and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the disestablished institution so vests in the Minister, all transactions entered into by, and acts of, the disestablished institution before the vesting effected by section 217(6) shall be deemed to have been entered into by, or to be those of, the Minister and to have been entered into or performed by the Minister at the time when they were entered into or performed by the disestablished institution.
- (2) For the purposes of determining whether—
  - (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or
  - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—

shares held by a disestablished institution in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 217(6) shall be treated as having been acquired by the Minister at the time when they were acquired by the disestablished institution.

- (3) The vesting of all the real and personal property of a disestablished institution in the Minister pursuant to section 217(6) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 219: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 219(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 219(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 219(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 219(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 219(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 219(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 219(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 219(3): amended, on 20 May 1999, by section 7 of the Stamp Duty Abolition Act 1999 (1999 No 61).

## **220 Annual report**

- (1) As soon as practicable after the end of each academic year of an institution ending after the commencement of this section



the council of the institution shall give to the Minister a report on the operations of the institution during that year.

- (2) A council must include in every annual report of the council the financial statements prepared by the council, in accordance with section 154 of the Crown Entities Act 2004, in respect of the academic year to which the report relates, together with the audit report and the statement of responsibility under section 155 of that Act relating to those financial statements.
- (2AA) A council must comply with sections 154 to 157 of the Crown Entities Act 2004 except that, despite section 155(d) of that Act, the statement of responsibility must be signed by—
  - (a) the chairperson of the council and the chief executive of the institution; or
  - (b) if there is no chairperson, the chief executive of the institution and the chief financial officer.
- (2A) A council shall include in every annual report—
  - (a) a summary of its equal employment opportunities programme for the year to which the report relates; and
  - (b) an account of the extent to which the council was able, during the year to which the report relates, to meet the equal employment opportunities programme for that year; and
  - (c) an account of the extent to which the council has eliminated unnecessary barriers to the progress of students; and
  - (d) an account of the extent to which the council has avoided the creation of unnecessary barriers to the progress of students; and
  - (e) an account of the extent to which the council has developed programmes to attract students from groups in the community—
    - (i) under-represented in the institution's student body; or
    - (ii) disadvantaged in terms of their ability to attend the institution; and
  - (f) in the case of an institution that has a plan, a statement of service performance for that financial year reporting on the performance of the institution as compared with the proposed outcomes described in that plan.

- (2B) Section 156 of the Crown Entities Act 2004 applies to institutions and, for this purpose, is to be read as referring to a statement of service performance under subsection (2A)(f).
- (3) The Minister must present the report to the House of Representatives within 5 working days after receiving the report or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.
- (4) The first report by the council of an institution that is a body to which section 162(1) applied shall extend to operations during the part of the academic year before the council became the governing body of the institution.

Section 220: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

Section 220(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 220(2AA): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 220(2A): inserted, on 25 June 1993, by section 26(2) of the Education Amendment Act 1993 (1993 No 51).

Section 220(2A)(e)(ii): amended, on 20 May 2010, by section 48 of the Education Amendment Act 2010 (2010 No 25).

Section 220(2A)(f): replaced, on 1 January 2008, by section 30 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 220(2B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 220(3): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **221 Annual report to be available for inspection**

The council of an institution shall ensure that copies of its annual report are available at the office of the council for inspection during ordinary office hours by any person without charge.

Section 221: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## **222 Delegation by council**

- (1) The council of an institution may, from time to time, either generally or particularly, by writing signed by at least 2 members of the council, delegate to the chief executive of the institution or to a committee appointed under section 193(3) any

- of its functions or powers under this Act (except the power to appoint a chief executive) or any other Act.
- (2) Where the council has, pursuant to subsection (1), delegated any functions or powers to the chief executive or a committee, the chief executive or committee may, with the prior approval in writing of the council, by writing signed by the chief executive or by at least 2 of the members of the committee, as the case may be, delegate such of those functions or powers as the council approves to a member of the staff of the institution.
  - (3) Subject to any general or special directions given or conditions imposed by the council, the person to whom any functions or powers are delegated under this section may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
  - (4) The power of the council to delegate under this section—
    - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the council's functions or powers; but
    - (b) does not limit any power of delegation conferred on the council by any other Act.
  - (5) A person purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
  - (6) A delegation under subsection (1) to the chief executive shall,—
    - (a) subject to paragraph (b), if the chief executive to whom it was made ceases to hold office, continue to have effect as if made to the chief executive for the time being; and
    - (b) if there is no chief executive for the time being, or if the chief executive is absent from duty, continue to have effect as if made to the person for the time being acting in place of the chief executive.
  - (7) A delegation under subsection (1) to a committee shall be deemed to be a delegation to the persons from time to time constituting the committee.

- (8) A delegation under this section to a member of the staff may be made to a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices.
- (9) A delegation under this section does not affect or prevent the performance of any function or the exercise of any power by the council or affect the responsibility of the council for the actions of any person acting under the delegation.
- (10) A delegation under this section is revocable at will—
  - (a) in the case of a delegation under subsection (1), in writing signed by at least 2 members of the council; or
  - (b) in the case of a delegation under subsection (2), in writing signed by the chief executive or by at least 2 of the members of the committee, as the case requires,—and until it is revoked continues in force according to its tenor.
- (11) This section applies to the academic board of an institution (established under section 182(2)) as if—
  - (a) it is a committee of the institution's council; and
  - (b) all its powers are powers of the council, conferred on the committee by the council by delegation.

Section 222: inserted, on 1 January 1991, by section 37 of the Education Amendment Act 1990 (1990 No 60).

## Part 15A

### Special provisions relating to polytechnics

Part 15A: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### *Polytechnic councils*

Heading: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **222AA Constitution of polytechnic councils**

- (1) The council of a designated polytechnic must comprise—
  - (a) 4 members appointed by the Minister;
  - (b) 4 members appointed by the council in accordance with its statutes.
- (2) A person is not eligible for appointment or election as a member of the council of a designated polytechnic if—

- (a) he or she is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
  - (b) there has been made under that Act in respect of him or her a personal order that reflects adversely on his or her—
    - (i) competence to manage his or her own affairs in relation to his or her property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
  - (c) he or she is a bankrupt who has not obtained his or her order of discharge, or whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled; or
  - (d) he or she has at any time been removed from office as a member of a polytechnic council under section 222AJ.
- (3) No act or proceeding of, or of any committee of, the council of a designated polytechnic is invalid because of—
- (a) a defect in the appointment or election of a member of the council or committee; or
  - (b) a disqualification of a member of the council or committee; or
  - (c) a defect in the convening of a meeting; or
  - (d) a vacancy or vacancies in the membership of the council or committee.

Section 222AA: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AB Statutes relating to appointment of members by polytechnic councils**

- (1) Every polytechnic council must have in place statutes relating to the appointment of members under section 222AA(1)(b).
- (2) The statutes may (in respect of any of the 4 appointments it has power to make)—
  - (a) require the appointment of a member—
    - (i) of a stated description; or
    - (ii) holding a stated office; or

- (iii) nominated by a stated institution or institutions, or an institution or institutions of a stated description; or
    - (iv) elected by people of a stated description:
  - (b) provide for the process by which—
    - (i) nominations may be called for and considered:
    - (ii) elections may be held and their results may be determined.
  - (3) Subsection (2) does not limit the generality of section 194.
- Section 222AB: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **222AC Membership of more than one polytechnic council**

A person who is a member of a polytechnic council may be appointed a member of another polytechnic council.

Section 222AC: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **222AD Matters to be considered when appointments made**

- (1) It is desirable in principle—
  - (a) that the council of a designated polytechnic should include Māori; and
  - (b) that, so far as is possible, the council of a designated polytechnic should reflect the ethnic and socio-economic diversity of the community it serves.
- (2) The Minister—
  - (a) must have regard to the principles in subsection (1) when appointing members of the council of a designated polytechnic; but
  - (b) must appoint people who (in the Minister's opinion) have enough experience of governance to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.
- (3) The council of a designated polytechnic must appoint as members people who (in the council's opinion)—
  - (a) have relevant knowledge, skills, or experience; and
  - (b) are likely to be able to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.

Section 222AD: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AE Term of office**

- (1) The person appointing a member of the council of a designated polytechnic must, when making the appointment, state the day on which it takes effect and its term.
- (2) The term must be no more than 4 years.
- (3) The term of office of a member of the council of a designated polytechnic begins on the later of the following:
  - (a) the day on which his or her appointment takes effect:
  - (b) the expiry of the term of office of his or her predecessor.
- (4) Notwithstanding subsection (3), if the term of office of a member of the council of a designated polytechnic expires before a successor is appointed, the member continues in office until the day on which the appointment of a successor takes effect.
- (5) Subsection (4) does not apply to a member who was before 1 May 2011 appointed under section 222AA(1)(b).

Section 222AE: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AF Reappointment and re-election**

Any member of the council of a designated polytechnic can be reappointed for a second or later term.

Section 222AF: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AG Chairperson and deputy chairperson**

- (1) The Minister may at any time the council of a designated polytechnic has no chairperson or no deputy chairperson, by written notice to the member concerned stating the term for which the member is appointed, appoint as chairperson or deputy chairperson (as the case requires) of the council any member who is not one of the following:
  - (a) a student enrolled at the polytechnic:
  - (b) the chief executive of the polytechnic (or in the case of a combined council, of one of the polytechnics concerned):

- (c) in the case of a council that is not a combined council, an employee of the polytechnic's chief executive;
  - (d) in the case of a combined council, an employee of the chief executive of one of the polytechnics concerned.
- (2) The Minister may at any time, by written notice to the member concerned, dismiss the chairperson or deputy chairperson of the council of a designated polytechnic from office as chairperson or deputy chairperson.
- (3) The Minister must not dismiss the chairperson or deputy chairperson without first consulting him or her on the proposed dismissal.
- (4) The Minister must give to the polytechnic council a copy of a notice under subsection (1) or (2).
- (5) The chairperson or deputy chairperson of the council of a designated polytechnic—
  - (a) may by written notice to the Minister resign as chairperson or deputy chairperson; and
  - (b) ceases to hold office as chairperson or deputy chairperson if he or she—
    - (i) ceases to be a member of the council; or
    - (ii) becomes the chief executive or a member of the staff of the polytechnic, or a student enrolled at the polytechnic.
- (6) The chairperson or deputy chairperson of the council of a designated polytechnic who resigns must give a copy of the notice of resignation to the council.
- (7) The chairperson or deputy chairperson of the council of a designated polytechnic holds office as chairperson or deputy chairperson for the term for which he or she was appointed (but may be reappointed), unless earlier he or she dies, is dismissed, resigns, or ceases to hold office by virtue of subsection (5)(b).
- (8) Notwithstanding subsection (7), if the term of office of the chairperson or deputy chairperson of the council of a designated polytechnic expires before a successor is appointed, he or she continues in office until a successor is appointed, unless earlier he or she dies, is dismissed, resigns, or ceases to hold office by virtue of subsection (5)(b).



- (9) The chairperson or deputy chairperson of the council of a designated polytechnic may be referred to by any title (other than Chancellor or Pro-Chancellor) the council determines.

Section 222AG: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AH Duties of members of polytechnic councils**

- (1) A member of the council of a designated polytechnic, when acting as a member of the council in any circumstances,—
- (a) must—
    - (i) act with honesty and integrity; and
    - (ii) act in the interests of the polytechnic as a whole; and
    - (iii) act in a manner that promotes the performance of the functions characteristic of a polytechnic, and the duties of the council; and
    - (iv) act in good faith, and not pursue his or her own interests at the expense of the council's interests; and
  - (b) must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account—
    - (i) the nature of the council; and
    - (ii) the nature of the action; and
    - (iii) the position of the member as a member of a polytechnic council, and the nature of the responsibilities undertaken by him or her; and
  - (c) must not disclose any information to which subsection (4) applies to any person, or make use of, or act on, that information, except—
    - (i) in the performance of the council's functions; or
    - (ii) as required or permitted by law; or
    - (iii) in accordance with subsection (3); or
    - (iv) in complying with requirements for members to disclose interests.
- (2) The fact that a member of the council of a designated polytechnic was appointed by the council in accordance with a statute providing for the appointment of a member (or 2 or more members) to represent the interests of a stated institution

or of people or institutions of a stated description does not displace or limit the member's duty under subsection (1)(a)(ii) to act in the interests of the polytechnic as a whole.

- (3) A member of the council of a designated polytechnic may disclose, make use of, or act on information to which subsection (4) applies if—
  - (a) he or she has earlier been authorised to do so by the council; or
  - (b) disclosing, making use of, or acting on it will not, or will be unlikely to, prejudice the council or the polytechnic.
- (4) This subsection applies to information that—
  - (a) a member of the council of a designated polytechnic has in his or her capacity as a member of the council; and
  - (b) would not otherwise be available to him or her.
- (5) Subparagraphs (i) to (iii) of paragraph (b) of subsection (1) do not limit the generality of that paragraph.

Section 222AH: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **222AI Accountability for individual duties**

- (1) The duties of a member of the council of a designated polytechnic (**council member**) under section 222AH (**individual duties**) are duties owed to the Minister and the council.
- (2) A council member who does not comply with his or her individual duties may be removed from office under section 222AJ.
- (3) The council of a designated polytechnic may bring an action against a council member for breach of any individual duty.
- (4) Except as provided in subsections (2) and (3), a council member is not liable for a breach of an individual duty.
- (5) This section does not affect any other ground for removing a council member from office.
- (6) Subsection (4) does not affect anything for which a council member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach concerned.
- (7) Subsection (4) does not affect anything for which a council member who is the chief executive of the polytechnic council

concerned may, as chief executive, be liable under this Act or any other Act or rule of law, arising from the act or omission that constitutes the breach concerned.

Section 222AI: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222AJ Removal of members**

- (1) The Minister may at any time, for just cause, remove a member of the council of a designated polytechnic from office.
- (2) The removal must be made by written notice to the member (with a copy to the council).
- (3) The notice must state—
  - (a) the day on which the removal takes effect, which must not be earlier than the day on which the notice is received; and
  - (b) the reasons for the removal.
- (4) The Minister must notify the removal in the *Gazette* as soon as is practicable after giving the notice.
- (5) This section does not limit or affect section 174.
- (6) For the purposes of subsection (1), **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the polytechnic council or the individual duties of members (depending on the seriousness of the breach).

Section 222AJ: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222AK Process for removal**

The Minister may remove a member of the council of a designated polytechnic under section 222AJ with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the principles of natural justice; and
- (b) a proper consideration of the matter; and
- (c) the requirements of that section.

Section 222AK: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

*Combination of polytechnic councils*

Heading: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AL Voluntary combination of councils**

- (1) The Minister may combine the polytechnic councils of 2 or more designated polytechnics if—
  - (a) each of them has (in a written report complying with subsection (2)) recommended that they should be combined; and
  - (b) he or she is satisfied that each of them has consulted the constituents of its polytechnic on the desirability of the combination of the councils.
- (2) Each report must recommend a constitution for any combined council that might be constituted, and state—
  - (a) the council's reasons for wishing to combine; and
  - (b) the results of the council's consultations.

Section 222AL: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AM Constitution of combined councils**

- (1) The Minister combines polytechnic councils by notice in the *Gazette*, stating—
  - (a) a constitution for the resulting combined council; and
  - (b) the day on which the combination takes effect.
- (2) The Minister must ensure that a combined council has an even balance between members appointed by the Minister and members appointed by the council.

Section 222AM: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AN Effect of combination**

- (1) The combination of any polytechnic councils does not affect the individual status, identity, or character of the polytechnics concerned.
- (2) On the combination of any polytechnic councils,—
  - (a) the resulting combined council—
    - (i) is the successor of each of them; and

- (ii) has all the obligations and rights each of them had immediately before their combination:
  - (b) every statute of any of them (other than a statute relating to the appointment of members under section 222AA(1)(b))—
    - (i) becomes a statute of the combined council (and may be amended or repealed accordingly); but
    - (ii) until amended so as to apply to the others, applies only to the polytechnic by whose council it was made:
  - (c) every member of any of the polytechnic councils combined goes out of office:
  - (d) the assets and liabilities of each of the polytechnics concerned immediately before their combination continue to be assets and liabilities of that polytechnic:
  - (e) a person who immediately before their combination was the chief executive of any of the polytechnics concerned is still the chief executive of that polytechnic, but (without having been made or otherwise become redundant) becomes an employee of the combined council.
- (3) Neither the Crown nor a combined council is liable to make a payment to, or otherwise compensate, a person in respect of the person's going out of office as a member of a polytechnic council under subsection (2)(c).

Section 222AN: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

#### **222AO Dissolution of combined council**

- (1) The Minister may, on the recommendation of a combined council, dissolve it.
- (2) A combined council must not recommend that the Minister dissolve it without first consulting the constituents of the polytechnics concerned.
- (3) The Minister dissolves a combined council by notice in the *Gazette* stating the day on which the dissolution takes effect.
- (4) After the publication of the notice, and before the day stated in it, the combined council may make in respect of any of the polytechnics concerned any statutes it thinks necessary or

desirable to enable the swift and efficient establishment of a polytechnic council for it.

Section 222AO: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222AP Effect of dissolution**

- (1) On the dissolution of a combined council,—
  - (a) each of the polytechnics concerned must have a polytechnic council, as required by this Act:
  - (b) each polytechnic council has—
    - (i) any of the obligations and rights the former polytechnic council of the polytechnic had immediately before the establishment of the combined council; and
    - (ii) any of the obligations and rights the combined council had immediately before the dissolution that have arisen in relation to the polytechnic:
  - (c) every statute of the combined council that relates to all the polytechnics concerned (other than a statute relating to the appointment of members under section 222AA(1)(b)) becomes a statute of each of them:
  - (d) every statute of the combined council that does not relate to all the polytechnics concerned (other than a statute relating to the appointment of members under section 222AA(1)(b)) becomes a statute of the polytechnic to which it does relate (or, as the case requires, of each of the polytechnics concerned to which it does relate):
  - (e) every member of the combined council goes out of office:
  - (f) a person who immediately before the dissolution was the chief executive of any of the polytechnics concerned is still the chief executive of that polytechnic, but (without having been made or otherwise become redundant) becomes an employee of the polytechnic council established or to be established for it.
- (2) For the purposes of subsection (1)(b)(ii),—
  - (a) a combined council may, after the publication of the notice dissolving it, and before the day stated in the

- notice, determine that any of its obligations or rights have arisen in relation to a particular polytechnic; and
- (b) the combined council's determination is binding on all the polytechnic councils established or to be established for the polytechnics concerned.
- (3) Neither the Crown nor a polytechnic council is liable to make a payment to, or otherwise compensate, a person in respect of the person's going out of office as a member of a combined council under subsection (1)(e).

Section 222AP: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AQ Initial membership of polytechnic councils after dissolution of combined council**

- (1) Before the dissolution of a combined council, the Minister must appoint the members of each of the new polytechnic councils required by its constitution to be appointed by the Minister.
- (2) Other members of a new polytechnic council—
- (a) may be appointed before the dissolution; and
- (b) must be appointed within 3 months after the dissolution.
- (3) The appointment of a member of a new polytechnic council takes effect on the later of the day on which it is made and the dissolution.
- (4) If on the dissolution there is a vacancy in a polytechnic's new council, the Minister may, by written notice to any person who was a member of the combined council immediately before that day, authorise him or her to act as a member of the council until the vacancy is filled.
- (5) The Minister must give a copy of every notice under subsection (4) to the council concerned.
- (6) A person authorised under subsection (4) must for all purposes be treated as a member of the council concerned until the vacancy concerned is filled.

Section 222AQ: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

*Combined academic boards*

Heading: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222AR Polytechnic councils may establish combined academic boards**

- (1) The councils of 2 or more designated polytechnics may, by written agreement,—
  - (a) establish a single, combined academic board for all the polytechnics concerned; or
  - (b) disestablish a combined academic board that (whether or not it was originally established for other polytechnics too) is now established for all the polytechnics concerned.
- (2) A combined council may, by resolution,—
  - (a) establish a single, combined academic board for all the polytechnics concerned; or
  - (b) disestablish a combined academic board that it has established for them.
- (3) A combined board must include—
  - (a) the chief executive of each of the polytechnics concerned; and
  - (b) at least one member of the staff of each of the polytechnics concerned; and
  - (c) at least one student of each of the polytechnics concerned.
- (4) The polytechnic council of a polytechnic for which a combined academic board has been established under subsection (1) may, by written notice to the other polytechnic council or councils concerned, opt out of the board (and if the board would then serve only one polytechnic, opting out disestablishes it).
- (5) As soon as is practicable after a combined academic board established under subsection (1) has been disestablished, each of the polytechnic councils concerned must establish an academic board for itself.
- (6) Section 182(1) applies to a combined academic board as if it were a board established within each of the polytechnics concerned.



- (7) For the purposes of section 222,—
- (a) a combined academic board established under subsection (1) must, in relation to each of the polytechnic councils concerned, be treated as if it were a committee appointed by the council under section 193(2)(i):
  - (b) a combined academic board established under subsection (2) must be treated as if it were a committee appointed by the combined council concerned under section 193(2)(i).
- (8) In relation to every polytechnic council for which a combined academic board is established (and to its polytechnic), a reference to the academic board of an institution in a provision of this Act other than this section is a reference to the combined academic board.

Section 222AR: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### *Interventions*

Heading: inserted, on 1 March 2010, by section 16 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222A Specialist help**

- (1) If he or she believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk, the chief executive of the Tertiary Education Commission may, by written notice to its polytechnic council, require the council to obtain specialist help.
- (2) The notice must state—
- (a) the help or kind of help to be obtained; and
  - (b) the person or organisation, or kind of person or organisation, from whom or which it is to be obtained.
- (3) As soon as is reasonably practicable after receiving the notice, the council must comply with it.
- (4) The council must—
- (a) provide the information and access, and do all other things, reasonably necessary to enable the person or organisation engaged to provide the help; and

- (b) to the extent that the help provided is advice, take the advice into account in performing its functions and duties; and
- (c) pay the person or organisation's reasonable fees and expenses.

Section 222A: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222B Performance improvement plans**

- (1) If he or she believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk, the chief executive of the Tertiary Education Commission may, by written notice to its polytechnic council, require the council to prepare and give to him or her a draft performance improvement plan for the polytechnic.
- (2) The notice must state—
  - (a) the matters to be addressed by the draft plan; and
  - (b) the outcomes that implementation of the draft plan is intended to achieve; and
  - (c) the times by which those outcomes should be achieved; and
  - (d) the performance measures that will be used to determine whether those outcomes have been achieved; and
  - (e) the day by which the draft plan must be given to him or her.
- (3) The council must prepare, and give to the chief executive of the Tertiary Education Commission by the stated day, a draft plan complying with subsection (2).
- (4) If the council complies with subsection (3), the chief executive of the Tertiary Education Commission may—
  - (a) approve the draft plan concerned; or
  - (b) after considering the draft plan, approve for the polytechnic some other plan complying with subsection (2) (whether a modified version of the draft plan or a different plan).
- (5) If the council does not comply with subsection (3), the chief executive of the Tertiary Education Commission may approve for the polytechnic any plan complying with subsection (2) the chief executive thinks appropriate.

- (6) The chief executive of the Tertiary Education Commission must not approve any plan other than a draft plan given to him or her by the council before discussing it with the council.
- (7) The council must take all reasonably practicable steps to implement a plan approved under this section.

Section 222B: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

### **222C Crown manager**

- (1) If he or she believes on reasonable grounds that there is a serious risk to the operation or long-term viability of a polytechnic, or that the education performance of the students at a polytechnic is at risk, the Minister may, by written notice to its polytechnic council, appoint a Crown manager for the polytechnic.
- (2) The Minister must not appoint the Crown manager without—
  - (a) giving the polytechnic's council written notice of—
    - (i) his or her intention to do so; and
    - (ii) his or her reasons for intending to do so; and
  - (b) allowing the council a reasonable time to respond to the notice; and
  - (c) considering any written submissions received from the council within that time.
- (3) Whether a time is reasonable in any particular case may depend (among other things) on the urgency of the matters the Crown manager will have to deal with.
- (4) The notice must state—
  - (a) the name of the Crown manager and the day on which his or her appointment takes effect; and
  - (b) the functions of the council to be performed by the Crown manager; and
  - (c) any conditions subject to which the Crown manager may perform those functions; and
  - (d) any matters the Crown manager may advise the council on.
- (5) As soon as is practicable after appointing the Crown manager, the Minister must publish in the *Gazette* a notice stating that he or she has done so.

- (6) While there is a Crown manager appointed for the polytechnic,—
- (a) the Crown manager may perform any of the functions stated in the notice appointing him or her; and—
    - (i) for that purpose has all the powers of the council; but
    - (ii) in performing any such function (and exercising any of those powers in order to do so) the Crown manager must comply with all relevant duties of the council; and
  - (b) the council—
    - (i) must not perform any of those functions; and
    - (ii) must provide the information and access, and do all other things, reasonably necessary to enable the Crown manager to perform those functions and exercise those powers.
- (7) The Crown manager must perform any function under subsection (6)(a) (and exercise any power in order to do so) in accordance with this Act; and, in particular, have regard to sections 160 and 161.
- (8) Subsection (7) does not limit the generality of subsection (6)(a)(ii).
- (9) The council must pay the Crown manager's reasonable fees and expenses.
- (10) If the Crown manager's appointment has not earlier been revoked, the Minister must consider whether the reasons for it still apply—
- (a) no later than 12 months after it was made; and
  - (b) no later than 12 months after he or she last considered whether they still apply.
- (11) For the purpose of subsection (1),—
- (a) there is a serious risk to the operation or long-term viability of a polytechnic if, according to criteria determined under section 195A(1), there is or is likely to be a serious level of risk to its operation or long-term viability; and
  - (b) the education performance of the students at a polytechnic is at risk if, according to criteria determined under section 195A(1), their education performance is at risk.

- (12) Subsection (11) does not limit or affect the generality of subsection (1).

Section 222C: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222D Protection of Crown managers**

A Crown manager is not personally liable for any act done or omitted by him or her, or for any loss arising out of any act done or omitted by him or her, if he or she did or omitted the act in good faith, in the course of performing his or her functions.

Section 222D: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222E Powers may be used concurrently**

- (1) Sections 222A to 222C do not limit or affect sections 195B to 195D.
- (2) To the extent that it is possible in practice, powers given by 2 or more of sections 195B, 195C, and 222A to 222C may be exercised concurrently in respect of the same polytechnic or polytechnic council.

Section 222E: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

**222F Polytechnic council may request intervention**

If a polytechnic council requests the Minister or chief executive of the Tertiary Education Commission (as the case requires) to act under any of sections 195C and 195D and 222A to 222C, he or she—

- (a) must consider any argument or evidence supplied by the council; and
- (b) must consider whether or not to act under that section; but
- (c) may then (if any necessary conditions are satisfied) act under another of those sections giving him or her power to act.

Section 222F: inserted, on 18 December 2009, by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70).

## **Part 16**

### **Programmes and students**

Part 16: inserted, on 1 January 1991, by section 38 of the Education Amendment Act 1990 (1990 No 60).

Part 16 heading: amended, on 30 August 2011, by section 22 of the Education Amendment Act 2011 (2011 No 66).

#### **223 Programmes**

- (1) Subject to subsection (2) and Part 20, the council of each institution may determine the programmes of study and training to be provided at the institution.
- (2) If the Minister believes on reasonable grounds that the provision or the continued provision of a particular programme of study or training at a particular institution would have significant implications for the allocation of the national resources available for tertiary education or vocational training, and would be contrary to the efficient use of those resources, the Minister may, after consulting the council of the institution and such other persons as the Minister considers appropriate, by written notice to the council setting out the reasons for giving the direction, direct the council that the institution is not to provide, or to continue to provide, that programme.
- (3) The power of the Minister under subsection (2) may be exercised only in relation to a programme of study or training as a whole and that subsection does not entitle the Minister to give a direction limited to particular subjects or other constituent elements of a programme of study or training.
- (4) The council of an institution shall comply with a direction given to it under subsection (2).

Section 223: inserted, on 1 January 1991, by section 38 of the Education Amendment Act 1990 (1990 No 60).

Section 223 heading: replaced, on 30 August 2011, by section 23(1) of the Education Amendment Act 2011 (2011 No 66).

Section 223(1): amended, on 30 August 2011, by section 23(2) of the Education Amendment Act 2011 (2011 No 66).

Section 223(2): amended, on 30 August 2011, by section 23(3) of the Education Amendment Act 2011 (2011 No 66).

Section 223(3): amended, on 30 August 2011, by section 23(3) of the Education Amendment Act 2011 (2011 No 66).

## **224 Enrolment of students**

(1) In this section,—

**eligible student**, in relation to a programme or training scheme at an institution, means a person who is eligible to be enrolled as a student in that programme or scheme by virtue of subsection (2)

**year** means a period of 12 months commencing on 1 January.

(2) Subject to this section, a person is eligible to be enrolled as a student at any institution in a programme or training scheme provided by the institution if, and only if,—

(a) either—

- (i) the person is a domestic student; or
- (ii) the council of the institution consents; and

(b) the person holds the minimum entry requirements for the programme or scheme as determined by the council; and

(c) the person has attained,—

- (i) if the institution has fixed a minimum age for enrolment at the institution, the age so fixed; and
- (ii) if the institution has fixed a minimum age for enrolment in the programme or scheme, the age so fixed.

(3) Subsection (2)(b) and (c) do not apply to a person if—

- (a) the person has attained the age of 20 years; or
- (b) the council of the institution is satisfied that the person is capable of undertaking the programme or scheme concerned.

(4) An eligible student who applies for enrolment in a programme or training scheme at an institution is, subject to this section, entitled to be enrolled in that programme or scheme.

(5) If the council of an institution is satisfied that it is necessary to do so because of insufficiency of staff, accommodation, or equipment, the council may determine the maximum number of students who may be enrolled in a particular programme or training scheme at the institution in a particular year.

(6) Where—

- (a) the maximum number of students who may be enrolled at an institution in a particular programme or training

- scheme in a particular year is determined by the council of the institution under subsection (5); and
- (b) the number of eligible students who apply for enrolment in that programme or training scheme in that year exceeds the maximum number so determined,—
- the council may, in the selection of the students to be enrolled, give preference to eligible persons who are included in a class of persons that is under-represented among the students undertaking the programme or training scheme.
- (7) The council of an institution must not permit the enrolment at the institution of an international student for all or part of a programme unless—
- (a) the programme is approved by the Qualifications Authority and the institution is accredited to provide the programme; or
- (b) the programme is exempted under section 232B.
- (8) The council of an institution must not permit the enrolment at the institution of an international student for all or part of a training scheme unless the scheme is an approved training scheme or exempted under section 232B.
- (9) Except as provided in subsection (11), no international student may be enrolled at an institution if the student's enrolment at the institution would have the effect that a domestic student who is eligible to enrol at the institution and has applied for enrolment would not be able to be enrolled.
- (10) Except as provided in subsection (11), no international student may be enrolled in any programme or training scheme at an institution if the student's enrolment in that programme or scheme would have the effect that a domestic student who is eligible to enrol in the programme or scheme and has applied for enrolment in the programme or scheme would not be able to be enrolled in it.
- (11) Although domestic students may not be able to be enrolled at an institution or in a programme or training scheme at an institution, an international student may be enrolled at the institution, or in that programme or scheme at the institution, if the enrolment is in a vacant place—
- (a) that the council of the institution established for international students; and



- (b) whose continued availability is dependent on the fees payable by international students enrolled in it.
- (12) Nothing in this section prevents the council of an institution from refusing to permit, or from cancelling, the enrolment of a person as a student at the institution, or in a particular programme or scheme at the institution, on the ground that—
  - (a) the person is not of good character; or
  - (b) the person has been guilty of misconduct or a breach of discipline; or
  - (c) the person is enrolled for full-time instruction in another institution or in a school; or
  - (d) the person has made insufficient progress in the person's study or training after a reasonable trial at the institution or at another institution.
- (13) The chief executive of an institution that provides approved programmes of pre-service teacher training must ensure that the appropriate authorities of the institution liaise with the appropriate authorities of other institutions that provide such programmes so as to establish common requirements to govern the selection of people for enrolment, and the enrolment of people, in those programmes.

Section 224: replaced, on 30 August 2011, by section 24 of the Education Amendment Act 2011 (2011 No 66).

## **225 Records relating to students**

- (1) Each institution shall keep records that show—
  - (a) the progress of each student at the institution (including the principal results achieved by the student) in his or her programme of study or training; and
  - (b) particulars of any allowances, grants, or other payments received by each student at the institution in respect of his or her programme of study or training out of public money appropriated by Parliament.
- (2) Without limiting the generality of subsection (1), the records to be kept by an institution under that subsection include such records as will enable the institution to comply with any requirement that may be made by the Secretary under section 226.

Section 225: inserted, on 1 January 1991, by section 38 of the Education Amendment Act 1990 (1990 No 60).

Section 225(1)(a): amended, on 30 August 2011, by section 25 of the Education Amendment Act 2011 (2011 No 66).

Section 225(1)(b): amended, on 30 August 2011, by section 25 of the Education Amendment Act 2011 (2011 No 66).

## 226 Secretary may require information

The Registrar or other appropriate officer of an institution shall, if so required by the Secretary, provide to the Secretary, in such form as the Secretary specifies, such statistical information in the possession of the institution as the Secretary specifies in relation to students generally or a particular class of students.

Section 226: inserted, on 1 January 1991, by section 38 of the Education Amendment Act 1990 (1990 No 60).

## 226A Disclosure of enrolment information by institutions

- (1) In this section, unless the context otherwise requires,—

**allowance** means an allowance established by regulations made under section 303, or identified by *Gazette* notice under section 307AB

**benefit** means jobseeker support under the Social Security Act 1964

**chief executive** means the chief executive of the department

**department** means the department for the time being responsible for the administration of the Social Security Act 1964 and for the administration of Part 25

**specified period** means any period specified in a notice under subsection (3)

**student loan** has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011

**student loan scheme** has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011.

- (2) The purpose of this section is to facilitate the disclosure of information by institutions to the department, in order to verify—
- (a) the entitlement or eligibility of any person to or for any benefit or allowance or student loan; or

- (b) the amount of any benefit or allowance or student loan to which any person is or was entitled or for which any person is or was eligible.
- (3) For the purpose of this section, the chief executive may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive and any institution (or, where they are unable to agree, in accordance with arrangements under that Act settled by the Privacy Commissioner appointed under the Privacy Act 1993), by notice in writing or electronically require the institution to supply all or any of the information set out in subsection (6), in respect of people—
  - (a) who are (or were in any specified period) enrolled as students at the institution; or
  - (b) whose name and date of birth (being the name and date of birth of any person who is, or was during any specified period, receiving a benefit or allowance or student loan) is supplied to the institution by the chief executive, together with the notice.
- (4) A notice under subsection (3) may require the institution to supply the information specified in the notice either immediately or at specified times during the academic year, or both, and in the latter case may require the institution to supply at those times only details of any changes to the information the institution has previously supplied under this section.
- (5) A notice under subsection (3) may include—
  - (a) an identification number assigned by the chief executive to any person who is referred to in the notice; or
  - (b) an identification number assigned to any such person by the institution; or
  - (c) both.
- (6) The details referred to in subsection (3) are—
  - (a) their—
    - (i) full names and addresses; and
    - (ii) their dates of birth;
  - (b) their identification numbers (being either or both of the identification numbers referred to in subsection (5)):

- (c) details of the education or training in which they are so enrolled, and details of the fees for that education or training:
  - (d) if, during the specified period, they are enrolled for any such education or training or ceased to be so enrolled or ceased to be enrolled as students, the details of each such event and the respective dates on which the event occurred:
  - (e) details of their academic performance in any such education or training:
  - (f) details of their citizenship or residency status in New Zealand:
  - (g) details of any allowances granted to the person by the institution on behalf of the Secretary in any academic year before the 1999 academic year:
  - (h) details reasonably required by the chief executive for the administration of the student loan scheme or for the determination or provision of an allowance or a benefit.
- (7) As soon as possible after the time or times specified in a requirement under subsection (3), an institution must supply the information required to the chief executive or any employee or agent of the department authorised by the chief executive to receive such information.
- (8) Information supplied by an institution under subsection (7) must be in a form previously agreed between the institution and the chief executive under the Privacy Act 1993 (or, where they are unable to agree, in a form settled by the Privacy Commissioner appointed under the Privacy Act 1993), and may include coded information.
- (9) Section 104 of the Privacy Act 1993 applies as if subsection (1) of that section also provided that, in relation to the information matching programme in this section, the Commissioner, before seeking a report on any of the matters in section 104(2)(a), (d), or (e) from a tertiary institution, must first seek a report on the matter from the department for the time being responsible for the administration of the Social Security Act 1964.

Section 226A: replaced, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 226A(1) **allowance**: amended, on 17 May 2006, by section 44 of the Education Amendment Act 2006 (2006 No 19).

Section 226A(1) **benefit**: amended, on 15 July 2013, by section 114 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Section 226A(1) **benefit**: amended, on 15 July 2013, by section 129 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Section 226A(1) **benefit**: amended, on 20 August 2012, by section 28(2) of the Social Security (Youth Support and Work Focus) Amendment Act 2012 (2012 No 50).

Section 226A(1) **student loan**: replaced, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 226A(1) **student loan scheme**: replaced, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 226A(2)(a): amended, on 1 November 1999, by section 2(2)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(2)(b): amended, on 1 November 1999, by section 2(2)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(3)(a): amended, on 1 November 1999, by section 2(2)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(3)(b): amended, on 1 November 1999, by section 2(2)(c) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(6)(c): replaced, on 30 August 2011, by section 26(1) of the Education Amendment Act 2011 (2011 No 66).

Section 226A(6)(d): amended, on 30 August 2011, by section 26(2) of the Education Amendment Act 2011 (2011 No 66).

Section 226A(6)(d): amended, on 1 November 1999, by section 2(2)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(6)(e): amended, on 30 August 2011, by section 26(2) of the Education Amendment Act 2011 (2011 No 66).

Section 226A(6)(h): inserted, on 1 November 1999, by section 2(3) of the Education Amendment Act 1999 (1999 No 107).

Section 226A(6)(h): amended, on 30 August 2011, by section 26(3) of the Education Amendment Act 2011 (2011 No 66).

Section 226A(9): amended, on 20 May 2010, by section 49 of the Education Amendment Act 2010 (2010 No 25).

## 226B Offences concerning information requests

- (1) Any institution that intentionally fails or refuses to comply with section 226A(7) commits an offence and is liable on conviction to the penalty specified in subsection (2).
- (1A) An institution commits an offence and is liable on conviction to a penalty specified in subsection (2) if, in response to any

requirement to supply information under section 226A, the institution intentionally—

- (a) makes a false or misleading statement; or
  - (b) makes a statement from which any material matter has been omitted; or
  - (c) provides any false or misleading paper, document, or record; or
  - (d) provides a paper, document, or record from which any material matter has been omitted.
- (2) The maximum penalty for an offence against subsection (1) or (1A) is a fine not exceeding \$5,000, and, where the offence is a continuing one, a fine not exceeding \$500 for each day the offence continues.

Section 226B: inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 226B(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 226B(1A): inserted, on 30 August 2011, by section 27(1) of the Education Amendment Act 2011 (2011 No 66).

Section 226B(1A): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 226B(2): amended, on 30 August 2011, by section 27(2) of the Education Amendment Act 2011 (2011 No 66).

## **227 Fees for domestic students**

- (1) The council of an institution may fix, or specify a means by which there may be calculated or ascertained, a tuition fee for any programme of study or training at the institution.
- (1A) The council of an institution that receives funding under section 159YA or 159ZC must not fix, in relation to domestic students, a fee (or a fee of a particular kind) that exceeds any maximum specified in a condition imposed under section 159YC or 159ZD(2) (whichever is applicable) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.
- (1B) The council of an institution may fix, or specify a means for calculating or ascertaining, a fee for the provision of student services that are provided by the institution or by another person or body on behalf of the institution.

- (1C) If the Minister gives an institution a direction under section 227A(1)(a) listing the categories of student services that the institution may make available, the council of the institution must ensure that any fees fixed under subsection (1B) for the provision of student services relate only to the types of student services that fall within those categories.
- (1D) If an institution is given a direction under section 227A(4), the council of the institution must not fix, in relation to the amount that students may be charged for student services, a fee that exceeds the maximum amount specified in the direction.
- (2) No domestic student shall be or continue to be enrolled in a programme of study or training at an institution unless there have been paid to the council in respect of the student—
  - (a) the tuition fee (if any) fixed, or calculated or ascertained in accordance with a means specified, under subsection (1); and
  - (ab) the fee for the provision of student services (if any) determined under subsection (1B); and
  - (b) all other fees (if any) prescribed by the council.
- (3) Nothing in subsection (2) prevents a council's accepting by instalments any fee required by that subsection to be paid.
- (4) The council of an institution shall take all reasonable steps to ensure that before the procedures for enrolling a student at the institution for the first time in any year are complete the student is given written notice of the circumstances (if any) in which the student is or may be entitled to a refund of all or any part of fees under this section paid or to be paid to the council.
- (5) The power of a council to refund to a student all or any part of any fees paid to it under this section is not limited or affected by—
  - (a) any failure to comply with subsection (4); or
  - (b) the fact that the circumstances fall outside those notified under that subsection; or
  - (c) the fact that the refund is larger than a notice under that subsection provides for.

Section 227: replaced, on 1 January 1992, by section 24 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 227(1): amended, on 30 August 2011, by section 28(1) of the Education Amendment Act 2011 (2011 No 66).

Section 227(1A): inserted, on 1 January 2003, by section 20 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 227(1A): amended, on 1 January 2008, by section 31(a) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 227(1A): amended, on 1 January 2008, by section 31(b) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 227(1B): inserted, on 30 August 2011, by section 28(2) of the Education Amendment Act 2011 (2011 No 66).

Section 227(1C): inserted, on 30 August 2011, by section 28(2) of the Education Amendment Act 2011 (2011 No 66).

Section 227(1D): inserted, on 30 August 2011, by section 28(2) of the Education Amendment Act 2011 (2011 No 66).

Section 227(2): amended, on 30 August 2011, by section 28(1) of the Education Amendment Act 2011 (2011 No 66).

Section 227(2)(ab): inserted, on 30 August 2011, by section 28(3) of the Education Amendment Act 2011 (2011 No 66).

## **227A Ministerial direction to institutions relating to compulsory student services fees**

- (1) For the purpose of ensuring accountability in the use of compulsory student services fees determined under section 227(1B), the Minister may give an institution or institutions a written direction that—
  - (a) lists the categories of student services that the institution or institutions may make available to students:
  - (b) requires the institution or institutions to hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited:
  - (c) requires the institution or institutions to establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the institution, or their representatives, on all or any of the following matters:
    - (i) the types of student services that, subject to subsection (2)(a), are to be made available to students:
    - (ii) the categories of student services that, subject to subsection (2)(b), are to be made available to students:



- (iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**):
    - (iv) the procurement of student services:
    - (v) the method for authorising expenditure on student services:
  - (d) requires the institution or institutions to include in the institution's annual report (under section 220) a description of the services funded out of the student services fee and a statement of the fee income and expenditure for each type of student service.
- (2) If the Minister lists under subsection (1)(a) categories of student services that may be made available to students (**listed categories**),—
- (a) the types of student services described in subsection (1)(c)(i) must fall within the listed categories; and
  - (b) the categories of student services described in subsection (1)(c)(ii) must be listed categories.
- (3) A direction given under subsection (1)—
- (a) may include all or any of the things specified in paragraphs (a) to (d) of that subsection:
  - (b) must specify when the direction must be complied with.
- (4) If an institution does not comply with a direction given under subsection (1), the Minister may give a written direction to that institution specifying—
- (a) the types of student services that the institution may make available to students; and
  - (b) the maximum amount that students may be charged for those services; and
  - (c) when the direction must be complied with.
- (5) Before giving a direction under subsection (1) or (4), the Minister must,—
- (a) by notice in the *Gazette*,—
    - (i) set out the proposed direction; and
    - (ii) invite submissions on it; and
    - (iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and

- (b) consider the submissions (if any) on the proposed direction.
- (6) The council of an institution that is given a direction under subsection (1) or (4) may make statutes under section 194(1) for the purpose of giving effect to the direction.

Section 227A: inserted, on 30 August 2011, by section 29 of the Education Amendment Act 2011 (2011 No 66).

## **228 Fees for international students**

- (1) The council of an institution shall take all reasonable steps to ensure that no person is enrolled at the institution until it has established whether the person is a domestic student or an international student.
- (2) No international student shall be or continue to be enrolled in any programme of study or training at an institution unless there have been paid to the council in respect of the student—
  - (a) an amount fixed by the council that is not less than the council's best estimate of—
    - (i) the cost to the institution (including the institution's marginal administrative and other general costs, and the appropriate portion of any initial or start-up costs of the programme) of providing tuition in the programme for 1 student, in the case of a programme in which no domestic student is enrolled;
    - (ii) the marginal cost to the institution (including the institution's marginal administrative and other general costs, and any marginal initial or start-up costs of the programme) of providing tuition in the programme for 1 student in addition to the domestic students receiving tuition in the programme, in every other case; and
  - (b) an amount fixed by the council that is not less than an amount that in the council's opinion is an appropriate reflection of the use by 1 student receiving tuition in the programme of the capital facilities (if any) whose provision at the institution is necessary by virtue only of the institution's provision of tuition to international students in addition to domestic students; and

- (c) all other fees (if any) prescribed by the council.
- (2A) Notwithstanding subsection (2), a council may accept from an international student in respect of any programme of study or training at an institution an amount that is less than the sum of the amounts referred to in that subsection by an amount that is no greater than the sum of—
  - (a) any amounts by which the council has decided to subsidise the student in respect of the programme; and
  - (b) the appropriate proportion of any amounts by which the council has decided to subsidise the student in respect of programmes of a kind or description that include the programme; and
  - (c) the appropriate proportion of any amounts by which the council has decided to subsidise students of a kind or description that include the student in respect of the programme; and
  - (d) the appropriate proportion of any amounts by which the council has decided to subsidise students of a kind or description that include the student in respect of programmes of a kind or description that include the programme,—out of the general revenue of the council (not being funds provided under section 159YA or 159ZC) or out of any special supplementary grant under that section that may be used for the purpose.
- (2B) Nothing in subsection (2) prevents a council's accepting by instalments any fee required by that subsection to be paid.
- (3) Where an international student has after 31 December 1989 received tuition in a programme of study or training at an institution without paying the full amounts required by paragraphs (a) and (b) of subsection (2) in respect of the programme, the institution may, in any court of competent jurisdiction, recover the underpayment from the student, as a debt to the institution.
- (4) In any year, the amount of any grant for an institution may be reduced from what it would otherwise have been by any amount by which (in the Secretary's opinion), by virtue of the fact that the full amount required by subsection (2)(a) in respect of a programme of study or training at the institution in which an international student was enrolled has not been paid

to the institution, the student's education has been subsidised by public money appropriated by Parliament.

- (5) No grant shall be reduced under subsection (4) unless the Secretary has given to the council of the institution written notice of the circumstances taken into account when the proposed reduction was decided on.
- (6) Where the council of an institution disputes that a grant should be reduced under subsection (4), or disputes the amount by which it should so be reduced, the following provisions apply:
  - (a) the council may, within 28 days of getting notice from the Secretary under subsection (5), by written notice to the Secretary giving the name and address of a proposed arbitrator, require the dispute to be settled by arbitration:
  - (b) if, within 14 days of getting the council's notice, the Secretary has agreed an arbitrator with the council, the agreed arbitrator shall settle the dispute:
  - (c) if, within 14 days of getting the council's notice, the Secretary has not agreed an arbitrator with the council, an arbitrator appointed jointly by the Secretary and by the arbitrator originally proposed by the council shall settle the dispute:
  - (d) the arbitrator's decision is final.
- (7) The council of an institution shall—
  - (a) when an international student enrolls, or resumes attendance, at the institution, give to the Secretary written notice (to the best of the council's knowledge) of the student's name, nationality, and programme of study or training:
  - (b) when an international student ceases to be enrolled at, or ceases to attend, the institution, notify the Secretary in writing:
  - (c) comply with all accounting requirements relating to international students enrolled at institutions contained in any notice published by the Minister in the *Gazette* that is for the time being in force.
- (8) The council of an institution shall take all reasonable steps to ensure that when a student enrolls at the institution (whether for the first time or for a subsequent time) the student is given

written notice of the circumstances (if any) in which the student is or may be entitled to a refund of all or any part of fees under this section paid or to be paid to the council.

- (9) The power of a council to refund to a student all or any part of any fees paid to it under this section is not limited or affected by—
- (a) any failure to comply with subsection (8); or
  - (b) the fact that the circumstances fall outside those notified under that subsection; or
  - (c) the fact that the refund is larger than a notice under that subsection provides for.

Section 228: inserted, on 1 January 1991, by section 38 of the Education Amendment Act 1990 (1990 No 60).

Section 228 heading: amended, on 30 August 2011, by section 30(1) of the Education Amendment Act 2011 (2011 No 66).

Section 228(1): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2): replaced, on 1 January 1992, by section 25(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 228(2): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2): amended, on 30 August 2011, by section 30(4) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2)(a)(i): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2)(a)(ii): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2)(b): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2)(b): amended, on 30 August 2011, by section 30(4) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A): inserted, on 1 January 1992, by section 25(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 228(2A): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A): amended, on 1 January 2008, by section 32 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 228(2A): amended, on 1 January 2004, by section 17(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 228(2A)(a): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A)(b): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A)(c): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2A)(d): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(2B): inserted, on 1 January 1992, by section 25(1) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 228(3): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(3): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(3): amended, on 1 January 1992, by section 25(2) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 228(4): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(4): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(7)(a): amended, on 30 August 2011, by section 30(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228(7)(a): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(7)(b): amended, on 30 August 2011, by section 30(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228(7)(c): amended, on 30 August 2011, by section 30(4) of the Education Amendment Act 2011 (2011 No 66).

Section 228(8): inserted, on 1 January 1992, by section 25(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 228(9): inserted, on 1 January 1992, by section 25(3) of the Education Amendment Act (No 4) 1991 (1991 No 136).

## **228A Tertiary institutions to give prospective students information about fees**

An institution (as defined in section 159(1)) must ensure that prospective students receive, before enrolment is completed, full written details of—

- (a) all fees associated with their programmes; and
- (b) the class or lecture materials, books, special clothing, safety equipment, tools, and other items that are or may be required by the establishment to be bought or provided by students enrolled for each programme of study or training; and

- (c) any fee fixed under section 227(1B) that must be paid to the institution for the provision of student services.

Section 228A: inserted, on 19 December 1998, by section 42 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 228A(a): amended, on 30 August 2011, by section 31(1) of the Education Amendment Act 2011 (2011 No 66).

Section 228A(b): amended, on 30 August 2011, by section 31(2) of the Education Amendment Act 2011 (2011 No 66).

Section 228A(b): amended, on 30 August 2011, by section 31(3) of the Education Amendment Act 2011 (2011 No 66).

Section 228A(c): inserted, on 30 August 2011, by section 31(3) of the Education Amendment Act 2011 (2011 No 66).

## **229 Fees payable to associations of students**

*[Repealed]*

Section 229: repealed, on 11 August 1998, by section 4 of the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998 (1998 No 90).

## **Part 16A**

### **Membership of associations of tertiary students**

Part 16A: inserted, on 11 August 1998, by section 5 of the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998 (1998 No 90).

## **229A Membership of students association voluntary**

No student or prospective student at an institution is required to be a member of a students association.

Section 229A: replaced, on 1 January 2012, by section 6 of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

## **229B Undue influence**

A person must not exert undue influence on any student or prospective student with intent to make that student or prospective student—

- (a) become or remain a member of a students association; or
- (b) cease to be a member of a students association; or
- (c) not become a member of a students association.

Section 229B: replaced, on 1 January 2012, by section 6 of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

### **229C Complaints**

- (1) A student or prospective student who, on reasonable grounds, considers that any person has exerted undue influence in breach of section 229B may lodge a complaint with the council of the institution.
- (2) A complaint must be in writing, and must specify the grounds on which the person believes that undue influence has been exerted.
- (3) A student or prospective student who lodges a complaint—
  - (a) is entitled to be heard on the matter by the council; and
  - (b) may represent himself or herself, or be represented by an advocate.
- (4) A students association in respect of which a complaint has been lodged—
  - (a) is entitled to be heard on the matter by the council; and
  - (b) may be represented by a member of the association or by an advocate.
- (5) The council may refuse to hear a complaint if it believes that no reasonable grounds exist for it to be made.
- (6) If the council hears a complaint, it must deal with that complaint in accordance with the principles of natural justice and the procedures (if any) prescribed by the council in statutes made under section 194.
- (7) The council may uphold, reject, or otherwise decide on the complaint as it considers appropriate in the circumstances, and its decision is final.

Section 229C: replaced, on 1 January 2012, by section 6 of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

### **229CA Students association membership fees**

- (1) No person is required to pay a membership fee to a students association, or to pay money to any other person as an alternative to paying such a membership fee, unless that person chooses to become or remain a member of that association.



- (2) A person who is not a member of a students association may not be required to pay a representation fee to that association for any services that the association provides generally to the institution's student body.
- (3) Subsections (1) and (2) do not prevent a students association—
  - (a) charging a person who is not a member of the association for the provision of a specific service to that person, at that person's request; or
  - (b) being contracted by an institution or any other person to provide services to students of an institution.
- (4) The council of an institution must, if asked by a students association of the institution, collect the membership fees of that association, but only if the association provides the council with—
  - (a) a copy of its current constitution; and
  - (b) an independently audited set of financial accounts of the association for the last financial year.
- (5) The council must pay all membership fees collected on behalf of the students association to the association in a timely manner.
- (6) Despite subsections (4) and (5), the council may decline a request to collect membership fees on behalf of a students association, or may withhold all or part of any membership fees collected, if the council believes that—
  - (a) the terms of the constitution of the association are being breached; or
  - (b) the accounts disclose financial irregularities.
- (7) The council may retain any membership fees that have been withheld under subsection (6) until the council is satisfied that all breaches of the terms of the association's constitution, and all financial irregularities, have been appropriately addressed by the association.
- (8) The council may charge a students association for the actual and reasonable costs incurred by the council in collecting membership fees on behalf of that association.

Section 229CA: inserted, on 1 January 2012, by section 6 of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

**229D Sections 229A to 229CA apply to private training establishments**

Sections 229A to 229CA apply to private training establishments; and, for the purpose of those sections,—

- (a) every reference to an institution includes a reference to a private training establishment; and
- (b) every reference to a council includes a reference to the governing body of the private training establishment.

Section 229D: replaced, on 8 July 2000, by section 25 of the Education Amendment Act 2000 (2000 No 21).

Section 229D heading: amended, on 1 January 2012, by section 7(1) of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

Section 229D: amended, on 1 January 2012, by section 7(2) of the Education (Freedom of Association) Amendment Act 2011 (2011 No 80).

## **Part 17**

### **Education Review Office**

*[Repealed]*

Part 17: repealed, on 25 June 1993, by section 26(4)(b) of the Education Amendment Act 1993 (1993 No 51).

**230 Review of institutions**

*[Repealed]*

Section 230: repealed, on 25 June 1993, by section 26(4)(b) of the Education Amendment Act 1993 (1993 No 51).

**231 Powers of Chief Review Officer**

*[Repealed]*

Section 231: repealed, on 25 June 1993, by section 26(4)(b) of the Education Amendment Act 1993 (1993 No 51).

## **Part 18**

### **Private training establishments**

Part 18: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

#### *Interpretation*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

## 232 Interpretation

In this Part, unless the context otherwise requires,—

**Authority** means the Qualifications Authority

**code** means the code of practice established under section 238F

**governing member**, in relation to a private training establishment, means—

- (a) any director;
- (b) any member occupying a position equivalent to that of a director;
- (c) if the establishment is a trust, any trustee;
- (d) if the establishment is a partnership, any partner;
- (e) any senior manager;
- (f) any shareholder with a controlling interest in the establishment

**senior manager**, in relation to a private training establishment, means—

- (a) the chief executive officer or person occupying an equivalent position; or
- (b) any member of staff in charge of academic issues, marketing, administration, finance, student fee trust funds, or student services.

Section 232: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### *Programmes and training schemes in which international students enrolled*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

## 232A Requirements that private training establishments must comply with before enrolling international students

- (1) A private training establishment must not enrol an international student in, or permit an international student to begin to undertake, all or part of a programme at the establishment unless—
  - (a) the establishment is registered under section 233 and is a signatory to the code; and
  - (b) either—

- (i) the programme is an approved programme and the establishment is accredited to provide the entire programme; or
    - (ii) the programme is of less than 3 months' duration and is exempted under section 232B; and
  - (c) if standards from the Directory of Assessment Standards are included in the programme, the establishment has a consent to assess against standards.
- (2) A private training establishment must not enrol an international student to begin to undertake a training scheme at the establishment unless—
- (a) the establishment is a registered establishment and is a signatory to the code; and
  - (b) either—
    - (i) the training scheme is an approved training scheme; or
    - (ii) the training scheme is of less than 3 months' duration and is exempted under section 232B; and
  - (c) if standards from the Directory of Assessment Standards are included in the training scheme, the establishment has a consent to assess against those standards.
- (3) For the purposes of this section and section 232B, a programme or training scheme is of less than 3 months' duration if the period starting on the day on which the programme or scheme starts and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which the programme or training scheme is, or is proposed to be, provided.

Compare: 1989 No 80 s 232

Section 232A: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **232B Exemptions**

- (1) The Authority may, by notice in the *Gazette*,—
- (a) exempt programmes for the purposes of section 232A(1)(b)(ii); or
  - (b) exempt training schemes for the purposes of section 232A(2)(b)(ii).
- (2) A notice under subsection (1)—

- (a) may exempt only programmes or training schemes that are, or are likely to be, of less than 3 months' duration; and
- (b) may identify programmes or training schemes, or classes of programmes or training schemes, that are exempt; and
- (c) may identify programmes or training schemes by reference to a provider, or a class of providers, that offers them; and
- (d) may be in respect of programmes or training schemes that have been completed, are in progress, or have not yet started.

Compare: 1989 No 80 s 232(2), (3)

Section 232B: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **232C Requirement to be registered before providing approved programmes or training schemes**

A private training establishment must be registered before it can provide an approved programme or training scheme to a student.

Compare: 1989 No 80 s 233

Section 232C: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### *Applications for registration*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **232D Applications for registration of private training establishments**

- (1) A private training establishment that is a body corporate may apply to the Authority for registration of the establishment as a private training establishment for the purposes of this Act.
- (2) The application must—
  - (a) include a written statement setting out—
    - (i) the kinds of education the establishment proposes to provide; and

- (ii) the outcomes it seeks to achieve through the provision of those kinds of education; and
  - (b) demonstrate how the establishment intends to meet the requirements of sections 233(1), 233A(1), and 233B(1) and (2); and
  - (c) contain a statutory declaration from each governing member of the establishment in respect of—
    - (i) any material conflicts of interest arising from the person's role as a governing member of the establishment; and
    - (ii) any interests that the person has in organisations in the education or immigration sector that provide goods or services to tertiary students; and
  - (d) contain a statutory declaration from each governing member of the establishment in respect of the matters described in section 233A(1)(a) to (g); and
  - (e) describe the arrangements that the establishment has in place to manage conflicts of interest that may arise; and
  - (f) be in a form and contain any other information that the Authority requires; and
  - (g) be accompanied by an amount that the Authority requires as a deposit on the fee charged under section 254(2)(a)(vii).
- (3) The Authority must not consider an application for registration if the applicant does not provide all the information required under subsection (2).

Compare: 1989 No 80 ss 234, 235

Section 232D: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**232E Authority may verify identity of governing members of private training establishment**

- (1) The Authority may require a private training establishment to provide, to the satisfaction of the Authority, evidence of the identities of its governing members—
- (a) before considering an application for registration from the establishment; or
  - (b) at any time there is a change in the membership of the governing members of the establishment.

- (2) When acting under subsection (1), the Authority may interview any governing member of the establishment for the purpose of verifying his or her identity.

Section 232E: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

*Determination of application*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**233 Grant or refusal of application**

- (1) The Authority must grant an application for registration of a private training establishment, and may grant the application, only if it is satisfied that—
- (a) every governing member of the establishment is a fit and proper person (after considering the criteria set out in section 233A); and
  - (b) the establishment has in place effective arrangements for managing any conflicts of interest that exist or may arise; and
  - (c) no governing member of the establishment has a material conflict of interest that the Authority considers is or is likely to be unmanageable; and
  - (d) no governing member of the establishment has an interest of a kind described in section 232D(2)(c)(ii) that the Authority considers is or is likely to be unmanageable; and
  - (e) the establishment has, or will at the relevant time have, adequate staff, equipment, and premises to provide its programmes or training schemes; and
  - (f) the establishment,—
    - (i) in the case of an establishment that is already operational, has acceptable financial management practices and performance (for example, is able to pay its staff, taxes, and creditors); and
    - (ii) in the case of an establishment that is not yet operational, is likely to have acceptable financial management practices and performance (for ex-

- ample, is likely to be able to pay its staff, taxes, and creditors); and
- (g) the establishment complies, or is capable of complying and likely to comply, with the conditions of registration under section 233B; and
  - (h) before accepting the enrolment of any prospective student, the establishment provides or will provide that student with a written statement of—
    - (i) the total costs and other financial commitments associated with the programme or training scheme for which the student seeks enrolment; and
    - (ii) any material conflicts of interest of any of the governing members of the establishment; and
    - (iii) any interests of a kind described in section 232D(2)(c)(ii); and
  - (i) in the case of an establishment that intends to enrol international students, the establishment will become a signatory to the code before enrolling any international students.
- (2) Registration may be granted without limitation as to time or for a specified period.
  - (3) The grant of registration does not entitle the establishment or any of its students to receive financial assistance out of public money appropriated by Parliament.
  - (4) The Authority may refuse to grant registration to a private training establishment or withdraw the establishment's registration (if already granted) if the Authority is satisfied that a governing member of the establishment has provided a false or misleading declaration under section 232D(2)(c).
  - (5) The Authority must give written notice to a private training establishment—
    - (a) when it grants, refuses to grant, or withdraws registration; and
    - (b) if it refuses or withdraws registration, give reasons for doing so.

Section 233: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).



**233A Criteria for determining whether governing member of private training establishment is fit and proper person**

- (1) For the purpose of determining under section 233(1)(a) whether a governing member of a private training establishment is a fit and proper person for that position, the Authority must give any weight that it considers appropriate to all of the following matters:
  - (a) the person's experience in the provision of education services (for example, any previous involvement in a registered private training establishment); and
  - (b) whether the person was a governing member of a registered private training establishment that was closed, sold due to insolvency, or taken over; and
  - (c) whether the person has been convicted of any offence involving fraud, violence, or dishonesty, or any offence under this Act or section 352 of the Immigration Act 2009; and
  - (d) whether the person is a defendant in proceedings in respect of an offence described in paragraph (c); and
  - (e) whether the person was adjudicated bankrupt under the Insolvency Act 2006 or the Insolvency Act 1967; and
  - (f) whether the person is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of sections 382, 383, 385, and 386A of the Companies Act 1993; and
  - (g) whether the person has failed to disclose any material conflict of interest as required under section 232D(2)(c)(i); and
  - (h) any other matter that the Authority considers relevant.
- (2) If the applicant has had direct involvement in the provision of education services that have failed, the Authority must give the applicant an opportunity to explain why the risk of this occurring again is unlikely.

Section 233A: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

*Conditions and other requirements of  
registration*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**233B Conditions of registration**

- (1) It is a condition of registration of a private training establishment that it will at all times comply with the requirements in the rules made under section 253, except to the extent that the Authority exempts the establishment, by a condition on its registration, from compliance.
- (2) It is a condition of registration that a registered establishment will keep the written statement required under section 232D(2)(a) up to date.
- (3) It is a condition of registration that a registered establishment will ensure that—
  - (a) existing governing members keep the declarations required under section 232D(2)(c) and (d) up to date; and
  - (b) any new governing member submits the declarations required under section 232D(2)(c) and (d) before commencing as a governing member of the establishment.
- (4) The Authority may impose conditions on the registration of an establishment that are specific to the establishment or a group or class of establishments.
- (5) The Authority may at any time, with the agreement of the establishment,—
  - (a) impose new conditions on the establishment's registration; or
  - (b) amend or revoke any existing conditions.
- (6) The Authority may, without the agreement of an establishment, impose conditions on the establishment's registration, or amend or revoke any existing conditions, but only if the Authority has first—
  - (a) given written notice to the establishment of its intentions; and
  - (b) given the establishment a reasonable opportunity to respond to the notice; and
  - (c) considered any submissions made by the establishment in response to the notice.

- (7) When conditions are imposed, amended, or revoked, the Authority must give written notice to the establishment of the new, amended, or revoked conditions.

Compare: 1989 No 80 s 236AA

Section 233B: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **233C Annual fee**

Every registered private training establishment must pay the Authority an annual registration fee of an amount prescribed by or determined under rules made under section 253.

Section 233C: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### *Cancellation and lapse of registration*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **233D Cancellation of registration**

- (1) The Authority may cancel the registration of a registered private training establishment—
- (a) if it is satisfied on reasonable grounds that—
    - (i) the establishment no longer meets 1 or more of the criteria set out in section 233(1); or
    - (ii) the establishment is not complying, or has not complied, with 1 or more of the conditions applying to it; or
  - (b) if the establishment has provided false or misleading information in its application for registration; or
  - (c) at the written request of the establishment.
- (2) The Authority must cancel the registration of a private training establishment if—
- (a) the establishment has been convicted of an offence against—
    - (i) this Act; or
    - (ii) section 352 of the Immigration Act 2009; or
  - (b) a governing member of the establishment is convicted of any serious criminal activity or any offence referred to in paragraph (a), and the establishment fails to com-

ply with a written notice issued by the Authority on reasonable grounds requiring that the person be removed, within 2 months of receipt of the notice, from his or her position as a governing member and from every other position in the establishment.

- (3) Before cancelling a registration under subsection (1)(a) or (b), the Authority must—
  - (a) notify the establishment that it is considering cancelling the establishment's registration, and give reasons; and
  - (b) give the establishment a reasonable opportunity to respond to the notice; and
  - (c) consider any submissions made by the establishment in response to the notice.
- (4) If the Authority cancels a registration, it must give notice of its decision to both the establishment and the Commission, with reasons.
- (5) Nothing in this section limits the Authority's powers under section 255(7)(a) to cancel an establishment's registration.

Compare: 1989 No 80 s 237

Section 233D: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **233E Effect of cancellation**

- (1) Cancellation of registration under section 233D takes effect on the date specified by the Authority in the notice given under section 233D(4) (the **date of cancellation**).
- (2) If the registration of a registered private training establishment is cancelled under section 233D,—
  - (a) from the date of cancellation,—
    - (i) all approved programmes or training schemes granted to the establishment are withdrawn; and
    - (ii) all accreditations granted to the establishment are withdrawn; and
    - (iii) all consents to assess against standards granted to the establishment are withdrawn; and
  - (b) no notice is required to be given to the establishment for those withdrawals.

Compare: 1989 No 80 s 237(5), (6)

Section 233E: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**234 Lapse of registration**

- (1) The registration of a registered private training establishment lapses—
  - (a) on the date that is 1 year after registration is granted if,—
    - (i) within that period, the establishment does not provide an approved programme that it is accredited to provide to enrolled students; and
    - (ii) within that period, the establishment does not provide an approved training scheme to enrolled students;
  - (b) on the date that is 1 year after the establishment has ceased to provide to enrolled students—
    - (i) any approved programme it is accredited to provide; and
    - (ii) any approved training scheme.
- (2) Subsection (1) does not affect the registration of a private training establishment if—
  - (a) the time for the lapse of the establishment's accreditation is extended under section 250B(2) beyond either of the dates specified in subsection (1) of this section, in which case the establishment's registration lapses when the accreditation lapses; or
  - (b) the time for the lapse of the establishment's training scheme approval is extended under section 251C(2) beyond either of the dates specified in subsection (1) of this section, in which case the establishment's registration lapses when the training scheme approval lapses.
- (3) If a registered private training establishment is required under this Act to pay any fees to the Authority, and fails to pay those fees after receiving 2 reminder notices within 3 months, the registration of the establishment lapses on the date that is 1 calendar month after the date of the second reminder notice from the Authority.
- (4) The Authority must give written notice of the lapse of an accreditation to the establishment.

Section 234: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

*Fees for domestic students*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**234A Fees for domestic students must not exceed maximums set in conditions of funding**

- (1) A registered private training establishment that receives funding under section 159YA or 159ZC must not exceed the maximum amount when fixing a tuition fee or a fee of a particular kind for any programme or training scheme at the establishment.
- (2) If a registered private training establishment is given a direction under section 235D(4), the establishment must not fix, in relation to the amount that students may be charged for student services, a fee that exceeds the maximum amount specified in the direction.
- (3) In subsection (1), **the maximum amount** means the maximum specified in a condition imposed under section 159YC or 159ZD(2) (whichever is applicable) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.

Compare: 1989 No 80 s 236C

Section 234A: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

*Information that must be given to prospective students*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**234B Information that private training establishments must give prospective students**

Every private training establishment must—

- (a) ensure that all printed and other information made available to prospective students has full details of—

- (i) the total fees for each programme or training scheme, including fees for class or lecture materials, books, special clothing, safety equipment, tools, and any other items that are or may be provided to students enrolled for that programme or training scheme, and including any students association membership fees; and
  - (ii) the class or lecture materials, books, special clothing, safety equipment, tools, and other items that are or may be required by the establishment to be bought or provided by students enrolled for each programme or scheme; and
- (b) before accepting the enrolment of any prospective student, give the student a written statement of—
  - (i) the total costs of the programme or training scheme and all other financial commitments associated with the programme or training scheme; and
  - (ii) the cost of fees charged for student services provided by the establishment; and
  - (iii) any material conflicts of interest of any of the governing members of the establishment; and
  - (iv) any interests of a kind described in any statement required under section 232D(2)(c)(ii); and
- (c) give every prospective student a written statement of his or her entitlements under sections 235 and 235A, in the event that the student withdraws from a programme or training scheme.

Compare: 1989 No 80 s 236A

Section 234B: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### *Protection of student fees*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

## **234C Interpretation**

- (1) In sections 234D to 235C,—

**independent trustee**, in relation to a private training establishment, means a trustee that does not provide any other service to the establishment other than that referred to in section 234E

**refund period** means, in relation to a domestic student who is enrolled in a programme or part of a programme, or enrolled in a training scheme, the 7 days after the first day of the programme or scheme for which the attendance of the student at the establishment is required

**trustee** means Public Trust, a trustee company under the Trustee Companies Act 1967, a chartered accountant in public practice, or a lawyer whose practising certificate allows the holding of trust funds.

- (2) In sections 234D to 235C, the requirement that funds paid by or on behalf of a student be deposited with an independent trustee applies to all components of any fee payable by the student (for example, it includes any component of the fee payable by the student in respect of accommodation costs or agent commissions).

Section 234C: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

#### **234D Application of rules relating to student fee protection**

- (1) This section applies to a person who receives money from a student for the purpose of enrolling, or helping the student to enrol, in a programme or training scheme at a private training establishment.
- (2) A person to whom this section applies must comply with the requirements of the rules made under section 253 that relate to student fee protection.

Section 234D: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

#### **234E Student fees must be deposited with independent trustee**

- (1) If a private training establishment receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the establishment must—
- (a) deposit those funds, as soon as practicable, with an independent trustee approved by the Authority; and



- (b) hold those funds on trust for the student until they are deposited with the independent trustee.
- (2) If a person to whom section 234D applies receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the person must—
  - (a) deposit those funds, as soon as practicable, with an independent trustee approved by the Authority unless the establishment has made alternative arrangements that are acceptable to the Authority; and
  - (b) hold those funds on trust for the student until they are deposited with the independent trustee or in accordance with the alternative arrangements referred to in paragraph (a).
- (3) An independent trustee approved by the Authority must comply with the requirements of any rules made under section 253 relating to student fee protection.
- (4) The Authority—
  - (a) may withdraw its approval of a particular trustee if satisfied that the trustee is not managing the trust funds in accordance with the requirements of the rules; and
  - (b) must, if approval for a trustee is withdrawn, appoint a new trustee in accordance with the rules.

Section 234E: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **235 Refund entitlements of domestic students**

- (1) A domestic student who is enrolled at a private training establishment for all or part of a programme or training scheme that is of more than 3 months' duration and who withdraws from that programme or scheme within the refund period is entitled to a refund, without deduction, of so much of any payment, or of the sum of any payments, made by the student in respect of the programme or scheme, and, if withdrawal from the programme or scheme also constitutes complete withdrawal from the establishment, in respect of enrolment at the establishment, as exceeds \$500 or 10% of the amount of that payment or of the sum of those payments, whichever is the lesser.

- (2) If the student withdraws from a programme or training scheme within the refund period, the independent trustee must refund all payments made to it by the private training establishment in respect of the programme or scheme—
  - (a) to the trustee of the student's new education provider; or
  - (b) if the fee has been paid for by student loan money, to the department defined in section 235F(1); or
  - (c) to the student, if neither paragraph (a) nor (b) applies.
- (3) When the refund period, in relation to any fees paid by or behalf of a student, has expired,—
  - (a) the fees paid must continue to be held in trust by the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under section 253; or
  - (b) the private training establishment may, if the Authority approves, make alternative arrangements in relation to the fees paid.

Section 235: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **235A Refund entitlements of international students**

- (1) A private training establishment must—
  - (a) allow every international student enrolled for a programme or training scheme that is of 3 months' duration or more to withdraw from it at any time within the refund period; and
  - (b) refund to every international student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that programme or training scheme, and, if withdrawal from the programme or scheme also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under section 235B; and
  - (c) allow every international student enrolled for a programme or training scheme that is of less than 3 months'

- duration to withdraw from it within a period (being less than 7 days) specified by the Authority; and
- (d) refund to every international student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the programme or training scheme.
- (2) For the purposes of subsection (1)(c), a programme or training scheme is of less than 3 months' duration if the period starting on the day on which the programme or scheme starts and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which the programme or training scheme is, or is proposed to be, provided.
  - (3) When the refund period, in relation to any fees paid by or on behalf of an international student, has expired,—
    - (a) the fees paid must continue to be held in trust with the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under section 253; or
    - (b) the private training establishment may, if the Authority approves, make alternative arrangements in relation to the fees paid.
  - (4) In this section, **refund period** means the period referred to in section 235B(1)(a) as specified in the notice made under section 235B.

Section 235A: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **235B Refund requirements set by *Gazette* notice**

- (1) The Minister must specify, by notice in the *Gazette*, for the purposes of refunds under section 235A,—
  - (a) the period within which an international student may withdraw from a programme or training scheme of 3 months' duration or more and be entitled to a refund under that section; and
  - (b) the maximum percentage of the payment or payments that an establishment may retain; and

- (c) the cost components of the fee total on which the maximum percentage is determined; and
  - (d) the expenses or categories of expenses that the establishment must show that it has incurred in relation to an international student in order to deduct the maximum percentage.
- (2) Before giving notice in the *Gazette* under subsection (1), the Minister must, as the Minister considers appropriate, consult with any 1 or more of the following:
  - (a) private training establishments;
  - (b) sector and industry representative organisations;
  - (c) any other relevant bodies.
- (3) A notice under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 235B: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

Section 235B(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **235C Rules apply if students withdraw because of programme or training scheme closure**

Any fees paid by or on behalf of any student who withdraws from a programme or training scheme because of the closure of the programme or scheme are subject to the protections set out in the rules made under section 253.

Section 235C: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **235D Ministerial direction to registered private training establishments relating to compulsory student services fees**

- (1) For the purpose of ensuring accountability in the use of compulsory student services fees, the Minister may give a registered private training establishment or registered private training establishments a written direction that—
  - (a) lists the categories of student services that the establishment or establishments may make available to students:

- (b) requires the establishment or establishments to hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited:
  - (c) requires the establishment or establishments to establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the establishment, or their representatives, on all or any of the following matters:
    - (i) the types of student services that, subject to subsection (2)(a), are to be made available to students:
    - (ii) the categories of student services that, subject to subsection (2)(b), are to be made available to students:
    - (iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**):
    - (iv) the procurement of student services:
    - (v) the method for authorising expenditure on student services:
  - (d) requires the establishment or establishments to provide each year to students a written report describing the services that have been funded out of the student services fee and a statement of the fee income and expenditure on each type of student service.
- (2) If the Minister lists under subsection (1)(a) categories of student services that may be made available to students (**listed categories**),—
- (a) the types of student services described in subsection (1)(c)(i) must fall within the listed categories; and
  - (b) the categories of student services described in subsection (1)(c)(ii) must be listed categories.
- (3) A direction given under subsection (1)—
- (a) may include all or any of the things specified in paragraphs (a) to (d) of that subsection:
  - (b) must specify when it must be complied with.

- (4) If a registered private training establishment does not comply with a direction given under subsection (1), the Minister may give a written direction to that establishment specifying—
- (a) the types of student services that the establishment may make available to students; and
  - (b) the maximum amount that students may be charged for those services; and
  - (c) when the direction must be complied with.
- (5) Before giving a direction under subsection (1) or (4), the Minister must,—
- (a) by notice in the *Gazette*,—
    - (i) set out the proposed direction; and
    - (ii) invite submissions on it; and
    - (iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and
  - (b) consider the submissions (if any) on the proposed direction.
- (6) In subsection (1), **compulsory student services fees** are fees for the provision of student services that a student must pay to a registered private training establishment as a condition of enrolment in a programme or training scheme at the establishment.

Section 235D: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

*Information sharing with other government  
departments*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**235E Private training establishment to notify immigration officer if student withdraws from programme or training scheme**

- (1) A private training establishment must ensure that, within 7 days of the withdrawal of any student from a programme or training scheme at the establishment, an immigration officer (within the meaning of section 4 of the Immigration Act 2009) is given written notice of the name of the student and the pro-

gramme or training scheme, and the day on which the student withdrew.

- (2) Subsection (1) does not apply to a student if the establishment is satisfied on reasonable grounds that the student is a domestic student.

Compare: 1989 No 80 s 236B

Section 235E: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

### **235F Disclosure of enrolment information by private training establishments**

- (1) In this section, unless the context otherwise requires,—  
**allowance** means an allowance established by regulations made under section 303, or identified by *Gazette* notice under section 307AB

**benefit** means jobseeker support under the Social Security Act 1964

**chief executive** means the chief executive of the department

**department** means the department for the time being responsible for the administration of the Social Security Act 1964 and for the administration of Part 25 of this Act

**specified period** means any period specified in a notice under subsection (3)

**student loan** has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011

**student loan scheme** has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011.

- (2) The purpose of this section is to facilitate the disclosure of information by governing bodies of private training establishments to the department, in order to verify—
- (a) the entitlement or eligibility of any person to or for any benefit or allowance or student loan; or
  - (b) the amount of any benefit or allowance or student loan to which any person is or was entitled or for which any person is or was eligible.
- (3) For the purpose of this section, the chief executive may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive

and any institution (or, where they are unable to agree, in accordance with arrangements under that Act settled by the Privacy Commissioner appointed under the Privacy Act 1993), by notice in writing, or electronically, require the institution to supply all or any of the information set out in subsection (4), in respect of people—

- (a) who are (or were in any specified period) enrolled as students at the private training establishment; or
  - (b) whose name and date of birth (being the name and date of birth of any person who is, or was during any specified period, receiving a benefit or allowance or student loan) is supplied to the private training establishment by the chief executive, together with the notice.
- (4) A notice under subsection (3) may require the private training establishment to supply the information specified in the notice either immediately or at specified times during the academic year, or both, and in the latter case may require the private training establishment to supply at those times only details of any changes to the information the private training establishment has previously supplied under this section.
- (5) A notice under subsection (3) may include—
- (a) an identification number assigned by the chief executive to any person who is referred to in the notice; or
  - (b) an identification number assigned to any such person by the private training establishment; or
  - (c) both.
- (6) The details referred to in subsection (3) are—
- (a) their—
    - (i) full names and addresses; and
    - (ii) dates of birth;
  - (b) their identification numbers (being either or both of the identification numbers referred to in subsection (5));
  - (c) details of the education or training in which they are so enrolled, and details of the fees for that education or training;
  - (d) if, during the specified period, they enrolled for any such education or training or ceased to be so enrolled or ceased to be enrolled as a student, the details of each



- such event and the respective dates on which the event occurred:
- (e) details of their academic performance in any such education or training:
  - (f) details of their citizenship or residency status in New Zealand:
  - (g) details of any allowances granted to them by the private training establishment on behalf of the Secretary in any academic year before the 1999 academic year:
  - (h) details reasonably required by the chief executive for the administration of the student loan scheme or for the provision or determination of a benefit or allowance.
- (7) As soon as possible after the time or times specified in a requirement under subsection (3), a private training establishment must supply the information required to the chief executive or any employee or agent of the department authorised by the chief executive to receive such information.
- (8) Information supplied by a private training establishment under subsection (7) must be in a form previously agreed between the private training establishment and the chief executive under the Privacy Act 1993 (or, where they are unable to agree, in a form settled by the Privacy Commissioner appointed under the Privacy Act 1993), and may include coded information.
- (9) Section 104 of the Privacy Act 1993 applies as if subsection (1) of that section also provided that, in relation to the information matching programme in section 226A of this Act, the Commissioner, before seeking a report on any of the matters in section 104(2)(a), (d), or (e) from a private training establishment, must first seek a report on the matter from the department for the time being responsible for the administration of the Social Security Act 1964.

Compare: 1989 No 80 s 238B

Section 235F: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

Section 235F(1) **benefit**: amended, on 15 July 2013, by section 114 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Section 235F(1) **benefit**: amended, on 15 July 2013, by section 129 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

Section 235F(1) **benefit**: amended, on 20 August 2012, by section 28(2) of the Social Security (Youth Support and Work Focus) Amendment Act 2012 (2012 No 50).

Section 235F(1) **student loan**: replaced, on 1 April 2012, pursuant to section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 235F(1) **student loan scheme**: replaced, on 1 April 2012, pursuant to section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

## **236 Offences concerning information requests**

- (1) A private training establishment that intentionally fails or refuses to comply with section 235F(7) commits an offence and is liable on conviction to the penalty specified in subsection (3).
- (2) A private training establishment commits an offence and is liable on conviction to the penalty specified in subsection (3) if, in response to any requirement to supply information under section 235F(7), the establishment intentionally—
  - (a) makes a false or misleading statement; or
  - (b) makes a statement from which any material matter has been omitted; or
  - (c) provides any false or misleading paper, document, or record; or
  - (d) provides a paper, document, or record from which any material matter has been omitted.
- (3) The maximum penalty for an offence against subsection (1) or (2) is a fine not exceeding \$5,000, and, if the offence is a continuing one, a fine not exceeding \$500 for each day the offence continues.

Compare: 1989 No 80 s 238C

Section 236: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

Section 236(1): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 236(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### *Student records*

Heading: inserted, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**236A Duties of private training establishments to maintain student records**

- (1) Every private training establishment must—
  - (a) keep accurate enrolment and academic records for each student enrolled in a programme or training scheme provided by the establishment; and
  - (b) comply with rules made under section 253(1)(n) in respect of those records; and
  - (c) ensure that the enrolment records required to be kept under this section are up to date; and
  - (d) ensure that the enrolment records are readily available, upon request, to—
    - (i) the Authority;
    - (ii) Immigration New Zealand;
    - (iii) the administrator of the code (within the meaning of Part 18A);
    - (iv) the department for the time being responsible for the administration of the Social Security Act 1964 and for the administration of Part 25 of this Act;
    - (v) Public Trust, if it is approved as an independent trustee for the private training establishment.
- (2) If a private training establishment closes, the establishment must, in respect of each student, forward his or her records kept under this section to the student's new education provider, or to the student if there is no new education provider.

Section 236A: replaced, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**237 Cancellation of registration**

*[Repealed]*

Section 237: repealed, on 30 August 2011, by section 32 of the Education Amendment Act 2011 (2011 No 66).

**238 Notice**

*[Repealed]*

Section 238: repealed, on 1 January 2003, by section 25(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## Part 18A

### International students

Part 18A: inserted, on 25 October 2001, by section 48 of the Education Standards Act 2001 (2001 No 88).

Part 18A heading: amended, on 12 December 2002, by section 27 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### 238D Interpretation

In this Part, unless the context otherwise requires,—

**administrator** means the person or organisation responsible for administering the code

**code** means the code of practice established under section 238F

**IEAA** means the International Education Appeal Authority established by the code

**international student** means a person who—

- (a) *[Repealed]*
- (b) is enrolled by a provider; and
- (c) in relation to a provider, is an international student as defined in section 2(1)

**provider** means—

- (a) a registered school; or
- (b) an institution as defined in section 159; or
- (c) a private training establishment holding a current registration under Part 18; or
- (d) an organisation that provides adult and community education and receives funding under section 159YA or 159ZC

**review panel** means the review panel established by the code.

Section 238D: inserted, on 25 October 2001, by section 48 of the Education Standards Act 2001 (2001 No 88).

Section 238D **international student** paragraph (a): repealed, on 12 December 2002, by section 28 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 238D **international student** paragraph (c): replaced, on 30 August 2011, by section 33 of the Education Amendment Act 2011 (2011 No 66).

Section 238D **provider** paragraph (c): amended, on 17 May 2006, by section 46(a) of the Education Amendment Act 2006 (2006 No 19).

Section 238D **provider** paragraph (d): inserted, on 17 May 2006, by section 46(b) of the Education Amendment Act 2006 (2006 No 19).

Section 238D **provider** paragraph (d): amended, on 1 January 2008, by section 34 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

**238E Signatories to code may enrol persons as international students**

- (1) A provider may enrol a person as an international student or continue to have an international student enrolled, so long as the provider is a signatory to the code.
- (2) A provider must not enrol a person as an international student or continue to have an international student enrolled, or provide educational instruction for such a person, if—
  - (a) the provider is not a signatory to the code; or
  - (b) the provider is removed as a signatory to the code under section 238G; or
  - (c) for any other reason provided in the code, the provider ceases to be a signatory to the code.
- (3) A provider that is suspended under section 238G may continue to have international students enrolled and may provide educational instruction to only those students to the extent permitted by the review panel under that section.
- (4) Until 1 July 2003, nothing in subsection (1) or subsection (2) applies to providers who enrol international students only on courses of less than 3 months' duration (as that term is defined in section 232(4)).

Section 238E: inserted, on 25 October 2001, by section 48 of the Education Standards Act 2001 (2001 No 88).

Section 238E(4): inserted, on 12 December 2002, by section 29 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**238EA Obligation on provider to enrol person as international student**

A provider must enrol a person as an international student if the person is not a domestic student and the provider—

- (a) provides the person with educational instruction for more than 2 weeks; or
- (b) accepts tuition fees from the person.

Section 238EA: inserted, on 30 August 2011, by section 34 of the Education Amendment Act 2011 (2011 No 66).

**238F Code**

- (1) The Minister may publish a code of practice that provides a framework for the pastoral care of international students.
- (2) Without limiting subsection (1), the code may include provisions for all or any of the following purposes:
  - (a) designating the administrator:
  - (b) setting out requirements relating to the manner in which providers may assess and recruit prospective international students, including the information to be given by providers about courses, procedures, and costs:
  - (c) providing for the welfare of international students, including the support services to be provided by a provider and any reporting obligations:
  - (d) requiring providers to review their own performance to ensure compliance with the code, and providing for the designation or appointment of an independent person or organisation to monitor the performance of providers to ensure compliance with the code:
  - (e) establishing the IEAA to investigate and determine complaints from international students or their authorised representatives about alleged breaches of the code, after all internal grievance procedures have been exhausted, to investigate and determine complaints from the administrator about alleged breaches of the code, and to refer appropriate cases to the review panel; setting out rules of procedure or empowering the IEAA to regulate its own procedure; and, subject to section 238G, specifying the remedies and sanctions it may impose:
  - (f) establishing the review panel to determine whether a signatory should be removed or suspended as a signatory to the code; setting out rules of procedure or empowering the review panel to regulate its own procedure; and, subject to section 238G, specifying the remedies and sanctions it may impose:
  - (g) despite everything in the Public Finance Act 1989, requiring providers to indemnify the administrator:

- (h) providing for such other matters as are contemplated by or necessary for giving full effect to this Part and for its due administration.
- (3) The code of practice may make different provisions in relation to international students aged under 18 and in relation to international students aged 18 or over.
- (4) The code is binding on all parties who are signatories to the code.
- (5) The Minister must notify the making of the code in the *Gazette* and make copies available for inspection free of charge, or for purchase at a reasonable cost, in such form and at such places as the Minister determines.

Section 238F: inserted, on 25 October 2001, by section 48 of the Education Standards Act 2001 (2001 No 88).

Section 238F(2)(e): amended, on 30 August 2011, by section 35(a) of the Education Amendment Act 2011 (2011 No 66).

Section 238F(2)(e): amended, on 30 August 2011, by section 35(b) of the Education Amendment Act 2011 (2011 No 66).

### **238G Sanctions**

- (1) If it finds that a signatory to the code has committed a serious breach of the code of practice, the IEAA may recommend to the review panel that—
  - (a) the provider be removed as a signatory to the code; or
  - (b) the provider be suspended for a specified period as a signatory to the code.
- (2) If it finds that a signatory to the code has committed a breach of the code other than a serious breach, the IEAA may impose an appropriate sanction (other than a sanction referred to in subsection (1)(a) or (b)) provided in the code.
- (3) If it considers that the sanction it has imposed on a provider under subsection (2) has not been complied with to its satisfaction, the IEAA can recommend to the review panel that—
  - (a) the provider be removed as a signatory to the code; or
  - (b) the provider be suspended for a specified period as a signatory to the code.
- (4) The review panel may—
  - (a) impose the sanction referred to in subsection (1)(a) or (b) that is recommended by the IEAA; or

- (b) substitute the other sanction referred to in subsection (1); or
  - (c) substitute an appropriate lesser sanction provided for in the code; or
  - (d) set aside the recommendation made by the IEAA.
- (5) At any time pending a final determination by the review panel, it may refer a matter back to the IEAA with directions to reconsider the whole or any specified part of the matter.

Section 238G: inserted, on 25 October 2001, by section 48 of the Education Standards Act 2001 (2001 No 88).

### **238H Export education levy**

- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations imposing an export education levy on providers who receive tuition fees from international students enrolled with them.
- (2) Without limiting subsection (1), regulations made under this section must—
- (a) prescribe the amount, a method or methods for calculating the amount, or both, of export education levy payable by individual providers, and may prescribe different amounts, or different methods of calculating the amounts, payable by different classes of provider; and
  - (b) prescribe when the levy, or any part of the levy, is payable; and
  - (c) designate the agency that will administer the levy and, if that agency is the Ministry, the regulations may authorise the Ministry to delegate all or specified aspects of the levy's collection and use to another body; and
  - (d) require that a provider supplies, on request by the agency responsible for the administration of the levy, information on student numbers or any other matter that is necessary to determine or verify the amount of levy payable by the provider.
- (e) *[Repealed]*
- (3) The Minister must consult with providers before recommending that regulations be made under subsection (1) that prescribe or amend an export education levy.



(4) *[Repealed]*

Section 238H: replaced, on 12 December 2002, by section 30 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 238H(2)(b): amended, on 30 August 2011, by section 36(1) of the Education Amendment Act 2011 (2011 No 66).

Section 238H(2)(d): amended, on 20 May 2010, by section 51 of the Education Amendment Act 2010 (2010 No 25).

Section 238H(2)(e): repealed, on 31 August 2004, by section 3 of the Education (Export Education Levy) Amendment Act 2004 (2004 No 75).

Section 238H(4): repealed, on 30 August 2011, by section 36(2) of the Education Amendment Act 2011 (2011 No 66).

**238I Purpose and administration of export education levy**

(1) The purposes to which the funds of the levy may be put are as follows:

- (a) the development, promotion, and quality assurance of the export education sector, which may include (without limitation)—
  - (i) professional and institutional development; and
  - (ii) marketing; and
  - (iii) implementation of scholarship schemes; and
  - (iv) research, and resource development; and
  - (v) support (financial or otherwise) of other bodies engaged in the development, promotion, or quality assurance of the export education sector:
- (ab) the making of payments as set out in subsections (1A) and (1B):
- (b) the administration and audit of the code:
- (c) the general administration of the levy and associated purposes.

(1A) Subsection (1B) applies if—

- (a) an international student is or was enrolled with a private training establishment for a course of study or training; and
- (b) at the time of the student's enrolment the private training establishment held a current registration under Part 18; and
- (c) the private training establishment has not, cannot, or will not provide, in whole or in part, the course of study or training.

- (1B) If this subsection applies, the funds of the levy may be used for any of the following:
- (a) to make payment to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment in respect of the student's course of study or training if, and to the extent that,—
    - (i) the private training establishment has not refunded the tuition fees or other payment; and
    - (ii) the agency responsible for the administration of the levy approves the reimbursement of the student as necessary and appropriate in the circumstances:
  - (b) with the approval of the Minister, to reimburse the Crown for any sum provided by the Crown and paid to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment in respect of the student's course of study or training if, and to the extent that,—
    - (i) the private training establishment had not refunded the tuition fees or other payment; and
    - (ii) the agency responsible for the administration of the levy approved the reimbursement of the student as necessary and appropriate in the circumstances:
  - (c) with the approval of the Minister, to reimburse, in whole or in part, the agency responsible for the administration of the levy, or any Crown entity, for—
    - (i) costs incurred by that agency or Crown entity in placing the student with an alternative provider; or
    - (ii) other costs incurred by that agency or Crown entity as a direct result of the private training establishment not providing the course of study or training.

- (2) The funds of the levy must be kept in a separate bank account that is used only for the purposes of the levy.
- (3) As soon as practicable after 1 July in each year, the agency responsible for the administration of the levy must present to the Minister an annual report on the administration of the levy, which must include audited financial statements prepared in accordance with generally accepted accounting practice; and the Minister must present a copy of the report to the House of Representatives.
- (4) The amount of levy payable by a provider under regulations made under this section is a debt due to the Crown and may be recovered in any court of competent jurisdiction.
- (5) No later than 1 March 2006, the Minister must—
  - (a) undertake, in consultation with providers, a review of the operation, administration, and effectiveness of the export education levy; and
  - (b) prepare a report on the findings of the review; and
  - (c) present a copy of the report to the House of Representatives.

Section 238I: inserted, on 12 December 2002, by section 30 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 238I(1)(ab): inserted, on 31 August 2004, by section 4(1) of the Education (Export Education Levy) Amendment Act 2004 (2004 No 75).

Section 238I(1A): inserted, on 31 August 2004, by section 4(2) of the Education (Export Education Levy) Amendment Act 2004 (2004 No 75).

Section 238I(1B): inserted, on 31 August 2004, by section 4(2) of the Education (Export Education Levy) Amendment Act 2004 (2004 No 75).

## Part 19

### Vice-Chancellors Committee

Part 19: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

#### 239 Definitions

In this Part and Schedule 14, unless the context otherwise requires,—

**Committee** means the New Zealand Vice-Chancellors Committee

**member** means a member of the Committee.

Section 239: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

#### **240 Establishment of Committee**

- (1) A committee to be known as the New Zealand Vice-Chancellors Committee is established.
- (2) The Committee is the same body as the Vice-Chancellors Committee that was established immediately before the commencement of this section under section 46 of the Universities Act 1961 but shall be constituted in accordance with this section.
- (3) The Committee consists of the Vice-Chancellors of such of the institutions as are universities.
- (4) If an office of Vice-Chancellor of a university is vacant, the person for the time being acting in that office shall be deemed to be the Vice-Chancellor of that university for the purposes of this Act.
- (5) The Committee is a body corporate with perpetual succession and a common seal; and is capable of—
  - (a) holding real and personal property; and
  - (b) suing and being sued; and
  - (c) otherwise doing and suffering all that bodies corporate may lawfully do and suffer.
- (6) Sections 153 to 156 of the Crown Entities Act 2004 apply to the Committee as if it were a Crown entity within the meaning of that Act.
- (7) Schedule 14 applies to the Committee.

Section 240: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

Section 240(6): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **241 Functions of Committee**

The functions of the Committee are—

- (a) to set up inter-university course approval and moderation procedures;
- (b) to exercise in relation to universities in accordance with section 253A the powers of the Qualifications Authority under sections 249 to 251C, 254A(2)(b), and 255:

- (ba) to list university qualifications on the Qualifications Framework:
- (c) to grant scholarships to students enrolled or proposing to enrol at universities out of money under its control on such terms as the Committee considers appropriate:
- (d) where another body has power to grant such scholarships—
  - (i) to make recommendations to the person or authority having power to make appointments to that body as to the persons who should be appointed:
  - (ii) if authorised to do so, to make appointments to that body:
  - (iii) if requested by that body to do so, to advise that body on the grant of such scholarships:
- (e) to make recommendations to the Qualifications Authority on criteria for entrance to universities for the purposes of the performance by that Authority of its functions under section 257:
- (f) if requested by the councils of the universities to do so, to consider applications by foreign students for enrolment at any of those universities and make recommendations to the councils in respect of those applications:
- (g) to liaise with the councils of institutions other than universities in respect of procedures for enrolling foreign students:
- (h) to issue certificates relating to degrees and other academic qualifications and courses of, or examinations conducted by, the University of New Zealand as if that University had continued in existence and to charge such reasonable fees for the certificates as the Committee determines:
- (i) to perform any other functions conferred on it by this Act or any other enactment.

Section 241: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

Section 241(b): replaced, on 30 August 2011, by section 37 of the Education Amendment Act 2011 (2011 No 66).

Section 241(ba): inserted, on 30 August 2011, by section 37 of the Education Amendment Act 2011 (2011 No 66).

**242 Powers of Committee**

The Committee has—

- (a) the powers given to it by this Act or any other enactment; and
- (b) all other powers reasonably necessary to enable it to perform its functions efficiently and effectively.

Section 242: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

**243 Devolution of certain property**

- (1) Upon the commencement of this section, all real and personal property that immediately before that commencement was vested in the University Grants Committee upon trust or as an endowment for any scholarship or any other purpose by virtue of section 52(1) of the Universities Act 1961 or otherwise is, by force of this subsection, vested in the Vice-Chancellors Committee for a like purpose.
- (2) All real and personal property that, under any will or trust instrument would have vested in the University of New Zealand for any purpose after the commencement of this section if the University of New Zealand had continued in existence shall, unless the will or trust instrument expressly provides for the eventuality of the University of New Zealand not being in existence, vest in the Committee for a like purpose.
- (3) All real and personal property that under any will or trust instrument would have vested in the University Grants Committee for any purpose after the commencement of this section if the University Grants Committee had continued in existence shall, unless the will or trust instrument expressly provides for the eventuality of the University Grants Committee not being in existence, vest in the Vice-Chancellors Committee for a like purpose.
- (4) Where any land vests in the Committee under this section, the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she requires, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of this section.

- (5) The Committee may transfer any real or personal property that vests in the Committee under this section for a particular purpose to any university for a like purpose and, if any property is so transferred, no tax is payable in respect of the transaction.

Section 243: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

Section 243(5): amended, on 20 May 1999, by section 7 of the Stamp Duty Abolition Act 1999 (1999 No 61).

#### **244 Taxes and duties in relation to Vice-Chancellors Committee**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
- (a) the University Grants Committee and the Vice-Chancellors Committee shall be deemed to be the same person with effect on and from the date on which real and personal property of the University Grants Committee so vests in the Vice-Chancellors Committee pursuant to section 243(1); and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which real and personal property of the University Grants Committee so vests in the Vice-Chancellors Committee, all transactions entered into by, and acts of, the University Grants Committee in relation to that property before the vesting effected by section 243(1) shall be deemed to have been entered into by, or to be those of, the Vice-Chancellors Committee and to have been entered into or performed by the Vice-Chancellors Committee at the time when they were entered into or performed by the University Grants Committee.
- (2) For the purposes of determining whether—
- (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or

- (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—  
shares held by the University Grants Committee in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 243(1) shall, if the shares vest under that section in the Vice-Chancellors Committee, be treated as having been acquired by the Vice-Chancellors Committee at the time when they were acquired by the University Grants Committee.
- (3) The vesting of real and personal property of the University Grants Committee in the Vice-Chancellors Committee pursuant to section 243(1) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 244: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

Section 244(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 244(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 244(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 244(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 244(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Section 244(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 244(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **245 General saving of statutes, etc, of University of New Zealand**

All statutes, regulations, rulings, and decisions, and all other acts of authority, of the Senate of the University of New Zealand or any committee or board of that Senate or University or of the Chancellor or Vice-Chancellor or any officer of that University, so far as they were subsisting immediately before the commencement of this section by virtue of section 53(1) of the Universities Act 1961 and are capable of application to the Vice-Chancellors Committee, apply to that Committee except so far as they are repealed, replaced, or amended by any enactment, or by regulations, rulings, decisions, or other acts of authority of that Committee under powers conferred by this Act or any other enactment.

Section 245: inserted, on 23 July 1990, by section 41 of the Education Amendment Act 1990 (1990 No 60).

## **Part 20**

### **New Zealand Qualifications Authority**

Part 20: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

### *Interpretation*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

## **246 Interpretation**

In this Part, unless the context otherwise requires,—

**Authority** means the Qualifications Authority

**chief executive** means the chief executive of the Authority

**member** means a member of the Authority

**relevant school** means—

- (a) a secondary school (as that term is defined in section 2(1)); or
- (b) a composite school (as that term is defined in section 2(1)); or
- (ba) a partnership school kura hourua (as that term is defined in section 2(1)), other than a partnership school kura hourua that is only a primary partnership school kura hourua (as that term is defined in section 2(1)); or
- (c) a school that is registered under section 35A, but does not include any school registered under that section only as a primary school (as that term is defined in section 2(1)); or
- (d) a special school (as that term is defined in section 2(2), except that a special school is not deemed to be a primary school for the purposes of this Part, despite the proviso to section 98(1) of the Education Act 1964)

**rules** means rules made under section 253.

Section 246: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

Section 246 **relevant school** paragraph (ba): inserted, on 13 June 2013, by section 32 of the Education Amendment Act 2013 (2013 No 34).

### *Functions of Qualifications Authority*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **246A Functions of Authority**

- (1) The Authority has the following functions:
  - (a) to oversee the setting of standards for qualifications in relevant schools and in tertiary education:
  - (b) to monitor and regularly review, and advise the Minister on, the standards for qualifications in relevant schools and in tertiary education, either generally or in relation to a particular organisation (within the meaning of section 159B) or a particular programme or training scheme:

- (c) to maintain mechanisms for the recognition of learning (for example, the recognition of learning through qualifications gained and standards met):
  - (d) to maintain the Qualifications Framework and Directory of Assessment Standards:
  - (e) to make rules, not inconsistent with this Act, under any provision of this Part that empowers the Authority to make rules:
  - (f) to ensure there are mechanisms in place to guarantee that relevant schools and tertiary education providers that provide programmes or training schemes that, in the view of the Authority, require national consistency have assessment and moderation procedures that are fair, equitable, and consistent, and comply with the appropriate standards:
  - (g) to assist overseas governments, and agencies of those governments, by—
    - (i) conducting examinations and assessments:
    - (ii) approving programmes and training schemes:
    - (iii) granting accreditations for the provision of approved programmes:
    - (iv) assisting governments and agencies to develop and conduct examinations, and to develop and confer awards:
  - (h) to maintain effective liaison with overseas certifying and validating bodies, in order to recognise overseas educational and vocational qualifications in New Zealand and to achieve recognition overseas of New Zealand educational and vocational qualifications:
  - (i) to ensure that post-school educational and vocational qualifications maintain international comparability:
  - (j) to promote and monitor the delivery of inter-institutional programmes and training schemes:
  - (k) any other functions that are conferred on it by this Act or any other enactment.
- (2) The Authority may consult any persons, authorities, and bodies as it considers appropriate for the purposes of performing any of its functions.

Compare: 1989 No 80 s 253

Section 246A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

Section 246A(1)(f): amended, on 13 June 2013, by section 33 of the Education Amendment Act 2013 (2013 No 34).

**247 Certain functions of Authority in relation to entrance to universities**

- (1) In addition to its other functions, the Authority has,—
  - (a) in relation to the rights of people who have not attained the age of 20 years to obtain entrance to universities, the function of establishing and maintaining by any means that it considers appropriate a common educational standard as a prerequisite for entrance to a university, other than provisional entrance and entrance *ad eundem statum*; and
  - (b) the function of consulting the universities as to the criteria to be established for provisional entrance, or entrance *ad eundem statum*, to universities.
- (2) A person who is refused provisional entrance or entrance *ad eundem statum* to a university on grounds relating to the person's educational qualifications may appeal to the Authority against the refusal.
- (3) The Authority must consider the appeal and,—
  - (a) if it is satisfied that the person meets the criteria established by the universities, as mentioned in subsection (1)(b), must allow the appeal and direct the council of the university concerned to admit the person as a student and, where appropriate, to grant the person such status as the Authority determines; or
  - (b) if it is not so satisfied, must dismiss the appeal.
- (4) The council of a university must comply with a direction given to it by the Authority under subsection (3)(a).
- (5) Before establishing standards for entrance to universities, the Authority must consult the council of each university and the Vice-Chancellors Committee.

Compare: 1989 No 80 s 257

Section 247: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*New Zealand Qualifications Framework*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**248 New Zealand Qualifications Framework**

- (1) The New Zealand Qualifications Framework—
  - (a) consists of all qualifications that have been approved and listed by the Authority in accordance with the rules made under section 253; and
  - (b) includes the rules relating to the Qualifications Framework made under that section.
- (2) The Authority—
  - (a) must list on the Qualifications Framework all qualifications that it has approved in accordance with the rules:
  - (b) may, in accordance with the rules, amend, add to, remove, or alter the status of any qualification on the framework.
- (3) If a qualification is removed from the Qualifications Framework,—
  - (a) any programme approval held by an institution in respect of the qualification lapses; and
  - (b) any accreditation granted to an institution in respect of the qualification lapses.
- (4) To avoid doubt, **qualifications** includes university qualifications.

Section 248: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Directory of Assessment Standards*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**248A Directory of Assessment Standards**

- (1) In this section, **institution** includes institutions, government training establishments, registered establishments, relevant schools, and other bodies.
- (2) The Directory of Assessment Standards consists of all standards approved by the Authority for use by institutions as standards for the assessment of students.

- (3) An application to have standards listed on the Directory—
- (a) may only be made by an approved standard-setting body; and
  - (b) must be made in accordance with the rules.

Section 248A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **248B Standard-setting bodies**

- (1) An approved standard-setting body includes—
- (a) an industry training organisation within the meaning of the Industry Training and Apprenticeships Act 1992; and
  - (b) the Ministry of Education; and
  - (c) the Authority; and
  - (d) any other body approved by the Authority under subsection (3).
- (2) A body may apply, in accordance with the rules, to the Authority for approval as a standard-setting body.
- (3) In deciding whether to approve a standard-setting body, the Authority must apply the criteria set out in the rules, and must be satisfied that the applicant is able to—
- (a) draft standards that meet the requirements in the rules; and
  - (b) manage consistency across New Zealand in learning outcomes in the relevant subject areas; and
  - (c) carry out national moderation of assessment of students.

Section 248B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

Section 248B(1)(a): amended, on 23 April 2014, by section 23 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

#### *Approval of programmes*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **249 Approval of programmes**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.

- (2) An institution may apply to the Authority for approval of a programme.
- (3) The Authority—
  - (a) may grant or refuse to grant approval of the programme to the applicant; and
  - (b) is required only to consider the programme as a whole; and
  - (c) must give the applicant written notice of its decision to grant or refuse approval; and
  - (d) may grant approval without limitation as to time or for a specified period.
- (4) If 2 or more institutions have prepared a programme together, they may make a joint application for approval of the programme.
- (5) If the Authority considers that there may be grounds for withdrawing approval of a programme,—
  - (a) the Authority must give written notice to the institution concerned stating the grounds on which the Authority is considering withdrawing approval; and
  - (b) the Authority must give the institution a reasonable time (as specified in the notice) to make submissions on the matter; and
  - (c) after considering those submissions, the Authority—
    - (i) may withdraw approval if it considers there are reasonable grounds to do so; and
    - (ii) must notify the institution of the withdrawal (if any) and the reasons for it.
- (6) The Authority may withdraw approval of a programme at the written request of the institution concerned.
- (7) This section—
  - (a) is subject to section 253A:
  - (b) does not limit the Authority's power to withdraw an approval under section 255(7):
  - (c) does not apply to secondary school qualifications.

Section 249: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**249A Conditions on programme approvals**

- (1) Every programme approval is subject to the condition that the institution will at all times comply with the relevant rules, except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance.
- (2) When approving a programme, the Authority may impose conditions on the approval that are specific to the programme or to a class of programmes.
- (3) The Authority may at any time, with the agreement of the institution that holds the programme approval,—
  - (a) impose new conditions on the approval; or
  - (b) amend or revoke any existing conditions.
- (4) The Authority may, without the agreement of the institution, impose conditions on a programme approval, or amend or revoke any existing conditions, but only if the Authority has first—
  - (a) given written notice to the institution of its intentions; and
  - (b) given the institution a reasonable opportunity to respond to the notice; and
  - (c) considered any submissions made by the institution in response to the notice.
- (5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the institution that holds the approval of the new, amended, or revoked conditions.

Section 249A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Accreditation to provide approved programmes*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**250 Accreditation to provide approved programmes**

- (1) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.
- (2) An institution must not offer or provide all or part of an approved programme unless the institution is granted accreditation to provide the programme or part of the programme.



- (3) An institution may apply to the Authority for a grant of accreditation to provide all or part of a programme.
- (4) If the programme for which accreditation is sought incorporates standards from the Directory of Assessment Standards, the applicant must obtain consent to assess against those standards.
- (5) The Authority—
  - (a) may grant or refuse to grant accreditation to the institution to provide all or part of the programme; and
  - (b) must give the institution written notice of its decision to grant or refuse accreditation; and
  - (c) may grant accreditation without limitation as to time or for a specified period.
- (6) This section—
  - (a) does not apply to any secondary school qualification or class of secondary school qualification that the Authority exempts, by notice in the *Gazette*, from the application of this section:
  - (b) does not apply to any workplace training components of any programmes:
  - (c) is subject to section 253A.

Compare: 1989 No 80 s 261

Section 250: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **250A Conditions on accreditation**

- (1) Every accreditation is subject to the condition that the institution will at all times comply with the rules made under section 253(1)(d) and (e), except to the extent that the Authority exempts the institution, by a condition on the accreditation, from compliance.
- (2) When granting accreditation to an institution to provide an approved programme, the Authority may impose conditions on the accreditation that are—
  - (a) specific to the programme or a particular class of programmes; or
  - (b) specific to the institution or a particular class of institutions.

- (3) The Authority may at any time, with the agreement of the accredited institution, impose new conditions on the accreditation and may amend or revoke any existing conditions.
- (4) The Authority may, without the agreement of the institution, impose conditions on an accreditation, or amend or revoke any existing conditions, but only if the Authority has first—
  - (a) given written notice to the institution of its intentions; and
  - (b) given the institution a reasonable opportunity to respond to the notice; and
  - (c) considered any submissions made by the institution in response to the notice.
- (5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the accredited institution of the new, amended, or revoked conditions.

Section 250A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **250B Lapse of accreditation**

- (1) An accreditation granted to an institution lapses when—
  - (a) 12 months have passed since accreditation was granted and the institution has not during that time provided all or part of the programme to which the accreditation relates; or
  - (b) 12 months have passed since the institution last provided all or part of the programme to which the accreditation relates; or
  - (c) the programme to which the accreditation relates ceases to be an approved programme; or
  - (d) the status of the qualification to which the accreditation relates is discontinued on the Qualifications Framework.
- (2) Despite subsection (1), the Authority may, if it considers that the circumstances so require, extend the time specified in subsection (1)(a) or (b).
- (3) The Authority must give written notice of the lapse of an accreditation to the institution concerned.

Section 250B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**250C Withdrawal of accreditation**

- (1) If the Authority considers that there may be grounds for withdrawing an accreditation from an institution, the Authority must give written notice to the institution—
  - (a) setting out the grounds on which the Authority is considering withdrawing the approval; and
  - (b) giving the institution a reasonable period to make submissions on the matter.
- (2) After that period, and having considered any submission made by the institution, the Authority may, on any reasonable grounds, withdraw the accreditation.
- (3) If the Authority withdraws an accreditation under subsection (2), it must give notice of the withdrawal, with reasons, to the institution concerned.
- (4) The Authority may withdraw an accreditation at the written request of the institution concerned.
- (5) This section does not limit the Authority's power to withdraw an accreditation under section 255(7).

Section 250C: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Training schemes and consents to assess against standards*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**251 Application for training scheme approval**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.
- (2) An institution may apply to the Authority for a grant of approval to provide a training scheme under this section.
- (3) An industry training organisation may apply jointly with an institution for a grant of approval to provide a training scheme if the scheme will be provided by the institution on behalf of the organisation.
- (4) The Authority—

- (a) may grant or refuse to grant approval to the training scheme; and
  - (b) must give the institution and any joint applicant written notice of its decision to grant or refuse approval; and
  - (c) may grant approval without limitation as to time or for a specified period.
- (5) If the training scheme incorporates assessment standards listed on the Directory of Assessment Standards, the Authority must not grant training scheme approval until the institution has obtained consent to assess against those standards.
- (6) This section does not apply to—
  - (a) any secondary school qualification or class of secondary school qualification that the Authority exempts, by notice in the *Gazette*, from the application of this section:
  - (b) any workplace training component of any training scheme.

Section 251: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **251A Conditions of training scheme approval**

- (1) Every training scheme approval is subject to the condition that the institution will at all times comply with the rules made under section 253(1)(c) except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance.
- (2) The Authority may impose conditions on a training scheme approval, and for that purpose, section 250A(2) to (5) apply as if each reference to accreditation were a reference to a training scheme approval under this section.

Section 251A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **251B Withdrawal of training scheme approval**

- (1) If the Authority considers that there may be grounds for withdrawing a training scheme approval from an institution, the Authority must give written notice to the institution—
  - (a) setting out the grounds on which the Authority is considering withdrawing the approval; and

- (b) giving the institution a reasonable period to make submissions on the matter.
- (2) After the period referred to in subsection (1)(b), and having considered any submission made by the institution, the Authority—
  - (a) may, on reasonable grounds, withdraw the training scheme approval; and
  - (b) must give notice of the withdrawal, with reasons, to the institution concerned.
- (3) This section does not limit the Authority's power to withdraw training scheme approval under section 255(7).
- (4) The Authority may withdraw a training scheme approval at the written request of the institution concerned.

Section 251B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### **251C Lapse of training scheme approval**

- (1) A training scheme approval granted to an institution lapses when—
  - (a) 12 months have passed since approval was granted and the institution has not during that time provided all or part of the training scheme to which the approval relates; or
  - (b) 12 months have passed since the institution last provided all or part of the training scheme to which the approval relates.
- (2) Despite subsection (1), the Authority may, if it considers that the circumstances so require, extend the time specified in subsection (1)(a) or (b).
- (3) The Authority must give written notice of the lapse of a training scheme approval to the institution concerned.

Section 251C: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

#### *Consent to assess against standards*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**252 Consent to assess against standards**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.
- (2) An institution that proposes to assess its students against standards listed on the Directory of Assessment Standards must apply to the Authority for a grant of consent to assess against those standards.
- (3) The Authority may grant or refuse consent to assess against those standards.
- (4) The Authority may withdraw a consent, but only after complying with subsection (5).
- (5) Before the Authority withdraws a consent, it must—
  - (a) give written notice of its intentions to the institution; and
  - (b) give the institution a reasonable opportunity to respond to the notice; and
  - (c) consider any submissions made by the institution in response to the notice.
- (6) The Authority must give the institution written notice of its decision under subsection (4), and must give reasons for its decision.
- (7) Despite subsection (4), the Authority may withdraw a consent at the written request of the institution concerned.

Section 252: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**252A Conditions**

- (1) Every consent to assess against standards is subject to the condition that the institution will at all times comply with the rules made under section 253(1)(c) except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance.
- (2) The Authority may impose conditions on a consent to assess against standards, and for that purpose section 250A(2) to (5) apply as if each reference to accreditation were a reference to a consent to assess against standards.

Section 252A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**252B When a consent expires or ceases to have effect**

- (1) A consent to assess against standards expires—
  - (a) when any training scheme approval or accreditation to which the consent relates is withdrawn, lapses, expires, or otherwise ceases to have effect:
  - (b) when the status of all standards to which the consent relates is discontinued on the Directory of Assessment Standards.
- (2) If the status of any standard to which the consent relates is discontinued on the Directory of Assessment Standards, the consent ceases to have effect in respect of that standard.

Section 252B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Rules*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**253 Rules**

- (1) The Authority may make rules—
  - (a) prescribing the process for, and the information required in, an application for—
    - (i) registration of a private training establishment:
    - (ii) approval of a programme:
    - (iii) approval of a training scheme:
    - (iv) accreditation:
    - (v) consent to assess against standards:
    - (vi) approval as a standard-setting body:
    - (vii) the listing of a qualification on the Qualifications Framework:
    - (viii) the listing of a standard on the Directory of Assessment Standards:
  - (b) prescribing criteria that the Authority must apply when considering—
    - (i) each class of application described in paragraph (a); and
    - (ii) different kinds of application within each class:

- (c) prescribing requirements that the applicant must meet in order to maintain the registration, approval, accreditation, or consent granted by the Authority:
- (d) prescribing the amount of, or the method for determining, the annual registration fee required under section 233C:
- (e) prescribing the requirements for the protection of student fees that must be met by a private training establishment, any person to whom section 234D applies, any agent or person purporting to act as an agent for a student or private training establishment, and any independent trustee:
- (f) prescribing matters relating to the general operation of the Qualifications Framework and the Directory of Assessment Standards:
- (g) prescribing the quality assurance requirements that must be met by providers of adult and community education:
- (ga) prescribing the amount of, or the method for determining, the annual registration fee required under section 11F of the Industry Training and Apprenticeships Act 1992, and when and how that fee is payable:
- (gb) prescribing quality assurance requirements for industry training organisations, including, without limitation, requirements relating to the matters described in section 13B of the Industry Training and Apprenticeships Act 1992:
- (h) providing for the review, amendment, removal, or alteration of the status of qualifications and standards, including their components (including where amendments to titles occur, consequential amendments to programmes of study or training titles, accreditations, and consents to assess against standards):
- (i) providing any special requirements for NCEA and other secondary school qualifications or awards for the purposes of the Qualifications Framework:
- (j) providing for the conduct of assessments and examinations relating to any qualifications or awards:



- (k) prescribing the details for credits, cross credits, recognition of prior learning, and moderation:
  - (l) prescribing requirements for qualifications in respect of which the Authority is the qualifications developer:
  - (m) prescribing requirements relating to workplace training:
  - (n) providing for the following matters for the purposes of section 236A:
    - (i) the kinds of enrolment and academic records that must be kept:
    - (ii) the manner in which the records must be kept:
    - (iii) the length of time for which the records must be kept:
  - (o) prescribing reporting requirements that institutions (within the meaning of section 254(1)) must comply with in relation to the student's record of achievement that is maintained by the Qualifications Authority:
  - (p) for the purposes of rules made under paragraph (o), specifying the qualifications or standards for which institutions are required to report the credits gained by students undertaking or who have undertaken study or training towards those qualifications or standards:
  - (q) providing for any other matters contemplated by this Part or Part 18, necessary for their administration, or necessary for giving them full effect.
- (2) Without limiting any power to make rules under this section, restrictions on the use of standards may be included in any rules made under subsection (1)(b) that—
- (a) prescribe criteria that the Authority must apply when considering applications for approval of a programme leading to a degree or postgraduate qualification:
  - (b) prescribe criteria that the Authority must apply when considering applications for the listing of a degree or postgraduate qualification on the Qualifications Framework:
  - (c) prescribe criteria that the Authority must apply when considering applications for the listing of a standard on the Directory of Assessment Standards that relates to any programme leading to a degree or postgraduate qualification.

- (3) Rules made under subsection (1)(n) may specify different requirements for different qualifications.
- (4) Before making rules under this section that apply to a class of institutions, the Authority must consult,—
  - (a) if the rules relate to universities, the Vice-Chancellors Committee; and
  - (b) if the rules relate to bodies that provide adult and community education, those bodies or a body that represents their interests; and
  - (c) if the rules relate to a class of institutions in respect of which there is a body whose function is to set up programme approval and moderation procedures, the representative bodies of those institutions, and any other bodies as the Authority considers appropriate.
- (5) Any proposed rules under this section must be approved by the board of the Authority and the Minister before being made, but, if the rules relate to any matter described in subsection (1)(j), the approval of the Minister is not required.
- (6) Any rules made under this section must be—
  - (a) published on an Internet site maintained by or on behalf of the Authority; and
  - (b) made available in printed form for purchase at a reasonable price on request by members of the public.
- (7) Any rules made under this section are regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989.

Section 253: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

Section 253(1)(ga): inserted, on 23 April 2014, by section 25 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 253(1)(gb): inserted, on 23 April 2014, by section 25 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

### *Functions and powers of Authority in relation to universities*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**253A Exercise of certain powers of Authority by  
Vice-Chancellors Committee**

- (1) In this section, **the powers of the Authority** means the Authority's powers under sections 249 to 251C, 254A(2)(b), and 255.
- (2) The powers of the Authority as far as they are applicable to universities may, subject to this section, be exercised by the Vice-Chancellors Committee in relation to universities. References to the Authority in the relevant sections must be read as references to the Vice-Chancellors Committee.
- (3) The Vice-Chancellors Committee in exercising the powers of the Authority must apply the relevant rules made under section 253.
- (4) The Vice-Chancellors Committee may charge fees to an institution for the grant of any approval or accreditation.
- (5) The Vice-Chancellors Committee may—
  - (a) list or arrange for the listing of university qualifications on the Qualifications Framework; and
  - (b) correct any errors or omissions in the listing of the qualification on the framework.
- (6) To avoid doubt, this section does not limit the Authority's power to delegate its functions or powers under the Crown Entities Act 2004.

Compare: 1989 No 80 s 260

Section 253A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Granting of awards*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**253B Powers of Authority in granting of awards**

- (1) A person may apply to the Authority for its consent—
  - (a) to grant an award that is described as a degree or the description of which includes the word bachelor, master, or doctor;
  - (b) to grant an award that is described as a post-graduate qualification, for example, a post-graduate certificate or diploma.

- (2) The Authority may, in accordance with this section, grant or refuse its consent.
- (3) The Authority must not consent to the granting of an award of a kind referred to in subsection (1) unless it is satisfied that the award recognises the completion of a programme of advanced learning that—
  - (a) is taught mainly by people engaged in research; and
  - (b) emphasises general principles and basic knowledge as the basis for self-directed work and learning.
- (4) The Authority must not withhold its consent to the use of any particular term or the granting of an award that, or whose name or description, includes any particular word, unless satisfied on reasonable grounds that it should do so.

Compare: 1989 No 80 s 254

Section 253B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Use of certain terms in name of registered  
establishment*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**253C Minister may consent to registered establishments using certain terms in their names**

- (1) In this section, **institution** means a college of education, a polytechnic, a specialist college, a university, or a wananga.
- (2) A registered establishment may apply to the Minister for consent to use the term university, college of education, polytechnic, or institute of technology to describe a registered establishment that is not an institution.
- (3) Before deciding whether to grant consent under subsection (2), the Minister must—
  - (a) take into account the characteristics of institutions as described in section 162(4); and
  - (b) receive advice on the application from the Authority; and
  - (c) be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and

- (d) consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.
- (4) In deciding whether to grant consent under subsection (2) to the use of the term “institute of technology”, the relevant characteristics that the Minister must take into account are the characteristics of a polytechnic.
- (5) The Minister may audit any registered establishment that has been given consent to use one of the terms in subsection (2) for continuous compliance with the requirements for consent to use the term.
- (6) If the Minister is not satisfied that a registered establishment is continuing to comply with the requirements for consent to use the term for which consent has been given, the Minister may—
  - (a) withdraw the consent; or
  - (b) suspend the consent for a specified period, at the expiry of which the Minister must either lift the suspension or withdraw the consent.

Compare: 1989 No 80 s 264A

Section 253C: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

### *Fees*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

## **254 Fees**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.
- (2) The Authority may—
  - (a) charge fees to any person or institution for any of the following:
    - (i) programme approval:
    - (ii) training scheme approval:
    - (iii) accreditation:
    - (iv) consent to assess against standards:

- (v) approval to list qualifications on the Qualifications Framework:
- (vi) approval to list standards on the Directory of Assessment Standards:
- (vii) registration of a private training establishment:
- (viii) approval to be a standard-setting body:
- (ix) consent to award a degree:
- (x) consent for the use by a registered establishment of certain terms in its name:
- (xi) reporting credits for the purposes of rules made under section 253(1)(o) and (p):
- (b) charge fees to any person or institution for any services provided by the Authority, including fees in relation to sitting for an examination conducted by the Authority, in relation to the making of any assessment by the Authority, or in relation to the granting to any person of an award certifying that the person had passed such an examination or been so assessed:
- (c) charge fees to any person or institution for any quality assurance activities undertaken by the Authority (including quality assurance activities undertaken in accordance with the Authority's functions under the Industry Training and Apprenticeships Act 1992):
- (d) charge an application fee to a body corporate applying for recognition as an industry training organisation under section 6 of the Industry Training and Apprenticeships Act 1992.
- (3) A fee may not be charged under subsection (2)(b) to a person who is a student at a relevant school unless the Minister has consented to the charging of the fee.
- (4) All fees that are to be charged under subsection (2) must be—
  - (a) published on an Internet site maintained by or on behalf of the Authority; and
  - (b) made available in printed form for purchase at a reasonable price on request by members of the public.

Compare: 1989 No 80 s 266

Section 254: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

Section 254(2)(c): replaced, on 23 April 2014, by section 26 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 254(2)(d): inserted, on 23 April 2014, by section 26 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

*Enforcement powers of Authority*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**254A Power to obtain information**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.
- (2) The chief executive or a person authorised by the chief executive may, subject to subsection (3),—
  - (a) by written notice to the Secretary, require the Secretary, within such period (being a reasonable period) as is specified in the notice, to supply to the Authority such information or documents relating to institutions, being information or documents in the possession of the Secretary, as are specified in the notice; and
  - (b) by written notice to the chief executive of an institution, require the chief executive, within such period (being a reasonable period) as is specified in the notice, to supply to the Authority such information or documents relating to the institution as are specified in the notice.
- (3) The powers conferred by subsection (2) may be exercised only where the obtaining of the information or documents is necessary for the purposes of the performance of the functions of the Authority.

Compare: 1989 No 80 s 255

Section 254A: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**255 Compliance notices**

- (1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body.
- (2) 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—

- (a) the institution's registration as a registered establishment; or
  - (b) the institution's programme approvals, training scheme approvals, or accreditation; or
  - (c) any consent that the institution has to assess against standards; or
  - (d) any quality assurance conditions on workplace training; or
  - (e) any notice issued under section 254A(2)(b).
- (3) Every compliance notice must be in writing and must—
  - (a) state the date on which it is issued; and
  - (b) state a time on or before which, or a period within which, the institution must comply with the notice; and
  - (c) state the consequences or possible consequences of non-compliance with the notice.
- (4) The Authority may publish any compliance notice, or a summary of a compliance notice, in a manner designed to give public notice of the compliance notice.
- (5) An institution that receives a compliance notice must comply with it within the time or during the period stated in the notice.
- (6) The Authority may, before the expiry of the time or period referred to in subsection (3)(b), extend that time or period, in which case the extended time or period is for all purposes the time or period within or during which the notice must be complied with.
- (7) If the institution does not comply with the compliance notice, the Authority may immediately,—
  - (a) if the notice related to the registration of a registered establishment, cancel the registration, or impose new conditions or amend or revoke any existing conditions on the registration; or
  - (b) if the notice related to a programme or training scheme approval, withdraw the approval, or impose new, or amend or revoke any existing, conditions on the approval; or
  - (c) if the notice related to an accreditation, withdraw the accreditation, or impose new conditions, or amend or revoke any existing conditions on the accreditation; or



- (d) if the notice related to a consent to assess against standards, withdraw the consent, impose new conditions, or amend or revoke any existing conditions on the approval; or
  - (e) if the notice related to any quality assurance conditions on workplace training, withdraw the programme or training scheme approval to which the training relates, impose new conditions, or amend or revoke any existing conditions.
- (8) The Authority may not do any of the things specified in subsection (7) until the later of—
  - (a) 10 days from the date of issue of the notice; or
  - (b) the expiry of the time or period referred to in subsection (3)(b).
- (9) If the Authority withdraws programme approval it must also withdraw any consent to assess against standards or any accreditation in respect of the programme approval.
- (10) If the Authority withdraws any training scheme approval it must also withdraw any consent to assess against standards in respect of the training scheme approval.

Compare: 1989 No 80 s 255A

Section 255: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

### **255A Powers of entry and inspection**

- (1) For the purpose of ensuring that a private training establishment (whether registered or not) and any agent of the establishment comply with the provisions of this Act, the rules, and any approval, consent, or other authorisation granted by the Authority, the chief executive may authorise any person to do, at any reasonable time, any 1 or more of the following things:
  - (a) enter and inspect any premises (other than a dwelling-house) that are occupied by the private training establishment or its agent:
  - (b) require any person to produce documents or information under the control of the person:
  - (c) inspect, photocopy, print out, or copy any documents (whether held in electronic or paper form) produced under paragraph (b) or that the authorised person be-

- believes on reasonable grounds to belong to the establishment:
- (d) remove any document referred to in paragraph (c), whether in its original form or as an electronic or paper copy;
  - (e) require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies;
  - (f) inspect any education and training work and any related materials;
  - (g) meet and talk with any person.
- (2) A person authorised by the chief executive under subsection (1) must—
- (a) provide evidence of his or her authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and
  - (b) give that person a list of all documents that have been removed (if any); and
  - (c) return any documents that have been removed unless to do so would prejudice any investigation.
- (3) An authorisation under subsection (1) must be in writing and contain—
- (a) a reference to this section; and
  - (b) the full name of the person authorised; and
  - (c) a statement of the powers conferred on that person under this section.

Compare: 1989 No 80 s 78A

Section 255A: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

### *Research*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

## **256 Research**

The Authority has power to carry out any research activities that it considers relevant to the performance of its functions.

Compare: 1989 No 80 s 256

Section 256: replaced, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

*Provisions relating to continuation, constitution,  
and operation of New Zealand Qualifications  
Authority*

Heading: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256A Continuation of New Zealand Qualifications Authority**

- (1) There continues to be a New Zealand Qualifications Authority, which is the same body as the body of that name existing immediately before the commencement of the Education Amendment Act 2011.
- (2) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.
- (4) The members of the Authority are the board for the purposes of the Crown Entities Act 2004.

Compare: 1989 No 80 s 248

Section 256A: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256B Constitution**

- (1) The Authority must consist of not fewer than 8 nor more than 10 members.
- (2) In appointing members, the Minister must consult such persons, authorities, and bodies as the Minister considers appropriate and must have regard to the interests of industry, the professions, and the authorities and bodies that are respectively responsible for providing compulsory and post-compulsory education.
- (3) Subsection (2) does not limit section 29 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 249

Section 256B: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256C Chief executive**

The Authority must from time to time appoint a chief executive of the Authority, on terms and conditions agreed by the Authority and the person appointed in accordance with section 117 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 254B

Section 256C: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256D Delegation by Authority**

- (1) The Authority must not delegate the power to appoint a chief executive.
- (2) Subsection (1) applies despite section 73 of the Crown Entities Act 2004.
- (3) A delegation under section 73 of the Crown Entities Act 2004 to the chief executive, if there is no chief executive for the time being, or if the chief executive is absent from duty, continues to have effect as if made to the person for the time being acting in place of the chief executive.

Compare: 1989 No 80 s 251

Section 256D: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256E Membership of Government Superannuation Fund**

Employment in the service of the Authority is Government service within the meaning of the Government Superannuation Fund Act 1956.

Section 256E: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256F Child care allowances**

A member may be paid any allowances in respect of child care that the Authority determines.

Section 256F: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**256G Taxation**

- (1) The Authority is deemed to be the agent of the Crown in respect of its property and the performance of its functions and

is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.

- (2) Subsection (1) does not exempt the Authority from—
- (a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or
  - (b) any obligation imposed by that Act.

Compare: 1989 No 80 s 254E

Section 256G: inserted, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**257 Entrance to universities**

*[Repealed]*

Section 257: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**258 Approval of courses**

*[Repealed]*

Section 258: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**259 Accreditation to provide approved courses**

*[Repealed]*

Section 259: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**260 Exercise of certain powers of Authority**

*[Repealed]*

Section 260: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**261 Only accredited institutions to provide approved courses**

*[Repealed]*

Section 261: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**262 Notice**

*[Repealed]*

Section 262: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**263 Awards for approved nationally recognised courses***[Repealed]*

Section 263: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**264 Applications for consents by Authority***[Repealed]*

Section 264: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**265 Examination and assessment***[Repealed]*

Section 265: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**266 Fees***[Repealed]*

Section 266: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**267 Saving of certain statutes, etc, of University of New Zealand***[Repealed]*

Section 267: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**268 Powers of Minister***[Repealed]*

Section 268: repealed, on 30 August 2011, by section 38 of the Education Amendment Act 2011 (2011 No 66).

**Part 21****Education New Zealand**

Part 21: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

**269 Education New Zealand established**

- (1) An organisation called Education New Zealand is established.

- (2) Education New Zealand is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to Education New Zealand except to the extent that this Act expressly provides otherwise.

Section 269: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

### **269A Interpretation**

In this Part, unless the context otherwise requires, **board** means the board of Education New Zealand.

Section 269A: inserted, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

### **270 Functions**

- (1) In performing its functions under this Act or any other enactment, Education New Zealand must give effect to the Government's policy on international education.
- (2) The functions of Education New Zealand are—
  - (a) to deliver strategies, programmes, and activities for promoting, together with providers and other government agencies, New Zealand education overseas; and
  - (b) to promote New Zealand as an educational destination for international students; and
  - (c) to promote the provision of New Zealand education and training services overseas; and
  - (d) to manage, in collaboration with other government agencies, activities undertaken by representatives appointed to act on behalf of the New Zealand Government in relation to international education; and
  - (e) to carry out research on international education markets and marketing strategies; and
  - (f) to administer any international programmes or activities that are consistent with the Government's policy on international education; and
  - (g) to provide information, advice, and assistance to providers on strategies to promote industry co-ordination and professional development; and

- (h) to provide information to international students about living and studying in New Zealand; and
  - (i) to work with other agencies to ensure that international students are adequately supported while living and studying in New Zealand; and
  - (j) to foster collaborative networks with former international students; and
  - (k) to perform any other function directed by the Minister under subsection (3).
- (3) The Minister may direct Education New Zealand to perform any function that the Minister considers consistent with the Government's policy on international education.
- (4) In this section, **providers** means any organisation that provides education, training, or education-related services.

Section 270: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

#### **271 International education strategy**

- (1) The Minister may, from time to time, issue an international education strategy that sets out—
- (a) the Government's long-term strategic direction for international education; and
  - (b) the Government's current and medium-term priorities for international education.
- (2) Before issuing the Government's international education strategy, the Minister must consult with organisations or people that, in the Minister's opinion, have a substantial interest in international education and ought to be consulted.

Section 271: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

#### **272 Membership of board of Education New Zealand**

- (1) The board of Education New Zealand consists of at least 5 members and no more than 7 members appointed by the Minister under section 28 of the Crown Entities Act 2004.
- (2) Before appointing any member to the board, the Minister must consult with—
- (a) the bodies that represent the organisations involved in the provision of international education; and



- (b) any organisations or people that, in the Minister's opinion, have a substantial interest in the board's operations.

Section 272: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

**272A Special advisers to the board**

- (1) The Minister may appoint as special advisers to the board—
  - (a) the Secretary for Education; and
  - (b) the chief executive of the department responsible for the administration of the Immigration Act 2009; and
  - (c) any other person as the Minister determines.
- (2) The function of a special adviser is to assist the board to align its strategies and activities with government policy.
- (3) A special adviser may attend any meeting of the board or any board committees but may not vote.
- (4) The board (including any board committee) must give the special advisers sufficient notice of its meetings and copies of all documents and materials to be considered at each meeting.
- (5) A special adviser may delegate to any person his or her functions and powers conferred by this section, and the delegate may exercise those functions and powers in the same manner and with the same effect as if they had been conferred directly by this section and not by delegation.
- (6) Every person purporting to act under a delegation under subsection (5) is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Section 272A: inserted, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

**272B International education stakeholder advisory committee**

- (1) The Minister may establish a stakeholder advisory committee to provide expert advice to the board on matters relating to the exercise of its functions.
- (2) The board must consider any advice it receives from the committee.
- (3) The members of the committee must be appointed by the Minister, on terms and conditions that the Minister determines, by written notice to each member.

- (4) When appointing members of the committee, the Minister must ensure, as far as practicable, that—
- (a) the committee's membership is broadly representative of the international education industry; and
  - (b) the members collectively have sufficient experience and knowledge of the international education industry to give appropriate advice to the board.
- (5) The Minister may give terms of reference on the topics or subject areas on which the committee may advise the board.
- (6) The committee must comply with any terms of reference given by the Minister.
- (7) The committee may determine its own procedure.

Section 272B: inserted, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

### **273 Chief executive**

- (1) The board—
- (a) must appoint a chief executive of Education New Zealand; and
  - (b) must act independently when appointing the chief executive; and
  - (c) may not delegate its duty under paragraph (a).
- (2) The chief executive must not be a member of the board.

Section 273: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

### **273A Responsibilities of chief executive**

The chief executive is responsible for—

- (a) the effective and efficient management and administration of Education New Zealand; and
- (b) the achievement of outcomes identified in the statement of intent of Education New Zealand.

Section 273A: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

### **273B Superannuation**

- (1) Any person who, immediately before becoming an employee of Education New Zealand, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government

Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service so long as he or she continues to be an employee of Education New Zealand.

- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of Education New Zealand were Government service.
- (3) Subsection (1) does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Education New Zealand is the controlling authority.

Section 273B: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

#### **274 Application of Part 2 of Commerce Act 1986**

- (1) For the purposes of section 43 of the Commerce Act 1986, the Governor-General may, by Order in Council, specifically authorise any act, matter, or thing, or kind of act, matter or thing, to be done or omitted to be done by Education New Zealand.
- (2) Part 2 of the Commerce Act 1986 does not apply to any act, matter, or thing, or kind of act, matter, or thing that is specifically authorised under subsection (1).

Section 274: replaced, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

#### **274A Transfer of Ministry employees to Education New Zealand**

- (1) The chief executive of the Ministry of Education must identify the employees of the Ministry—
  - (a) whose duties are overall more closely connected with the functions of Education New Zealand than with the Ministry; and
  - (b) whose positions will, as a result of the establishment of Education New Zealand, cease to exist within the Ministry.

- (2) An employee who is identified under subsection (1) must be offered equivalent employment by Education New Zealand, being employment that is—
- (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that employee; and
  - (d) on terms that treat the period of service with the Ministry of Education (and every other period of service recognised by the Ministry of Education as continuous service) as if it were continuous service with Education New Zealand.
- (3) The employee is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Ministry of Education has ceased to exist if—
- (a) the employee's position ceases to exist because the duties of the position are more closely connected with the functions of Education New Zealand; and
  - (b) the employee is offered employment in an equivalent position in Education New Zealand (whether or not the employee accepts the offer).
- (4) This section overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.

Section 274A: inserted, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

**274B No compensation for technical redundancy of employees of Education New Zealand Trust**

- (1) An employee of Education New Zealand Trust is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Trust has ceased to exist if the employee's position ceases to exist because the duties of the position are more closely connected with the functions of Education New Zealand, and—
- (a) the employee is offered employment in an equivalent position in Education New Zealand (whether or not the employee accepts the offer); or

- (b) the employee is offered and accepts employment in Education New Zealand.
- (2) In subsection (1)(a), **employment in an equivalent position** means employment that is—
  - (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that employee; and
  - (d) on terms that treat the period of service with Education New Zealand Trust (and every other period of service recognised by Education New Zealand Trust as continuous service) as if it were continuous service with Education New Zealand.

Section 274B: inserted, on 30 August 2011, by section 39 of the Education Amendment Act 2011 (2011 No 66).

## **275 Power of Secretary to obtain information**

*[Repealed]*

Section 275: repealed, on 25 June 1993, by section 19 of the Education Amendment Act 1993 (1993 No 51).

## **276 Powers of Board**

*[Repealed]*

Section 276: repealed, on 1 January 2003, by section 41 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## **277 Transitional provisions relating to Education and Training Support Agency**

*[Repealed]*

Section 277: repealed, on 1 January 2003, by section 41 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

# **Part 22 Careers New Zealand**

Part 22: inserted, on 23 July 1990, by section 44 of the Education Amendment Act 1990 (1990 No 60).

Part 22 heading: replaced, on 30 August 2011, by section 40 of the Education Amendment Act 2011 (2011 No 66).

**278 Interpretation**

In this Part and Schedule 17, unless the context otherwise requires,—

**Board** means the Board of the Service

**general manager** means the general manager of the Service

**Service** means the Service continued by section 279.

Section 278: inserted, on 23 July 1990, by section 44 of the Education Amendment Act 1990 (1990 No 60).

Section 278 heading: replaced, on 19 December 1998, by section 48 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 278 **document of accountability**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 278 **Service**: replaced, on 19 December 1998, by section 48 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**279 Careers New Zealand is service for purposes of this Part**

- (1) There is to continue to be a Service for the purposes of this Part and the Service is to be known as Careers New Zealand.
- (2) The Service is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Service except to the extent that this Act expressly provides otherwise.
- (4) The members of the Service are the Board for the purposes of the Crown Entities Act 2004.
- (5) *[Repealed]*
- (6) The Service is the same body as the Service that existed under this section immediately before the commencement of sections 40 and 41 of the Education Amendment Act 2011.

Section 279: replaced, on 19 December 1998, by section 49(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 279 heading: replaced, on 1 January 2008, by section 37(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 279 heading: amended, on 30 August 2011, by section 41(1) of the Education Amendment Act 2011 (2011 No 66).

Section 279(1): amended, on 30 August 2011, by section 41(2) of the Education Amendment Act 2011 (2011 No 66).

Section 279(1): amended, on 1 January 2008, by section 37(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 279(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 279(3): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 279(4): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 279(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 279(6): replaced, on 30 August 2011, by section 41(3) of the Education Amendment Act 2011 (2011 No 66).

## **280 Functions of Service**

- (1) The functions of the Service are—
  - (a) to establish and maintain a database of information about occupations and about post-compulsory education and training;
  - (b) to make that information available to the public and to institutions, private training establishments, students, and other interested bodies and persons;
  - (c) to provide—
    - (i) training and assistance to persons who advise about occupations; and
    - (ii) career advice and associated counselling relating to post-compulsory education and training;
  - (d) to liaise with, and monitor the needs of, institutions, private training establishments, students and other bodies and persons with respect to—
    - (i) information, training, and advice relating to occupations; and
    - (ii) career advice and associated counselling relating to post-compulsory education and training;
  - (e) to provide support services for the purpose of promoting transition education that prepares students for employment, or further education and training, or both.
- (2) On and after the day on which the Board's first statement of intent takes effect, the Service shall not perform any of its functions otherwise than in accordance with the Board's statement of intent.
- (3) Before the day on which the Board's first statement of intent takes effect, the Service shall not administer any scheme, activity, or programme, otherwise than in accordance with the Board's charter for the time being.

Section 280: inserted, on 23 July 1990, by section 44 of the Education Amendment Act 1990 (1990 No 60).

Section 280(1)(a): amended, on 1 January 2008, by section 38 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 280(2): inserted, on 25 June 1993, by section 22 of the Education Amendment Act 1993 (1993 No 51).

Section 280(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 280(3): inserted, on 25 June 1993, by section 22 of the Education Amendment Act 1993 (1993 No 51).

Section 280(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **281 Continuation of Board**

- (1) A Board will continue to manage the affairs of the Service and the Board is to be constituted in accordance with this section.
- (2) The Board comprises—
  - (a) a chairperson; and
  - (b) 6 members.
  - (c) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*

Section 281: replaced, on 19 December 1998, by section 50 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 281(2)(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 281(2)(b): amended, on 20 May 2010, by section 62 of the Education Amendment Act 2010 (2010 No 25).

Section 281(2)(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 281(2)(c): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 281(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 281(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 281(5): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).



## **282 Duties of Board**

It is the duty of the Board in managing the affairs of the Service—

- (a) to ensure that the database referred to in section 280(a) is well researched, accurate, and up-to-date:
- (b) to publicise, as widely as practicable, the services that it provides:
- (c) to make those services available on an equitable basis to all institutions, private training establishments, students, and other bodies and persons:
- (d) *[Repealed]*
- (e) to be flexible and responsive to the needs of individuals and the community.

Section 282: inserted, on 23 July 1990, by section 44 of the Education Amendment Act 1990 (1990 No 60).

Section 282(a): amended, on 1 January 2008, by section 39 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 282(d): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **283 Charter of Service**

*[Repealed]*

Section 283: repealed, on 25 June 1993, by section 23 of the Education Amendment Act 1993 (1993 No 51).

## **283A Minister may require Board to negotiate document of accountability**

*[Repealed]*

Section 283A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **283B Minister may prepare document where no agreement reached**

*[Repealed]*

Section 283B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**283C Contents of statement of intent***[Repealed]*

Section 283C: repealed, on 1 July 2014, by section 72 of the Crown Entities Amendment Act 2013 (2013 No 51).

**283D Amendments to documents***[Repealed]*

Section 283D: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**283E Revocation of documents***[Repealed]*

Section 283E: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**283F Board to comply with document of accountability***[Repealed]*

Section 283F: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**283G Non-compliance with document***[Repealed]*

Section 283G: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**283H Minister may dismiss Board where non-compliance not rectified**

- (1) The Minister may, by notice in the *Gazette*, appoint a person to act in place of the Board if the Board is dismissed under the Crown Entities Act 2004 for breach of its collective duties.
- (2) The Minister may, by notice in the *Gazette*, revoke a notice under subsection (1) (or this subsection) and appoint some different person to act in place of the Board.
- (3) Until a notice under subsection (1) or subsection (2) is revoked (by notice in the *Gazette*)—
  - (a) *[Repealed]*
  - (b) the person for the time being appointed to act in place of the Board—

- (i) shall have and may exercise and perform all the powers and functions of the Board and the Service in the same manner as if he or she were the Board or the Service, as the case may be; and
- (ii) *[Repealed]*
- (c) the provisions of the Crown Entities Act 2004, and section 286A, apply to the person as if he or she were a board under the Crown Entities Act 2004, with necessary modifications.

Section 283H: inserted, on 25 June 1993, by section 23 of the Education Amendment Act 1993 (1993 No 51).

Section 283H(1): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 283H(3)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 283H(3)(b)(i): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 283H(3)(b)(ii): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 283H(3)(c): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **283I Minister to publish certain documents and directions**

*[Repealed]*

Section 283I: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **284 Communication of government policy to the Board**

*[Repealed]*

Section 284: repealed, on 25 June 1993, by section 23 of the Education Amendment Act 1993 (1993 No 51).

### **285 Power of Secretary to obtain information**

*[Repealed]*

Section 285: repealed, on 25 June 1993, by section 23 of the Education Amendment Act 1993 (1993 No 51).

**286 Powers of Board**

(1) *[Repealed]*

(2) The Board has power for the purpose of the performance of the functions of the Service to charge for services provided by the Service.

Section 286: inserted, on 23 July 1990, by section 44 of the Education Amendment Act 1990 (1990 No 60).

Section 286(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**286A Child care allowances**

A member may be paid any allowances in respect of child care that the Board determines.

Section 286A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**286B Chief executive**

(1) The Board must from time to time appoint a chief executive of the Board, on terms and conditions agreed by the Board and the person appointed.

(2) Section 117 of the Crown Entities Act 2004 also applies.

Section 286B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**286C Membership of Government Superannuation Fund**

Employment by the Service is Government service within the meaning of the Government Superannuation Fund Act 1956.

Section 286C: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**286D Employees transferring from Ministry and education boards**

(1) Every person who,—

- (a) before the commencement of this section and while an employee of the Ministry or an education board, received from the Secretary written notice that the person is designated to become an employee of the Service; and
- (b) immediately before that commencement was still an employee of the Ministry or that education board,—

on that commencement becomes an employee of the Service.

- (2) If a person has become an employee of the Service under subsection (1), the person's period of continuous service in the Public Service or, as the case may be, the education service so ended must be treated for all purposes other than superannuation as service in the employment of the Service.

Section 286D: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **286E Board may not delegate power to appoint general manager**

- (1) The Board may not delegate the power to appoint a general manager.
- (2) This section applies despite the power of delegation in section 73 of the Crown Entities Act 2004.

Section 286E: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **286F Delegations to general manager**

A delegation to the member who is the general manager continues to have effect,—

- (a) as if made to the general manager for the time being (subject to paragraph (b)), if the general manager to whom it was made ceases to hold office; and
- (b) as if made to the person for the time being acting in place of the general manager, if there is no general manager for the time being, or if the general manager is absent from duty.

Section 286F: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **286G Taxation**

- (1) The Service is deemed to be the agent of the Crown in respect of its property and the performance of its functions and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.
- (2) Subsection (1) does not exempt the Service from—

- (a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or
- (b) any obligation imposed by that Act.

Section 286G: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **Part 23**

### **Tertiary Research Board**

*[Repealed]*

Part 23: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **287 Definitions**

*[Repealed]*

Section 287: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **288 Establishment of Board**

*[Repealed]*

Section 288: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **289 Constitution of Board**

*[Repealed]*

Section 289: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **290 Functions of Board**

*[Repealed]*

Section 290: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

#### **291 Powers of Board**

*[Repealed]*

Section 291: repealed, on 1 January 2003, by section 45(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## **Part 24**

### **Miscellaneous provisions**

Part 24: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

#### **292 Offences relating to use of certain terms**

- (1) A person commits an offence who—
- (a) uses the term university to describe an educational establishment or facility unless the educational establishment and facility—
    - (i) is a university; or
    - (ii) is a registered establishment that has the Minister's consent under section 253C to use the term; or
    - (iii) was a university but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a university as set out in section 162(4)(a) and (b)(iii):
  - (b) uses the term college of education to describe an educational establishment or facility unless the educational establishment or facility—
    - (i) is a college of education; or
    - (ii) is a registered establishment that has the Minister's consent under section 253C to use the term; or
    - (iii) was a college of education but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a college of education as set out in section 162(4)(b)(i):
  - (c) uses the term polytechnic to describe an educational establishment or facility unless the educational establishment or facility—
    - (i) is a polytechnic or institute of technology; or
    - (ii) is a registered establishment that has the Minister's consent under section 253C to use the term; or
    - (iii) was a polytechnic or institute of technology but, despite being incorporated under section 164(4) into another institution, retains the char-

- acteristics of a polytechnic as set out in section 162(4)(b)(ii):
- (d) uses the term institute of technology to describe an educational establishment or facility unless the educational establishment or facility—
    - (i) is an institute of technology or a polytechnic; or
    - (ii) is a registered establishment that has the Minister's permission under section 253C to use the term; or
    - (iii) was an institute of technology or a polytechnic but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a polytechnic as set out in section 162(4)(b)(ii).
  - (2) A person (other than a university) commits an offence who grants or purports to grant an award that is described as a degree, or the description of which includes the word bachelor, master, doctor, or postgraduate, unless—
    - (a) the person has the consent of the Qualifications Authority; or
    - (b) as provided by section 192(11).
  - (3) A person commits an offence who, without the consent of the Qualifications Authority, grants or purports to grant an award which, or the name or description of which, includes the word national or the words New Zealand.
  - (4) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292

Section 292: replaced, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292(4): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **292A Offences relating to false representations**

- (1) A person commits an offence who falsely represents, expressly or by implication, that—
  - (a) a qualification is listed on the Qualifications Framework; or
  - (b) a programme is an approved programme; or



- (c) a training scheme is an approved training scheme; or
  - (d) a body is a registered establishment; or
  - (e) a programme or training scheme provided by a body—
    - (i) is an approved programme or training scheme; or
    - (ii) leads to a qualification listed on the Qualifications Framework; or
  - (f) a body has accreditation to provide an approved programme or training scheme; or
  - (g) a body is providing or purports to provide an approved training scheme; or
  - (h) a body is providing or purports to provide an approved programme; or
  - (i) a body has consent to assess against standards; or
  - (j) a standard is on the Directory of Assessment Standards; or
  - (k) the person is an agent of an institution (as that term is defined in section 249(1)) when the person is not.
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Section 292A: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292A(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **292B Liability of body corporate and directors in respect of false representations**

- (1) If, in proceedings in respect of conduct engaged in by a body corporate, being conduct in relation to which section 292A(1) applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of that person's actual or apparent authority, had that state of mind.
- (2) For the purpose of section 292A, any conduct engaged in on behalf of a body corporate—
  - (a) by a director, an employee, or an agent of the body corporate, acting within the scope of that person's actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee or agent,—  
is deemed to have been engaged in also by the body corporate.
- (3) If a body corporate is convicted of an offence under section 292A(1), any director of the body corporate, and, if the body corporate is a private training establishment, any governing member of the establishment, is to be treated as having committed the same offence, if—
  - (a) the director or governing member approved of the act that constituted the offence; or
  - (b) the director or governing member knew the offence was to be or was being committed and failed to take all reasonable steps to prevent it.
- (4) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.
- (5) In this section, **governing member** has the meaning given to it in section 232.

Compare: 1986 No 121 s 45(1), (2), (5)

Section 292B: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

### **292C Offence to issue false qualifications and falsify records**

- (1) A person commits an offence who knowingly or recklessly issues an award that falsely represents that a person has achieved a qualification listed on the Qualifications Framework.
- (2) A person commits an offence who receives an award knowing that the award falsely represents that he or she has achieved a qualification listed on the Qualifications Framework.
- (3) A person commits an offence—
  - (a) who enters or changes results on a student's record of achievement, knowing that the results or changes have the effect of falsifying the student's record:

- (b) who, without reasonable excuse or lawful authority, causes entries or changes to be made on a student's record that have the effect of falsifying the student's record.
- (4) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Section 292C: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292C(4): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

**292D Offence to fail to comply with section 236A (student records)**

- (1) A private training establishment commits an offence that fails, without reasonable excuse, to comply with the requirements of section 236A.
- (2) A private training establishment that commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Section 292D: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292D(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

**292E Offence to provide or advertise cheating services**

- (1) A person commits an offence if the person provides any service specified in subsection (4) with the intention of giving a student an unfair advantage over other students.
- (2) A person commits an offence if the person advertises any service described in subsection (4) knowing that the service has or would have the effect of giving a student an unfair advantage over other students.
- (3) A person commits an offence who, without reasonable excuse, publishes an advertisement for any service described in subsection (4).
- (4) The services referred to in subsections (1) to (3) are as follows:
  - (a) completing an assignment or any other work that a student is required to complete as part of a programme or training scheme:

- (b) providing or arranging the provision of an assignment that a student is required to complete as part of a programme or training scheme:
  - (c) providing or arranging the provision of answers for an examination that a student is required to sit as part of a programme or training scheme:
  - (d) sitting an examination that a student is required to sit as part of a programme or training scheme or providing another person to sit the exam in place of the student.
- (5) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.
- (6) In this section,—

**programme** has the meaning given to it in section 159(1)

**student** means a student of a programme or training scheme

**training scheme** has the meaning given to it in section 159(1).

Section 292E: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292E(5): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **292F Offences relating to enrolment of international students and registration of private training establishments**

- (1) Where the Council of an institution contravenes section 224(7), the institution commits an offence.
- (2) A private training establishment that contravenes section 232A(1), 232A(2), or 232C commits an offence.
- (3) A body that commits an offence against this section is liable, on conviction, to a fine not exceeding \$10,000.

Section 292F: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292F(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **292G Offence to contravene requirements in section 234E relating to student fees**

- (1) A private training establishment that contravenes section 234E(1) commits an offence.
- (2) A person who contravenes section 234E(2) commits an offence.

- (3) A private training establishment or person that commits an offence against this section is liable, on conviction, to a fine not exceeding \$10,000.

Section 292G: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

Section 292G(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### **292H Injunctions and orders of High Court**

- (1) If a person has engaged, is engaging, or proposes to engage, in conduct that contravenes section 224(7) or any of sections 292 to 292F, the High Court may, on application by the Qualifications Authority, grant an injunction or make any appropriate order—
- (a) restraining the person from engaging in that conduct; or
  - (b) for the purpose of ensuring that the person does not engage in that conduct.

- (2) The court may grant an injunction or make an order under subsection (1) on any terms that it considers appropriate.

Compare: 1989 No 80 s 292(12)

Section 292H: inserted, on 30 August 2011, by section 42 of the Education Amendment Act 2011 (2011 No 66).

### **293 Transitional provisions consequential on repeal of Adult Education Act 1963**

- (1) Upon the commencement of this section,—
- (a) all real and personal property that, immediately before that commencement, was vested in the National Council of Adult Education that was constituted under the Adult Education Act 1963 is, by force of this subsection, vested in the trustees from time to time of the trust known as the National Resource Centre for Adult Education and Community Learning subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and
  - (b) the Minister becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities, and obligations of that Council that existed immediately before that commencement.

- (2) The District Land Registrar for the Wellington land registration district shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of this section in relation to the land at 192 Tinakori Road, Wellington, contained in Register Book Volume 41 Folio 132.

Section 293: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

**294 Taxes and duties in relation to property of former National Council of Adult Education**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
- (a) the National Council of Adult Education referred to in section 293(1)(a) (in this section referred to as the **National Council**) and the trustees referred to in that section (in this section referred to as the **trustees**) shall be deemed to be the same person with effect on and from the date on which the real and personal property of the National Council vests in the trustees pursuant to that section; and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the National Council so vests in the trustees, all transactions entered into by, and acts of, the National Council before the vesting effected by section 293(1)(a) shall be deemed to have been entered into by, or to be those of, the trustees and to have been entered into or performed by the trustees at the time when they were entered into or performed by the National Council.
- (2) For the purposes of determining whether—
- (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or

- (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—  
shares held by the National Council in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 293(1)(a) shall be treated as having been acquired by the trustees at the time when they were acquired by the National Council.
- (3) The vesting of all the real and personal property of the National Council in the trustees pursuant to section 293(1)(a) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 294: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

Section 294(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 294(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 294(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 294(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 294(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 294(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 294(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **295 Transitional provisions consequential on repeal of Trades Certification Act 1966**

(1) In this section,—

**Authority** means the Qualifications Authority

**Board** means the New Zealand Trades Certification Board that was constituted under the Trades Certification Act 1966.

(2) Upon the commencement of this section,—

(a) all real and personal property that, immediately before that commencement, was vested in the Board is, by force of this subsection, vested in the Authority subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and

(b) the Authority becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities and obligations of the Board that existed immediately before that commencement.

(3) Where any land vests in the Authority under subsection (2), the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she may require, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of that subsection.

(4) Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the commencement of this section to which the Board was a party has effect after that commencement as if—

(a) the Authority is substituted for the Board as a party to the contract, other instrument, or proceeding; and

(b) any reference in the contract or other instrument, or in a pleading, affidavit or other document in the proceeding, to the Board in its capacity as a party to the contract, other instrument or pleading is (except in relation



to matters that occurred before that commencement) a reference to the Authority.

- (5) A person who was an officer or employee of the Board immediately before the commencement of this section and becomes an employee of the Authority by virtue of clause 9(1) of Schedule 15 shall be employed by the Authority on the same terms and conditions as those on which the person was employed immediately before that commencement until the person's employment terminates or is terminated in accordance with those terms and conditions, but nothing in this section prevents the variation of those terms and conditions in the same way as the terms and conditions of other employees may be varied.
- (6) All regulations, rulings, decisions, and other acts of authority of the Board, so far as they were subsisting immediately before the commencement of this section, continue in force as if they were regulations, rulings, decisions, and other acts of authority, respectively, of the Authority.
- (7) Notwithstanding the repeal of the Trades Certification Act 1966,—
  - (a) subsections (2) to (4) of section 19 of that Act continue to apply in relation to each financial year in respect of which those subsections had not been complied with before the commencement of this section but so apply as if the period that commenced on 1 April 1990 and ended immediately before that commencement was a financial year; and
  - (b) the Board continues in existence for the purpose only of complying with section 19 of that Act as that section applies by virtue of paragraph (a) of this subsection.
- (8) The Authority shall give to the Board any assistance that the Board requires for the purpose of complying with section 19 of the Trades Certification Act 1966 as that section applies by virtue of subsection (7)(a) of this section and is responsible for paying any expenses incurred by the Board (including remuneration and expenses of members of the Board) in so complying.

Section 295: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

**296 Taxes and duties in relation to property of former New Zealand Trades Certification Board**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
- (a) the Board referred to in section 295(2)(a) (in this section referred to as the **Board**) and the Qualifications Authority shall be deemed to be the same person with effect on and from the date on which the real and personal property of the Board vests in that Authority pursuant to that section; and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the Board so vests in the Qualifications Authority, all transactions entered into by, and acts of, the Board before the vesting effected by section 295(2)(a) shall be deemed to have been entered into by, or to be those of, that Authority and to have been entered into or performed by that Authority at the time when they were entered into or performed by the Board.
- (2) For the purposes of determining whether—
- (a) any taxpayer satisfies the requirements of section IF 1(1)(a) of the Income Tax Act 2004; or
  - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IG 1 of the Income Tax Act 2004; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section ME 5(1)(i) of the Income Tax Act 2004, or in a taxpayer's dividend withholding payment account under section MG 5(1)(i) of that Act, or in a taxpayer's branch equivalent tax account under section MF 4(3)(d) of that Act,—
- shares held by the Board in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 295(2)(a) shall be treated

as having been acquired by the Qualifications Authority at the time when they were acquired by the Board.

- (3) The vesting of all the real and personal property of the Board in the Qualifications Authority pursuant to section 295(2)(a) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 296: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

Section 296(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 296(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 296(2)(a): amended, on 1 April 2005 (effective for 2005–06 income year and later income years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 296(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 296(2)(b): amended, on 1 April 2005 (effective for 2005–06 income year and later income years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 296(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 296(2)(c): amended, on 1 April 2005 (effective for 2005–06 income year and later income years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

## **297 Transitional provisions consequential on repeal of Universities Act 1961**

- (1) Upon the commencement of this section,—
  - (a) all real and personal property that, immediately before that commencement, was vested in the University Grants Committee other than property to which section 243(1) applies, is, by force of this subsection, vested

- in the Minister subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and
- (b) the Minister becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities and obligations of the University Grants Committee that existed immediately before that commencement.
- (2) Where any land vests in the Minister under subsection (1), the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she may require, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of that subsection.
- (3) The Minister may, by writing signed by the Minister, declare that a specified debt, liability, or obligation referred to in subsection (1)(b) is to be assumed by the Vice-Chancellors Committee or the Qualifications Authority and thereupon that debt, liability or obligation becomes a debt, liability or obligation of that Committee or Authority, as the case may be, and ceases to be a debt, liability or obligation of the Minister.
- (4) Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the commencement of this section to which the University Grants Committee was a party has effect after that commencement as if—
- (a) the Minister is substituted for the Committee as a party to the contract, other instrument or proceeding; and
- (b) any reference in the contract or other instrument, or in a pleading, affidavit or other document in the proceeding, to the Committee in its capacity as a party to the contract, other instrument or proceeding is (except in relation to matters that occurred before that commencement) a reference to the Minister.
- (5) Any rulings, decisions, or other acts of authority of the University Grants Committee, or of any committee of the University Grants Committee, or of the Universities Entrance Board, or of any committee of the Universities Entrance Board, to the extent to which they were subsisting immediately before

the commencement of this section and are capable of being repealed, replaced, or amended by an appropriate body established under this Act, continue in force after that commencement, so far as they are capable of operation and with any necessary modifications, as if they had been duly made, given, or done by that body.

- (6) Where, but for the repeal of the Universities Act 1961, the Chairman of the University Grants Committee would, by virtue of his or her office, have been—

- (a) a trustee of any trust established by an Act, other than a trust of which a member of the Vice-Chancellors Committee is a trustee; or
- (b) a member of any board, committee, authority, or other body, established by an Act, other than a board, committee, authority, or other body, of which a member of the Vice-Chancellors Committee is a member,—

the Chairperson of the Vice-Chancellors Committee is, by force of this subsection, a trustee of that trust or a member of that board, committee, authority or other body, as the case may be, in place of the Chairman of the University Grants Committee.

- (7) Where, but for the repeal of the Universities Act 1961, the University Grants Committee would have had power to appoint a person to be—

- (a) a trustee of any trust established by an Act, other than a trust of which a member of the Vice-Chancellors Committee is a trustee; or
- (b) a member of any board, committee, authority, or other body, established by an Act, other than a board, committee, authority, or other body, of which a member of the Vice-Chancellors Committee is a member,—

the Chairperson of the Vice-Chancellors Committee is, by force of this subsection, a trustee of that trust or a member of that board, committee, authority, or other body, as the case may be, and, if a person was such a trustee or member immediately before the commencement of this section by virtue of such an appointment, that appointment shall be deemed to have terminated upon that commencement.

- (8) Notwithstanding the repeal of the Universities Act 1961,—

- (a) sections 18, 25, 32, and 37 of that Act continue to apply in respect of any financial year in respect of which those sections had not been complied with before the commencement of this section but so apply as if the period that commenced on 1 January 1990 and ended immediately before that commencement was a financial year; and
  - (b) section 44 of that Act continues to apply in relation to the exercise of any functions of the Universities Entrance Board before the commencement of this section that have not been the subject of a report by the Board under that section; and
  - (c) the University Grants Committee continues in existence for the purpose only of complying with sections 18(3) and 25(1) of that Act as those sections apply by virtue of paragraph (a); and
  - (d) the Curriculum Committee of the University Grants Committee continues in existence for the purpose only of furnishing a report or reports in accordance with section 32 of that Act as that section applies by virtue of paragraph (a) but any such report shall be furnished to the Minister and not to the University Grants Committee; and
  - (e) the Research Committee of the University Grants Committee continues in existence for the purpose only of furnishing a report or reports in accordance with section 37 of that Act as that section applies by virtue of paragraph (a) of this subsection but any such report shall be furnished to the Minister and not to the University Grants Committee; and
  - (f) the Universities Entrance Board continues in existence for the purpose only of furnishing a report in accordance with section 44 of that Act as that section applies by virtue of paragraph (b) of this subsection but any such report shall be furnished only to the Minister.
- (9) The Secretary shall give to the University Grants Committee any assistance that is required for the purpose of complying with sections 18 and 25 of the Universities Act 1961 as those sections apply by virtue of subsection (8)(a) of this section

and is responsible for paying any expenses incurred in respect of that compliance, including remuneration and expenses of members of the University Grants Committee.

- (10) The Qualifications Authority shall give to the Curriculum Committee of the University Grants Committee and to the Universities Entrance Board any assistance that is required for the purpose of complying with sections 32 and 44 of the Universities Act 1961 as those sections apply by virtue of paragraph (a) or paragraph (b) of subsection (8) of this section, as the case may be, and is responsible for paying any expenses incurred in respect of that compliance, including remuneration and expenses of members of the Curriculum Committee or of the Universities Entrance Board.

- (11) *[Repealed]*

Section 297: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

Section 297(11): repealed, on 1 January 2003, by section 45(2)(b) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## **298 Taxes and duties in relation to certain property of former University Grants Committee**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
- (a) the University Grants Committee and the Minister shall be deemed to be the same person with effect on and from the date on which real and personal property of that Committee vests in the Minister pursuant to section 297(1)(a); and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which real and personal property of the University Grants Committee so vests in the Minister, all transactions entered into by, and acts of, that Committee in relation to that property before the vesting effected by section 297(1)(a) shall be deemed to have been entered into by, or to be those of, the Minister and

to have been entered into or performed by the Minister at the time when they were entered into or performed by that Committee.

- (2) For the purposes of determining whether—
- (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or
  - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under section OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—
- shares held by the University Grants Committee in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 297(1)(a) shall, if the shares vest under that section in the Minister, be treated as having been acquired by the Minister at the time when they were acquired by that Committee.
- (3) The vesting of real and personal property of the University Grants Committee in the Minister pursuant to section 297(1)(a) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 298: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

Section 298(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 298(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 298(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).



Section 298(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 298(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 298(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 298(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

## **299 Transitional provisions consequential on repeal of Vocational Awards Act 1979**

- (1) In this section, **previous Authority** means the Authority for Advanced Vocational Awards that was constituted under the Vocational Awards Act 1979.
- (2) Upon the commencement of this section,—
  - (a) all real and personal property that, immediately before that commencement, was vested in the previous Authority is, by force of this subsection, vested in the Qualifications Authority subject to all charges, encumbrances, estates, and interests, and the provisions of any enactment, affecting that property; and
  - (b) the Qualifications Authority becomes, by force of this subsection, liable to pay and discharge all the debts, liabilities and obligations of the previous Authority that existed immediately before that commencement.
- (3) Where any land vests in the Qualifications Authority under subsection (2), the District Land Registrar for the land registration district in which the land is situated, on the deposit with him or her of such plans and documents as he or she may require, shall make such entries in the register, and generally do all such other things, as may be necessary to give full effect to the provisions of that subsection.
- (4) Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the commencement of this section to which the previous Authority was a party has effect on and after that commencement as if—

- (a) the Qualifications Authority is substituted for the previous Authority as a party to the contract, other instrument or proceeding; and
  - (b) any reference in the contract or other instrument, or in a pleading, affidavit, or other document in the proceeding, to the previous Authority in its capacity as a party to the contract, other instrument, or proceeding is (except in relation to matters that occurred before the commencement) a reference to the Qualifications Authority.
- (5) All regulations, rulings, decisions, and other acts of authority of the previous Authority, so far as they were subsisting immediately before the commencement of this section, continue in force as if they were regulations, rulings, decisions, and other acts of authority, respectively, of the Qualifications Authority.
- (6) Notwithstanding the repeal of the Vocational Awards Act 1979,—
  - (a) sections 21(2) and 22(2) of that Act continue to apply in respect of each financial year in respect of which those sections had not been complied with before the commencement of this section but so apply as if the period that commenced on 1 April 1990 and ended immediately before that commencement was a financial year; and
  - (b) every Course Committee that was established under section 4 of that Act shall, as soon as practicable after the commencement of this section, forward a report to the previous Authority on its activities for the period that commenced on 1 March 1990 and ended immediately before the commencement of this section; and
  - (c) the previous Authority and each Course Committee continue in existence for the purpose only of complying with paragraphs (a) and (b).
- (7) The Qualifications Authority shall give to the previous Authority and a Course Committee any assistance that the previous Authority or Course Committee requires for the purpose of complying with its obligations under or arising by virtue of subsection (6) and is responsible for paying any expenses incurred by the previous Authority or Course Committee (in-

cluding remuneration and expenses of members of the previous Authority or Course Committee) in so complying.

Section 299: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

**300 Taxes and duties in relation to property of former Authority for Advanced Vocational Awards**

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge—
  - (a) the previous Authority referred to in section 299(1) (in this section referred to as the **previous Authority**) and the Qualifications Authority shall be deemed to be the same person with effect on and from the date on which the real and personal property of the previous Authority vests in the Qualifications Authority pursuant to that section; and
  - (b) in respect of the liability under any such enactment for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the previous Authority so vests in the Qualifications Authority, all transactions entered into by, and acts of, the previous Authority before the vesting effected by section 299(2)(a) shall be deemed to have been entered into by, or to be those of, the Qualifications Authority and to have been entered into or performed by that Authority at the time when they were entered into or performed by the previous Authority.
- (2) For the purposes of determining whether—
  - (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007; or
  - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007; or
  - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007, or in a taxpayer's FDP account under sec-

tion OC 24 of that Act, or in a taxpayer's branch equivalent tax account under section OE 15 of that Act,—  
shares held by the previous Authority in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting effected by section 299(2)(a) shall be treated as having been acquired by the Qualifications Authority at the time when they were acquired by the previous Authority.

- (3) The vesting of all the real and personal property of the previous Authority in the Qualifications Authority pursuant to section 299(2)(a) shall not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purpose of the Estate and Gift Duties Act 1968 or as a conveyance for the purposes of the Stamp and Cheque Duties Act 1971.
- (4) Nothing in subsection (2) or subsection (3) limits the generality of subsection (1).

Section 300: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

Section 300(1): amended, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 300(2)(a): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 300(2)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 300(2)(b): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 300(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 300(2)(c): replaced, on 1 April 1995 (applying with respect to tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 300(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### **301 Regulations**

The Governor-General may, from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of Parts 13 to 24 and for the due administration of those provisions.

Section 301: inserted, on 23 July 1990, by section 46 of the Education Amendment Act 1990 (1990 No 60).

### **301A Change of names of education entities**

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, do either or both of the following:
  - (a) specify or change the name of any education entity whose name is to be specified under this section:
  - (b) amend any enactment by omitting from it the name of any such education entity and substituting some other name.
- (2) An education entity established or continued by this Act does not cease to be such an entity merely because its name is changed under this section.

Section 301A: inserted, on 19 December 1998, by section 52 of the Education Amendment Act (No 2) 1998 (1998 No 118).

## **Part 25**

### **Student allowances and administration of student loans**

Part 25: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Part 25 heading: amended, on 1 November 1999, by section 4 of the Education Amendment Act 1999 (1999 No 107).

### **302 Interpretation**

In this Part of this Act, unless the context otherwise requires,—  
**allowance** includes award, bursary, grant, and scholarship  
**Authority** means the Student Allowance Appeal Authority established by section 304(1)

**member** means the person who for the time being is the Authority

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Secretary** means the chief executive of the Ministry

**student loan** has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011

**student loan information** means information held by the Ministry for the purposes of the administration of the student loan scheme under the Student Loan Scheme Act 2011.

Section 302: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Section 302 **Minister**: inserted, on 1 January 1992, by section 2(6) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 302 **Ministry**: inserted, on 1 January 1992, by section 2(6) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 302 **Secretary**: inserted, on 1 January 1992, by section 2(6) of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 302 **student loan**: replaced, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 302 **student loan information**: inserted, on 1 November 1999, by section 5 of the Education Amendment Act 1999 (1999 No 107).

Section 302 **student loan information**: amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

### 303 Student allowances

- (1) The Governor-General may, by Order in Council, make regulations establishing allowances to help people pursue courses of education or training (in the case of courses of secondary education, whether within or outside New Zealand).
- (2) Every allowance shall—
  - (a) be awarded in accordance with the regulations that established it; and
  - (b) have an annual or other value from time to time set out in those regulations.

- (3) Regulations under subsection (1) may, in relation to the payment of allowances in respect of courses of study at registered private schools or private training establishments, apply to—
  - (a) all such schools or establishments; or
  - (b) registered private schools or private training establishments of a specified class or description only; or
  - (c) particular schools or establishments.
- (3A) Regulations made under this section may be expressed to come into force, and may accordingly come into force, before the date on which they are made, but only if the regulations—
  - (a) increase the value or maximum value of any allowance, or the rate or maximum rate at which any allowance may be paid; or
  - (b) extend the class or classes of person entitled to receive an allowance, or entitled to be paid an allowance at any particular rate.
- (3B) The rates of student allowances set under this section (except the rates of allowances provided in respect of accommodation expenses) must be adjusted, by regulations made under subsection (1), as at 1 April each year so that in each case the new rate (after the deduction of standard tax) is the rate at that date (after the deduction of standard tax and before the adjustment under this section is made) adjusted by an amount equal to the percentage movement upwards in the CPI between the CPI for the quarter ended with 31 December 1 year before the immediately preceding 31 December and the CPI for the quarter ended with the immediately preceding 31 December.
- (3C) The adjustments (by any percentage movement upwards in the CPI) required under subsection (3B) as at 1 April in any year from 2011 to 2017 (inclusive) must, despite subsections (3B) and (3F), be calculated,—
  - (a) if, and insofar as, they relate to movements during quarters that end before 29 April 2010, using index numbers for those quarters of the consumers price index-all groups published by Statistics New Zealand; and
  - (b) if, and insofar as, they relate to movements during quarters that end after 28 April 2010, using index numbers for those quarters of the consumers price index-all

groups excluding cigarettes and other tobacco products published by Statistics New Zealand.

- (3D) An adjustment under subsection (3B) must not reduce the weekly amounts of student allowances payable.
- (3E) Every adjustment made under subsection (3B) comes into force, or is considered to have come into force, on 1 April of the calendar year in which it is made, and applies to student allowances payable on and after that date.
- (3F) In this section,—
- CPI** means the consumers price index-all groups published by Statistics New Zealand
- standard tax** means the amount of tax reckoned on a weekly basis that would be withholdable in accordance with tax code “M” stated in section 24B of the Tax Administration Act 1994.
- (4) The power to make regulations under subsection (1) includes (and is deemed always to have included) power to make regulations—
- (a) authorising the Secretary, for the purposes of assessing the eligibility of any person for an allowance, to take into account the income of that person’s parents or spouse or partner:
- (b) defining the terms parent, spouse, partner, and any related terms, for the purposes of the regulations:
- (c) stating when and to what extent that income is to be taken into account.
- (5) Until regulations under this section set out the value of allowances established by the regulations, the allowances have the annual or other value prescribed by the Minister by notice in the *Gazette*.

Compare: 1964 No 135 s 203(2)

Section 303: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Section 303(2)(b): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 303(3A): inserted, on 17 May 2006, by section 47 of the Education Amendment Act 2006 (2006 No 19).

Section 303(3B): inserted, on 27 September 2010, by section 4 of the Education Amendment Act (No 2) 2010 (2010 No 103).



Section 303(3C): inserted, on 27 September 2010, by section 4 of the Education Amendment Act (No 2) 2010 (2010 No 103).

Section 303(3C): amended, on 24 October 2012, by section 3 of the Education (Student Allowances Indexation—Budget Measures) Amendment Act 2012 (2012 No 79).

Section 303(3D): inserted, on 27 September 2010, by section 4 of the Education Amendment Act (No 2) 2010 (2010 No 103).

Section 303(3E): inserted, on 27 September 2010, by section 4 of the Education Amendment Act (No 2) 2010 (2010 No 103).

Section 303(3F): inserted, on 27 September 2010, by section 4 of the Education Amendment Act (No 2) 2010 (2010 No 103).

Section 303(4): inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 303(4)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 303(4)(b): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 303(5): inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

### **304 Student Allowance Appeal Authority**

- (1) There is hereby established the Student Allowance Appeal Authority.
- (2) Subject to subsection (3), the Authority shall comprise 1 person, who shall be appointed by the Minister for a term of 3 years from the date of appointment, but shall be eligible for reappointment.
- (2A) Despite the expiry of the member's term of office, the member may remain in office until he or she is reappointed or a successor is appointed.
- (3) The member may at any time be removed from office by the Minister by notice in the *Gazette* for inability to adequately perform the duties of office, bankruptcy, neglect of duty, or misconduct, proved to the Minister's satisfaction, and may at any time resign office by written notice to the Minister.
- (4) The Authority is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (5) The member is entitled to receive—

- (a) remuneration by way of fees, salary, or allowances, for the member's services as the Authority;
  - (b) payment of travelling allowances or expenses in respect of time spent travelling as, or in connection with the member's function as, the Authority.
- (6) The Authority's function is to hear and determine appeals made to it in accordance with this section.
- (7) The Authority is the body formerly known as the Tertiary Assistance Grants Appeal Authority.

Section 304: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Section 304(2A): inserted, on 17 May 2006, by section 48 of the Education Amendment Act 2006 (2006 No 19).

Section 304(3): amended, on 25 October 2001, by section 58 of the Education Standards Act 2001 (2001 No 88).

### **305 Appeals**

- (1) This subsection applies to every decision under this Act (being a decision that the person or body making it had power to make in some other way)—
- (a) fixing the amount of any allowance; or
  - (b) declining to award an allowance to any person; or
  - (c) approving as a full-time programme for any person in any year any specified part of a course of study; or
  - (d) refusing to approve as a full-time programme in any year any part of a course of study for any person; or
  - (e) refusing to extend the period in respect of which any person may receive payments under any allowance; or
  - (f) refusing to recognise the amount of work passed in any year by any person as being sufficient to entitle the person to the reinstatement of any allowance; or
  - (g) refusing to recognise any qualification or amount of work gained or passed by any person as being equivalent to any other qualification or amount of work.
- (2) Where any person enrolled or intending to enrol at a tertiary institution is aggrieved by a decision to which subsection (1) applies, being a decision the making of which has been delegated to an employee of the Ministry by the Secretary, that person may request the Secretary to review that decision; and

in that case the Secretary shall review that decision and shall either—

- (a) confirm it; or
- (b) substitute for it any other decision that the person or body that made it might have made.

(2A) An application for a review under subsection (2) must be brought within 3 months after the person receives notification of the decision, or (if the Secretary considers there is good reason for the delay) within such further period as the Secretary may allow on application made either before or after the expiration of that period of 3 months.

(3) Where any person is aggrieved by—

- (a) the decision by the Secretary under subsection (2)(a) to confirm any decision relating to the person; or
- (b) any decision relating to the person substituted by the Secretary under subsection (2)(b) for any other decision; or
- (c) any decision relating to the person made by the Secretary (other than by an employee of the Ministry under delegation) to which subsection (1) applies—

the person may appeal against the decision; and in that case the Authority shall consider the appeal and, in the light of all the circumstances it considers relevant, shall either—

- (d) confirm the decision; or
- (e) substitute for it any other decision that the Secretary might have made,—

and the confirmation or decision shall have effect as if it were the decision of the Secretary.

(4) Every decision of the Authority shall be accompanied by written reasons for it.

(5) When substituting for any decision of the Secretary any other decision that the Secretary might have made, the Authority may (if it thinks that in all the circumstances to do so would be appropriate) require the Secretary to pay a sum fixed by the Authority, being all or part of the costs incurred by the Authority in hearing the appeal; and in that case the Secretary shall cause that sum to be paid to the chief executive of the Ministry of Justice.

Section 305: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Section 305(2): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 305(2A): inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 305(3)(c): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 305(5): amended, on 1 October 2003, pursuant to section 14(2) of the State Sector Amendment Act 2003 (2003 No 41).

### **306 Procedures to be prescribed**

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing how—
  - (a) appeals are to be made to the Authority; and
  - (b) the Authority is to deal with appeals and conduct its proceedings.
- (2) Subject to subsection (1), the Authority shall conduct its proceedings as it thinks fit.
- (3) The Ministry of Justice shall provide for the Authority all administrative and secretarial services necessary to enable it to perform its functions.

Section 306: inserted, on 23 July 1990, by section 48 of the Education Amendment Act 1990 (1990 No 60).

Section 306(3): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

### **306A Disclosure of enrolment information by secondary schools**

The provisions of section 226A apply to any secondary school as if such a school were an institution within the meaning of that section.

Section 306A: inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

### **307 Recipients of allowances or student loans, and other persons, may be required to provide information**

- (1) In this section and sections 307AAA and 307AA,—

**change in the recipient's circumstances** includes a change in another person's circumstances that—

- (a) the recipient knows about; and
- (b) the recipient knows materially affects his or her entitlement to a statutory allowance or student loan, or a particular rate of statutory allowance or a particular amount of a student loan

**non-recipient** means a person who is not a recipient, and—

- (a) includes a person who is acting in his or her official capacity as an officer or employee of a department of State or public body; but
- (b) does not include a person acting in his or her capacity as an officer of a court

**recipient** means a person who holds, has at any time held, or has at any time applied for, a statutory allowance or a student loan

**statutory allowance** means an allowance established by regulations under section 303.

- (2) Regulations under section 303 may require officials of institutions at which any statutory allowance established by the regulations is or has at any time been tenable to give the Secretary either or both of the following:
  - (a) information about payments made under the regulations to or in respect of recipients enrolled or formerly enrolled at the institution:
  - (b) statistical or other information relating to payments made under the regulations to or in respect of recipients enrolled or formerly enrolled at the institution, whether—
    - (i) in general; or
    - (ii) in relation to recipients of a particular class or description; or
    - (iii) in relation to a particular recipient or particular recipients.
- (3) The Secretary (or any person authorised for the purpose by the Secretary) may, by written notice to any recipient, require the recipient to do all or any of the following things:

- (a) produce to the Secretary (or authorised person) any papers, documents, records, or other things, relevant to the recipient's entitlement at any time—
  - (i) to a statutory allowance or student loan; or
  - (ii) to be paid a statutory allowance at a particular rate or any amount of a student loan,—that are in the person's possession or under the person's control;
- (b) allow copies of any such papers, documents, or records to be made;
- (c) give the Secretary (or authorised person) any information or particulars relevant to the recipient's entitlement at any time—
  - (i) to a statutory allowance or student loan; or
  - (ii) to be paid a statutory allowance at a particular rate or any amount of a student loan,—that is required by the Secretary (or the authorised person).
- (4) The Secretary (or any person authorised for the purpose by the Secretary) may investigate the circumstances at any time of any recipient so far as they may relate to the recipient's entitlement at any time—
  - (a) to a statutory allowance or student loan; or
  - (b) to be paid a statutory allowance at a particular rate or any amount of a student loan.
- (5) A recipient or non-recipient who is asked questions during an investigation under subsection (4) must answer the questions.
- (6) A recipient must notify the Secretary, as soon as practicable, of any change in the recipient's circumstances that materially affects his or her entitlement at any time—
  - (a) to a statutory allowance or student loan; or
  - (b) to be paid a statutory allowance at a particular rate or a particular amount of a student loan.
- (6A) *[Repealed]*
- (7) *[Repealed]*

Section 307: replaced, on 19 December 1998, by section 53 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 307 heading: amended, on 20 May 2010, by section 64(1) of the Education Amendment Act 2010 (2010 No 25).

Section 307 heading: amended, on 1 November 1999, by section 6 of the Education Amendment Act 1999 (1999 No 107).

Section 307(1): amended, on 20 May 2010, by section 64(2) of the Education Amendment Act 2010 (2010 No 25).

Section 307(1) **change in the recipient's circumstances**: inserted, on 20 May 2010, by section 64(3) of the Education Amendment Act 2010 (2010 No 25).

Section 307(1) **non-recipient**: inserted, on 20 May 2010, by section 64(3) of the Education Amendment Act 2010 (2010 No 25).

Section 307(1) **recipient**: amended, on 1 November 1999, by section 6(1) of the Education Amendment Act 1999 (1999 No 107).

Section 307(3)(a)(i): amended, on 1 November 1999, by section 6(2)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 307(3)(a)(ii): amended, on 1 November 1999, by section 6(2)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 307(3)(c)(i): amended, on 1 November 1999, by section 6(2)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 307(3)(c)(ii): amended, on 1 November 1999, by section 6(2)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 307(4)(a): amended, on 1 November 1999, by section 6(2)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 307(4)(b): amended, on 1 November 1999, by section 6(2)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 307(5): replaced, on 1 November 1999, by section 6(3) of the Education Amendment Act 1999 (1999 No 107).

Section 307(5): amended, on 20 May 2010, by section 64(4) of the Education Amendment Act 2010 (2010 No 25).

Section 307(6): replaced, on 20 May 2010, by section 64(5) of the Education Amendment Act 2010 (2010 No 25).

Section 307(6A): repealed, on 20 May 2010, by section 64(5) of the Education Amendment Act 2010 (2010 No 25).

Section 307(7): repealed, on 20 May 2010, by section 64(5) of the Education Amendment Act 2010 (2010 No 25).

### **307AAA Suspension or refusal for not providing information**

- (1) The Secretary may do whichever of the following the case requires, if he or she is satisfied that a recipient or non-recipient has, without reasonable cause, failed or refused to comply with a requirement under section 307(3) or to comply with section 307(5) and, in the case of a recipient, that the recipient has been warned of the consequence of the failure or refusal and given the opportunity to show reasonable cause or answer the question:

- (a) suspend any statutory allowance held by the recipient, whether granted before or after the failure or refusal:
  - (b) refuse to grant any statutory allowance, or refuse to advance any student loan, to the recipient, whether or not the recipient may appear to be entitled to be granted the allowance or advanced the loan.
- (2) Despite subsection (1), the recipient must be given an opportunity to provide the information sought before any action is taken in respect of him or her under subsection (1), if the failure or refusal to comply is by a non-recipient.
- (3) Payments must not be made under a statutory allowance while it is suspended under subsection (1).

Section 307AAA: inserted, on 20 May 2010, by section 65 of the Education Amendment Act 2010 (2010 No 25).

### **307AA Offences concerning allowances and student loans**

- (1) A person commits an offence against this Act, and is liable on conviction to a fine not exceeding \$2,000, who, in response to a requirement under subsection (3) or a question asked under subsection (5) of section 307, knowingly—
  - (a) makes a false or misleading statement; or
  - (b) makes a statement from which any material matter has been omitted; or
  - (c) provides any false or misleading paper, document, or record; or
  - (d) provides a paper, document, or record from which any material matter has been omitted.
- (2) A recipient or non-recipient commits an offence against this Act and is liable on conviction to a fine not exceeding \$2,000 who refuses to comply with section 307(5).
- (2A) A recipient commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 if he or she, for the purpose of receiving or continuing to receive a statutory allowance or student loan, or a statutory allowance at a particular rate or any amount of a student loan, other than that to which he or she is entitled,—
  - (a) knowingly makes a false or misleading statement in an application for a statutory allowance or student loan; or



- (b) knowingly makes a false or misleading statement in a notification of a change in the recipient's circumstances that materially affects his or her entitlement at any time—
    - (i) to a statutory allowance or student loan; or
    - (ii) to be paid a statutory allowance at a particular rate or a particular amount of a student loan; or
  - (c) wilfully fails to comply with section 307(6).
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this section ends on the date that is 12 months after the date on which the offence was brought to the Ministry's attention.

Section 307AA: inserted, on 19 December 1998, by section 53 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 307AA heading: amended, on 1 November 1999, by section 7 of the Education Amendment Act 1999 (1999 No 107).

Section 307AA(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 307AA(1): amended, on 20 May 2010, by section 66(1) of the Education Amendment Act 2010 (2010 No 25).

Section 307AA(2): replaced, on 20 May 2010, by section 66(2) of the Education Amendment Act 2010 (2010 No 25).

Section 307AA(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 307AA(2A): replaced, on 20 May 2010, by section 66(2) of the Education Amendment Act 2010 (2010 No 25).

Section 307AA(2A): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 307AA(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **307AB Allowances identified by *Gazette* notice**

- (1) The Minister may, by notice in the *Gazette*, identify either or both of the following as an allowance to which this section applies:
  - (a) any allowance paid to students otherwise than under an enactment;
  - (b) any money paid under any agreement entered into under section 139E.

- (2) Subsection (1) applies whether the allowance or money referred to in that subsection first became payable before or after 17 May 2006.

Section 307AB: replaced, on 20 September 2007, by section 6 of the Education Amendment Act 2007 (2007 No 52).

### **307AC Bonded scholarships**

- (1) The Minister may, by notice in the *Gazette*, declare that any allowance to which section 307AB applies is a bonded scholarship.
- (2) The effect of declaring an allowance to be a bonded scholarship is that, under section 7 of the Student Loan Scheme Act 2011, the Student Loan Scheme Act 2011 applies to enable the recovery of money in accordance with the terms of the scholarship.

Section 307AC: inserted, on 17 May 2006, by section 50 of the Education Amendment Act 2006 (2006 No 19).

Section 307AC(1): replaced, on 20 September 2007, by section 7(1) of the Education Amendment Act 2007 (2007 No 52).

Section 307AC(2): amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 307AC(2): amended, on 20 September 2007, by section 7(2) of the Education Amendment Act 2007 (2007 No 52).

### **307A Use of student allowance information for purposes of Social Security Act 1964**

- (1) In this section, unless the context otherwise requires,—
- allowance** means an allowance established by regulations under section 303 or identified by *Gazette* notice under section 307AB
- allowance information** means any information held by the Ministry about a person who has applied for or has been granted an allowance
- beneficiary** means any person who is receiving, or has received, any benefit; and includes an applicant for a benefit
- beneficiary information** means information held by the department about a beneficiary

**benefit** has the same meaning as in section 3(1) of the Social Security Act 1964; and includes—

- (a) a lump sum payable under section 61DB or section 61DC or section 61DD of that Act;
- (b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) or (da) of that Act

**department** means the department for the time being responsible for the administration of the Social Security Act 1964

**tax file number** has the same meaning as in section YA 1 of the Income Tax Act 2007.

- (2) During any period in which the Ministry and the department are the same department,—
  - (a) allowance information, beneficiary information, and student loan information may be held on the same system or systems within that department;
  - (b) allowance information about any person and beneficiary information and student loan information about the same person may be held on the same file within that department;
  - (c) allowance information about any person may be used by the department for the purposes of verifying—
    - (i) the entitlement or eligibility of any person to or for any benefit or student loan; or
    - (ii) the amount of any benefit, or any amount of a student loan, to which any person is or was entitled or for which any person is or was eligible;
  - (d) beneficiary information about any person may be used by the department for the purposes of verifying—
    - (i) the entitlement or eligibility of any person to or for any allowance or student loan; or
    - (ii) the amount of any allowance or student loan to which any person is or was entitled or for which any person is or was eligible;
  - (da) student loan information about any person may be used by the department for the purposes of verifying—
    - (i) the entitlement or eligibility of any person to or for any allowance or benefit; or

- (ii) the amount of any allowance or benefit to which any person is or was entitled or for which any person is or was eligible:
- (e) allowance information, beneficiary information, and student loan information about any person may be used by the department—
  - (i) for the purpose of recovering from that person any amount for which that person is indebted to the Crown; or
  - (ii) for the purpose of prosecuting that person for any offence; or
  - (iii) for the purpose of imposing any pecuniary penalty,—

in respect of the payment to that person of an allowance or benefit, or the payment to that person of an allowance or benefit at a rate, to which he or she was not entitled.

Section 307A: replaced, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 307A(1) **allowance**: amended, on 17 May 2006, by section 51 of the Education Amendment Act 2006 (2006 No 19).

Section 307A(1) **benefit** paragraph (b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 307A(1) **tax file number**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 307A(2)(a): amended, on 1 November 1999, by section 8(1)(a) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(b): amended, on 1 November 1999, by section 8(1)(b) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(c)(i): amended, on 1 November 1999, by section 8(1)(c) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(c)(ii): amended, on 1 November 1999, by section 8(1)(d) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(d)(i): amended, on 1 November 1999, by section 8(1)(e) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(d)(ii): amended, on 1 November 1999, by section 8(1)(e) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(da): inserted, on 1 November 1999, by section 8(2) of the Education Amendment Act 1999 (1999 No 107).

Section 307A(2)(e): amended, on 20 May 2010, by section 67 of the Education Amendment Act 2010 (2010 No 25).

Section 307A(2)(e): amended, on 1 November 1999, by section 8(1)(f) of the Education Amendment Act 1999 (1999 No 107).

**307B Recovery of debts**

- (1) This section applies to any person who is indebted to the Crown in respect of the payment to that person of an allowance, or the payment to that person of an allowance at a rate, or the payment to that person of any amount of a student loan or other money, to which he or she was not or is no longer entitled.
- (2) The Secretary is entitled to recover the amount of the debt—
  - (a) in the case of an allowance debt, by deduction from—
    - (i) any allowance; or
    - (ii) any benefit under the Social Security Act 1964 to which that person may become subsequently entitled; or
  - (aa) in the case of a student loan debt, by deduction from—
    - (i) any allowance (including any case where the living costs have already been paid under the loan for the period to which the debt relates); or
    - (ii) any benefit under the Social Security Act 1964 to which that person may become subsequently entitled; or
  - (ab) in the case of a debt described in section 85A of the Social Security Act 1964, by deduction from any allowance; or
  - (b) at the suit of the Secretary; or
  - (c) by deduction notice under section 86A of the Social Security Act 1964.
- (3) For the purposes of subsection (2)(c), sections 86A and 86B to 86J of the Social Security Act 1964 apply with any necessary modifications.

Section 307B: inserted, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 307B(1): replaced, on 1 November 1999, by section 9(1) of the Education Amendment Act 1999 (1999 No 107).

Section 307B(2)(a): replaced, on 1 November 1999, by section 9(2) of the Education Amendment Act 1999 (1999 No 107).

Section 307B(2)(aa): inserted, on 1 November 1999, by section 9(2) of the Education Amendment Act 1999 (1999 No 107).

Section 307B(2)(ab): inserted, on 1 November 1999, by section 9(2) of the Education Amendment Act 1999 (1999 No 107).

Section 307B(2)(ab): amended, on 20 August 2012, by section 28(2) of the Social Security (Youth Support and Work Focus) Amendment Act 2012 (2012 No 50).

### **307C Ministry may carry out information matching of student loan information**

*[Repealed]*

Section 307C: repealed, on 1 April 2007, by section 42 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

### **307D Details of academic performance**

- (1) The Ministry of Education may, on request by the Ministry (as defined in section 302), supply details of the academic performance of any person for the purpose of verifying—
  - (a) the entitlement or eligibility of the person to or for any benefit, allowance, or student loan (as those terms are defined in section 226A); or
  - (b) the amount of any benefit, allowance, or student loan (as so defined) to which any person is or was entitled or for which any person is or was eligible.
- (2) In this section, **Ministry of Education** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of Part 13.

Section 307D: inserted, on 17 May 2006, by section 52(1) of the Education Amendment Act 2006 (2006 No 19).

## **Part 26**

### **Early childhood education and care**

Part 26: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

#### *Interpretation*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### 308 Overview

This Part—

- (a) requires the licensing of service providers who operate early childhood education and care centres; and
- (b) allows, but does not require, the licensing of service providers who provide a home-based education and care service or a hospital-based education and care service; and
- (c) allows, but does not require, playgroups to be certificated; and
- (d) provides for the funding of licensed early childhood services and certificated playgroups; and
- (e) provides for the regulation of licensed early childhood services and certificated playgroups; and
- (f) provides for a range of other matters generally in relation to early childhood education and care, including administration, curriculum, Police vetting of employees, powers of entry, and offences.

Section 308: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### 309 Interpretation

In this Part, unless the context otherwise requires,—

**early childhood education and care centre** has the meaning set out in section 310

**early childhood service** means an early childhood education and care centre, home-based education and care service, or hospital-based education and care service

**foreign student** has the same meaning as in section 2(1)

**home-based education and care service** means the provision of education or care, for gain or reward, to fewer than 5 children under the age of 6 (in addition to any child enrolled at school who is the child of the person who provides education or care), in—

- (a) their own home; or
- (b) the home of the person providing the education or care; or
- (c) any other home nominated by the parents of the children

**hospital-based education and care service** means the provision of education or care to 3 or more children under the age of 6 who are receiving hospital care within the meaning of section 4(1) of the Health and Disability Services (Safety) Act 2001

**licensed early childhood education and care centre** means an early childhood education and care centre in respect of which the service provider holds a current licence issued under regulations made under section 317

**licensed early childhood service** means an early childhood service in respect of which the service provider holds a current licence issued under regulations made under section 317

**licensed home-based education and care service** means a home-based education and care service in respect of which the service provider holds a current licence issued under regulations made under section 317

**licensed hospital-based education and care service** means a hospital-based education and care service in respect of which the service provider holds a current licence issued under regulations made under section 317

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**playgroup** means a group that meets on a regular basis to facilitate children's play and in respect of which—

- (a) no child attends for more than 4 hours on any day; and
- (b) more than half the children attending on any occasion have a parent or caregiver present in the same play area at the same time; and
- (c) the total number of children attending on any occasion is not greater than 4 times the number of parents and caregivers present in the same play area at the same time

**Secretary** means the chief executive of the Ministry



**service provider** means each of the following:

- (a) in relation to an early childhood education and care centre, the body, agency, or person who or that operates the centre:
- (b) in relation to a home-based education and care service, the body, agency, or person who or that arranges, or offers to arrange, that education or care:
- (c) in relation to a hospital-based education and care service, the body, agency, or person who or that provides that education or care:
- (d) in relation to a playgroup, the person or persons who operate the playgroup

**unsupervised access to children**, in relation to a licensed early childhood service, means access to any child that is not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:

- (a) a registered teacher or holder of a limited authority to teach:
- (b) an employee of the service on whom a satisfactory Police vet has been conducted within the last 3 years:
- (c) a parent of the child.

Section 309: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 309 **hospital-based education and care service**: replaced, on 20 May 2010, by section 68(1) of the Education Amendment Act 2010 (2010 No 25).

Section 309 **playgroup**: replaced, on 20 May 2010, by section 68(2) of the Education Amendment Act 2010 (2010 No 25).

Section 309 **unsupervised access to children**: inserted, on 20 May 2010, by section 68(3) of the Education Amendment Act 2010 (2010 No 25).

### **310 Meaning of early childhood education and care centre**

- (1) In this Part, but subject to subsections (2) to (4), **early childhood education and care centre** means premises used regularly for the education or care of 3 or more children (not being children of the persons providing the education or care, or children enrolled at a school being provided with education or care before or after school) under the age of 6—
  - (a) by the day or part of a day; but
  - (b) not for any continuous period of more than 7 days.

- (2) Subject to subsections (3) and (4), premises of the following kind are not early childhood education and care centres:
- (a) registered schools (within the meaning of section 2(1));
  - (b) hostels (within the meaning of section 2(1));
  - (c) residences (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989);
  - (d) institutions under the control of the Ministry of Health or a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000;
  - (e) hospital care institutions (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001);
  - (f) children's health camps operated by Children's Health Camps—The New Zealand Foundation for Child and Family Health and Development;
  - (g) premises where all the children present are members of the same family in the care of a member of the family or members of the same family in the care of a caregiver who is not acting for gain or reward;
  - (h) any premises, during any period of use for the education or care of children for any period not exceeding 4 hours a week in circumstances where the children's parents or caregivers are—
    - (i) in close proximity to the children and are able to be contacted; and
    - (ii) able to resume responsibility for the children at short notice:
  - (ha) any premises, during any period of use for the education or care of 3 or more children under the age of 6, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children's parents or caregivers are—
    - (i) in close proximity to the children and are able to be contacted; and
    - (ii) able to resume responsibility for the children at short notice:

- (i) any premises, during any period of use for the operation of a playgroup, licensed home-based education and care service, or hospital-based education and care service.
- (3) Despite subsection (2), premises are early childhood education and care centres if they are—
  - (a) within premises of a kind described in any of paragraphs (a) to (h) or paragraph (i) of subsection (2); and
  - (b) used regularly or principally for the education or care of 3 or more children under the age of 6 who are children of—
    - (i) staff who work within premises of a kind described in any of paragraphs (a) to (h) or paragraph (i) of subsection (2); or
    - (ii) persons attending premises of that kind as residents or students.
- (4) An early childhood education and care centre may be operated within the premises of a registered school; and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises.

Section 310: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 310(2)(ha): inserted, on 21 December 2010, by section 34(1) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 310(3)(a): amended, on 21 December 2010, by section 34(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

Section 310(3)(b)(i): amended, on 21 December 2010, by section 34(2) of the Education Amendment Act (No 3) 2010 (2010 No 134).

### *Funding*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

## **311 Funding of certain early childhood services and certificated playgroups**

- (1) In each year, out of money appropriated by Parliament,—
  - (a) the service provider for every licensed early childhood service—
    - (i) must be paid general grants; and
    - (ii) may be paid 1 or more discretionary grants; and

- (b) the service provider who operates a certificated play-group—
    - (i) may be paid general grants; and
    - (ii) may be paid 1 or more discretionary grants; and
  - (c) the management of any body corporate may be paid a discretionary grant for the purpose of establishing a licensed early childhood service or certificated play-group.
- (2) The amount of every grant must be determined by the Minister.
- (3) The Minister may from time to time determine the means by which the amounts of grants may be calculated or ascertained; and—
  - (a) different means may be determined in respect of—
    - (i) grants of different classes or descriptions; and
    - (ii) licensed early childhood services of different classes or descriptions and certificated play-groups; and
  - (b) the amount of any grant may be determined accordingly; but
  - (c) nothing in this subsection limits or affects the Minister's power under subsection (2) to determine the amount of any grant.
- (4) Without limiting subsection (3), the Minister may determine that no grant is payable in respect of any foreign student attending a licensed early childhood service.
- (5) Any grant—
  - (a) may be paid unconditionally, or subject to any conditions the Minister specifies in writing when the grant is paid or earlier; and
  - (b) may be paid to be used for any purpose the service provider considers appropriate, or for only such purposes as the Minister specifies in writing when the grant is paid or earlier; and
  - (c) may be withheld in whole or in part if the service provider fails to comply with any regulations made under section 317 or section 319 or any conditions of the licence or certificate.
- (6) The service provider must ensure that—

- (a) where a grant has been paid subject to conditions, the conditions are complied with; and
- (b) if a grant has been paid to be used only for purposes specified by the Minister under subsection (5)(b), the grant is used only for those purposes.

Section 311: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **311A Grants to licence-exempt centres**

*[Repealed]*

Section 311A: repealed, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **311B Reporting requirements if grant paid to licence-exempt centre**

*[Repealed]*

Section 311B: repealed, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **312 Loans to licensed early childhood services**

The Minister may, on any terms and conditions the Minister considers appropriate, lend to the service provider for any licensed early childhood service public money appropriated by Parliament for the purpose.

Section 312: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### *Administration and curriculum*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **313 Administrative requirements**

The service provider for every licensed early childhood service must keep, and make available to the Secretary on request,—

- (a) a register of the children who attend or have attended the service, specifying the date of birth of each; and
- (b) a record of the attendance of children at the service; and

- (c) a record of all fees and other charges paid in respect of children's attendance at the service; and
- (d) evidence that parents of children attending the service have regularly examined the attendance record; and
- (e) any other records that are necessary to enable the service's performance to be monitored adequately.

Section 313: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **314 Curriculum framework**

- (1) The Minister may prescribe a curriculum framework for any or all of the following:
  - (a) all licensed early childhood services;
  - (b) all certificated playgroups;
  - (c) all licensed early childhood services and certificated playgroups.
- (2) The Minister may not prescribe a curriculum framework or amend any prescribed curriculum framework, unless the Minister has consulted with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by the curriculum framework or the amendment, as the case may be.
- (3) As soon as practicable after prescribing or amending a curriculum framework, the Minister must publish a notice in the *Gazette* —
  - (a) stating that a curriculum framework has been prescribed or, as the case requires, amended; and
  - (b) setting out the curriculum framework or the amendment to the curriculum framework in its entirety, or stating where or how a copy of the curriculum framework or the amendment to the curriculum framework can be obtained by members of the public.
- (4) Without limiting the generality of subsection (1), a notice under subsection (3) may—
  - (a) specify different commencement dates for different provisions of the curriculum framework or for different purposes; and
  - (b) specify a transitional period during which service providers may elect to comply with another specified

curriculum requirement and specify a date on which service providers must comply with the curriculum framework.

- (5) If a curriculum framework is prescribed under this section, every service provider for a licensed early childhood service or who operates a certificated playgroup, and to whom that curriculum framework applies, must implement that curriculum framework in accordance with any requirements prescribed in regulations made under section 317 or section 319, as the case may be.

Section 314: replaced, on 17 May 2006, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 314(5): inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

#### *Licensing and certification provisions*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **315 Service providers operating early childhood education and care centres to be licensed**

- (1) No service provider may operate an early childhood education and care centre unless that service provider is licensed to operate the centre under regulations made under section 317.
- (2) Every service provider who operates an early childhood education and care centre commits an offence if—
- (a) the service provider operates the early childhood education and care centre without holding a current licence under regulations made under section 317 authorising the operation of the centre; or
  - (b) the service provider ceases to operate an early childhood education and care centre for which it holds a current licence under regulations made under section 317 authorising the operation of the centre, in circumstances other than an emergency, without first telling the Secretary that it will stop operating the centre; or
  - (c) the service provider ceases to operate the early childhood education and care centre for which it holds a current licence under regulations made under section 317

authorising the operation of the centre, in circumstances involving an emergency, and fails to tell the Secretary as soon as is reasonably practicable after the closure.

- (3) An offence against subsection (2) is punishable on conviction,—
- (a) in the case of an offence under subsection (2)(a), by a fine not exceeding \$200 for every day or part of a day on which the offence took place; or
  - (b) in the case of an offence under subsection (2)(b) or (c), by a fine not exceeding \$200.
- (4) This section is subject to section 319O.

Section 315: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 315(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **315AA Police vetting of contractors and their employees who work at early childhood services**

*[Repealed]*

Section 315AA: repealed, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **315AB Internal procedures relating to Police vets**

*[Repealed]*

Section 315AB: repealed, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **315A Payment of fees for attendance of children at kindergartens**

*[Repealed]*

Section 315A: repealed, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **316 Certain service providers may be licensed**

A service provider for a home-based education and care service or a hospital-based education and care service may, but need not, apply for a licence under regulations made under section 317 in respect of the home-based education and care



service or hospital-based education and care service provided by the service provider.

Section 316: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **317 Regulations relating to licensing**

- (1) The Governor-General may, by Order in Council, make regulations providing for either or both of the following:
  - (a) the licensing of service providers to provide early childhood services of any kind, and the transfer of licences:
  - (b) regulating the management, operation, and control of licensed early childhood services of any kind, and imposing duties on service providers.
- (2) Regulations made under subsection (1) may (without limitation) do all or any of the following:
  - (a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, staffing and parental or caregiver participation (including adult:child ratios), health and safety, implementation of the curriculum framework, communication and consultation with parents, the operation or administration of those services, or any of them, to be complied with to ensure the health, comfort, care, education, and safety of children attending licensed early childhood services:
  - (b) authorise the Minister, after consultation with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the Secretary to assess compliance with the minimum standards imposed by these regulations:
  - (c) require the Secretary to publish a notice in the *Gazette*—
    - (i) stating that criteria referred to in paragraph (b) have been prescribed; and
    - (ii) setting out the criteria in their entirety, or stating where or how a copy of those criteria may be obtained by members of the public:

- (d) limit or regulate the numbers of children who may attend licensed early childhood education and care centres or any premises used to provide a licensed home-based education and care service, or a licensed hospital-based education and care service:
- (e) provide for the grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of licences of 1 or more specified kinds for service providers for each kind of early childhood service, and prescribe the conditions subject to which such licences may be granted, renewed or transferred and the fees payable in respect of the grant, renewal, and transfer of such licences, or do any of those things:
- (f) prescribe conditions governing, or that may be imposed in respect of, licensed early childhood services and the duties of their service providers:
- (g) prescribe the records to be kept by service providers in respect of children attending licensed early childhood education and care centres, licensed home-based education and care services, and licensed hospital-based education and care services:
- (h) regulate the qualifications to be held by any specified number or proportion of those persons carrying out the following:
  - (i) the control and management of each licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them:
  - (ii) the education and care of children attending a licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service, or any of them:
- (i) provide for transitional matters not dealt with in this Act:
- (j) prescribe offences punishable on conviction by a fine not exceeding \$500 in respect of the contravention of, or non-compliance with, the regulations.

- (3) Regulations made under subsection (1) may (without limitation) prescribe different standards and other requirements—
  - (a) for early childhood services of different types or descriptions; and
  - (b) in respect of different kinds of licences.
- (4) Criteria prescribed by the Minister for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including (without limitation), for—
  - (a) early childhood services of different types or descriptions; and
  - (b) different kinds of licences; and
  - (c) different minimum standards.
- (5) Criteria prescribed by the Minister for use in assessing compliance with minimum standards imposed by regulations 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.

Section 317: replaced, on 17 May 2006, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 317(2)(j): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 317(5): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **318 Playgroups may be certificated**

A service provider who operates a playgroup may, but need not, apply for a certificate issued under regulations made under section 319 in respect of the playgroup.

Section 318: replaced, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319 Regulations relating to certification of playgroups**

- (1) The Governor-General may, by Order in Council, make regulations providing for the certification of playgroups and these regulations may do all or any of the following:
  - (a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, parental or

caregiver participation (including adult:child ratios), health and safety, implementation of the curriculum framework, communication and consultation with parents, the operation and administration of playgroups, or any of them, to be complied with to ensure the health, comfort, care, education, and safety of children attending certificated playgroups:

- (b) authorise the Minister, after consultation with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the Secretary to assess compliance with minimum standards imposed by these regulations:
- (c) require the Secretary to publish a notice in the *Gazette*—
  - (i) stating that criteria referred to in paragraph (b) have been prescribed; and
  - (ii) setting out the criteria in their entirety, or stating where or how a copy of those criteria may be obtained by members of the public:
- (d) limit or regulate the numbers of children who may attend certificated playgroups:
- (e) provide for the grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of certificates of 1 or more specified kinds for playgroups, and prescribe the conditions subject to which such certificates may be granted, renewed, or transferred and the fees payable in respect of the grant, renewal, or transfer of such certificates, or do any of these things:
- (f) prescribe conditions governing, or that may be imposed in respect of, certificated playgroups and the duties of their service providers:
- (g) prescribe the records to be kept by the service provider in respect of children attending certificated playgroups:
- (h) regulate the qualifications to be held by any specified number or proportion of those persons responsible for either or both of the following:
  - (i) the control and management of a certificated playgroup:

- (ii) the education and care of children attending a certificated playgroup:
  - (i) provide for transitional matters not dealt with in this Act.
- (2) Criteria prescribed by the Minister for use in assessing compliance with the minimum standards imposed by regulations made under this section may differ in any way, including (without limitation), for—
  - (a) different kinds of certificates; and
  - (b) different standards.
- (3) Criteria prescribed by the Minister for use in assessing compliance with minimum standards imposed by regulations 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.

Section 319: replaced, on 17 May 2006, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 319(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **319AA Application of Legislation Act 2012 to certain material incorporated by reference**

- (1) This section applies if section 49 of the Legislation Act 2012 is relied on to incorporate material by reference in criteria prescribed under section 317(2)(b) or 319(1)(b) of this Act.
- (2) When this section applies, subpart 2 of Part 3 of the Legislation Act 2012 (other than section 51) applies.

Section 319AA: inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### *Powers of entry and inspection*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319A Parent's right of entry**

The parent or guardian of a child has a right of entry to a licensed early childhood education and care centre or to the premises where a licensed home-based education and care ser-

vice is provided, whenever the child is there, except if the parent or guardian—

- (a) is subject to an order of a court that prohibits access to, or contact with, the child, either generally or with respect to the child while, or at a time when the child is, attending the centre or service; or
- (b) is subject to a warning under section 4 of the Trespass Act 1980 to stay off the premises; or
- (c) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them; or
- (d) is, in the opinion of a person responsible for the operation of the centre or service, under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behaviour of the person; or
- (e) is, in the opinion of a person responsible for the operation of the centre or service, exhibiting behaviour that is or is likely to be disruptive to the effective operation of the centre or service.

Section 319A: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319B Powers of entry and inspection without warrant**

- (1) Any person holding an authorisation under subsection (3) may, for the purpose of ensuring that the provisions of this Act and any regulations made under this Act, or the conditions of any licence, certificate, or grant issued or made under any of those provisions, are being complied with, or for the purpose of conducting any audit, at any reasonable time, do all or any of the following:
  - (a) enter and inspect any premises that are or contain a licensed early childhood education and care centre or that are used to provide a licensed home-based education and care service or a licensed hospital-based education and care service, or that are used by a certificated play-group:
  - (b) inspect, photocopy, print out, or copy onto disk any documents (whether held in electronic or paper form) that the person believes on reasonable grounds to be

- those of the licensed early childhood service or certificated playgroup:
- (c) remove any document described in paragraph (b), whether in its original form or as an electronic or paper copy.
- (2) If any document is removed from premises under subsection (1)(c), the person who removes it must—
- (a) leave at the premises a list of the documents removed; and
  - (b) return the documents, or a copy of them, to the premises as soon as practicable, unless to do so would prejudice any investigation being or to be carried out by the Ministry.
- (3) The Secretary may authorise in writing any person, who in the opinion of the Secretary is suitably qualified and trained in the exercise of powers under subsection (1), to exercise those powers.
- (4) Every authorisation under subsection (3) must contain—
- (a) a reference to this section; and
  - (b) the full name of the person authorised; and
  - (c) a statement of the powers conferred on that person by this section.
- (5) Every person exercising any power under subsection (1) must have the appropriate written authorisation, and evidence of identity, and must produce them to the person in charge of the premises concerned (or, as the case may be, the person having possession or control of the documents concerned)—
- (a) on first entering the premises; and
  - (b) whenever subsequently reasonably required to do so by the person in charge.
- (6) For the purposes of this section and section 319C, inspection, in relation to any premises, includes observing any children present there.

Section 319B: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319C Powers of entry and inspection with warrant**

- (1) Any person authorised by section 319B(3) who has reasonable grounds to believe that any premises are being used as an

early childhood education and care centre in contravention of this Act or regulations made under section 317, may apply in writing on oath to a District Court Judge, Justice of the Peace, Community Magistrate, or Registrar or Deputy Registrar of any court for a warrant.

- (2) If the Judge or other person to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, he or she may issue a warrant directed to the person by name authorising the person to enter the premises.
- (3) Every warrant issued under subsection (2) must contain—
  - (a) a reference to this section; and
  - (b) the full name of the person authorised; and
  - (c) a description of the premises concerned; and
  - (d) the date on which it was issued and the date on which it expires.
- (4) Every warrant issued under subsection (2) must authorise the person named in it, at any reasonable time within 4 weeks after the date on which it is issued, to—
  - (a) enter the premises described in the warrant; and
  - (b) do on those premises anything necessary to ascertain whether those premises are being used as an early childhood education and care centre, in contravention of this Act or any regulations made under section 317.
- (5) Every person exercising any power under subsection (4) must have the appropriate warrant and evidence of identity and must produce them to the occupier of the premises concerned—
  - (a) on first entering the premises; and
  - (b) whenever subsequently reasonably required to do so by that occupier.
- (6) Every warrant issued under subsection (2) expires on the earlier of the following dates:
  - (a) the date when the purpose for which it was issued has been satisfied; or
  - (b) the date specified as the date of expiry under subsection (3)(d).

Section 319C: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).



*Police vetting of employees*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

**319D Police vetting of non-teaching and unregistered employees at licensed early childhood services**

The service provider of a licensed early childhood service must obtain a Police vet of every person—

- (a) whom the service provider appoints, or intends to appoint, to a position at the early childhood service; and
- (b) who is to work at the service during normal opening hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

Section 319D: replaced, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319E Police vetting of contractors and their employees who work at licensed early childhood services**

- (1) The service provider of a licensed early childhood service must obtain a Police vet of every contractor, or the employee of a contractor, who has, or is likely to have, unsupervised access to children at the service during normal opening hours.
- (2) In this section, **contractor** means a person who, under contract (other than an employment contract), works at a licensed early childhood service.

Section 319E: replaced, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319F Police vet must be obtained before person has unsupervised access to children**

- (1) A Police vet required under section 319D or 319E must be obtained before the person has, or is likely to have, unsupervised access to children at the service during normal opening hours.
- (2) The service provider of a licensed early childhood service that is required under section 319D to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the service.

Section 319F: replaced, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319FA Procedures relating to Police vets under section 319D or 319E**

The service provider of a licensed early childhood service that applies for a Police vet of a person under section 319D or 319E—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) must not take adverse action in relation to a person who is the subject of a Police vet until—
  - (i) the person has validated the information contained in the vet; or
  - (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Section 319FA: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

*Police vetting of household members for home-based services*

Heading: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319FB Police vetting of adult members of household where licensed home-based education and care service provided**

- (1) The service provider of a licensed home-based education and care service must obtain a Police vet of every adult who lives in a home—
  - (a) where the service is being provided; but
  - (b) that is not the home of every child to whom the service is being provided.
- (2) In this section, **adult** means a person who is of or over the age of 17 years.

Section 319FB: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319FC When Police vet under section 319FB must be obtained**

A Police vet required under section 319FB must be obtained before the adult is, or is likely to be, present when the service is being provided.

Section 319FC: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319FD Procedures relating to Police vets under section 319FB**

The service provider of a licensed home-based education and care service that applies for a Police vet of a person under section 319FB—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) must not take adverse action in relation to the person providing the education or care until the person who is the subject of the Police vet has—
  - (i) validated the information contained in the vet; or
  - (ii) been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Section 319FD: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

*Service provider to obtain further Police vets  
under this Part every 3 years*

Heading: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

**319FE Further Police vets to be obtained every 3 years**

- (1) The service provider of a licensed early childhood service must obtain a further Police vet of every person—
  - (a) on whom a Police vet has already been obtained under this Part by that service provider; and
  - (b) who still works at the service, or lives in the home, as the case may be.
- (2) A further Police vet required under subsection (1) must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.

- (3) The requirement for a further Police vet under this section does not apply to a person on whom a Police vet under section 319D or 319E would not be required if he or she were about to be appointed to a position at the licensed early childhood service or to work at the service at the time that the further Police vet would otherwise be required.

Section 319FE: inserted, on 20 May 2010, by section 69 of the Education Amendment Act 2010 (2010 No 25).

### *Miscellaneous*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

#### **319G Offence of insulting, abusing, or intimidating staff**

Every person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, who intentionally insults, abuses, or intimidates a teacher or member of staff of an early childhood education and care centre—

- (a) within the presence or hearing of any child at the centre; and
- (b) while on centre premises or in any other place where children are assembled for purposes associated with the centre.

Section 319G: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 319G: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **319H Offence of obstructing power of entry**

Every person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by section 319A, 319B, or 319C.

Section 319H: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

Section 319H: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**319I Payment of fees for attendance of children at kindergartens**

- (1) Fees may be charged in respect of the attendance of any child at any kindergarten (whether or not it is, or is known or described as, a free kindergarten).
- (2) Subsection (1) is not limited or affected by, and has effect despite,—
  - (a) any enactment or rule of law; or
  - (b) anything in the constitution of any body corporate; or
  - (c) any contract or undertaking to the contrary entered into or given before the commencement of the Education Amendment Act (No 3) 1990.

Section 319I: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

**319J Centres situated on property owned by, or leased to, the Crown**

- (1) The continued operation of an early childhood education and care centre on land owned by, or leased to, the Crown, and the occupation by an early childhood education and care centre of any building on any such land, may be governed by—
  - (a) a lease or tenancy or licence between the Crown and the service provider who operates the centre under section 45 of the Public Works Act 1981; or
  - (b) a lease or licence between a board and the service provider under section 70B of the Education Act 1989; or
  - (c) a lease between a third party (to whom a lease has been granted by the Crown) and the service provider; or
  - (d) an occupancy document notified to the service provider who operates the centre by the Secretary.
- (2) If subsection (1)(d) applies to an early childhood education and care centre, the following provisions also apply:
  - (a) the Secretary may direct the building of any capital works on that land that are intended for the centre's use;
  - (b) the service provider who operates the centre must—
    - (i) pay to the Secretary the rent for the time being charged by the Secretary; and

- (ii) comply with standards of maintenance and capital works as determined by the Secretary:
- (c) the service provider who operates the centre must not, without the Secretary's approval,—
  - (i) carry out any capital works on the land; or
  - (ii) grant any lease or sublease of, or grant any licence or permit in respect of, or assign any rights in respect of, or part with possession or control of, or allow any other person to share possession, control, or use of, the land or any other property of the Crown.
- (3) The Secretary may from time to time amend an occupancy document by written notice to the service provider who operates the early childhood education and care centre.
- (4) In this section, **lease** includes a sublease.

Section 319J: replaced, on 13 June 2013, by section 34 of the Education Amendment Act 2013 (2013 No 34).

### *Transitional provisions*

Heading: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319K Existing early childhood centres deemed to be licensed**

- (1) Subject to subsections (2), (3), and (6), every early childhood centre that, immediately before the commencement of this section, was licensed as an early childhood centre is deemed to be licensed as an early childhood education and care centre under this subsection, and continues to be so licensed—
  - (a) for the relevant period, and in accordance with the regulations referred to in section 319N(1)(a) and (b); or
  - (b) if the service provider who operates that centre applies within the relevant period for a licence in accordance with regulations made under section 317, until that application is determined.
- (2) Despite subsection (1), the Secretary may give written notice to the service provider of an early childhood education and care centre that is deemed to be licensed under subsection (1), requiring the service provider who operates that centre to

- apply for a licence under regulations made under section 317 within 3 months of the date of that notice, and—
- (a) if that service provider fails to make such an application within the specified period, the centre ceases to be licensed under subsection (1) at the end of that period; or
  - (b) if that service provider makes such an application within the required period, the centre continues to be licensed under subsection (1) until that application has been determined.
- (3) Despite subsection (1), if subsection (4) applies, the Secretary may, by written notice to the service provider who operates an early childhood education and care centre that is deemed to be licensed under subsection (1), declare that the centre is no longer licensed under subsection (1) and the notice has effect accordingly.
- (4) The Secretary may give a notice under subsection (3) only if the Secretary is satisfied that the service provider or the centre—
- (a) does not comply with the regulations referred to in section 319N(1)(a) and (b); or
  - (b) does not comply with any conditions of the licence.
- (5) The Secretary may, despite the fact that the centre concerned does not meet the minimum requirements for the issue of a licence under regulations made under section 317, issue to the service provider operating the centre a transitional licence under those regulations that—
- (a) expires on a date specified in the licence (being a date that is not later than 18 months after the date of issue); and
  - (b) is subject to any conditions specified on it.
- (6) If the Secretary is not satisfied that the conditions specified in a licence issued in circumstances described in subsection (5) are being complied with, the Secretary may, by written notice to the service provider operating the centre, cancel the licence.
- (7) Every notice under subsection (3) or subsection (6) must give reasons for the action taken.

- (8) Every early childhood centre must, while it is deemed to be licensed under subsection (1), be treated for the purposes of this Act as an early childhood centre licensed under regulations made under section 317 (as inserted by section 53 of the Education Amendment Act 2006).
- (9) Subsections (1) to (6) do not limit any powers to cancel, suspend, or reclassify a licence conferred by the regulations referred to in section 319N(1)(a) and (b).
- (10) In this section, **relevant period** means,—
  - (a) in relation to an early childhood centre for which a probationary licence was in force immediately before the commencement of this section, the period expiring on—
    - (i) the date specified in the probationary licence as the date on which it expires; or
    - (ii) if a full licence is obtained under the regulations referred to in section 319N(1)(a) and (b) before the expiry of that probationary licence, the date that is 6 years after the commencement of this section:
  - (b) in relation to an early childhood centre for which a provisional or full licence was in force immediately before the commencement of this section, the date that is 6 years after the commencement of this section.

Section 319K: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319L Existing chartered care arrangers deemed to be licensed**

- (1) Subject to subsections (2) and (3), every care arranger who, immediately before the commencement of this section, was a chartered care arranger is deemed to be a service provider who is licensed to operate a home-based education and care service for—
  - (a) a period of 6 years after the commencement of this section; or
  - (b) if the service provider who provides that service applies within that period for a licence in accordance with regulations under section 317, until that application is determined.



- (2) Despite subsection (1), the Secretary may give written notice to a service provider that is deemed to be licensed under subsection (1), requiring the service provider to apply for a licence under regulations made under section 317 within 3 months of the date of that notice, and—
  - (a) if that service provider fails to make such an application within the specified period, the home-based education and care service provided by that service provider ceases to be licensed under subsection (1) at the end of that period; or
  - (b) if that service provider makes such an application within the required period, the service continues to be licensed under subsection (1) until that application has been determined.
- (3) Despite subsection (1), if subsection (4) applies, the Secretary may by written notice to the service provider who provides the home-based education and care service that is deemed to be licensed under subsection (1), declare that the service is no longer licensed under subsection (1) and the notice has effect accordingly.
- (4) The Secretary may give a notice under subsection (3) only if the Secretary is satisfied that the service is not provided in a way that complies with the code of practice set out in the order referred to in section 319N(1)(c).
- (5) The Secretary may, despite the fact that the service provider or service concerned does not meet the minimum requirements for the issue of a licence under regulations made under section 317 or the service concerned is not provided in a way that complies with the code of practice set out in the order referred to in section 319N(1)(c), issue to the service provider providing the service a transitional licence under those regulations that—
  - (a) expires on a date specified in the licence (being a date that is not later than 18 months after the date of issue); and
  - (b) is subject to any conditions specified on it.
- (6) If the Secretary is not satisfied that the conditions specified in a licence issued in circumstances described in subsection (5) are

being complied with, the Secretary may, by written notice to the service provider providing the service, cancel the licence.

- (7) Every notice under subsection (3) or subsection (6) must give reasons for the action taken.
- (8) Every home-based education and care service must, while it is deemed to be licensed under subsection (1), be treated for the purposes of this Act as a home-based education and care service licensed under regulations made under section 317 (as inserted by section 53 of the Education Amendment Act 2006).

Section 319L: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

### **319M Funding conditions during transitional period**

- (1) This section applies in respect of—
  - (a) a service provider who operates an early childhood education and care centre that immediately before the commencement of this section was a chartered early childhood centre, during the period while it is deemed to be licensed under section 319K(1); and
  - (b) a service provider who operates a home-based education and care service and who immediately before the commencement of this section was a chartered care arranger, during the period while the service provider is deemed to be licensed under section 319L(1).
- (2) While this section applies in respect of a service provider who operates an early childhood education and care centre or a home-based education and care service, it is a condition of any grant paid to that provider under section 311 that the provider continues to comply with the relevant statement of desirable objectives and practices published in the *Gazette* under section 312 (as that section read before the commencement of this section).
- (3) The Minister may at any time, while this section applies in respect of any service provider, amend, revoke, or replace any statement of desirable objectives and practices referred to in subsection (2) by notice in the *Gazette*.

Section 319M: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

**319N Existing regulations preserved**

- (1) The following regulations are to be treated as regulations made under section 317 (as inserted by section 53 of the Education Amendment Act 2006):
  - (a) the Education (Early Childhood Centres) Regulations 1998 (SR 1998/85);
  - (b) the Education (Early Childhood Centres) Fees Regulations 1990 (SR 1990/262);
  - (c) the Education (Home-Based Care) Order 1992 (SR 1992/238).
- (2) Despite subsection (1), the regulations referred to in subsection (1) are not to be treated as regulations made under section 317 (as inserted by section 53 of the Education Amendment Act 2006) for the purposes of the following provisions:
  - (a) section 319K(1)(b), (2), and (5); and
  - (b) section 319L(1)(b), (2), and (5); and
  - (c) section 319O(1).
- (3) The regulations and order referred to in subsection (1) may be amended under section 317.

Section 319N: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

**319O Licence-exempt centres may continue**

- (1) The service provider for an early childhood education and care centre, that immediately before the commencement of this section was a licence-exempt centre, may continue to operate that centre without a licence issued under regulations made under section 317 for a period that expires 6 years after the date of the commencement of this section.
- (2) Despite the repeal of sections 311A and 311B by the Education Amendment Act 2006, grants may continue to be paid after the commencement of this section to a service provider operating any early childhood education and care centre that, immediately before the commencement of this section, was a licence-exempt centre, for any period that the Minister considers reasonable (not exceeding 6 years after the date of the commencement of this section).
- (3) For the purposes of subsection (2), section 309 (as it read before the commencement of section 53 of the Education

Amendment Act 2006) and sections 311A and 311B continue to apply as if—

- (a) they were still in force; and
- (b) every reference to the management of a centre were a reference to the service provider who operates the centre.

Section 319O: inserted, on 1 December 2008, by section 53 of the Education Amendment Act 2006 (2006 No 19).

## Part 27

### Recognition and funding of other services

Part 27: inserted, on 1 January 1992, by section 33 of the Education Amendment Act (No 4) 1991 (1991 No 136).

#### 320 Interpretation

In this Part, unless the context otherwise requires,—

**educational body**, or **body**, means a body corporate that is recognised by the Minister as a body that provides any educational or developmental service or facility, including an organisation as defined in section 159B

**financial year**, in relation to any body, means a year ending—

- (a) where the Minister has specified a day for the purpose, with that day; and
- (b) with 30 June in every other case

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Secretary** means the chief executive of the Ministry.

Section 320: inserted, on 1 January 1992, by section 33 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 320 **educational body**, or **body**: inserted, on 1 January 2003, by section 42 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**321 Grants to educational bodies**

- (1) An educational body may be paid grants out of public money appropriated by Parliament for the purpose on such conditions as the Minister thinks fit.
- (2) However, a grant may not be paid under this section to a tertiary education provider or an industry training organisation (as those terms are defined in section 159) unless the Minister is satisfied that payment under this section is in the national interest.
- (3) The amount of every grant and the conditions subject to which it will be paid shall be determined by the Minister.
- (4) Before a grant is paid, the Minister may give the body written notice that the grant, or a part or parts of the grants (specified as a particular sum or as a proportion of the total grant), is not to be used except for purposes specified in the notice.
- (5) A body that has been given notice under subsection (4) shall ensure that no part of the grant to which the notice relates is used for purposes other than those specified for it in the notice.
- (6) Subject to subsection (5), a body to which a grant is paid may apply the grant as it sees fit.
- (7) During the financial year during which a grant was paid to a body under this section, and during the next financial year, the Secretary may by written notice to the body require it to give to the Secretary in writing any financial report, or statistical or other information, relating to the body specified in the notice, within a time specified in the notice; and the body shall take all reasonable steps to comply with the notice.

Section 321: inserted, on 1 January 1992, by section 33 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 321 heading: amended, on 1 January 2003, by section 43(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 321(1): replaced, on 1 January 2003, by section 43(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 321(2): replaced, on 1 January 2003, by section 43(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

**322 Educational bodies to keep accounts**

- (1) Where a grant under section 321 has been paid to a body subject to conditions, the body shall ensure that—

- (a) there are kept (in respect of the year in which the grant was made and the year after), in a manner approved by the Minister, all records necessary to show fully and fairly—
  - (i) such of the body's financial transactions, assets, liabilities, and funds, as relate to or are or were affected by the making of the grants; and
  - (ii) that the conditions have been complied with:
- (b) the records are available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- (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.
- (3) *[Repealed]*
- (4) *[Repealed]*

Section 322: inserted, on 1 January 1992, by section 33 of the Education Amendment Act (No 4) 1991 (1991 No 136).

Section 322 heading: amended, on 1 January 2003, by section 44(1) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 322(2): replaced, on 1 January 2003, by section 44(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 322(3): repealed, on 1 January 2003, by section 44(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

Section 322(4): repealed, on 1 January 2003, by section 44(2) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

## Part 28

### Review of educational services

Part 28: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

#### 323 Interpretation

In this Part, unless the context otherwise requires,—

**applicable organisation** means an institution that provides an applicable service

**applicable person**, in relation to an applicable organisation, means any body or person who or that administers, controls, governs, manages, operates, or owns, the organisation

**applicable service** means an educational service to which section 324(1) and sections 325 to 328 apply

**Chief Review Officer** means the chief executive of the Education Review Office

**hostel** means a boarding establishment used mainly or solely for the accommodation of students enrolled at a registered school

**Minister** means the Minister of State who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**parent**, in sections 328A to 328D, means the mother, father, or guardian of a person who has been exempted from the requirements of section 20

**registered school** has the same meaning as it has in section 2(1)

**review officer** means a person for the time being designated under section 326; and includes the Chief Review Officer.

Section 323: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

Section 323 **applicable service**: amended, on 19 December 1998, by section 56(1) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 323 **hostel**: inserted, on 25 October 2001, by section 62(1) of the Education Standards Act 2001 (2001 No 88).

Section 323 **parent**: inserted, on 19 December 1998, by section 56(2) of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 323 **registered school**: inserted, on 25 October 2001, by section 62(2) of the Education Standards Act 2001 (2001 No 88).

### **324 Educational services to which this Part applies**

- (1) This Part applies to every educational service (other than a service provided only to or for people over 16 who are not enrolled at a State school within the meaning of section 2(1))—
- (a) that is provided by an organisation—
- (i) owned or operated by the Crown; or
  - (ii) forbidden by law to provide that service (or a service of that kind) unless it holds a licence,

- permit, or other authority issued by or on behalf of the Crown; or
- (b) whose provision is (wholly or partly)—
- (i) funded by public money appropriated by Parliament; or
- (ii) regulated by or under statute.
- (2) Sections 328A to 328D apply in relation to educational services provided to persons who are exempted from the requirements of section 20; and, for the purposes of this subsection and sections 328A to 328D, **educational service** is to be construed in that context and the meaning it has in the definition of the term applicable service in section 323 does not apply.

Section 324: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

Section 324(2): inserted, on 19 December 1998, by section 57 of the Education Amendment Act (No 2) 1998 (1998 No 118).

### 325 Chief Review Officer to perform certain functions

The Chief Review Officer shall—

- (a) administer—
- (i) when directed by the Minister to do so; or
- (ii) notwithstanding section 32 of the State Sector Act 1988, of the Chief Review Officer's own motion,—
- reviews, either general or relating to particular matters, of the performance of applicable organisations in relation to the applicable services they provide; and
- (b) administer the preparation of reports to the Minister on the undertaking and results of such reviews; and
- (c) give the Minister such other assistance and advice on the performance of applicable organisations as the Minister from time to time requires.

Section 325: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

### 326 Review officers

The Chief Review Officer may designate any suitably qualified person (whether or not an employee of the Chief Review Officer) a review officer; and shall ensure that every person



for the time being so designated has a certificate to that effect, in a form approved by the Chief Review Officer.

Section 326: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

### **327 Powers of entry and inspection**

For the purposes of enabling any functions of the Chief Review Officer to be performed, any review officer may, at any reasonable time and having given reasonable notice to an applicable organisation or any applicable person of the organisation, enter any place (other than a dwellinghouse) occupied by the organisation or person, and—

- (a) conduct inspections or inquiries:
- (b) require any person to produce documents or information relating to—
  - (i) an applicable service that the organisation provides; or
  - (ii) people to whom such a service is (or has been) provided,—and permit the review officer to make copies or extracts of the documents or information:
- (c) require any applicable person of the organisation, or any other person—
  - (i) employed by the organisation or any applicable person of the organisation; or
  - (ii) involved in the management of the organisation,—to make or provide statements, in any form and manner the review officer specifies, about any matters relating to an applicable service:
- (d) inspect the work of any person to whom an applicable service is (or has been) provided:
- (e) meet and talk with any person to whom an applicable service is being provided.

Section 327: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

**328 Review officers to prove identity**

Every review officer who enters any place under the authority of section 327 shall, on first entering and, if requested, at any later time, produce to the person apparently in charge the review officer's certificate of designation.

Section 328: inserted, on 25 June 1993, by section 25 of the Education Amendment Act 1993 (1993 No 51).

*Provisions concerning students with enrolment exemption*

Heading: inserted, on 19 December 1998, by section 58 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**328A Functions of Chief Review Officer**

The Chief Review Officer—

- (a) may carry out reviews (which may be general or in relation to particular matters) of the educational services provided to persons exempted from the requirements of section 20 and must carry out such reviews when directed by the Minister to do so; and
- (b) must administer the preparation of reports to the Minister on the undertaking and results of such reviews; and
- (c) must give the Minister such other assistance and advice on the educational services provided to persons exempted from the requirements of section 20 as the Minister from time to time requires.

Sections 328A: inserted, on 19 December 1998, by section 58 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**328B Review officers**

Review officers designated under section 326 are also review officers for the purposes of section 328A, and sections 328C and 328D apply to them accordingly.

Sections 328B: inserted, on 19 December 1998, by section 58 of the Education Amendment Act (No 2) 1998 (1998 No 118).

**328C Powers of review officers for purposes of sections 328A to 328D**

- (1) For the purposes of enabling any functions of the Chief Review Officer to be performed for the purposes of section 328A,

any review officer may, at any reasonable time and having given reasonable notice,—

- (a) conduct inspections or inquiries:
- (b) require any parent or other person to produce documents or information relating to—
  - (i) the educational service the parent or other person provides; or
  - (ii) people to whom such educational service is (or has been) provided,—and permit the review officer to make copies or extracts of the documents or information:
- (c) require any parent or other person to make or provide statements, in such form and manner as is reasonable in the circumstances, about any matters relating to provision of the educational service provided by that parent or person:
- (d) inspect the work of any person to whom the educational service concerned is (or has been) provided:
- (e) meet and talk with any person to whom the educational service concerned is being provided.

- (2) Nothing in this section confers on a review officer the power to enter any dwellinghouse without the consent of the owner or occupier.

Sections 328C: inserted, on 19 December 1998, by section 58 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Section 328C(2): amended, on 20 May 2010, by section 70 of the Education Amendment Act 2010 (2010 No 25).

### **328D Review officers to prove identity before acting under section 328C**

Every review officer who exercises any power under section 328C must, before exercising that power and, if requested, at any later time, produce to the parent or other person providing the educational service concerned the review officer's certificate of designation.

Sections 328D: inserted, on 19 December 1998, by section 58 of the Education Amendment Act (No 2) 1998 (1998 No 118).

*Provisions concerning hostels*

Heading: inserted, on 25 October 2001, by section 63 of the Education Standards Act 2001 (2001 No 88).

**328E Functions of Chief Review Officer**

The Chief Review Officer—

- (a) may carry out reviews (which may be general or in relation to particular matters) of the provision of a safe physical and emotional environment that supports learning for students accommodated in hostels and must carry out those reviews when directed by the Minister to do so; and
- (b) must administer the preparation of reports to the Minister on the undertaking and results of the reviews; and
- (c) must give the Minister any other assistance and advice on the provision of a safe physical and emotional environment that supports learning for students accommodated at hostels that the Minister from time to time requires.

Section 328E: inserted, on 25 October 2001, by section 63 of the Education Standards Act 2001 (2001 No 88).

**328F Review officers**

Review officers designated under section 326 are also review officers for the purposes of section 328E, and sections 328G and 328H apply to them accordingly.

Section 328F: inserted, on 25 October 2001, by section 63 of the Education Standards Act 2001 (2001 No 88).

**328G Powers of review officers for purposes of sections 328E to 328H**

- (1) For the purposes of enabling any functions of the Chief Review Officer to be performed for the purposes of section 328E, any review officer may, at any reasonable time and having given reasonable notice to the management of the hostel, enter any hostel and do all or any of the following:
  - (a) conduct inspections or inquiries;
  - (b) require any person to produce documents or information relating to—

- (i) the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel; or
    - (ii) the students accommodated in the hostel:
  - (c) make copies or extracts of any documents and information referred to in paragraph (b):
  - (d) require any person to make or provide statements, in any form and manner that is reasonable in the circumstances, about any matters relating to the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel:
  - (e) meet and talk to any person who is accommodated at the hostel.
- (2) Nothing in this section confers on a review officer the power to enter any room or sleeping area of a student accommodated at the hostel unless—
- (a) the review officer believes on reasonable grounds that entry or inspection is necessary for the purpose of review; and
  - (b) the review officer produces his or her certificate of designation to the student; and
  - (c) the student is present during the inspection.
- (3) This section does not limit any other powers of a review officer under this Act.

Section 328G: inserted, on 25 October 2001, by section 63 of the Education Standards Act 2001 (2001 No 88).

### **328H Review officers to prove identity before acting under section 328G**

Every review officer who exercises any power under section 328G must, before exercising that power and, if requested, at any later time, produce to the person apparently in charge the review officer's certificate of designation.

Section 328H: inserted, on 25 October 2001, by section 63 of the Education Standards Act 2001 (2001 No 88).

## Part 29

### Learning Media Limited

Part 29: inserted, on 25 June 1993, by section 27 of the Education Amendment Act 1993 (1993 No 51).

#### 329 Interpretation

In this Part, unless the context otherwise requires,—

**company** means Learning Media Limited, a State enterprise under the State-Owned Enterprises Act 1986

the **Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

the **Secretary** means the chief executive of the Ministry

the **shareholding Ministers** means—

- (a) the Minister; and
- (b) the Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Public Finance Act 1989.

Section 329: inserted, on 25 June 1993, by section 27 of the Education Amendment Act 1993 (1993 No 51).

Section 329 **company**: replaced, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

Section 329 the **Minister**: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

#### 330 Incorporation of company

*[Repealed]*

Section 330: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

#### 331 Principal objective of company

- (1) The company's principal objective is to provide, pursuant to contracts with the Secretary, the basic materials and services necessary to support the national education guidelines (within the meaning of section 60).
- (2) Subsection (1) does not limit section 4 of the State-Owned Enterprises Act 1986.

Section 331: replaced, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**332 Crown shareholding**

*[Repealed]*

Section 332: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**333 Application of Government Superannuation Fund Act 1956**

Section 2A of the Government Superannuation Fund Act 1956 applies to the company.

Section 333: inserted, on 25 June 1993, by section 27 of the Education Amendment Act 1993 (1993 No 51).

**334 Application of Public Finance Act 1989**

*[Repealed]*

Section 334: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**335 Auditor**

*[Repealed]*

Section 335: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**336 Application of Companies Act 1955**

*[Repealed]*

Section 336: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**337 Personnel policy**

*[Repealed]*

Section 337: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**338 Equal employment opportunities programme**

*[Repealed]*

Section 338: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**339 Consultation with State Services Commissioner***[Repealed]*

Section 339: repealed, on 25 January 2005, by section 5 of the State-Owned Enterprises Amendment Act 2004 (2004 No 116).

**340 Existing rights, assets, liabilities, and debts**

- (1) Subject to subsection (2), on the incorporation of the company,—
- (a) all rights and assets of the Crown,—
    - (i) including rights under the Ministry's leases of premises then occupied by the learning media section of the Ministry; but
    - (ii) otherwise excluding interests in land,—formerly exercisable or used, exclusively or substantially, by the learning media section of the Ministry shall become rights and assets of the company; and
  - (b) all liabilities and debts of the Crown contracted in relation to, or in relation to activities exclusively or substantially carried on by, the learning media section of the Ministry shall become liabilities and debts of the company.
- (2) All patents, trademarks, designs, copyright, and other intellectual property of the Crown (whether enforceable under any enactment or by law) formerly exercisable or used, exclusively or substantially, by the learning media section of the Ministry, all rights exercisable by the Crown in respect of any such intellectual property, and all liabilities of the Crown contracted in relation to any such intellectual property, shall remain assets, rights, and liabilities of the Crown.

Section 340: inserted, on 25 June 1993, by section 27 of the Education Amendment Act 1993 (1993 No 51).

**Part 30****National student numbers**

Part 30: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).



### 341 Purpose

The purpose of this Part is to authorise the use by authorised users of national student numbers for specific purposes, in order to facilitate the accurate use and transfer, by authorised users, of information relating to individual students.

Section 341: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

### 342 Interpretation

In this Part,—

**authorised user** means—

- (a) an education provider; and
- (b) the Ministry; and
- (c) the New Zealand Qualifications Authority; and
- (d) the Tertiary Education Commission; and
- (e) the Service continued by section 279; and
- (f) any other agency or body declared by regulations made under section 347 to be an authorised user

**early childhood service** means a licensed early childhood service (as defined in section 309)

**education provider** means—

- (a) an early childhood service; and
- (b) a registered school as defined in section 2; and
- (c) a tertiary education organisation, being an organisation as defined in section 159B(1)

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

**Secretary** means the chief executive of the Ministry.

Section 342: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

Section 342 **early childhood service**: inserted, on 13 June 2013, by section 35(1) of the Education Amendment Act 2013 (2013 No 34).

Section 342 **education provider** paragraph (a): amended, on 13 June 2013, by section 35(2) of the Education Amendment Act 2013 (2013 No 34).

### 343 Assigning national student numbers

- (1) The Secretary may assign a national student number to any student who—

- (a) is enrolled with an education provider; or
  - (b) has been granted an exemption under section 21 or section 22.
- (1A) The Secretary may also assign a national student number to any child under the age of 6 years if the Secretary has reasonable grounds to believe that—
  - (a) the child is unlikely to attend an early childhood service; and
  - (b) the child is likely to benefit from attending such a service.
- (2) On the date on which this Part comes into force, every national student number that is already assigned to a person is deemed to be a national student number assigned under this section to that person.

Section 343: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

Section 343(1A): inserted, on 13 June 2013, by section 36 of the Education Amendment Act 2013 (2013 No 34).

### **344 Use of national student numbers**

- (1) The Secretary may authorise or require an authorised user to use national student numbers.
- (2) The Secretary may authorise or require an authorised user to use national student numbers only for the purpose of, or for a specific purpose falling within, any 1 or more of the following:
  - (a) monitoring and ensuring student enrolment and attendance:
  - (ab) encouraging attendance at early childhood services:
  - (b) ensuring education providers and students receive appropriate resourcing:
  - (c) statistical purposes:
  - (d) research purposes:
  - (e) ensuring that students' educational records are accurately maintained.
- (3) Every authorisation or requirement under this section must be made by notice in the *Gazette*, and—
  - (a) takes effect on the date, specified in the notice, on or after the date of the notice; and
  - (b) may be subject to conditions.

- (4) An authorisation or requirement may be made generally (by reference to a class of authorised user) or specifically (by reference to a named authorised user).
- (5) An authorised user to whom any 1 or more authorisations relates is authorised to use national student numbers in accordance with the terms of the authorisations.
- (6) An authorised user that is required to use national student numbers for a specific purpose must use national student numbers for that purpose.

Section 344: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

Section 344(2)(ab): inserted, on 13 June 2013, by section 37 of the Education Amendment Act 2013 (2013 No 34).

### **345 Person may use or disclose own national student number**

Despite anything in this Part, a person may use or disclose his or her own national student number for any purpose.

Section 345: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

Section 345 heading: amended, on 13 June 2013, by section 38(1) of the Education Amendment Act 2013 (2013 No 34).

Section 345: amended, on 13 June 2013, by section 38(2) of the Education Amendment Act 2013 (2013 No 34).

### **346 Offences**

- (1) An authorised user commits an offence, and is liable on conviction to a fine not exceeding \$15,000, who uses or discloses a person's national student number otherwise than in accordance with the authorisations under section 344 that apply to that user.
- (2) A person (**person A**) who is not an authorised user commits an offence, and is liable on conviction to a fine not exceeding \$15,000, who, without reasonable excuse, keeps a record of, or requires the disclosure of, the national student number of another person (**person B**) if the number is, or is capable by person A of being, linked to any information that may lead person A to the identification of person B.

Section 346: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

Section 346(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 346(2): replaced, on 13 June 2013, by section 39 of the Education Amendment Act 2013 (2013 No 34).

### **347 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations identifying any agency or body as an authorised user for the purpose of this Part.
- (2) A recommendation for an Order in Council to be made under this section may not be made unless the Privacy Commissioner has been consulted on the recommendation.

Section 347: inserted, on 17 May 2006, by section 54 of the Education Amendment Act 2006 (2006 No 19).

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**Schedule 1**

s 9(7)

**Transitional provisions relating to special  
education**

*[Repealed]*

Schedule 1: repealed, on 1 January 1990, by section 9(8).

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**Schedule 2**

s 37(2)

**Administrative provisions applying to  
Board continued by section 37**

*[Repealed]*

Schedule 2: repealed, on 28 February 2002, by section 86(2) of the Education Standards Act 2001 (2001 No 88).

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**Schedule 3**

s 43(2)

**Administrative provisions applying to  
Board continued by section 43**

*[Repealed]*

Schedule 3: repealed, on 6 April 2004, by section 5(2) of the Education (Dis-establishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14).

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**Schedule 4**

s 49(2)

**Administrative provisions applying to  
Parent Advocacy Council**

*[Repealed]*

Schedule 4: repealed, on 1 October 1991, by section 2(3)(a) of the Education Amendment Act (No 2) 1991 (1991 No 90).

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## **Schedule 5**

### **Specified institutions**

Central Regional Health School, Wellington

Felix Donnelly College, Tuakau

Glenburn Centre School, Auckland

Hogben School, Christchurch

Homai Vision Education Centre, Auckland

Kelston School for the Deaf, Auckland

Kimi Ora School, Hastings

McKenzie Residential School, Christchurch

Northern Hospitals School, Auckland

Salisbury School, Nelson

Southern Regional Health School, Christchurch

Van Asch College, Christchurch

Waimokoia School, Auckland

Schedule 5 Central Regional Health School, Wellington: inserted, on 1 July 2000, by clause 3 of the Education (Specified Institutions) Order 2000 (SR 2000/44).

Schedule 5 Felix Donnelly College, Tuakau: inserted, on 1 July 2000, by clause 3 of the Education (Specified Institutions) Order 2000 (SR 2000/44).

Schedule 5 Homai Vision Education Centre, Auckland: inserted, on 1 July 2000, by clause 3 of the Education (Specified Institutions) Order 2000 (SR 2000/44).

Schedule 5 Northern Hospitals School, Auckland: inserted, on 1 July 2000, by clause 3 of the Education (Specified Institutions) Order 2000 (SR 2000/44).

Schedule 5 Southern Regional Health School, Christchurch: inserted, on 1 July 2000, by clause 3 of the Education (Specified Institutions) Order 2000 (SR 2000/44).

**Schedule 5A**  
**Application of Crown Entities Act 2004 to**  
**school boards of trustees**

s 65H

Schedule 5A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 5A heading: amended, on 20 May 2010, by section 71(1) of the Education Amendment Act 2010 (2010 No 25).

<b>Section</b>	<b>Brief description</b>
Sections 3 to 8	Crown entities and categories
Section 10	Interpretation
Section 99	Application to multi-parent subsidiaries
Section 102	Interface with Companies Act 1993 and other Acts
Section 107	Directions under section 107
Section 113	Safeguarding independence of Crown entities
Section 114	Crown entity must comply with directions given under statutory power of direction
Section 115	Procedure for all Ministerial directions
Section 119	Cross reference to State Sector Act 1988, sections 84 to 84B
Section 131(2)	Application of Ombudsmen Act 1975 and Official Information Act 1982
Section 133	Minister's power to request information
Section 134	Reasons for refusing to supply information
Section 135	Officials for the purposes of sections of the Crimes Act 1961
Section 136	Interpretation for Part 4

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Section	Brief description
Section 137	Application of subpart 2 of Part 4
Section 155, with the variation specified in section 87(4) of the Education Act 1989	Statement of responsibility for financial statements
Section 157	Variation of reporting requirements of multi-parent subsidiaries
Section 158	Bank accounts
Section 159	Application of acquisition of securities, borrowing, guarantees, indemnities, and derivative transactions rules
Sections 160 to 164	Restrictions on acquisition of securities, borrowing, guarantees, indemnities, and derivative transactions
Section 167	Gifts
Section 168(1) and (2), except that the reference to section 154 must be read as a reference to section 87(3) of the Education Act 1989	Accounting records
Section 173	Regulations
Section 176	Application of provisions of the Public Finance Act 1989
Section 178	Application of Archives Act 1957
Section 179	Public Bodies Contracts Act 1959 does not apply



<b>Section</b>	<b>Brief description</b>
Section 180	Local Authorities (Members' Interests) Act 1968 does not apply
Sections 181, 188, 191, 193, 194, 195, 196, 197, 198, 199, 200	Transitional and savings provisions and associated consequential amendments

Schedule 5A: amended, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

Schedule 5A: amended, on 20 May 2010, by section 71(2) of the Education Amendment Act 2010 (2010 No 25).

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**Schedule 6**

s 117

**Other provisions applying to boards****1 Status of board**

- (1) A board (and not the school) is a body corporate.
- (2) A board—
  - (a) is accordingly a legal entity separate from its members, office holders, employees, and the Crown; and
  - (b) continues in existence until it is dissolved in accordance with this Act.

Schedule 6 clause 1: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1A Things board can do**

- (1) A board may do anything authorised by this Act.
- (2) A board may do anything that a natural person of full age and capacity may do.
- (3) Subclause (2) applies except as provided in this Act or another Act or rule of law.
- (4) A board may do an act under this clause only for the purpose of performing its functions.
- (5) References in this clause to **this Act** include the provisions of the Crown Entities Act 2004 that are applied by Schedule 5A of this Act.

Schedule 6 clause 1A: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**Validity of Acts**

Heading: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1B Acts in breach of statute are invalid**

- (1) An act of a board is invalid, unless clause 1C applies, if it is—
  - (a) an act that is contrary to, or outside the authority of, an Act; or
  - (b) an act that is done otherwise than for the purpose of performing its functions.
- (2) Subclause (1) does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Schedule 6 clause 1B: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1C Some natural person acts protected**

- (1) Clause 1B or any rule of law to similar effect does not prevent a person dealing with a board from enforcing a transaction that is a natural person act unless the person dealing with the board had, or ought reasonably to have had, knowledge—
  - (a) of an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or
  - (b) that the act is done otherwise than for the purpose of performing the board's functions.
- (2) In this clause, **natural person act**—
  - (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act); and
  - (b) includes entry into a contract for, or relating to,—
    - (i) acquisition of securities or borrowing of money; or
    - (ii) a derivative transaction; or
    - (iii) the purchase, leasing, or sale of, or other dealings with, property; or
    - (iv) the employment, or engagement of the services, of a person.
- (3) A person who relies on subclause (1) has the onus of proving that that person did not have, and ought not reasonably to have had, the knowledge referred to in that subsection.
- (4) A board must report, in its annual report, each transaction that the board has performed in the year to which the report relates that was invalid under clause 1B but enforced in reliance on subclause (1).
- (5) For the avoidance of doubt, this section does not affect any person's remedies (for example, remedies in contract) under the general law.

Schedule 6 clause 1C: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1D Acts that are not in best interests of board**

It is irrelevant to the validity of an act that the act is not, or would not be, in the best interests of a board.

Compare: 1993 No 105 s 17(3)

Schedule 6 clause 1D: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1E Dealings between boards and other persons**

(1) A board may not assert against a person dealing with the board that—

- (a) a person held out by the board to be a member, office holder, chief executive, employee, or agent of the board (as the case may be)—
  - (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
  - (ii) does not have the authority to exercise a power that, given the nature of the board, a person appointed to that capacity customarily has authority to exercise; or
  - (iii) does not have the authority to exercise a power that the board holds him or her out as having; or
- (b) a document issued on behalf of the board by a member, office holder, chief executive, employee, or agent of the board with actual or usual authority to issue the document is not valid or genuine.

(2) However, a board may assert any of those matters if the person dealing with the board has, or ought reasonably to have had, knowledge of the matter.

(3) Nothing in this clause affects a person's right to apply, in accordance with the law, for judicial review.

Compare: 1993 No 105 s 18

Schedule 6 clause 1E: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**1F Interpretation**

In clauses 1B to 1E, unless the context otherwise requires,—  
**act** includes a transfer of property, rights, or interests to or by a board

**do** includes—

- (a) to do an act; and
- (b) to have a capacity; and
- (c) to have or exercise a power, right, or privilege

**person dealing**—

- (a) means the other party to the transaction, if the act of the board is a transaction; and
- (b) includes a person who has acquired property, rights, or interests from a board.

Schedule 6 clause 1F: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### Directions under section 107 of Crown Entities Act 2004

Heading: replaced, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

#### **1G Directions under section 107 of Crown Entities Act 2004**

- (1) A board must comply with any direction given under section 107 of the Crown Entities Act 2004.
- (2) The board may be dissolved under section 78I(1)(e) if it does not.

Schedule 6 clause 1G: inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 6 clause 1G heading: replaced, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

Schedule 6 clause 1G(1): amended, on 18 July 2013, by section 42 of the Crown Entities Amendment Act 2013 (2013 No 51).

#### **2 Boards exempt from taxation**

- (1) Every board is hereby deemed to be the agent of the Crown in respect of its property and the exercise of its functions, and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.
- (2) Nothing in subclause (1) exempts a board from—
  - (a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or
  - (b) any obligation imposed by that Act.

**3 Names of boards**

The name of a board is “The [*name of school or institution*] Board of Trustees”.

**4 Trustees not personally liable**

No trustee is personally liable for—

- (a) any act done or omitted by the board; or
- (b) any loss to the board arising out of any act done or omitted by the trustee,—

if the act or omission was (so far as the trustee’s involvement is concerned) in good faith in pursuance or intended pursuance of the functions of the board.

**5 Affixing of board’s seal**

- (1) A board’s common seal shall not be affixed to a document except pursuant to a resolution of the board.
- (2) The affixing of a board’s common seal to a document shall be countersigned by at least 2 trustees.

**6 Actions of boards not to be questioned for informality in membership**

The powers of a board are not affected by—

- (a) any vacancy in its membership; or
- (b) the discovery of any error or defect in the election, appointment, or co-option of any trustee; or
- (c) the fact that any elected, appointed, or co-opted trustee acted as a trustee while a person who may not (in terms of section 103(1)) become an elected, appointed, or co-opted trustee; or
- (d) the fact that a person continued acting as a trustee after the person’s office as a trustee became vacant and (in the case of a person whose election as a trustee has been declared invalid under clause 9 or by a court), before the person’s election was declared invalid.

**7 One trustee to preside at meetings**

- (1) Every board must appoint a trustee (not being the principal or a staff or student representative) to preside at meetings of the board.
- (2) The appointment must be made—
  - (a) at the board's first meeting in any year, unless it is an election year, in which case it must be at the first meeting held after the election; and
  - (b) when the board has resolved that it has no confidence in the person for the time being appointed; and
  - (c) when the person for the time being appointed ceases to be a trustee, or resigns the task by notice in writing to the board.

Schedule 6 clause 7: replaced, on 17 May 2006, by section 55 of the Education Amendment Act 2006 (2006 No 19).

**8 Meetings**

- (1) Every board shall hold a meeting not later than 3 months after its previous meeting, at a time and place determined at the previous meeting.
- (2) Where a board does not at any meeting determine a time and place for its next meeting, the time and place of its next meeting shall be determined—
  - (a) by the person for the time being appointed under clause 7; or
  - (b) where no such person is for the time being appointed, and a trustee who presided at the board's previous meeting is still a trustee, by the trustee; and
  - (c) where no such person is for the time being appointed, and either—
    - (i) such a person presided at the board's last meeting; or
    - (ii) the trustee who presided at the board's last meeting is no longer a trustee,—by the principal.
- (3) When a casual vacancy occurs, the person for the time being appointed under clause 7 or, where there is no such person, the principal must fix a place for a meeting of the board to deal with the vacancy, and a time for the meeting that is—

- (a) within 28 days of the vacancy occurring, if it occurs during any period of 6 months commencing on 1 October in a year before an election year; or
  - (b) within 8 weeks of the vacancy occurring, if it occurs at any other time.
- (4) No business shall be transacted at any meeting of a board unless more than half the trustees then holding office are present.
- (5) At a meeting of a board,—
  - (a) the person for the time being appointed under clause 7 shall preside if present; and
  - (b) otherwise, a trustee (not being the principal or a staff or student representative) appointed by the board at the meeting shall preside.
- (6) Every question before a board shall be decided by a majority of the votes cast on it by trustees present.
- (7) At a meeting of a board, the person presiding has a deliberative vote on every question and, on any question where deliberative votes for and against are equal, also has a casting vote.
- (8) Subject to subclause (11), a trustee who has a pecuniary interest in any matter or any interest that may reasonably be regarded as likely to influence a trustee in carrying out his or her duties and responsibilities as a trustee shall be excluded from any meeting of the board while it discusses, considers, considers anything relating to, or decides, the matter.
- (9) Subject to subclause (11), a trustee who is a member of the board staff shall be excluded from any meeting of the board while it discusses, considers, considers anything relating to, or decides, any matter relating to the trustee's employment by the board, or to the course of action to be taken following the hearing of a complaint against the trustee (being a complaint against the trustee in the trustee's capacity as a member of the board staff).
- (10) Subject to subclause (11), a trustee who is a student enrolled at the school or institution shall be excluded from any meeting of the board while it discusses, considers, considers anything relating to, or decides, any matter relating to the trustee as an individual student.



- (11) A trustee may attend any meeting of the board to give evidence, make submissions, or answer questions.
- (11A) A meeting of the board may be held—
  - (a) by more than half the trustees then holding office being assembled together at the time and place appointed for the meeting; or
  - (b) by means of audio, audio and visual, or electronic communication provided that—
    - (i) all of the trustees who wish to participate in the meeting have access to the technology needed to participate in the meeting; and
    - (ii) a quorum of members can simultaneously communicate with each other throughout the meeting.
- (11B) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.
- (11C) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.
- (12) Except as provided in this Act, every board shall determine its own procedures.

Schedule 6 clause 8(3): replaced, on 20 May 2010, by section 72 of the Education Amendment Act 2010 (2010 No 25).

Schedule 6 clause 8(8): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 6 clause 8(11A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 6 clause 8(11B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 6 clause 8(11C): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Validation and invalidation of elections of boards**

- (1) Where—
  - (a) anything required to be done in connection with an election under this Act—
    - (i) has been done after the time it is required to be done; or

- (ii) has not been done at all; or
  - (iii) has been done irregularly; and
- (b) the Minister thinks the lateness, omission, or irregularity could not materially have affected the result of the election,—  
the Minister may, by notice in the *Gazette*, validate the lateness, omission, or irregularity.
- (2) Where anything required to be done in connection with an election under this Act cannot be done at or by the time at or by which it is required to be done, the Minister may, at any time, by notice in the *Gazette*, extend the time for doing it.
- (3) Subclause (3A) applies if there occurs in connection with an election under this Act—
  - (a) any lateness, omission, or irregularity that is capable of being validated under this clause, but which the Minister thinks would be improper or undesirable to validate; or
  - (b) any other irregularity that the Minister thinks could materially have affected the result of the election.
- (3A) If this subclause applies to an election, the Minister may at any time within 60 days of the election, by notice in the *Gazette*,—
  - (a) declare the election invalid; and
  - (b) require a new election to be held on a day specified in the notice; and
  - (c) declare that the trustees holding office on the date of the invalid election remain in office until the close of the day before the day on which the new trustees take office.
- (4) Every notice under this clause shall have effect according to its tenor.

Schedule 6 clause 9 heading: amended, on 19 December 1998, by section 59 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Schedule 6 clause 9(3): replaced, on 19 December 1998, by section 59 of the Education Amendment Act (No 2) 1998 (1998 No 118).

Schedule 6 clause 9(3A): inserted, on 19 December 1998, by section 59 of the Education Amendment Act (No 2) 1998 (1998 No 118).

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**Schedule 7**

s 139AC(3)

**New Zealand Teachers Council and  
members**

*[Repealed]*

Schedule 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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**Schedule 8**

s 141

**Consequential amendments to Private  
Schools Conditional Integration Act 1975**

*Amendment(s) incorporated in the Act(s).*

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**Schedule 9**

s 142(1)

**Consequential amendments to Education  
Act 1964**

*Amendment(s) incorporated in the Act(s).*

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**Schedule 10**

s 142(2)

**Other consequential amendments****Civil Defence Act 1983 (1983 No 46)***Amendment(s) incorporated in the Act(s).***Education Lands Act 1949 (1949 No 24)***Amendment(s) incorporated in the Act(s).***Local Government Official Information and Meetings Act 1987  
(1987 No 174)***Amendment(s) incorporated in the Act(s).***Official Information Act 1982 (1982 No 156)***Amendment(s) incorporated in the Act(s).***Ombudsmen Act 1975 (1975 No 9)***Amendment(s) incorporated in the Act(s).***State Sector Act 1988 (1988 No 20)***Amendment(s) incorporated in the Act(s).*

Schedule 10: amended, on 20 May 2010, by section 73(1) of the Education Amendment Act 2010 (2010 No 25).

Schedule 10: amended, on 20 May 2010, by section 73(2) of the Education Amendment Act 2010 (2010 No 25).

Schedule 10: amended, on 20 May 2010, by section 73(3) of the Education Amendment Act 2010 (2010 No 25).

Schedule 10: amended, on 20 May 2010, by section 73(4) of the Education Amendment Act 2010 (2010 No 25).

Schedule 10: amended, on 20 May 2010, by section 73(5) of the Education Amendment Act 2010 (2010 No 25).

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## **Schedule 11**

### **Consequential repeals**

s 142(3)

Schedule 11 heading: amended, on 23 July 1990, by section 34 of the Education Amendment Act 1990 (1990 No 60).

#### **Education Act 1964 (1964 No 135) (Reprinted 1975, Vol 3, p 1699)**

*Amendment(s) incorporated in the Act(s).*

#### **Education Amendment Act 1932–33 (1932–33 No 49)**

#### **Education Amendment Act 1967 (1967 No 136) (Reprinted 1975, Vol 3, p 1880)**

*Amendment(s) incorporated in the Act(s).*

#### **Education Amendment Act 1968 (1968 No 11) (Reprinted 1975, Vol 3, p 1881)**

*Amendment(s) incorporated in the Act(s).*

#### **Education Amendment Act 1972 (1972 No 34) (Reprinted 1975, Vol 3, p 1886)**

*Amendment(s) incorporated in the Act(s).*

#### **Education Amendment Act (No 2) 1974 (1974 No 136) (Reprinted 1975, Vol 3, p 1888)**

*Amendment(s) incorporated in the Act(s)*

#### **Education Amendment Act 1975 (1975 No 26) (Reprinted 1975, Vol 3, p 1895)**

*Amendment(s) incorporated in the Act(s).*

#### **Education Amendment Act 1976 (1976 No 42) *Amendment(s) incorporated in the Act(s).***

#### **Education Amendment Act (No 2) 1976 (1976 No 70)**

**Education Amendment Act 1977 (1977 No 91)***Amendment(s) incorporated in the Act(s).***Education Amendment Act 1978 (1978 No 79)***Amendment(s) incorporated in the Act(s).***Education Amendment Act 1979 (1979 No 148)***Amendment(s) incorporated in the Act(s).***Education Amendment Act (No 2) 1982 (1982 No 155)***Amendment(s) incorporated in the Act(s).***Education Amendment Act 1983 (1983 No 57)***Amendment(s) incorporated in the Act(s).***Education Amendment Act (No 2) 1987 (1987 No 177)***Amendment(s) incorporated in the Act(s).***Local Government Amendment Act 1979 (1979 No 59)***Amendment(s) incorporated in the Act(s).***School Trustees Act 1989 (1989 No 3)***Amendment(s) incorporated in the Act(s).*

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**Schedule 12**  
**Consequential revocations**

s 142(4)

**Education Amending Regulations 1945 (SR 1945/59)**

**Education Board Administration Regulations 1979 (SR 1979/86)**

**Education Board Administration Regulations 1979, Amendment No 1 (SR 1980/92)**

**Education Board Administration Regulations 1979, Amendment No 2 (SR 1980/40)**

**Education Board Grants Regulations 1973 (SR 1973/5)**

**Education Board Grants Regulations 1973, Amendment No 1 (SR 1977/229)**

**Education (Committees of Management) Regulations 1981 (SR 1981/3)**

**Education (Forms 1 to 7) Schools' Regulations 1976 (SR 1976/325)**

**Education (School Committees' Incidental Expenses) Regulations 1956 (SR 1956/218)**

**Education (School Committees' Incidental Expenses) Regulations 1956, Amendment No 4 (SR 1972/174)**

**Gisborne High Schools' Board Administration Regulations 1967 (SR 1967/122)**

**Manual and Technical Instruction Regulations 1925 (*Gazette* Vol III 1925, p 3245)**

**Manual and Technical Instruction Regulations 1925, Amendment No 1 (*Gazette* Vol II 1927, p 2743)**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 5 (*Gazette* Vol I 1931, p 1047)**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 8 (*Gazette* Vol III 1932, p 2781)**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 10 (*Gazette* Vol II 1934, p 1448)**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 13 (*Gazette* Vol I 1935, p 287)**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 14**

**Manual and Technical Instruction Regulations 1925,  
Amendment No 18 (SR 1973/68)**

**Organisation and Inspection of State Primary Schools'  
Regulations 1963 (SR 1963/46)**

**Organisation and Inspection of State Primary Schools'  
Regulations 1963, Amendment No 1 (SR 1981/161)**

**Organisation and Inspection of State Primary Schools'  
Regulations 1963, Amendment No 2 (SR 1986/157)**

**Private Schools' Conditional Integration Agreement  
Regulations 1976 (SR 1976/175)**

**School Committees' Administration Regulations 1965 (SR  
1965/149)**

**School Committees' Administration Regulations 1965,  
Amendment No 1 (SR 1967/60)**

**School Committees' Administration Regulations 1965,  
Amendment No 2 (SR 1969/97)**



**School Committees' Administration Regulations 1965,  
Amendment No 3 (SR 1973/173)**

**School Committees' Administration Regulations 1965,  
Amendment No 4 (SR 1976/310)**

**School Committees' Administration Regulations 1965,  
Amendment No 5 (SR 1979/63)**

**School Committees' Administration Regulations 1965,  
Amendment No 6 (SR 1981/270)**

**School Committees' Administration Regulations 1965,  
Amendment No 7 (SR 1982/79)**

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**Schedule 13**  
**Existing institutions**

s 162(1)

Schedule 13: inserted, on 23 July 1990, by section 47 of the Education Amendment Act 1990 (1990 No 60).

**Part 1**  
**Universities**

University of Auckland  
University of Canterbury  
Lincoln University  
Massey University  
University of Otago  
University of Waikato  
Victoria University of Wellington

**Part 2**  
**Colleges of Education**

Auckland College of Education  
Christchurch College of Education  
Dunedin Teachers College  
Hamilton Teachers College  
Palmerston North Teachers College  
Wellington College of Education

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**Schedule 13A**

s 203

**Application of Crown Entities Act 2004 to  
tertiary education institutions**

Schedule 13A: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 13A heading: amended, on 20 May 2010, by section 74(1) of the Education Amendment Act 2010 (2010 No 25).

<b>Section</b>	<b>Brief description</b>
Section 3 to 8	Crown entities and categories
Section 10	Interpretation
Section 119	Cross reference to State Sector Act 1988, sections 84 to 84B
Section 131(2)	Application of Official Information Act 1982 and Ombudsmen Act 1975
Section 135 (but only in respect of office holders and employees of tertiary education institutions and Crown entity subsidiaries)	Officials for the purposes of sections of the Crimes Act 1961
Section 136	Interpretation for Part 4
Section 137	Application of subpart 2 of Part 4
Section 154, as amended by the Education Act 1989 section 220(2) to (2B), in Schedule 6	Financial statements
Section 155	Statement of responsibility for financial statements
Section 156	Audit report
Section 157	Allows for variation of reporting requirements of multi-parent subsidiaries

Section	Brief description
Section 220 Education Act 1989	Inclusion of financial statements in annual report
Section 220 Education Act 1989	Laying before House of Representatives of financial statements
Section 167	Gifts
Section 168(1), (2)	Accounting records
Sections 171(1)(b), (2), 172	Offences and penalties
Section 176	Application of provisions of the Public Finance Act 1989
Section 178	Application of Archives Act 1957
Sections 181, 188, 191, 193, 194, 198, 199, 200	Transitional and savings provisions and associated consequential amendments

Schedule 13A: amended, on 20 May 2010, by section 74(2) of the Education Amendment Act 2010 (2010 No 25).

Schedule 13A: amended, on 20 May 2010, by section 74(3)(a) of the Education Amendment Act 2010 (2010 No 25).

Schedule 13A: amended, on 20 May 2010, by section 74(3)(b) of the Education Amendment Act 2010 (2010 No 25).

## **Schedule 14**

s 240(7)

### **Administrative provisions applying to Vice-Chancellors Committee**

Schedule 14: inserted, on 23 July 1990, by section 47 of the Education Amendment Act 1990 (1990 No 60).

#### **1 Meetings of Committee**

- (1) The Committee shall meet as and when the Vice-Chancellors consider appropriate.
- (2) If the Vice-Chancellor of a university is unable to attend a meeting, a person nominated by that Vice-Chancellor may attend in place of that Vice-Chancellor and, when so attending, shall be deemed to be the Vice-Chancellor of that university.
- (3) The Committee shall appoint a member to be the Chairperson of the Committee.
- (4) The Chairperson holds office as Chairperson, subject to this clause, for such period as the Committee determines.
- (5) The Chairperson ceases to hold office as Chairperson if he or she—
  - (a) ceases to be a member; or
  - (b) tells the members at a meeting of the Committee or otherwise that he or she resigns from office as Chairperson.
- (6) The Chairperson shall preside at all meetings at which he or she is present.
- (7) If the Chairperson is not present at a meeting, the members present shall appoint one of their number to preside at that meeting.
- (8) Subject to this clause, the Committee may determine its own procedures.

#### **2 Staff and expenses**

The Councils of the universities are responsible for providing a secretary and other staff to assist the Committee in the performance of its functions and for paying the remuneration and allowances of those staff and meeting any other costs and expenses of the Committee.

**3 Affixing of Committee's common seal**

- (1) The Committee may, in writing under its common seal, authorise any member or members, or any member or members of the staff of the Committee, to execute documents, or documents of a specified class or description, or specified documents, on the Committee's behalf.
- (2) Subject to subclause (6), an authority under subclause (1) may be given unconditionally, or subject to any conditions the Committee thinks fit.
- (3) The Committee's common seal shall not be affixed to any document except—
  - (a) pursuant to a resolution of the Committee; or
  - (b) by virtue of, and in accordance with, an authority under subclause (1).
- (4) The affixing of the Committee's common seal pursuant to a resolution of the Committee shall be countersigned by at least 2 members.
- (5) The affixing of the Committee's common seal by virtue of an authority under subclause (1) shall be countersigned in accordance with the authority.
- (6) An authority under subclause (1) shall provide for the affixing of the Committee's common seal to be countersigned by at least 2 people.
- (7) The affixing of the Committee's common seal on a document is conclusive proof of the authority of the people who affixed it to do so.

**4 Personal liability**

No member, or member of the staff, of the Committee is personally liable for any act done or omitted by the member, or members of the staff, or by the Committee—

- (a) in good faith; and
- (b) in pursuance or intended pursuance of the Committee's functions.

**5 Committee may establish sub-committees**

- (1) The Committee may from time to time establish and abolish sub-committees.

- (2) A sub-committee may include people who are members of the Committee, people who are not, or both.
- (3) Every sub-committee shall appoint a person to preside at its meetings.
- (4) If the person so appointed is not present at a meeting of the sub-committee, the members of the sub-committee present shall appoint one of their number to preside at that meeting.
- (5) Subject to this clause, a sub-committee may determine its own procedures.

**6 Delegations**

- (1) The Committee may delegate to any of its sub-committees or members, or any member of its staff, any of its powers under this Act or any other enactment.
- (2) Every delegation shall be made in writing.
- (3) Every delegation is revocable at will in writing.
- (4) No delegation prevents or affects the exercise of any power by the Committee.
- (5) No delegation affects the Committee's responsibility for the actions of a sub-committee, member, or member of its staff, acting under it.
- (6) Delegations may be made subject to instructions or conditions.
- (7) Delegations may be made generally, or in relation to a particular case or cases of a particular class or description.
- (8) A delegation continues in force until revoked.
- (9) In the absence of proof to the contrary, a sub-committee, a member, or a member of the staff of the Committee, purporting to act under a delegation shall be deemed to be acting in accordance with its terms.

**7 Power of Committee to borrow money**

The Committee may borrow money for the purposes only of any trust of which the Committee is a trustee.

**8 Bank accounts**

- (1) The Committee may establish, maintain and operate bank accounts at any registered bank.

- (2) As soon as is practicable after receiving any money, the Committee shall pay it into one or other of its bank accounts.
- (3) The Committee shall properly authorise every withdrawal and payment of money from any of its bank accounts.

## **9 Investment**

Subject to any other enactment, the Committee may invest any of its money in any manner in which the Treasury may invest public money under section 65I(1) and (2) of the Public Finance Act 1989.

Schedule 14 clause 9: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **10 Annual report**

- (1) As soon as is practicable after the end of every financial year, the Committee shall give to the Minister a report on its operations for the year.
- (2) The Committee must include in every annual report of the Committee the financial statements and statement of service performance prepared by the Committee, in accordance with sections 153 to 156 of the Crown Entities Act 2004, in respect of the financial year to which the report relates, together with the audit report and the statement of responsibility under section 155 of that Act relating to those financial statements.
- (3) The Minister must present a copy of the report to the House of Representatives in accordance with section 150 of the Crown Entities Act 2004.

Schedule 14 clause 10(2): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 14 clause 10(3): replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).



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**Schedule 15**

s 248(4)

**Administrative provisions applying to  
New Zealand Qualifications Authority**

*[Repealed]*

Schedule 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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**Schedule 16**

s 270(5)

**Administrative provisions applying to the  
Agency continued by section 270**

*[Repealed]*

Schedule 16: repealed, on 1 January 2003, by section 41 of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

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**Schedule 17**

s 279(5)

**Administrative provisions applying to the  
Service continued by section 279**

*[Repealed]*

Schedule 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

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**Schedule 18**

s 288(5)

**Administrative provisions applying to  
Tertiary Research Board**

*[Repealed]*

Schedule 18: repealed, on 1 January 2003, by section 45(2)(c) of the Education (Tertiary Reform) Amendment Act 2002 (2002 No 50).

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## Education Amendment Act (No 4) 1991

Public Act    1991 No 136  
Date of assent    18 December 1991  
Commencement    see section 1(2)

### **1    Short Title and commencement**

- (1) This Act may be cited as the Education Amendment Act (No 4) 1991, and shall be read together with and deemed part of the Education Act 1989 (hereinafter referred to as “the principal Act”).
- (2) Except as provided in sections 5(5), 16(2), 17(2), 18(2), and 34, this Act shall come into force on 1 January 1992.

### **9    National education guidelines**

- (1)–(4) *Amendment(s) incorporated in the Act(s).*
  - (5) All national education guidelines under section 60 of the principal Act that were in force immediately before the commencement of this Act shall continue in force as if they are national administration guidelines; but may be amended or revoked accordingly.
  - (6) *Amendment(s) incorporated in the Act(s).*
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## Education Amendment Act (No 2) 1998

Public Act    1998 No 118  
Date of assent    18 December 1998  
Commencement    see section 1(2), (3)

### **1    Short Title and commencement**

- (1) This Act may be cited as the Education Amendment Act (No 2) 1998, and is part of the Education Act 1989 (“the principal Act”).
- (2) Except as provided in subsection (3), this Act comes into force on the day after the date on which it receives the Royal assent.
- (3) Sections 7 and 64 come into force on a date to be appointed by the Governor-General by Order in Council.

### *Repeals, amendments, and transitional and savings provisions*

### **62    Transitional provisions relating to enrolment schemes**

- (1) Despite anything in the principal Act or in the enrolment schemes concerned, every enrolment scheme in place under the principal Act when this section comes into force (**an old scheme**) continues in force and ceases to have effect on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made under this subsection appointing different dates for different classes of schools or different locations.
- (2) A new enrolment scheme (whether or not it is to have effect in place of an old scheme) may be prepared in accordance with Part 2 of the principal Act (as amended by this Act) at any time after this section comes into force.

### **63    Saving of syllabuses in force under Education Act 1964**

Every statement (such as a syllabus) corresponding to a national curriculum statement under section 60A of the principal Act that was issued in the form of a notice and was, immediately before the commencement of this section, in force under

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the Education Act 1964 continues in force until revoked under section 60A(2) of the principal Act.

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## Education Standards Act 2001

Public Act    2001 No 88  
Date of assent    24 October 2001  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Education Standards Act 2001.
- (2) In this Act, the Education Act 1989 is called “the principal Act”.

### **2    Commencement**

- (1) This Act, other than the sections listed in subsection (2), comes into force on the day after the date on which it receives the Royal assent.
- (2) The following sections come into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions:
  - (a) section 18:
  - (b) sections 25 to 37:
  - (c) section 60:
  - (d) sections 69 to 77:
  - (e) section 82(2):
  - (f) section 83.

Section 2(2)(d): brought into force, on 1 February 2002, by the Education Standards Act Commencement Order 2001 (SR 2001/384).

## **Part 2**

### **Transitional and miscellaneous provisions, and consequential amendments**

#### *Transitional provisions relating to school planning and reporting*

### **65    Transition to new planning regime**

- (1) In this section,—

**new national administration guidelines** means national administration guidelines issued under section 60A(1)(c) of the principal Act as substituted by section 12

**old national administration guidelines** means national administration guidelines that were issued under section 60A(1)(c) of the principal Act, as it read immediately before the date of commencement of section 12, and had effect immediately before that date.

- (2) The provisions of old national administration guidelines continue to have effect until replaced or superseded by new national administration guidelines.

#### **66 Transition to new annual reporting requirements**

- (1) In this section,—

**new section 87** means section 87 of the principal Act as amended by section 23

**old section 87** means section 87 of the principal Act as it read immediately before the commencement of section 23.

- (2) A Board must make its first annual report under new section 87 in relation to the 2003 school year.
- (3) Until a Board's first annual report has to be made under new section 87, it must make its annual reports in accordance with old section 87.

#### *Transitional provision relating to intervention in poorly performing schools*

#### **67 Transitional arrangements for financial managers**

- (1) This section applies to every person who, at the close of the day before the commencement of this section, is a financial manager appointed under section 81B of the principal Act (before its repeal by this Act).
- (2) On the date of commencement of this section, a person to whom this section applies is deemed to be a limited statutory manager appointed under section 78M of the principal Act by a notice that states—
- (a) that the person has and may exercise all the functions, powers, and duties of the board that are necessary to

- enable him or her to manage the board's financial management system; and
- (b) that no cheque drawn on the board's accounts is valid unless signed by the person.
- (3) The conditions in a notice under subsection (2) may be amended under section 78M(6) of the principal Act as if they were contained in a notice issued under section 78M(1).

**68 Transitional arrangements for commissioners**

- (1) On the date of commencement of this section, a commissioner appointed under section 106 of the principal Act (before its repeal by this Act) is deemed to be a commissioner appointed under section 78N(3) of the principal Act (as inserted by this Act).
- (2) On the date of commencement of this section, a commissioner appointed under section 107 of the principal Act (before its repeal by this Act) is deemed to be a commissioner appointed under section 78N(2) of the principal Act (as inserted by this Act).

*Transitional provisions relating to teacher  
registration*

**69 Delayed application of teacher registration provisions**

- (1) Part 10 of the principal Act does not apply to, or apply in relation to, Kura Kaupapa Maori or any person employed in a teaching position at a Kura Kaupapa Maori, except in accordance with regulations made under subsection (2).
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out 1 or more transition plans for bringing Kura Kaupapa Maori and early childhood services (as defined in section 120 of the principal Act) under Part 10 of the principal Act, including regulations—
  - (a) declaring specified early childhood services, or early childhood services of 1 or more specified types or descriptions, to be early childhood education and care services for the purpose of Part 10 of the principal Act:

- (b) setting a date or dates on which, or a period or periods within which, specified provisions of Part 10 of the principal Act apply to—
  - (i) Kura Kaupapa Maori, or persons employed in teaching positions at Kura Kaupapa Maori:
  - (ii) early childhood services or persons employed in teaching positions at those early childhood services:
- (c) modifying the definition of teaching position in section 120 of the principal Act for the purposes of applying it to Kura Kaupapa Maori, or early childhood services, or both.

Section 69(2): amended, on 17 May 2006, by section 56(1) of the Education Amendment Act 2006 (2006 No 19).

Section 69(2)(b)(ii): replaced, on 17 May 2006, by section 56(2) of the Education Amendment Act 2006 (2006 No 19).

Section 69(2)(c): amended, on 17 May 2006, by section 56(3) of the Education Amendment Act 2006 (2006 No 19).

*Transitional provisions relating to New Zealand  
Teachers Council*

**70 Interpretation**

In this section and sections 71 to 76,—

**Teacher Registration Board** means the Teacher Registration Board established under section 131 of the principal Act (as repealed by this Act)

**Teachers Council** means the New Zealand Teachers Council established under Part 10A of the principal Act (as inserted by this Act).

**71 Teacher Registration Board to be absorbed into Teachers Council**

- (1) On the date of commencement of this section, the Teacher Registration Board ceases to exist and—
  - (a) the term of every member of the Teacher Registration Board expires; and
  - (b) the assets and liabilities of the Teacher Registration Board vest in the Teachers Council.



- (2) No member of the Teacher Registration Board is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) On and from the date of commencement of this section, every reference in an enactment (other than this Act), or in any instrument or register, to the Teacher Registration Board (or Registration Board) must, if the context requires, be construed as a reference to the Teachers Council.
- (4) An application for teacher registration, a practising certificate, or a limited authority to teach that was properly made before this section commences must be treated as if it were properly made under Part 10 of the principal Act as amended by this Act.

## **72 Final annual report and final accounts**

- (1) As soon as practicable after the commencement of this section, the Teachers Council must, unless the Teacher Registration Board has already done so, prepare and forward to the Minister an annual report on the operations of the Teacher Registration Board for the year ended 30 June 2001.
- (2) The annual report must include—
  - (a) financial statements prepared in accordance with Part 5 of the Public Finance Act 1989; and
  - (b) the audit report and the statement of responsibility relating to those financial statements.
- (3) The Minister must present a copy of the annual report to the House of Representatives.
- (4) As soon as practicable after the commencement of this section, the Teachers Council must prepare and forward to the Auditor-General financial statements of the Teacher Registration Board to the end of the month preceeding the commencement of this section.

## **73 Transfer of employees**

- (1) Every person who is employed by the Teacher Registration Board immediately before the date of commencement of this Act transfers to the Teachers Council on that date of commencement.

- (2) The transfer of an employee by this section is subject to any relevant transfer provisions in the employment agreement or contract applying to that employee.
- (3) For the purpose of any provisions of a transferred employee's employment agreement or contract relating to continuity of service, the employee's transfer to the Teachers Council is insufficient by itself to break his or her employment.

**74 Protection of terms and conditions for transferred employee**

- (1) The employment of a transferred employee must be on terms and conditions no less favourable than those applying to the employee immediately before the date of the person's transfer to the Teachers Council.
- (2) Subsection (1)—
  - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Teachers Council; but
  - (b) does not apply to a transferred employee who, after the transfer, receives any subsequent appointment within the Teachers Council.

**75 No compensation for technical redundancy**

A transferred employee is not entitled to receive any compensation for redundancy or any severance payment solely on the ground that the person has ceased to be an employee of the Teacher Registration Board as a result of his or her transfer to the Teachers Council.

**76 Delayed application of certain provisions relating to Teachers Council**

- (1) The Teachers Council must give notice in the *Gazette* of the date on which the first elected members to the Council take office.
- (2) Until the date on which the first elected members take office, the Teachers Council may not—

- (a) exercise its functions under section 139AE(g), (h), (i), or (j) of the principal Act; and
  - (b) prepare a code of ethics under section 139AI of the principal Act; and
  - (c) make the rules referred to in section 139AJ(1)(b) to (e) of the principal Act (which relate to disciplinary functions and mandatory reporting).
- (3) After the date on which the elected members take office, the Teachers Council may do any of the things specified in subsection (2), except exercise its functions under section 139AE(h) of the principal Act (which relates to disciplinary functions).
- (4) The Teachers Council must advise the Minister when it has made rules under section 139AJ(1)(b) to (e) of the principal Act.
- (5) The Governor-General must make an Order in Council bringing the following provisions into force as soon as practicable after the date on which the Teachers Council advises the Minister that it has made rules under section 139AJ(1)(b) to (e) of the principal Act:
  - (a) section 29 (which substitutes a new section 129 of the principal Act dealing with deregistration) and section 32 (which repeals section 130G of the principal Act (cancellation of authorisation));
  - (b) sections 35 and 36 (which repeal sections of the principal Act relating to deregistration and mandatory reporting);
  - (c) sections 139AK to 139AZB of the principal Act (as inserted by section 37) (which relate to mandatory reporting and disciplinary provisions);
  - (d) section 139AZC of the principal Act (as inserted by section 37) (which relates to complaints about competence).
- (6) On and from the date on which the provisions listed in subsection (5) come into force, the Teachers Council may exercise its functions under section 139AE(h) of the principal Act.

**77 Transitional provision relating to inquiries**

- (1) Until the disciplinary bodies of the Teachers Council are established, the Teachers Council may continue or commence, and may complete,—
  - (a) any inquiries into notifications received under sections 138A or 138B of the principal Act, whether the notification is received by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date; and
  - (b) any inquiry in connection with the possible deregistration of a teacher under section 129 of the principal Act or the possible cancellation of an authorisation under section 130G of the principal Act, whether the inquiry is commenced by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date.
- (2) Before the disciplinary bodies are established, when doing any of the things described in subsection (1), the Teachers Council must (as far as reasonably practicable) follow the procedures, and apply the standards, that were used by the Teacher Registration Board for those purposes.
- (3) After the disciplinary bodies of the Teachers Council are established, those bodies must deal with any matter arising under any of sections 139AK to 139AP, section 139AR, or section 139AZC of the principal Act in accordance with the relevant rules.
- (4) However, in relation to an inquiry referred to in subsection (1) that is incomplete on the date when the disciplinary bodies are established,—
  - (a) the Teachers Council must continue and complete the inquiry in the manner described in subsection (2); or
  - (b) with the agreement in writing (which is not revocable) of the teacher or authorised person concerned, the matter may be continued and completed by the disciplinary bodies in accordance with the relevant rules, as if the matter arose under the relevant equivalent provision specified in subsection (3).

*Transitional provision relating to pastoral care  
of international students*

**78 Transitional provisions relating to code**

- (1) This section applies to providers that enrol international students.
- (2) Until the close of 6 months after the date the code takes effect, a provider may enrol persons as international students and continue to have international students enrolled even though the provider is not a signatory to the code.
- (3) At the close of the period stated in subsection (2), the authority conferred by subsection (2) lapses.
- (4) This section applies despite the provisions of section 238E of the principal Act.
- (5) Terms used in this section and defined in section 238D of the principal Act have the same meanings as in that section.

*Validation*

**84 Validation of accommodation grant payments to Te Kohanga Reo National Trust Board**

- (1) This section applies to the payments made by the Crown to Te Kohanga Reo National Trust Board that—
  - (a) were capital accommodation grants under section 309(1)(a)(ii) of the principal Act for the period beginning on 1 July 1996 and ending with the close of 30 June 2000; and
  - (b) were advanced to the constituent kohanga reo by way of loans.
- (2) The payments to which this section applies are validated and are to be treated for all purposes as if they were capital accommodation grants made in accordance with section 309 of the principal Act.

*Specialist Education Services*

**85 Interpretation**

- (1) In sections 86 to 97, unless the context otherwise requires,—**assets** has the same meaning as in section 216 of the principal Act

**collective agreement** means an employment agreement that is binding on 1 or more employers and 2 or more employees

**effective date** means 28 February 2002, unless an earlier date is appointed as the effective date by the Governor-General by Order in Council under subsection (2)

**employment agreement**, in relation to a transferred employee,—

- (a) has the same meaning as in section 5 of the Employment Relations Act 2000; and
- (b) to avoid doubt, includes an employment contract that took effect before the commencement of that Act and covers the transferred employee's employment with the Specialist Education Services Board

**liabilities** has the same meaning as in section 216 of the principal Act

**Ministry** means the Ministry of Education

**rights** has the same meaning as in section 216 of the principal Act

**Secretary** means the chief executive of the Ministry

**transferred employee** means an employee of the Specialist Education Services Board who transfers to the Ministry under section 88 before or on the effective date.

- (2) The Governor-General may, by Order in Council, appoint an effective date for the purposes of this section and sections 86 to 97 that is earlier than 28 February 2002.

## **86 Specialist Education Services Board abolished and undertaking transferred on effective date**

- (1) On the effective date,—
  - (a) the Specialist Education Services Board ceases to exist; and
  - (b) all assets, liabilities, and rights of the Specialist Education Services Board, by virtue of this section, become those of the Crown.
- (2) On the effective date, Part 4 and Schedule 2 of the principal Act are consequentially repealed.
- (3) On the effective date, the following enactments are consequentially repealed:

- (a) section 13(1) of the Education Amendment Act 1990;
- (b) sections 3 and 4 of the Education Amendment Act 1993;
- (c) sections 14 and 15 and the heading above section 14 of the Education Amendment Act (No 2) 1998.

**87 Effect of reorganisation on employees**

Despite section 95, the abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not transfer the chief executive or an employee of the Specialist Education Services Board.

**88 Transfer of employees**

- (1) An employee of the Specialist Education Services Board transfers to the Ministry under this section if—
  - (a) his or her position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and
  - (b) the Secretary agrees to his or her transfer under this section; and
  - (c) he or she is appointed to a position in the Ministry, whether before or on the effective date.
- (2) Nothing in sections 60, 61, and 65 of the State Sector Act 1988 applies to that appointment.
- (3) The transfer of the employee under this section is subject to any relevant provisions of the employee's employment agreement (but this subsection does not limit the operation of sections 89 to 92).

**89 Application of employment agreements of transferred employees**

- (1) Unless a transferred employee's employment agreement otherwise provides, and subject to subsection (2), the transferred employee's employment agreement continues to apply to that employee, on and from the date that the employee transfers to the Ministry, on the same terms and conditions (including the period of the agreement)—
  - (a) as if it were an agreement that had been made in respect of the Ministry; and
  - (b) as if it were binding on both that employee and on the Secretary, and on any other party to that agreement.

- (2) If there is a change to an employee's duties or location arising out of his or her transfer to the Ministry, the conditions of employment of that employee may be varied by agreement to reflect that change, but the conditions of employment (as so varied) must be no less favourable than those that the employee was entitled to receive under the employment agreement that applied to the employee at the date of the transfer.
- (3) Subsections (1) and (2) continue to apply to the conditions of employment of each transferred employee to whom this section applies until the time that any of the conditions of employment that apply under the employment agreement applying to that employee at the date of the transfer are subsequently varied (otherwise than for the purpose referred to in subsection (2)).
- (4) The conditions of employment of each such transferred employee must, on and from the date of any subsequent variation to which subsection (3) applies, be determined in accordance with the employment agreement that applies to that employee in the Ministry.
- (5) Nothing in subsection (1) or subsection (2) continues to apply to any transferred employee who receives any subsequent appointment, whether within the Ministry or any other department.

**90 Application of collective agreements of transferred employees**

- (1) This section limits the employees who may be bound by a collective agreement that binds the chief executive of the Specialist Education Services Board before the effective date and, as a consequence of sections 86 and 95, binds the Secretary and transferred employees after the effective date.
- (2) After the effective date, the only employees of the Ministry who are entitled to be bound by or enforce that collective agreement are transferred employees who are appointed to a position in the Ministry that has been established (whether or not previously existing in the Ministry) to enable the Ministry to perform the functions of the Specialist Education Services Board.



- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- (4) Sections 62 and 64 of the Employment Relations Act 2000 do not apply to a transferred employee in relation to the transfer.
- (5) This section limits the employees who may be bound by a collective agreement and the coverage of that agreement under Part 6 of the State Sector Act 1988 and sections 56(1), 57, 63(3), and 243 of the Employment Relations Act 2000.
- (6) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

**91 Employment of transferred employees continuous**

For the purposes of any provisions of a transferred employee's employment agreement relating to continuity of service, that employee's transfer from the Specialist Education Services Board to the Ministry is insufficient by itself to break his or her employment.

**92 Restriction of compensation for technical redundancy for transferred employees**

An employee of the Specialist Education Services Board who transfers to the Ministry under section 88 is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist.

**93 Restriction of compensation for technical redundancy for other employees**

- (1) This section applies to an employee of the Specialist Education Services Board who is not transferred to the Ministry under section 88.
- (2) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist if—

- (a) the position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and
  - (b) in connection with that transfer of functions,—
    - (i) the employee is offered equivalent employment in the Ministry (whether or not the employee accepts the offer); or
    - (ii) the employee is offered, and accepts, other employment in the Ministry.
- (3) **Equivalent employment** to the employee's employment in the Specialist Education Services Board is employment in the Ministry—
- (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
  - (d) on terms that treat the period of service with the Specialist Education Services Board (or any other period of service recognised by that Board as continuous service) as if it were continuous service with the Ministry.

#### 94 **Consequential amendments to other enactments**

On the effective date,—

- (a) Schedule 1 of the Official Information Act 1982 is consequentially amended by omitting the item relating to the Specialist Education Services Board; and
- (b) Schedule 1 of the Ombudsmen Act 1975 is consequentially amended by omitting from Part 2 the item relating to the Specialist Education Services Board; and
- (c) Schedules 4, 5, 6, and 7 of the Public Finance Act 1989 are amended by omitting the item relating to the Specialist Education Services Board; and
- (d) the Education (Change of Name of Education Entities) Order 2000 (SR 2000/117) is consequentially amended by revoking clause 3(4) and so much of the Schedule as relates to the Specialist Education Services Board.

**95 Consequential changes to other references**

- (1) If any other enactment or other thing refers to the Specialist Education Services Board (or to the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Ministry.
- (2) If any other enactment or other thing refers to the chief executive of the Specialist Education Services Board (or of the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Secretary.

**96 Application of consequential changes to references**

- (1) Section 95—
  - (a) applies to things that are in force or existing on the effective date (whether coming into force, entered into, or created before or after the commencement of this section); and
  - (b) applies to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.
- (2) Section 95 applies to an employment agreement only in accordance with sections 87 and 89.

**97 Effect of reorganisation**

- (1) On and from the effective date, anything done or omitted to be done by, or in relation to, the Specialist Education Services Board must be treated as having been done or omitted by, or in relation to, the Crown.
- (2) The abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not affect—
  - (a) the assets, liabilities, or rights of the Crown or the Board (other than by transferring them); or
  - (b) the commencement or continuation of proceedings by or against the Board; those proceedings may instead be commenced or continued by or against the Crown.

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- (3) If a transfer of an asset or liability under section 86 is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
  - (4) Subsection (2) does not limit sections 86 to 96.
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## **Education (Tertiary Reform) Amendment Act 2002**

Public Act    2002 No 50  
Date of assent    11 December 2002  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Education (Tertiary Reform) Amendment Act 2002.
- (2) In this Act, the Education Act 1989 is called “the principal Act”.

### **2    Commencement**

- (1) This Act, other than the sections referred to in subsections (2) to (4), comes into force on 1 January 2003.
- (2) Section 21 comes into force on 1 July 2003.
- (3) Sections 15, 17, 18, and 26 come into force on 1 January 2004.
- (4) Sections 27 to 31 come into force on the day after the date on which this Act receives the Royal assent.

#### *Amendments to Part 15 (Administration of tertiary institution) of principal Act*

### **19    Application of Public Finance Act 1989**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Despite subsection (1), section 203(2) of the principal Act, as it read immediately before 1 January 2003, continues to apply after that date to every institution that does not have a profile.

#### *Amendments to Part 18A (Code of practice for providers who enrol international students) of principal Act*

### **31    Money for annual fee to transfer into export education levy account**

The money held for the purpose of the annual fee for the administration of the code in the trust account established under section 238H of the principal Act (as it was immediately be-

fore the commencement of section 30 of this Act) must be transferred to the export education account referred to in section 238I(2) of the principal Act as soon as practicable after the establishment of that account.

*Transitional provisions*

**48 Interpretation**

In sections 49 to 57, unless the context otherwise requires,—  
**assets** has the same meaning as in section 216(1) of the Education Act 1989

**Commission** means the Tertiary Education Commission established under section 159C of the Education Act 1989 (as inserted by section 9 of this Act)

**liabilities** has the same meaning as in section 216(1) of the Education Act 1989

**Ministry** means the Ministry of Education

**Skill New Zealand** means the agency that was continued by section 270 of the Education Act 1989 as in force immediately before the commencement of this section

**transferred employee** means an employee of Skill New Zealand or of the Ministry who transfers to the Commission.

*Absorption of Skill New Zealand into  
Commission*

**49 Skill New Zealand absorbed into Commission**

- (1) On the date of commencement of this section, Skill New Zealand ceases to exist and—
  - (a) the term of office of every member of the Board of Skill New Zealand expires; and
  - (b) all assets and liabilities of Skill New Zealand vest in the Commission.
- (2) No member of the Board of Skill New Zealand is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) On and from the date of commencement of this section, every reference to Skill New Zealand in any enactment (other than this Act), or in any instrument, register, agreement, deed,

lease, application, notice, or other document in force at the effective date, must, unless the context otherwise requires, be read as a reference to the Commission.

**50 Final report and accounts**

- (1) As soon as reasonably practicable after the commencement of this section, the Commission must arrange for the final report of Skill New Zealand to be delivered to the Minister.
- (2) The report must—
  - (a) describe Skill New Zealand's operations for the period beginning on 1 July 2002 and ending immediately before the commencement of this section; and
  - (b) include—
    - (i) financial statements of Skill New Zealand prepared, in accordance with Part 5 of the Public Finance Act 1989, for that period; and
    - (ii) an audit report prepared by the Auditor-General.
- (3) The Minister must present a copy of the report to the House of Representatives under section 44A of the Public Finance Act 1989.

**51 Transfers of contracts and leases do not give rise to claims**

- (1) No person has any claim against the Crown for breach of any contract merely because the administration of the contract or the benefit of the contract is vested in the Commission by section 49.
- (2) Subsection (1) applies whether or not the vesting involves the Commission and its employees gaining access to any information, data, programme, intellectual property right, know-how, chattel, equipment, transmission device, or facility of the claimant or any other person.

**52 Effect of absorption of Skill New Zealand into Commission**

- (1) On and from the date of commencement of this Act, anything done or omitted to be done by, or in relation to, Skill New Zealand must be treated as having been done or omitted by, or in relation to, the Commission.

- (2) The disestablishment of Skill New Zealand and the transfer of its undertaking and functions to the Commission does not affect—
  - (a) the assets, liabilities, or rights of the Crown or Skill New Zealand (other than by transferring them); or
  - (b) the commencement or continuation of proceedings by or against Skill New Zealand; those proceedings may instead be commenced or continued by or against the Commission.
- (3) If the transfer of an asset or liability under section 49 is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
- (4) Subsection (2) does not limit section 49, section 51, or sections 53 to 57.

*Transfer of employees to Commission*

**53 Transfer of employees of Skill New Zealand**

- (1) Every person who is employed by Skill New Zealand immediately before the commencement of this Act transfers to the Commission on that date of commencement.
- (2) The transfer of an employee by this section is subject to any relevant transfer provisions in the employment agreement or contract applying to that employee.
- (3) Subsection (2) is subject to section 57.

**54 Transfer of employees of Ministry**

Employees of the Ministry may be transferred to the Commission under section 61A of the State Sector Act 1988 as if their duties were no longer to be carried out by the Ministry and the Commission were a department.

**55 Transfer does not break continuity of employment**

For the purpose of any provisions of a transferred employee's employment agreement or contract relating to continuity of service, the employee's transfer to the Commission from Skill



New Zealand or the Ministry is insufficient, by itself, to break his or her employment.

**56 Protection of terms and conditions for transferred employees**

- (1) The employment of a transferred employee must be on terms and conditions no less favourable than those applying to the employee immediately before the date of the person's transfer to the Commission.
- (2) Subsection (1)—
  - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Commission; but
  - (b) does not apply to a transferred employee who, after the transfer, receives any subsequent appointment within the Commission.

**57 No compensation for technical redundancy**

- (1) An employee who has transferred, or will transfer, to the Commission under section 53 or section 54 is not entitled to receive any payment or other benefit solely on the ground that the person has ceased, or will cease, to be an employee of Skill New Zealand or the Ministry as a result of his or her transfer to the Commission.
- (2) An employee of the Ministry is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry has ceased to exist if—
  - (a) the position ceases to exist as a result of a transfer of functions of the Ministry to the Commission; and
  - (b) in connection with that transfer of functions,—
    - (i) the employee is given the opportunity, under section 54, to transfer to the Commission, to employment that complies with section 56, but he or she declines to transfer; or
    - (ii) the employee is offered, and accepts, other employment in the Ministry.
- (3) This section overrides an employee's employment agreement to the extent that it is inconsistent with that agreement.

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*Miscellaneous*

**58 Chief executive may be called general manager**

For the first 3 years after the Tertiary Education Commission is established, the person appointed as its chief executive officer under clause 36 of Schedule 13A of the principal Act (as inserted by section 47 of this Act) may be called the general manager.

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## **Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004**

Public Act    2004 No 14  
Date of assent    5 April 2004  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004.
- (2) In this Act, the Education Act 1989 is called “the principal Act”.

## **Part 1**

### **Preliminary provisions**

#### **2    Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

#### **3    Purpose**

The purpose of this Act is—

- (a) to provide for the Early Childhood Development Board, a Crown entity continued under Part 5 of the principal Act, to be disestablished and for its functions, assets, liabilities, and rights to be transferred to the Ministry of Education; and
- (b) to provide for other matters related to the reorganisation, such as a new funding mechanism for certain early childhood centres to enable grants to be paid by the Ministry rather than through the Early Childhood Development Board.

#### **4    Interpretation**

In this Act, unless the context otherwise requires,—

**assets** has the same meaning as in section 216(1) of the principal Act

**Board** means the Early Childhood Development Board

**collective agreement** means an employment agreement that is binding on 1 or more employers and 2 or more employees

**effective date** means the date on which this Act comes into force (as set out in section 2)

**employment agreement**, in relation to an employee,—

- (a) has the same meaning as in section 5 of the Employment Relations Act 2000; and
- (b) to avoid doubt, includes an employment contract that took effect before the commencement of that Act and covers the employee's employment with the Board

**liabilities** has the same meaning as in section 216(1) of the principal Act

**Ministry** means the Ministry of Education

**rights** has the same meaning as in section 216(1) of the principal Act

**Secretary** means the chief executive of the Ministry.

## Part 2

### Disestablishment of Board and associated matters

#### 5 Early Childhood Development Board disestablished and functions, assets, etc, transferred to Ministry on effective date

- (1) On the effective date,—
  - (a) the Board ceases to exist; and
  - (b) all functions, assets, liabilities, and rights of the Board, by virtue of this section, become those of the Crown.
- (2) On the effective date, Part 5 and Schedule 3 of the principal Act are consequentially repealed.
- (3) On the effective date, the following enactments are consequentially repealed:
  - (a) section 13(2) of the Education Amendment Act 1990; and
  - (b) sections 5 and 6 of the Education Amendment Act 1993; and

- (c) sections 16 and 17 and the heading above section 16 of the Education Amendment Act (No 2) 1998.

## **8 Consequential changes to other references**

- (1) If any other enactment or other thing refers to the Board and that reference is no longer appropriate because the Board has been disestablished, the reference must be read as a reference to the Ministry.
- (2) If any other enactment or other thing refers to the chief executive of the Board and that reference is no longer appropriate because the Board has been disestablished, the reference must be read as a reference to the Secretary.

## **9 Application of consequential changes to references**

Section 8—

- (a) applies to things that are in force or existing on the effective date (whether coming into force, entered into, or created before or after the commencement of this section); and
- (b) applies to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices; and
- (c) does not apply to collective employment agreements (if any); and
- (d) does not apply to individual employment agreements (if any).

## **10 Effect of reorganisation**

- (1) On and from the effective date, anything done or omitted to be done by, or in relation to, the Board must be treated as having been done or omitted by, or in relation to, the Crown.
- (2) The disestablishment of the Board, and the transfer of its functions, assets, liabilities, and rights to the Crown, does not affect—
  - (a) the assets, liabilities, or rights of the Crown or the Board (other than by transferring them); or
  - (b) the commencement or continuation of proceedings by or against the Board; those proceedings may instead be commenced or continued by or against the Crown.

- (3) If the transfer of an asset or liability under section 5 is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
- (4) Subsection (2) does not limit sections 5 to 9.

## **11 Final report and accounts**

- (1) As soon as reasonably practicable after the commencement of this Act, the Ministry must arrange for the final report of the Board to be delivered to the Minister.
  - (2) The report must—
    - (a) describe the Board's operations for the period beginning on 1 July 2003 and ending immediately before the effective date; and
    - (b) if the Board has not already prepared and forwarded to the Minister an annual report on the operations of the Board for the year ended 30 June 2003 under Part 5 of the Public Finance Act 1989, describe the Board's operations for that year; and
    - (c) include—
      - (i) financial statements of the Board prepared, in accordance with Part 5 of the Public Finance Act 1989, for that period and, if paragraph (b) applies, that year; and
      - (ii) an audit report prepared by the Auditor-General.
  - (3) The Minister must present a copy of the report to the House of Representatives under section 44A of the Public Finance Act 1989.
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## **Education (Tertiary Reforms) Amendment Act 2007**

Public Act    2007 No 106  
Date of assent    14 December 2007  
Commencement    see section 2

### **1    Title**

This Act is the Education (Tertiary Reforms) Amendment Act 2007.

### **2    Commencement**

This Act comes into force on 1 January 2008.

## **Part 1 Amendments to Education Act 1989**

### **40    Transitional provision: institutions and organisations with approved charters and approved profiles**

#### **(1)    Subsection (2) applies to—**

- (a)    an institution that, immediately before this Act comes into force, has an approved charter and approved profile under the Education Act 1989; and
- (b)    an organisation (other than an institution) that, immediately before this Act comes into force, has an approved charter and approved profile under the Education Act 1989.

#### **(2)    On the coming into force of this Act, an institution or organisation to which this subsection applies is to be treated as an institution or organisation that has a plan that has been given funding approval under the Education Act 1989 (as amended by this Act) that takes effect from the date on which this Act comes into force.**

### **41    Transitional provision: organisations with approved charters that are exempt from need to have profile**

#### **(1)    Subsection (2) applies to an organisation that, immediately before this Act comes into force,—**

- (a) has an approved charter under the Education Act 1989; but
  - (b) is exempt from the need to have a profile under the Education Act 1989.
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has exempted, under section 159U (as substituted by section 20 of this Act), from being required to submit a proposed plan in order to receive funding under a funding mechanism that provides for funding via plans, until the Commission decides that the organisation is no longer exempt under section 159U.

**42 Transitional provision: organisations with approved profile and exempt from need to have charter**

- (1) Subsection (2) applies to an organisation that, immediately before this Act comes into force,—
  - (a) has an approved profile under the Education Act 1989; but
  - (b) is exempt from the need to have a charter under the Education Act 1989.
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has exempted, under section 159U (as substituted by section 20 of this Act), from being required to submit a proposed plan in order to receive funding under a funding mechanism that provides for funding via plans, until the Commission decides that the organisation is no longer exempt under section 159U.

**43 Transitional provision: organisations exempt from need to have profile and charter**

- (1) Subsection (2) applies to an organisation that, immediately before this Act comes into force,—
  - (a) is exempt from the need to have a profile under the Education Act 1989; and
  - (b) is exempt from the need to have a charter under the Education Act 1989.



- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has exempted, under section 159U (as substituted by section 20 of this Act), from being required to submit a proposed plan in order to receive funding under a funding mechanism that provides for funding via plans, until the Commission decides that the organisation is no longer exempt under section 159U.

**44 Transitional provision: organisations funded under section 159ZC(3)**

- (1) Subsection (2) applies to an organisation that immediately before this Act comes into force is funded under section 159ZC(3) of the Education Act 1989.
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has decided to fund under section 159ZC(1) of the Education Act 1989 (as amended by this Act) for the remainder of the funding period to which the section 159ZC(3) funding relates.

**45 Transitional provision: tertiary education strategy and statement of tertiary education priorities**

- (1) Subsection (2) applies to the tertiary education strategy and the statement of tertiary education priorities in existence immediately before this Act comes into force.
- (2) On the coming into force of this Act, the documents to which this subsection applies must, when read together, be treated as if they are a tertiary education strategy made under section 159AA of the Education Act 1989 (as substituted by section 7 of this Act).

**46 Transitional provision: funding mechanisms**

- (1) Subsection (2) applies to funding mechanisms that fund organisations that have approved profiles that are determined and implemented under the Education Act 1989 immediately before this Act comes into force.

- (2) On the coming into force of this Act, a funding mechanism to which this subsection applies is treated as a funding mechanism that provides for funding via plans determined and implemented under the Education Act 1989 (as amended by this Act).
- (3) Subsection (4) applies to funding mechanisms that, immediately before this Act comes into force, fund organisations that do not have profiles.
- (4) On the coming into force of this Act, a funding mechanism to which this subsection applies must be treated as if it is a funding mechanism to fund organisations other than via plans determined and implemented under the Education Act 1989 (as amended by this Act).

**47 Validation of determination of design of funding mechanism for student component fund**

- (1) In this section,—

**consequences**, in relation to any action, or any failure or refusal to act, includes the availability of any power (on the part of any person) to take action in respect of, or because of, the action, failure, or refusal

**Minister** means the Minister for Tertiary Education

**SCF funding determination** means the determination of the Minister, communicated to the chair of the Tertiary Education Commission by a letter dated 23 January 2007, specifying amendments to the design of the funding mechanism for the student component fund.

- (2) The SCF funding determination must be treated as being, and having always been, as valid and effectual as it would have been if the Minister had taken the actions described in subsection (4).
- (3) The validity or invalidity, and the consequences, of any action (and of any failure or refusal to act) of any person, whether occurring before or after the commencement of this section, must be determined as if the Minister had taken the actions described in subsection (4).
- (4) The actions referred to in subsections (2) and (3) are—

- (a) more than 2 months before 23 January 2007, publishing in the *Gazette* a notice, complying in all respects with former section 159ZA of the principal Act, relating to all the new or amended conditions setting limits on the fees that organisations may charge domestic students that were in fact specified in the SCF determination (whether directly, or by the modification of the application of existing conditions); and
  - (b) before making the SCF determination, considering all submissions received before the specified date.
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## Education (Polytechnics) Amendment Act 2009

Public Act    2009 No 70  
Date of assent    17 December 2009  
Commencement    see section 2

### 1    **Title**

This Act is the Education (Polytechnics) Amendment Act 2009.

### 2    **Commencement**

- (1) Sections 5, 7 to 9, 11 to 13, and 16 come into force on 1 March 2010.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## Part 2 Transitional matters

### 18    **Interpretation**

In this Part,—

- (a) **principal Act** means Education Act 1989; and
- (b) **reconstituted polytechnic council** means a polytechnic council as constituted for a polytechnic on its reconstitution day; and
- (c) terms defined in section 159 of the principal Act have the meanings given by that section.

### 19    **Initial membership of reconstituted councils**

- (1) Before its reconstitution day, the Minister must appoint the number of members of each reconstituted polytechnic council required by its constitution to be appointed by the Minister.
- (2) Other members of a reconstituted polytechnic council—
  - (a) may be appointed before its reconstitution day; and
  - (b) must be appointed within 3 months after that day.
- (3) Every member of a reconstituted polytechnic council who is before 1 May 2011 appointed under section 222AA(1)(b) of

the principal Act must be appointed for a term ending no later than the close of 30 April 2011.

- (4) A reconstituted polytechnic council must ensure that every vacancy of either of the following kinds is filled no later than 11 June 2011:
  - (a) a vacancy that arises at the close of 30 April 2011 because a member appointed under section 222AA(1)(b) of the principal Act goes out of office at that time;
  - (b) a vacancy that—
    - (i) arises at a time before the close of 30 April 2011 because a member appointed under section 222AA(1)(b) of the principal Act goes out of office at that time; and
    - (ii) has not been filled before the close of 30 April 2011.
- (5) Subsection (3) overrides section 222AE(2) of the principal Act.
- (6) The appointment of a member of a reconstituted polytechnic council takes effect on the later of the day on which it occurs and its reconstitution day.
- (7) If on its reconstitution day there is a vacancy in a polytechnic's council, the Minister may, by written notice to any person who was a member of the council immediately before that day, authorise him or her to act as a member of the council until the vacancy is filled.
- (8) The Minister must give a copy of every notice under subsection (7) to the council concerned.
- (9) A person authorised under subsection (7) must for all purposes be treated as a member of the council concerned until the vacancy concerned is filled.
- (10) A council may, before its reconstitution day, make the statutes required by section 222AB of the principal Act.

## **20 Members of existing polytechnic councils to go out of office**

- (1) On its reconstitution day,—
  - (a) all members of a polytechnic council immediately before that day go out of office; and

- (b) all people appointed or elected a member of the council before that day under section 19 take up office.
- (2) Subsection (1)—
  - (a) is subject to section 19(7); and
  - (b) overrides section 222AE(4) of the principal Act.
- (3) Neither the Crown nor a polytechnic council is liable to make a payment to, or otherwise compensate, a person in respect of the person's going out of office as a member of the council under subsection (1)(a).

## **21 Council continues to be same body**

- (1) On and after its reconstitution day, a polytechnic council—
  - (a) is the same body as the council of the polytechnic concerned that existed immediately before that day; and
  - (b) continues to have the obligations and rights it then had.
- (2) Subsection (1) is subject to section 22.

## **22 Temporary power of direction**

Before its reconstitution day, the Minister may, by written notice to the chief executive of a polytechnic, give any directions he or she thinks reasonably necessary to ensure that its council as reconstituted can deal effectively with the business before it on and after that day; and—

- (a) the chief executive must give the notice to the council as soon as is practicable after that day; and
  - (b) the council must comply with the directions.
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## Education Amendment Act 2010

Public Act    2010 No 25  
Date of assent    19 May 2010  
Commencement    see section 2

### 1 Title

This Act is the Education Amendment Act 2010.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

## Part 2

### Transitional provision, validations, and consequential amendments

#### *Transitional provision in relation to Police vetting*

### 75 Transitional provision in relation to Police vetting

Despite sections 78C, 78CA, 319D, and 319E of the Education Act 1989 (as substituted by sections 21 and 69 of this Act), and section 319FB of the Education Act 1989 (as inserted by section 69 of this Act), the board of a State school, or the management of a school registered under section 35A, or a service provider of a licensed early childhood service (as the case may be) must, within 4 weeks after the date on which this Act comes into force, apply for a Police vet of any person in respect of whom—

- (a) a Police vet is required under section 78C, 78CA, 319D, or 319E of the Education Act 1989 (as substituted by this Act) or under section 319FB of the Education Act 1989 (as inserted by this Act); and
- (b) no Police vet has been obtained within a period of 3 years immediately before the commencement of this Act, by—
  - (i) that board, management, or service provider; or
  - (ii) the New Zealand Teachers Council, at the request of that board, management, or service provider.

*Validations***76 Validation in respect of Part 20**

The validity of any action of the Authority must be determined as if at all material times—

- (a) section 246 of the Education Act 1989—
  - (i) contained the definition of **relevant school** inserted by section 52 of this Act; and
  - (ii) did not contain the definition of **secondary school**, as repealed by section 52 of this Act; and
- (b) every other reference in Part 20 of the Education Act 1989 to a **secondary school** were a reference to a **relevant school**, within the meaning of that term as inserted in section 246 of that Act by section 52 of this Act.

**77 Validation in respect of change of proprietor of integrated school**

- (1) For the purposes of the Education Act 1989, actions done under that Act or under the Private Schools Conditional Integration Act 1975 before the commencement of this Act are not invalid solely because of a defect or error in the processes relating to a change of proprietor of an integrated school.
  - (2) In this section, **integrated school** and **proprietor** have the same meanings as in section 2(1) of the Private Schools Conditional Integration Act 1975.
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## Education Amendment Act (No 3) 2010

Public Act    2010 No 134  
Date of assent    20 December 2010  
Commencement    see section 2

### 1    **Title**

This Act is the Education Amendment Act (No 3) 2010.

### 2    **Commencement**

- (1) Sections 31 to 33 come into force 6 months after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### *Transitional provision*

### 37    **Continuation of registration if school registered under repealed section 35A**

- (1) In this section,—
  - (a) **old section 35A** means the section 35A of the Education Act 1989 repealed by section 11 of this Act; and
  - (b) **new section 35A** means the section 35A of the Education Act 1989 substituted by section 11 of this Act.
- (2) A school that, immediately before new section 35A comes into force, is or is deemed to be fully registered as a school of a particular description or descriptions under old section 35A, is to be regarded as fully registered as a school of that description or those descriptions under new section 35A.
- (3) Despite subsection (2), the managers of a school to which that subsection applies must comply with the criteria for registration as a private school under new section 35A as if it had been registered under that section.
- (4) A school that, immediately before new section 35A comes into force, is provisionally registered as a school of a particular description or descriptions under old section 35A, is to be regarded as provisionally registered as a school of that descrip-

tion or those descriptions under new section 35A when that section comes into force.

- (5) Despite subsection (4), when the Secretary is deciding whether to fully register a school to which that subsection applies, he or she must do so as if—
- (a) old section 35A had not been repealed by section 11 of this Act, but continued in force; and
  - (b) he or she were considering under old section 35A whether to fully register a provisionally registered school.
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## Education Amendment Act 2011

Public Act    2011 No 66  
Date of assent    29 August 2011  
Commencement    see section 2

### 1    **Title**

This Act is the Education Amendment Act 2011.

### 2    **Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## Part 2

### **Transitional arrangements and amendments to other enactments**

#### *Transitional provisions*

### 43    **Qualifications and standards existing before commencement of this Act**

On the commencement of this Act,—

- (a) all qualifications listed on the Qualifications Framework immediately before the commencement of this Act are deemed to be qualifications listed on the Qualifications Framework under section 248 of the principal Act; and
- (b) all standards listed on the Directory of Assessment Standards immediately before the commencement of this Act are deemed to be standards listed under section 248A of the principal Act.

### 44    **Policies and criteria under former section 253 and rules under former section 265**

(1) On the commencement of this Act,—

- (a) all policies and criteria made under former section 253 of the principal Act and in force immediately before the commencement of this Act are deemed to be rules made under section 253 of the principal Act; and

- (b) all rules made under former section 265 of the principal Act and in force immediately before the commencement of this Act are deemed to be rules made under section 253 of the principal Act.
- (2) All policies and criteria that exist by the operation of subsection (1)(a) and all rules that exist by the operation of subsection (1)(b) expire on the close of 31 December 2012.

**45 Course approvals, accreditations, consents, etc**

- (1) On the commencement of this Act,—
  - (a) a course approval granted under former section 258 of the principal Act and that existed immediately before commencement is deemed to be a programme approval granted under section 249 of the principal Act;
  - (b) a course approval granted under former section 258 of the principal Act that does not lead to a qualification on the New Zealand Qualifications Framework is deemed to be a training scheme approval granted under section 251 of the principal Act;
  - (c) an accreditation granted under former section 259 of the principal Act and that existed immediately before commencement is deemed to be an accreditation granted under section 250 of the principal Act;
  - (d) a consent to assess against standards granted by the Qualifications Authority and that existed immediately before commencement is deemed to be a consent to assess against standards granted under section 252 of the principal Act;
  - (e) a consent granted under former section 254 of the principal Act and that existed immediately before commencement is deemed to be a consent granted under section 253B of the principal Act;
  - (f) fees charged under former section 266 of the principal Act that, immediately before commencement, were owed to the Authority are deemed to be fees charged under section 254 of the principal Act.
- (2) If, immediately before commencement, an institution provided study or training under a consent to assess against standards,—

- (a) the institution must, within 12 months of commencement, apply for training scheme approval for the study or training; and
  - (b) if it fails to apply for training scheme approval within that period, the consent to assess against standards that it holds by the operation of subsection (1)(d) lapses on the date that is 12 months after commencement.
- (3) Subsection (2) does not apply where the institution had a course approval or an accreditation to provide the study or training.
- (4) In this section, **commencement** means commencement of this Act.

*Transitional provisions relating to private  
training establishments*

**46 Transitional arrangements for private training establishments**

- (1) A registered private training establishment that existed immediately before the commencement of this Act must, in order to maintain its registration,—
  - (a) do the following things within 6 months of the commencement of this Act:
    - (i) give the Authority a statutory declaration from each governing member of the establishment that satisfies the requirements of section 232D(2)(c)(i) and (ii); and
    - (ii) satisfy the Authority that it complies with the requirements of section 233(1)(h) relating to the provision of certain information; and
  - (b) provide, within 6 months of receiving a request from the Authority, any application or information required by the Authority for the purpose of determining whether each governing member of the establishment is a fit and proper person; and
  - (c) satisfy the Authority, within 3 years of the commencement of this Act, that each governing member of the establishment is a fit and proper person.

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- (2) A failure to comply with subsection (1) is a failure to meet the relevant criteria set out in section 233(1), and section 233D applies accordingly.
  - (3) In subsection (1), a **registered private training establishment** means a private training establishment that was granted registration by the Authority under section 236 of the principal Act before it was amended by this Act.
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## **Education (Freedom of Association) Amendment Act 2011**

Public Act    2011 No 80  
Date of assent    30 September 2011  
Commencement    see section 2

### **1    Title**

This Act is the Education (Freedom of Association) Amendment Act 2011.

### **2    Commencement**

This Act comes into force on 1 January 2012.

### **9    Transitional provision**

- (1) This section applies to any student who on 1 January 2012—
- (a) is enrolled at an institution or private training establishment; and
  - (b) is a member of that institution's or that private training establishment's students association.
- (2) Despite sections 229A to 229CA of the principal Act (as inserted by this Act),—
- (a) a student to whom this section applies continues to be a member of the students association until the expiry of his or her current term of enrolment; and
  - (b) the provisions of the constitution of the students association that existed when the student last joined or re-joined the association continue to apply until the expiry of that period.
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## Reprints notes

### 1 *General*

This is a reprint of the Education Act 1989 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16): sections 23, 25, 26

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)

Crown Entities Amendment Act 2013 (2013 No 51): sections 42, 72

Education Amendment Act 2013 (2013 No 34)

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13): sections 114, 129

Legislation Act 2012 (2012 No 119): section 77(3)

Education (Student Allowances Indexation—Budget Measures) Amendment Act 2012 (2012 No 79)

Education (Extension of Application Period) Order 2012 (SR 2012/204): clause 3

Social Security (Youth Support and Work Focus) Amendment Act 2012 (2012 No 50): section 28(2)

Criminal Procedure Act 2011 (2011 No 81): section 413



Education (Freedom of Association) Amendment Act 2011 (2011 No 80)  
Education Amendment Act 2011 (2011 No 66)  
Student Loan Scheme Act 2011 (2011 No 62): section 223  
Education Amendment Act (No 3) 2010 (2010 No 134)  
Research, Science, and Technology Act 2010 (2010 No 131): section 18  
Education Amendment Act (No 2) 2010 (2010 No 103)  
Education Amendment Act 2010 (2010 No 25)  
Education (Polytechnics) Amendment Act 2009 (2009 No 70)  
Immigration Act 2009 (2009 No 51): section 406(1)  
Education (National Standards) Amendment Act 2008 (2008 No 108)  
Policing Act 2008 (2008 No 72): section 116(a)(ii)  
Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64): section 4  
Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106)  
Income Tax Act 2007 (2007 No 97): section ZA 2(1)  
Education Amendment Act 2007 (2007 No 52)  
Crimes (Substituted Section 59) Amendment Act 2007 (2007 No 18): section 6(2)  
Student Loan Scheme Amendment Act 2007 (2007 No 13): section 42  
Securities Amendment Act 2006 (2006 No 46): section 25  
Education Amendment Act 2006 (2006 No 19)  
Public Records Act 2005 (2005 No 40): section 67(1)  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
State-Owned Enterprises Amendment Act 2004 (2004 No 116): section 5  
Crown Entities Act 2004 (2004 No 115): section 200  
State Sector Amendment Act (No 2) 2004 (2004 No 114): section 18  
Public Finance Amendment Act 2004 (2004 No 113): section 37(1)  
Education (Export Education Levy) Amendment Act 2004 (2004 No 75)  
Building Act 2004 (2004 No 72): section 414  
Income Tax Act 2004 (2004 No 35): section YA 2  
State Sector Amendment Act 2004 (2004 No 15): section 6  
Education (Disestablishment of Early Childhood Development Board) Amendment Act 2004 (2004 No 14)  
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)  
State Sector Amendment Act 2003 (2003 No 41): section 14  
Local Government Act 2002 (2002 No 84): section 262  
Education (Tertiary Reform) Amendment Act 2002 (2002 No 50)  
Public Trust Act 2001 (2001 No 100): section 170(1)  
Education Standards Act Commencement Order 2001 (SR 2001/384)  
Health and Disability Services (Safety) Act 2001 (2001 No 93): section 58(1)  
Education Standards Act 2001 (2001 No 88)  
Employment Relations Act 2000 (2000 No 24): sections 240, 241

Education Amendment Act 2000 (2000 No 21)  
Education (Specified Institutions) Order 2000 (SR 2000/44)  
Education Amendment Act 1999 (1999 No 107)  
Department of Child, Youth and Family Services Act 1999 (1999 No 82):  
section 13  
Education (Te Aho Matua) Amendment Act 1999 (1999 No 79)  
Stamp Duty Abolition Act 1999 (1999 No 61): section 7  
Education Amendment Act (No 2) 1998 (1998 No 118)  
Employment Services and Income Support (Integrated Administration) Act  
1998 (1998 No 96): section 11  
Education (Tertiary Students Association Voluntary Membership) Amendment  
Act 1998 (1998 No 90)  
Education Amendment Act 1998 (1998 No 21)  
Education Amendment Act 1996 (1996 No 98)  
Survey Amendment Act 1996 (1996 No 55): section 5  
Income Tax Act 1994 (1994 No 164): section YB 1  
Education Amendment Act 1994 (1994 No 148)  
Education Amendment Act (No 2) 1993 (1993 No 77)  
Education Amendment Act 1993 (1993 No 51)  
Foreign Affairs Amendment Act 1993 (1993 No 48): section 9(2)  
Public Finance Amendment Act 1992 (1992 No 142): section 42  
Education Amendment Act 1992 (1992 No 107)  
Building Act 1991 (1991 No 150): section 92(1)  
Education Amendment Act (No 4) 1991 (1991 No 136)  
Education Amendment Act (No 2) 1991 (1991 No 90)  
Judicature Amendment Act 1991 (1991 No 60): section 3(4)  
Education Amendment Act 1991 (1991 No 43)  
Education Amendment Act 1990 (1990 No 60)  
Education Amendment Act 1989 (1989 No 156)  
Education Act 1989 (1989 No 80): section 9(8)  
Public Finance Act 1989 (1989 No 44): section 65R(3)

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