

# Tertiary Education Reform Bill

Government Bill

## Explanatory note

### General policy statement

The Government established the Tertiary Education Advisory Commission in 2000 to provide advice to the Government on a strategic direction for tertiary education in New Zealand that best serves New Zealand's human capability development and knowledge needs into the future. This Bill gives effect to the Government's decisions on the reform of the whole tertiary education system, based on the recommendations of the first 2 Tertiary Education Advisory Commission reports.

The reforms will ensure that tertiary education in New Zealand makes more strategic use of resources through a more co-operative and collaborative tertiary education sector. The reforms will also encourage a greater focus on excellence in teaching, learning, and research; more constructive partnerships between the key participants in the sector, including individuals, local communities, and industry; and better-managed institutions and providers that can work together across the whole system to meet the education and research needs of the nation.

The emphasis on greater strategic direction for the system as a whole will be given effect through the development by the Government of a Tertiary Education Strategy and an associated statement of tertiary education priorities, and the establishment of a new Crown entity, the Tertiary Education Commission (the **Commission**). The statement of tertiary education priorities will be established by the Minister and will be used to guide the activities and education provision of all tertiary education providers and industry training organisations (**ITOs**). The statement of tertiary education priorities will also form

the basis for decision-making by the Commission and the Minister about those activities and education provision.

All tertiary education providers and ITOs that seek public funding must develop charters and profiles that will demonstrate the alignment of their activities and education provision with the Tertiary Education Strategy and statement of tertiary education priorities. Public institutions will be required to have charters and profiles even if they do not seek public funding. The Commission can negotiate with providers around the development of their charters and their profiles if this is necessary. The Minister will have the power to approve charters, while the Commission will approve profiles. Approval of both charters and profiles will be needed before providers can access Commission funding.

Charters are public documents that illustrate an organisation's contribution to the Tertiary Education Strategy and to the wider tertiary system and its stakeholders. They are high-level governance documents providing a broad description of the provider's or ITO's mission and role in the tertiary education system. The charter indicates the type of education and other activities that the provider or ITO will position itself to deliver and the organisation's engagement with other providers and/or stakeholders. The information will inform the Commission in its negotiations, and the Commission and the Minister when deciding whether to approve a charter. Charter approval is the first prerequisite for eligibility for public funding for quality-assured providers.

The annual profile describes in greater detail the strategic direction, activities, policies, and performance measures for the next 3 years that are signalled in the provider's or ITO's charter. Profiles will be required of all publicly funded tertiary education providers and ITOs. The Commission will have the responsibility to negotiate and agree on the composition of profiles, subject to the Government's tertiary education priorities. The profile contributes to a more detailed map of the tertiary education sector and establishes more consistent monitoring, reporting, and accountability for publicly funded organisations.

Providers and ITOs receiving government funding must report on the performance and financial targets set out in their profiles. Approval of all or part of a profile by the Commission will be required before providers and ITOs can access Commission funding. Profiles will replace the current requirement for statements of objectives for public institutions. Public institutions will, however, still be

required to include in their annual financial statements, prepared under the Public Finance Act 1989, statements of service performance, reporting against the objectives and targets as set out in their profiles. Profiles will also replace the requirement under the Education Act 1989 that private training establishments provide a statement of objectives to the Ministry of Education.

The Commission will have responsibility for allocating public funding on the basis of approved profiles according to formulas and criteria approved by the Minister. This Bill provides for a more enabling funding framework, with formulas and criteria for the allocation of funding approved by the Minister in accordance with the national priorities. The Commission will also have responsibility for using information from providers to build a system-wide picture of the sector and using this information to build the capability of the sector.

The Bill directly strengthens the industry training part of the tertiary education system in response to the Industry Training Review. The reforms are designed to improve the effectiveness and responsiveness of the industry training system so that it better serves the current and future skill needs of employees and employers. The amendments to the Industry Training Act 1992 add new criteria for recognition and re-recognition of ITOs, requiring that ITOs provide greater leadership in skill and training matters for their industries and also requiring ITOs to provide evidence of satisfactory performance. The Industry Training Act 1992 is also amended to provide that, on a voluntary balloted agreement of a majority of employers, the ITO may impose a levy on firms within its industry. A further key change that makes industry training more responsive to the need for high-level skills is the removal of the restriction of industry training funding to level 4 or below of the National Qualifications Framework. The recognition of ITOs, currently undertaken by Skill New Zealand, will be incorporated within the charter to be approved by the responsible Minister. This will provide for consistency across the tertiary education sector and prevent duplication of processes.

To be effective, the tertiary education reforms need to be supported by an effective quality assurance system. This Bill strengthens the quality assurance system by providing the New Zealand Qualifications Authority (NZQA) with the ability to institute more effective early intervention processes to better ensure the quality of tertiary education provision. This Bill enables the NZQA to set conditions, if needed, on recognition for registration, accreditation, and course

approval, and to suspend rather than cancel recognition if concerns arise or conditions are not met.

The Bill also adds “specialist college” as a new class of institution. Institutions at present are universities, institutions of technology, polytechnics, colleges of education, or wananga.

These reforms, to be given effect through this Bill, will ensure that New Zealand has a tertiary education system that can deliver the capability New Zealand needs to become a world-leading knowledge society.

### Clause by clause analysis

This Bill contains 2 substantive Parts. *Part 2* amends the Education Act 1989 and *Part 3* amends the Industry Training Act 1993. It is intended that each of these Parts will be split out of the main Bill at the Committee of the whole stage to form an Education Amendment Bill and an Industry Training Amendment Bill.

*Clause 1* is the Title clause of the whole Bill.

## Part 1

### Preliminary provisions

*Clause 2* is the commencement clause for the whole Bill. Most clauses will come into force on **1 July 2002**. However, *clause 12*, which repeals the provisions of the Education Act 1989 that currently deal with charters for institutions, comes into force on **1 January 2004**.

*Clause 3* sets out the purpose of the whole Bill. It describes the objective of the changes proposed to be made to the tertiary education sector as being to achieve coherence between different parts of that sector and the strategic use of resources. It then broadly describes the main changes to be made by the Bill as being to—

- establish the Tertiary Education Commission (incorporating Skill New Zealand); and
- extend the requirements for charters and to introduce profiles; and
- introduce a new funding approach; and
- improve the effectiveness and responsiveness of the industry training system; and

- enable the New Zealand Qualifications Authority to impose conditions on, and to suspend, accreditations, course approvals, and registrations; and
- make related minor changes to the tertiary education system.

## Part 2

### Amendments to Education Act 1989

*Part 2* of the Bill sets out the amendments to the Education Act 1989, which is called “the principal Act” in that Part (see *clause 4*) and in this part of the explanatory note.

*Clause 5* amends section 159 of the principal Act. That section sets out definitions that apply to the parts of the principal Act that relate to the tertiary education sector. *Clause 5* inserts new definitions of **charter**, **Commission**, **industry training organisation**, **profile**, **specialist college**, **statement of tertiary education priorities**, and **tertiary education provider**. It also amends the definition of **registered establishment** so that that term no longer applies to an establishment whose registration has been suspended, and makes consequential amendments.

*Clause 6* inserts a *new Part 13A* into the principal Act. That part establishes the Tertiary Education Commission (the **Commission**), and sets out details relating to charters, profiles, and funding.

#### *Preliminary provisions*

*New section 159A* describes the purpose of *new Part 13A*.

*New section 159B* sets out definitions of **give notice**, **stakeholder**, and **organisation** that apply in *new Part 13A*. An **organisation** is a tertiary education provider or an industry training organisation.

#### *Establishment of Commission*

*New section 159C* establishes the Commission as a Crown entity, and provides that *Schedule 13A* of the principal Act applies to the Commission and its members.

*New section 159D* provides that the Commission comprises 6 to 9 members to be appointed by the Minister in consultation with the Minister of Māori Affairs.

*New section 159E* sets out the powers of the Commission.

### *Functions of Commission*

*New section 159F* provides that the main functions of the Commission are to—

- give effect to the statement of tertiary education priorities through negotiating charters and profiles, allocating funds, and building the capability of organisations; and
- provide advice to the Minister in relation to the statement of education priorities.

The Commission may also provide other tertiary-related services to the Crown if the Minister agrees and if the functions are consistent with, and do not displace, the Commission's other functions.

*New section 159G* sets out certain principles that must guide how the Commission operates. The Commission must comply with written directions of the Minister and work closely with stakeholders, tertiary education providers, and industry training organisations.

*New section 159H* provides that the Minister may review the performance of the Commission.

*New section 159I* provides for the delegation of the Minister's functions and powers to the Commission.

*New section 159J* provides that the Minister may give directions to the Commission, and sets out the requirements that the Minister must comply with when giving directions.

### *Accountability of Commission*

*New section 159K* states that the Commission is named in the Fourth, Fifth, Sixth, and Seventh Schedules of the Public Finance Act 1989. This imposes on the Commission the standard accountability obligations applying to other Crown entities named in those schedules.

*New section 159L* replaces some of the Public Finance Act 1989 requirements relating to statements of intent with more extensive ones.

*New section 159M* imposes additional requirements on the Commission relating to the annual report required under the Public Finance Act 1989.

### *Government guidance of Commission*

*New section 159N* provides that the Minister must approve a Tertiary Education Strategy setting out the Government's medium to long term strategy for tertiary education.

*New section 159O* provides that the Minister must issue a statement of tertiary education priorities, at least once every 3 years, based on the Tertiary Education Strategy. The statement must set out the Government's priorities for tertiary education over the next 1 to 3 years. This statement plays a central role in guiding decisions made under *new Part 13A* of the principal Act.

### *Charters*

*New section 159P* sets out what a charter is. An organisation's charter sets out the organisation's mission and role in the tertiary education system over the medium to long term. It forms the basis for negotiations over the organisation's profile.

*New section 159Q* provides that the Minister must prescribe the content of charters and the criteria that the Minister will use to assess proposed charters. Under *subsection (5)*, the Minister may also exempt organisations (other than institutions) from the requirement to have a charter or a requirement as to the content of their charters.

*New section 159R* identifies which organisations must have a charter after **1 January 2004**. They are institutions, registered establishments that wish to obtain funding from the Commission, certain other tertiary education providers, and industry training organisations. Before **1 January 2004**, the Commission may require any such organisation to have a charter, and any organisation that wants a charter may prepare and seek approval for one. This section is designed to allow the staggered introduction of charters and for the gradual conversion of institution's charters (currently approved under Part XV) to charters approved under this Part.

*New section 159S* sets out the process for an organisation to obtain a charter. This includes requirements to consult with stakeholders and the Commission before submitting a proposed charter to the Minister for approval.

*New section 159T* sets out the process for obtaining approval from the Minister for a charter. It provides that the Minister must assess proposed charters against the criteria prescribed under *new section 159Q* and, in the case of industry training organisations, criteria set out in sections 6 and 7 of the Industry Training Act 1992. The

Minister must have reasonable grounds, and must give reasons, for refusing to approve a proposed charter.

*New section 159U* sets out the Minister's special powers in relation to the charters of institutions. If an institution and the Minister cannot agree over a charter, the Minister must determine the matter. The Minister may also propose amendments to an institution's charter or proposed charter. These provisions largely repeat the equivalent provisions in Part XV that are to be repealed.

*New section 159V* provides that the Minister may approve interim charters for institutions that have recently merged, changed status, or been incorporated into another institution, or whose charter has expired.

*New section 159W* provides for the amendment of charters.

*New section 159X* provides that charters lapse on an expiry date agreed by the Minister (which must be a date no later than 10 years from the date on which the charter came into effect) or, in the case of the charter of an industry training organisation, 5 years from the date on which it came into effect.

*New section 159Y* provides that the charter of an organisation (other than an institution) lapses if the organisation does not have a profile approved for 2 consecutive years.

*New section 159Z* requires charters to be publicly available.

### *Profiles*

*New section 159ZA* describes what a profile is. An organisation's profile is a document, negotiated between the organisation and the Commission, that sets out the organisation's key objectives, plans, performance measures, targets, etc, for the next 3 years. New profiles must be negotiated at least once every 3 years, but the Commission may require an organisation to prepare a new profile at less than 3-yearly intervals. It must identify activities for which the organisation will seek funding from the Commission and explain how the organisation will give effect to its charter.

*New section 159ZB* provides that the Commission must specify the content of profiles, the criteria by which they will be assessed, the kinds of background or additional information the Commission may require an organisation to provide, and the timetable and processes for profile development.

*New section 159ZC* identifies which organisations must, after **1 January 2004**, have a profile. They are institutions and every other organisation that seeks or receives funding from the Commission. Before **1 January 2004**, however, the Commission may require any such organisation to have a profile.

*New section 159ZD* describes the process for negotiating and getting approval for a profile.

*New section 159ZE* provides that profiles may be amended.

*New section 159ZF* empowers the Commission to monitor compliance with profiles by requiring organisations to provide information and to review their profiles. The Commission may suspend or cancel the profile of an organisation if it is not satisfied that the organisation is complying with its profile or if the organisation fails to supply information or review its profile when required to do so.

*New section 159ZG* provides that profiles must be publicly available.

#### *Funding by Commission*

*New sections 159ZH to 159ZM* replace the funding systems for tertiary providers that are currently set out in sections 199, 238A, and 321 of the principal Act. The new sections will apply a uniform funding system, with the exception that the accountability provisions for institutions are somewhat different as they are governed by sections 203 and 220 of the principal Act.

*New section 159ZH* provides that the Minister must identify which mechanisms for funding tertiary education he or she wishes to adopt. He or she must determine the formulas to be used in any formula-based funding mechanism, and the general form of any other type of mechanism.

*New section 159ZI* provides that if formula funding is used, any formulas must be set out in an Order in Council. The Commission must work out the details around other forms of funding mechanism, but no mechanism may be used until the Minister has approved its final form.

*New section 159ZJ* provides that the Commission may provide funding to organisations. No funding under this provision is to be available until the **2003** academic year. (*Clause 25* provides that funding under the repealed sections 199, 238A, and 321 will apply until then.)

*New section 159ZK* provides that the Commission may impose conditions on grants of funding.

*New section 159ZL* sets out how organisations (other than institutions) that receive funding from the Commission must account for it. (Accounting by institutions is provided for in sections 203 and 220.)

*New sections 159ZM* provides that the Commission may, in certain circumstances, suspend payment of a grant of funding.

*Amendments to Part XIV (Establishment and disestablishment of institutions) of principal Act*

*Clause 7* amends section 162 of the principal Act, which deals with the establishment of institutions. It adds a new type of institution, a specialist college, to the current list of types of institution that may be established. A specialist college is characterised by teaching and (if relevant) research of a specialist nature. *Clause 7* also adds a new requirement that the Minister must fulfil before recommending that an institution be established, which is to consider the interests of the tertiary education system and the nation as a whole.

*Clause 8* amends section 164(3) of the principal Act, which sets out requirements that the Minister must fulfil before he or she recommends the disestablishment of an institution. *Clause 8* adds a similar requirement to that inserted in section 162, namely that the Minister must be satisfied that the disestablishment is in the interests of the tertiary education system and the nation as a whole.

*Amendments to Part XV (Administration of tertiary institutions) of principal Act*

*Clause 9* amends section 166 of the principal Act by inserting a reference to specialist colleges. This ensures that the incorporation details and powers specified in section 166 will apply to specialist colleges.

*Clause 10* amends section 180 of the principal Act, which deals with the functions of the Council. The amendments reflect the changed requirements relating to charters and profiles. *Subclause (2)* is designed to deal with the transition period between the commencement of this provision and the date (**1 January 2004**) on which all institutions must have a profile.

*Clause 11* inserts a *new section 184A* into the principal Act, which is designed to deal with the transition period before **1 January 2004**,

when all institutions will be required to have a charter prepared under *new Part 13A*. It will enable the Commission to require an institution to prepare a new charter under *Part 13A* before that date, in order that the Commission can manage the conversion process steadily.

*Clause 12* repeals the sections in the principal Act that relate to charters prepared under Part XV of the principal Act. New sections relating to charters are set out in *new Part 13A* of the Bill. This clause will not come into force until **1 January 2004**, when all institutions must have charters prepared under *new Part 13A*.

*Clause 13* repeals section 199 of the principal Act, which provides for the bulk funding of institutions. It substitutes a *new section 199* that simply preserves subsections (6) and (7) of the current section 199 under a more accurate heading.

*Clause 14* amends section 203(2) of the principal Act, which applies the accountability requirements of Crown entities under the Public Finance Act 1989 to institutions. The effect of the amendments is that institutions no longer have to provide a statement of objectives in their financial statements. Instead, they must include that part of their profile that deals with the institution's objectives, performance measures, and targets. A *new subsection (4)* deals with the transition period before all institutions have a profile.

*Amendments to Part XVIII (Private training establishments) of principal Act*

*Clause 15* amends section 236 of the principal Act to provide that the New Zealand Qualifications Authority (the **Authority**) may impose conditions on a registered establishment when it recognises it under this Part.

*Clause 16* substitutes a *new section 237* in the principal Act. The current section 237 permits the Authority to cancel registration. The new section permits the Authority to cancel or suspend registration.

*Clause 17* repeals section 238A of the principal Act, which is the provision under which registered establishments receive grants from the Government. This provision is replaced by the new provisions in *Part 13A* dealing with funding by the Commission.

*Amendments to Part XX (New Zealand Qualifications Authority)  
of principal Act*

*Clause 18* amends section 258 of the principal Act, which is about the Authority approving courses. The amendments allow the Authority to impose conditions on course approvals.

*Clause 19* amends section 259 of the principal Act, which is about accrediting providers. The amendment allows the Authority to impose conditions on an accreditation.

*Clause 20* amends section 264A of the principal Act by requiring that the Minister, when considering whether to consent to a body using a protected term in its name, must consider the interests of the tertiary education system and the nation as a whole. It also permits the Minister to suspend (and not just to cancel, as presently provided) a consent under this section.

*Repeal of Part XXI (Skill New Zealand) and Sixteenth Schedule of  
principal Act*

*Clause 21* repeals Part XXI and the Sixteenth Schedule of the principal Act. These dealt with Skill New Zealand, whose functions are being taken over by the Commission.

*Amendments to Part XXVII (Recognition and funding of other  
services) of principal Act*

*Clause 22* amends section 320 of the principal Act, which is the interpretation section for this Part.

*Clause 23* amends section 321 of the principal Act, which is the section under which grants of money are made available to a variety of educational bodies, including bodies that operate within the tertiary sector. The funding for educational bodies that operate in the tertiary sector is to be provided under *new Part 13A*. The amendments to this section and section 320 have the effect of limiting their application, so they no longer apply to bodies to which *Part 13A* apply.

*Clause 24* amends section 322 of the principal Act by consequentially amending its heading.

*Transitional funding arrangements*

*Clause 25* provides that, despite the repeal of sections 199 (which applies to institutions) and 238A (which applies to registered establishments) of the principal Act, funding under these sections will continue up to the end of the **2002** academic year. After that, funding will be provided under *new Part 13A*. Similarly, funding of other miscellaneous tertiary bodies will continue under section 320 of the principal Act, despite its amendment, to the end of **2002**.

*New Schedule 13A inserted in principal Act*

*Clause 26* inserts a *new Schedule 13A* into the principal Act, which sets out the administrative provisions that apply to the Commission.

*Transitional provisions*

*Clause 27* sets out definitions that apply for the purposes of the transitional provisions in *clauses 28 to 35*.

*Clause 28* provide for Skill New Zealand to be absorbed into the Commission when this Bill commences. The terms of office of all members of the Board of Skill New Zealand will expire on that date, and all assets and liabilities of Skill New Zealand will vest in the Commission.

*Clause 29* ensures that the transfer of contracts and leases from Skill New Zealand to the Commission will not give rise to any claim against the Crown for breach of contract.

*Clause 30* sets out the effect of the absorption of Skill New Zealand into the Commission.

*Clauses 31 to 35* provide for the transfer of employees from Skill New Zealand, and from the Ministry of Education, to the Commission. They ensure that those transfers will not break the continuity of employment of employees who transfer, and protect the terms and conditions of employment that apply to those employees. *Clause 35* ensures that no compensation is payable for technical redundancy for employees who transfer to the Commission.

*Miscellaneous*

*Clause 36* provides that the chief executive of the Commission may be called the General Manager for the first 3 years after the Commission is established.

*Clause 37* and *Schedule 2* make certain consequential amendments.

### Part 3

#### Amendments to Industry Training Act 1992

*Part 3* of the Bill sets out various amendments to the Industry Training Act 1992, which is called “the principal Act” in that Part (see *clause 38*) and also in this part of the explanatory note.

*Clause 39* amends section 2 of the principal Act by inserting a definition of **statement of tertiary education priorities**.

*Clause 40* substitutes a *new section 5* in the principal Act, which sets out how an industry training organisation becomes recognised. In order to be recognised, an industry training organisation must get a charter. In addition to the criteria for assessing charters prescribed under the Education Act 1989, the Minister must also assess an industry training organisation’s charter against the criteria in section 6 of the principal Act, and have regard to the matters in section 7 of the principal Act. An industry training organisation is recognised when its charter has been approved and a notice is published in the *Gazette*.

*Clause 41* amends section 6 of the principal Act, which currently sets out the criteria that the Minister must be satisfied of before recognising an industry training organisation. The amendment changes the section so that it describes these criteria as criteria for the approval of an industry training organisation’s charter (which is the means by which an organisation will get recognition). The criteria remain unchanged, except that a new criterion is added as *new paragraph (c)*. That new paragraph adds a requirement that the industry training organisation can provide leadership in the industry by identifying and planning for current and future skill needs, and promoting training to meet those needs.

*Clause 42* amends section 7 of the principal Act, which currently sets out certain matters to which the Board of Skill New Zealand must have regard before recognising an industry training organisation. The amendment changes the section so that it sets out matters to which the Minister must have regard before approving an organisation’s charter. The matters remain unchanged, except that—

- paragraph (d), which currently requires the Board to have regard to the organisation’s intentions in relation to the involvement of people employed in the industry, is strengthened. That paragraph will now require regard to be had to the

extent to which the organisation has implemented mechanisms to allow the collective representation of employees in the industry in the governance of the organisation; and

- 3 new paragraphs are added, which require the Minister to have regard to—
  - the organisation’s alignment with the Government’s statement of tertiary education priorities;
  - whether the organisation has considered the desirability of amalgamating, or entering joint arrangements, with other recognised institutions; and
  - the organisation’s performance at other times when it has been recognised or provisionally recognised; and
- paragraph (g), which is a general paragraph, is amended to require the Minister to have regard to any other criteria for assessing charters that are prescribed under the Education Act 1989.

*Clause 43* amends section 8 of the principal Act by requiring the Minister, rather than Skill New Zealand, to grant provisional recognition and also makes some consequential changes to the section.

*Clause 44* makes 3 main changes to section 9 of the principal Act, which relates to the expiry and cancellation of recognition. First, the power to cancel an organisation’s recognition is transferred from Skill New Zealand to the Minister. The second change relates to expiry of recognition. Currently, recognition of an industry training organisation expires after 5 years. *Clause 43* changes this so that recognition will expire if an organisation ceases to have a charter. This means that, as long as an organisation continues to have a charter, it will continue to be recognised unless its recognition is cancelled by the Minister. The third main change is to add a new means by which an organisation’s recognition can be cancelled. Under *new subsection (3A)*, the Minister may cancel an organisation’s recognition if he or she has given notice to the organisation that its performance is inadequate and the organisation has failed to improve its performance within the time specified in the notice.

*Clause 45* amends section 10 of the principal Act by adding a new funding provision that will enable an employer to switch to a different industry training organisation for the management of its training needs in certain circumstances. The circumstances are if the employer’s current industry training organisation has no capacity to provide a satisfactory service or if the employer faces significant

administration and compliance costs because its training needs are covered by more than 1 organisation.

*Clause 46* adds a *new Part 5* to the principal Act, which relates to training levies.

*New section 24* describes the purpose of the new Part, which is to enable a training levy to be imposed on members of an industry if sufficient members of the industry support that levy in a ballot.

*New section 25* defines certain terms that are used in the new Part, namely **ballot**, **closing date**, **levy group**, **member of an industry**, **qualifying member**, and **relevant industry**. The **levy group** is all members of a particular industry who have to, or will have to, pay the levy described in a levy order or proposed levy order.

*New section 26* enables an Order in Council to be made that imposes a levy on a levy group. A levy may be payable to an industry training organisation by all of the members of the industry that it covers or only by members of a specific industry within its range of coverage. A levy may also be payable to more than 1 industry training organisation if those organisations cover the same industry. A levy order is made on the recommendation of the Minister, but the Minister must be satisfied of the matters in *new section 27* before making that recommendation.

*New section 27* sets out certain restrictions on when the Minister can recommend that a levy order be made. The Minister must be satisfied that—

- a proper ballot of industry members has taken place; and
- at least 60% of the members responded in that ballot; and
- out of the ballot papers returned, more than 60% in number, and more than 60% weighted according to the size of the industry member, supported the levy; and
- the details in the order do not materially differ from those proposed in the ballot paper; and
- the details in the order are acceptable to the Minister; and
- the industry training organisation has adequate systems to account to the levy group.

When considering these matters, the Minister must consult with the Commission.

*New section 28* and *Schedule 4* set out the details that must be included in a levy order.

*New section 29* describes the purposes for which a levy may be required. Essentially, a levy must be used for purposes that will benefit the levy group as a whole and that are related to designing qualifications and setting skill standards, or identifying present and future skill needs in the industry and promoting training. A levy may not be used to meet the costs of arranging delivery of industry training or for a commercial activity or for any activity that directly benefits an individual industry member.

*New section 30* provides that a levy order may require members of the levy group to provide information that will enable the amount of levy payable to be calculated.

### *Ballots*

*New sections 31 to 38* relate to the ballot that must be conducted before a levy can be imposed. The process is as follows:

- the ballot is conducted by an independent returning officer (*new section 31*):
- the industry training organisation must provide a list of potential members of the levy group to that returning officer (*new section 32*):
- the returning officer must notify those potential members about the ballot and advise them that they may dispute membership of the levy group (*new section 33*):
- any disputes as to membership of the levy group must be resolved by the Commission (*new section 34*), from which there is a right of appeal to the District Court on procedural grounds only (*new section 50(2)*):
- once any disputes are resolved, the returning officer must send ballot papers to all members of the levy group (*new section 35*):
- the ballot paper must contain the details in *new section 36*, which include all details to be included in the levy order under in *Schedule 4*:
- the returning officer must count the votes (*new section 37*):

Under *new section 38*, the returning officer must keep the ballot papers and other documents used in connection with the ballot for 1 year.

### *Collection of levy*

*New section 39* provides that a levy must be paid by qualifying members of the levy group to the industry training organisation named in the order.

*New section 40* provides that the Commission can exempt a member of an industry from payment of the levy if, through no fault on that person's part, they should have been but were not included in the ballot.

*New section 41* describes how the levy may be collected. It may be collected directly by the industry training organisation or by a collection agent. Unpaid levy may be deducted from amounts owed to the member or recovered through civil proceedings.

*New section 42* provides for levy orders to specify persons to act as collection agents and the amount they may deduct as a fee for providing that collection service.

*New section 43* provides that, if a member of an industry switches industry training organisations, that member must continue to pay the levy payable to the original organisation and does not need to pay the new organisation.

### *Duties of industry training organisations and others in relation to levies*

*New sections 44 to 47* impose duties on industry training organisations that collect levies. Those duties are—

- to keep levy funds in separate bank accounts and use those funds only for authorised purposes; and
- to keep accurate records in relation to the collection of the levy; and
- to prepare, and have audited, an annual report in relation to the levy, and to provide that report to the Minister and to every person primarily liable for paying the levy; and
- to protect commercially sensitive information.

### *Disputes*

*New section 48* obliges industry training organisations that receive levies to establish a mediation or arbitration system to deal with disputes about the levy, other than coverage disputes. Either party

may refer an unresolved dispute, or appeal a decision of the mediator or arbitrator, to the District Court under *new section 50(1)*.

*New section 49* provides that the Commission must determine coverage disputes, which are disputes about whether or not a person is within a levy group. The industry training organisation must pay the Commission's reasonable costs for determining those disputes. The Commission's determination may be appealed, by either party, to the District Court, but only on procedural grounds (*new section 50(2) and 50(3)*).

#### *Confirmation and expiry of orders*

*New section 51* provides that a levy order must be confirmed within 12–18 months (depending on when it is made) or it will expire.

*New section 52* provides that all levy orders expire—

- after 5 years (if they are not revoked or disallowed before then); and
- if the industry training organisation ceases to be recognised.

*Clause 47* repeals Part IV of the principal Act, which relates to the dissolution of industry training boards.

*Clause 48* inserts *Schedule 4* (which sets out the details to be included in a levy order) into the principal Act.

*Clause 49* makes certain consequential changes to the principal Act.

### **Regulatory impact and compliance cost statement**

#### *Statement of the public policy objective*

The Government's primary objective for the tertiary education reforms is to provide a sound institutional and sector environment for the provision of excellent tertiary teaching, scholarship, and research essential to New Zealand's future direction.

The integration of the administration of all tertiary education in one agency, the Tertiary Education Commission, will enable a co-operative and collaborative tertiary sector, delivering high quality knowledge and skills, particularly in areas of identified priority. The reforms will encourage participation by all and support Māori aspirations for human capability development.

### *Statement of the problem and the need for action*

A paradigm shift is required for the tertiary system to contribute to New Zealand's transformation into a knowledge nation, driven by high quality knowledge, skills, and innovation.

While participation in tertiary education has increased significantly over the past decade, there is concern about the level of attention to excellence and specialisation in areas that can contribute to New Zealand's economic transformation.

Action is required to shift from a fragmented, competitive approach to a more integrated and strategic approach that will foster a greater sense of partnership and collaboration between key contributors to the sector, and greater involvement by, and responsiveness to, stakeholders such as business, Māori, and the wider community.

The tertiary education sector includes all formal education and training post-school: public tertiary education institutions (TEIs), private training establishments (PTEs), adult and community education, industry training, Training Opportunities, and Youth Training.

### *Statement of options for achieving the desired objective*

A multi-layered approach is proposed to achieve the desired objectives. This includes—

#### **Non-regulatory measures**

- development of Tertiary Education Strategy – to be developed on the basis of widespread consultation, the strategy will establish 3–5 year national priorities for tertiary education and provide direction to guide the activities of the sector;

#### **Regulatory measures**

- establishment of the Tertiary Education Commission as a new operational Crown entity, incorporating Skill New Zealand, to give effect to the Tertiary Education Strategy; and
- establishment of a “steering” framework for the tertiary education system through the Tertiary Education Strategy, charters, profiles, and funding mechanisms.

The Tertiary Education Strategy will provide a policy and priorities framework to enable greater Government leadership to be exercised over the tertiary sector. The successful implementation of a more strategic approach in the tertiary sector is dependent upon achieving

operational mechanisms to implement the strategy's objectives and priorities. Without legislative backing for the operational implementation of the strategy, the strategy would have very limited effectiveness.

Legislation is therefore required to establish the Tertiary Education Commission, appropriate powers, and associated requirements. The proposed approach to the legislation enables and allows for appropriate flexibility for policies, and for implementation to be responsive to change.

New legislation will be specifically needed for—

- the establishment of the Tertiary Education Commission, also incorporating Skill New Zealand;
- the specification of the functions and powers of the Tertiary Education Commission;
- the powers and requirements in relation to the Tertiary Education Strategy, charters and profiles, and funding mechanisms; and
- associated changes related to institutional classifications and other minor matters.

#### *Statement of the net benefit of this proposal*

The Tertiary Education Strategy, underpinned by the proposed operational legislation, will enable a more strategic and collaborative tertiary education sector, capable of delivering high quality knowledge, skills, and innovation in areas that will contribute to New Zealand's future direction.

Specific benefits include—

- the ability to co-ordinate broad stakeholder involvement in the ongoing development of the Tertiary Education Strategy; and
- the ability to steer and fund the tertiary sector on the basis of agreed national priorities; and
- the ability to foster excellence and build provider capability on the basis of identified priorities; and
- the ability to collect, analyse, and make available information about the tertiary education sector from public charters and profiles; and

- the ability for the Tertiary Education Commission and/or Minister to make judgements about the desirability of providers' activities and provision, or proposed activities and provision, or of other major activities such as establishment, disestablishment, mergers, or change of status; and
- the ability for the Tertiary Education Commission and/or Minister to not approve or fund activities that do not meet criteria based on the Tertiary Education Strategy.

The costs include—

- the costs of the establishment of Tertiary Education Commission; and
- the transition costs in the disestablishment of Skill New Zealand; and
- the net additional costs of Tertiary Education Commission operation over and above the current arrangements; and
- some increased compliance costs for tertiary providers in the provision of charters and profiles.

#### ***Business compliance cost statement***

The system of charters and profiles will involve some additional compliance costs. There will be one-off compliance costs for all providers and ITOs to create new, or revise existing, charters and to create profiles that have not existed previously.

There will be ongoing compliance costs for those providers with whom Tertiary Education Commission decides to hold intensive negotiations or to reject applications for approval.

#### ***Consultation***

##### **Government agencies:**

Ministry of Education

Ministry of Justice

State Services Commission

Skill New Zealand

Treasury

Department of the Prime Minister and Cabinet

Department of Labour

Ministry of Economic Development

Te Puni Kokiri

Ministry of Youth Affairs

Ministry of Women's Affairs

Ministry of Pacific Island Affairs

Careers Service

New Zealand Qualifications Authority

Ministry of Research, Science and Technology

Ministry of Social Development

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*Hon Steve Maharey*

# **Tertiary Education Reform Bill**

Government Bill

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## Tertiary Education Reform

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Tertiary Education Reform Act **2001**.

## Part 1 Preliminary provisions

### 2 Commencement

- (1) This Act, other than **section 12**, comes into force on **1 July 2002**.
- (2) **Section 12** comes into force on **1 January 2004**.

### 3 Purpose

The purpose of this Act is to amend the Education Act 1989 and the Industry Training Act 1993 in order to reshape the tertiary education sector to achieve coherence between different parts of the sector and strategic use of resources by—

- (a) establishing a Tertiary Education Commission and incorporating Skill New Zealand within the Tertiary Education Commission; and
- (b) extending the requirements for charters and introducing profiles to steer the tertiary education sector; and
- (c) introducing a new approach to funding for the sector to create consistency and strategic use of resources across the sector as a whole; and
- (d) improving the effectiveness and responsiveness of the industry training system; and
- (e) enabling the New Zealand Qualifications Authority to set conditions on, and to suspend, accreditations, course approvals, and registrations; and
- (f) making other minor changes to provisions relating to the tertiary education sector.

## Part 2 Amendments to Education Act 1989

### 4 Education Act 1989 principal Act in this Part

In this Part, the Education Act 1989<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1989 No 80

#### *Amendments to Part XIII (Interpretation) of principal Act*

### 5 Interpretation

- (1) Section 159 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:  
“**charter** means a document of the kind described in **section 159P** or, in the case of an institution that has a charter

approved under Part XV, a document of the kind described in section 184

“**Commission** means the Tertiary Education Commission established under **section 159C**

“**industry training organisation** means a body corporate for the time being recognised under **section 5 or section 8(1)** of the Industry Training Act 1992

“**profile** means a document of the kind described in **section 159ZA**

“**specialist college** means, subject to subsection (3), a body established as a specialist college under section 162(2)

“**statement of tertiary education priorities** means the statement issued by the Minister under **section 1590**

“**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)”.

- (2) Section 159(1) of the principal Act is amended by inserting in the definition of **institution**, after paragraph (b), the following paragraph:

“(ba) specialist college; or”.

- (3) Section 159(1) of the principal Act is amended by adding to the definition of **registered establishment** the words “or suspended”.

- (4) Section 159(3) of the principal Act is amended by inserting, after the word “polytechnic,”, the words “specialist college,”.

*New Part 13A inserted in principal Act*

**6 New Part 13A inserted**

The principal Act is amended by inserting, after Part XIII, the following Part:

**“Part 13A  
“Tertiary Education Commission**

*“Preliminary provisions*

**“159A Purpose of Part**

The purpose of this Part is to establish a Tertiary Education Commission and the means by which the Government will exercise leadership of the tertiary education sector to ensure the strategic use of resources.

**“159B Interpretation**

In this Part, unless the context otherwise requires,—

**“give notice**, when referring to the Minister or the Commission giving notice, means—

“(a) to give notice in the *Gazette* of the fact that something has been made, approved, or done; and

“(b) to include in the notice information about how or where the public can see and obtain a copy of the thing that has been made, approved, or done

**“organisation** means a tertiary education provider or an industry training organisation

**“stakeholder**, in relation to a tertiary education provider, includes the staff and students of the provider and members of, or groups of persons in, the communities served by the provider.

*“Establishment of Commission*

**“159C Establishment of Commission**

“(1) The Commission is established as a body corporate owned by the Crown.

“(2) The Commission is a Crown entity for the purposes of the Public Finance Act 1989.

“(3) **Schedule 13A** applies to the Commission and its members.

**“159D Composition of Commission**

The Commission comprises at least 6, but not more than 9, members appointed by the Minister after consultation with the Minister of Māori Affairs.

**“159E Powers of Commission**

- “(1) The Commission has—
- “(a) all the rights, powers, and privileges of a natural person of full age and capacity; and
  - “(b) the power to do anything it is authorised to do by or under this Act, any other enactment, or any rule of law.
- “(2) The Commission may exercise its powers only for the purpose of carrying out its functions.
- “(3) The Commission may provide goods and services that are consistent with its functions and may, with the approval of the Minister, charge a commercial rate for any goods and services provided.

*“Functions of Commission***“159F Functions of Commission**

- “(1) The functions of the Commission are to—
- “(a) give effect to the statement of tertiary education priorities through—
    - “(i) negotiating charters and profiles with organisations; and
    - “(ii) allocating funds to organisations; and
    - “(iii) building the capability of organisations; and
  - “(b) work with stakeholders to provide advice to the Minister on the Tertiary Education Strategy (referred to in **section 159N**); and
  - “(c) provide advice to the Minister on matters relating to the statement of tertiary education priorities; and
  - “(d) undertake any other function given by this Act or any other enactment; and
  - “(e) undertake, with the agreement of the Minister, any other function that is necessary or desirable for the purpose of fulfilling its other functions under this subsection.
- “(2) In addition, the Commission may provide information, training, and other tertiary-related services to the Crown, provided that the exercise of these functions—
- “(a) is agreed to by the Minister; and
  - “(b) is consistent with the Commission’s other functions and its statement of intent; and
  - “(c) does not displace the exercise of the Commission’s other functions.

- “(3) Nothing in this section affects the fact that—
- “(a) the Ministry is and remains the Minister’s principal policy adviser on tertiary education matters; and
  - “(b) the New Zealand Qualifications Authority is and remains the agent primarily responsible for the quality assurance matters referred to in Part XX.

“159G **Principles guiding how Commission operates**

In performing its functions, the Commission must—

- “(a) comply with any written direction of the Minister given under **section 159J**; 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.

“159H **Minister may review performance of Commission**

- “(1) The Minister may, by written notice to the Commission, review the performance, or any aspect of the performance, of the Commission.
- “(2) Before the Minister undertakes a review under this section, he or she must—
  - “(a) consult with the Commission on the purpose and nature of the review; and
  - “(b) consider any submissions made by the Commission on the proposed review.
- “(3) The Minister may appoint any agency to conduct a review under this section on behalf of the Minister, and in that case **clause 16 of Schedule 13A** applies to the agency as if it were the Minister.

“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 or any other Act, including—
  - “(a) functions or powers delegated to the Minister under this Act or any other Act; and
  - “(b) the Minister’s powers relating to charters.

- “(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.

“159J **Minister may direct Commission**

- “(1) The Minister may, from time to time, give a formal direction under this section to the Commission specifying the policy that the Government wants the Commission to pursue in fulfilling its functions, and the Minister may revoke or amend any existing direction.
- “(2) The Minister may not, under this section, direct the Commission to fund, or refuse funding to, any particular organisation.
- “(3) As soon as practicable after giving, amending, or revoking a direction under **subsection (1)**, the Minister must—
- “(a) give notice of the direction, amendment, or revocation; and
  - “(b) present a copy of it to the House of Representatives.
- “(4) If the Minister gives a direction under this section, the Commission must include in its annual report for every year to which the direction relates—

- “(a) a copy of the direction; and
- “(b) a report on how the Commission has responded to it.

*“Accountability of Commission*

**“159K Accountability under the Public Finance Act 1989**

The Commission is named in the Fourth, Fifth, Sixth, and Seventh Schedules of the Public Finance Act 1989.

**“159L Statement of intent**

- “(1) In fulfilling the requirements under section 41D(1) of the Public Finance Act 1989, the Commission must, instead of including in its statement of intent the information described in subsection (1)(a), (b), and (c) of that section (which is about objectives, activities, and performance targets), include the following information in its statement of intent:
- “(a) contextual information about the Commission, including its functions, its current organisational structure, any notable features of its operating environment, and the likely implications of those features; and
  - “(b) a general description of the things that the Commission proposes to do, achieve, or work towards during the year covered by the statement of intent, which—
    - “(i) must be consistent with the statement of tertiary education priorities 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
  - “(c) a general description of the Commission’s proposed strategies and activities for giving effect to, or achieving, the things referred to in **paragraph (b)**, including a list of the intended principal activities of the Commission and how they relate to the things referred to in **paragraph (b)**; and
  - “(d) a description of how the statement of output objectives (as required by section 41D(1)(h) of the Public Finance Act 1989) links to the things referred to in **paragraph (b)**; and
  - “(e) a general description of the manner in which the Commission proposes to operate and, in particular,—

- “(i) who else it proposes to liaise with (and how it proposes to liaise with) other persons or bodies engaged in similar or related work; 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; and
- “(f) performance measures and targets that indicate the Commission’s progress towards achieving the things referred to in **paragraph (b)**; and
- “(g) in relation to decision-making, the following matters:
  - “(i) the matters on which the Commission must have the Minister’s approval before proceeding;
  - “(ii) the matters on which the Commission will consult the Minister before making a decision;
  - “(iii) the matters on which the Commission will report to the Minister, and the frequency of reporting; and
- “(h) in relation to the financial affairs of the Commission, the following matters:
  - “(i) the key financial measures by which the financial performance of the Commission will be judged;
  - “(ii) the expected revenue to be earned, and the proposed costs to be incurred, for each class of outputs as specified in the statement of output objectives;
  - “(iii) a forecast statement of financial performance, statement of financial position, and statement of cash flows in respect of the first financial year to which the statement of intent relates;
  - “(iv) those forecast financial statements in summary form in respect of the remainder of the period to which the statement of intent relates;
  - “(v) a statement of the principal assumptions on which the forecast financial statements are based;
  - “(vi) an outline of the proposed strategy for managing any recently reported or anticipated material net deficit (as determined in accordance with generally accepted accounting practice); and
- “(i) any other information material to understanding and assessing the information provided in the statement of intent without which that information is false or misleading in a material particular.

- “(2) The grouping of outputs in the statement of output objectives referred to in section 41D(1)(h) of the Public Finance Act 1989 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.
- “(3) The Minister may, in relation to the Commission, exercise his or her powers under section 41G(1) of the Public Finance Act 1989 as if that section included a reference to **paragraphs (b), (f), and (g) of subsection (1)**; and that section applies accordingly.

“159M **Annual report**

The Commission must include the following matters in its annual report, in addition to the matters specified in sections 41I and 44 of the Public Finance Act 1989:

- “(a) a comparison of what the Commission did and achieved, as compared with what its statement of intent indicated that it would do or achieve; and
- “(b) an assessment of the reasons for, and the implications of, any material reported net deficit (as determined in accordance with generally accepted accounting practice) incurred during the financial year; and
- “(c) any matter on which the statement of intent for that financial year required the annual report to report; and
- “(d) for each person who was at any time during the financial year a member or committee member of the Commission, the total value of the remuneration and other benefits received from the Commission during that financial year; and
- “(e) the number of employees who, at any time during the financial year, received remuneration and any other benefits in their capacity as employees, the total value of which exceeded \$100,000 per year, and the number of those employees, in upward brackets of \$10,000; and
- “(f) any other information that is necessary to enable an informed assessment to be made of the Commission’s overall performance for that financial year.

*“Fundamental documents for the sector***“159N Tertiary Education Strategy**

- “(1) The Minister must, from time to time, approve a Tertiary Education Strategy that sets out the Government’s medium- to long-term strategy for tertiary education.
- “(2) As soon as practicable after approving a Tertiary Education Strategy, the Minister must—
- “(a) give notice of it; and
  - “(b) present a copy of it to the House of Representatives.

**“159O Statement of tertiary education priorities**

- “(1) The Minister may, from time to time, and must at least once in every 3 years, issue a statement of tertiary education priorities that—
- “(a) is based on, and is consistent with, the Tertiary Education Strategy referred to in **section 159N**; and
  - “(b) sets out the Government’s current priorities for tertiary education.
- “(2) The Minister must consult with the Commission before issuing or amending a statement of tertiary education priorities.
- “(3) The Minister may, at any time, amend or revoke a statement of tertiary education priorities, and every amendment forms part of the statement it amends.
- “(4) The Minister must—
- “(a) give notice of every statement of tertiary education priorities and of every amendment to it; and
  - “(b) present a copy of it, and every amendment to it, to the House of Representatives.

*“Charters***“159P What is a charter?**

An organisation’s **charter** is a document that—

- “(a) sets out the organisation’s mission and role in the tertiary education system; and
- “(b) is intended to cover a medium- to long-term timeframe; and
- “(c) provides the basis for negotiations over the organisation’s profile; and

- “(d) is prepared by the organisation in accordance with the requirements for the contents of charters prescribed by the Minister under **section 159Q**; and
- “(e) is approved by the Minister in accordance with the criteria for assessment of charters identified by the Minister under **section 159Q**.

**“159Q Content of charters, and assessment criteria**

- “(1) The Minister must, in consultation with the Commission, prescribe and give notice of—
  - “(a) the content of charters, being the matters that charters must address; and
  - “(b) the criteria that the Minister will use to assess proposed charters.
- “(2) The Minister may prescribe standard contents and criteria, as well as prescribing different contents and different criteria applying to different organisations, groups of organisations, or types of organisation.
- “(3) The criteria for assessment may (without limitation) include criteria that relate to the process used to develop a charter as well as to the content of the charter.
- “(4) If the Minister requires an organisation, by notice in writing, to consult over its charter with any specified person or group of persons, that requirement is for all purposes to be treated as an assessment criteria that has been prescribed under this section.
- “(5) The Minister may, on the advice of the Commission,—
  - “(a) by notice in writing to an organisation, exempt the organisation from the requirement to have a charter or from any requirement about the content of charters; and
  - “(b) by notice in the *Gazette*, exempt any group of organisations or type of organisation from the requirement to have a charter or from any requirement about the content of charters.
- “(6) **Subsection 5** does not apply to institutions.

**“159R Organisations that must or may have a charter**

- “(1) After **1 January 2004**, the following organisations must have a charter prepared and approved under this Part:
  - “(a) institutions:

- “(b) registered establishments that wish to obtain funding from the Commission:
  - “(c) any other tertiary education provider that seeks or receives funding from the Commission and that the Minister requires to have a charter:
  - “(d) industry training organisations.
- “(2) At any time before **1 January 2004**, the Commission may require, by notice in writing to the organisation, any organisation referred to in **subsection (1)** to prepare a charter under this Part within a specified reasonable period, and an organisation that receives such a notice must prepare a charter as required.
- “(3) Any organisation that is not required to have a charter, but that wishes at any time to have one, may, with the agreement of the Minister, prepare and seek approval for a charter.

“159S **Preparing charters**

- “(1) An organisation that wishes, or is obliged, to have a charter must—
- “(a) identify its stakeholders and publish a list of them in at least 1 daily newspaper circulating in each area served by the organisation; and
  - “(b) prepare a proposed charter; and
  - “(c) consult with its stakeholders over the proposed charter; and
  - “(d) consult with any other person or group of persons with whom the Minister requires the organisation to consult.
- “(2) After completing the consultation required under **subsection (1)(c) and (d)**, the organisation must submit the proposed charter to the Commission for comment and, if necessary, negotiation over its content.
- “(3) When the consultation with the Commission required by **subsection (2)** is complete, the organisation must—
- “(a) resubmit the proposed charter to the Commission for comment; and
  - “(b) submit the proposed charter, along with the Commission’s comment, to the Minister for approval of the charter.

**“159T Minister’s approval of charters**

- “(1) The Minister must assess a proposed charter on the basis of—
- “(a) the assessment criteria prescribed under **section 159Q**;  
and
  - “(b) in the case of an industry training organisation, the matters set out in sections 6 and 7 of the Industry Training Act 1992.
- “(2) The Minister must approve a proposed charter unless satisfied on reasonable grounds that he or she should not do so.
- “(3) A charter comes into effect on the date specified by the Minister.
- “(4) If the Minister rejects a proposed charter, he or she must give reasons for the rejection.
- “(5) An organisation may submit a revised proposed charter to the Minister as many times as is necessary, but only if, before resubmitting it, the organisation has consulted further with the Commission and, if the revisions are significant, with the people or groups with whom it is required to consult under **section 159S(1)(c) and (d)**.

**“159U Minister’s special powers in relation to charters of institutions**

- “(1) If the Minister and an institution cannot agree over the content of the institution’s charter, the Minister must, after consulting as he or she thinks appropriate, determine the matter.
- “(2) The Minister may, at any time, on his or her own initiative, propose amendments to an institution’s charter or proposed charter.
- “(3) If the Minister proposes an amendment to a charter or proposed charter, he or she must notify the institution of the proposal and give the institution a reasonable period in which to make submissions in response to it.
- “(4) After considering any submissions made by an institution on the proposal, the Minister may approve the proposed amendment, with or without further amendment, or abandon the proposal.
- “(5) Nothing in this section limits the right or ability of an institution to propose any amendment to its own charter or proposed charter.

**“159V Minister may approve interim charters for institutions**

- “(1) In any of the following circumstances, the Minister may, on his or her own initiative, approve an interim charter for an institution:
- “(a) when an institution is newly established:
  - “(b) when an institution has changed its status:
  - “(c) when an institution has merged with another institution or had another institution incorporated into it:
  - “(d) when an institution’s charter has expired or been revoked:
- “(2) An interim charter approved under **subsection (1)** remains in force until a new charter is approved under **section 159T**.

**“159W Amendments to, and review of, charters**

- “(1) **Sections 159S and 159T** apply to an amendment or proposed amendment to a charter (other than an amendment proposed by the Minister under **section 159U**) as if the amendment or proposed amendment were a charter or proposed charter.
- “(2) If the Minister approves an amendment to a charter, the amendment forms part of the charter from the date set by the Minister.
- “(3) The Minister may, at any time, require an organisation to review its charter with a view to amending or replacing it.

**“159X Expiry of charters**

- “(1) Every charter must specify the date on which it expires, which must be—
- “(a) an expiry date as agreed with the Minister, which must be a date no later than 10 years after the date on which the charter comes into effect; or
  - “(b) in the case of an industry training organisation, the date that is 5 years from the date on which the charter comes into effect.
- “(2) Every charter, unless revoked earlier, expires on its expiry date.

**“159Y Charters may lapse if organisation has no profile**

The charter of a tertiary education provider (other than an institution) lapses if the provider does not have a profile approved under this Act for 2 consecutive years.

**“159Z Charters must be available**

An organisation that has a charter must ensure that the charter is available for inspection by the public, and that copies may be obtained at no more than a reasonable cost.

*“Profiles***“159ZA What is a profile?**

- “(1) An organisation’s **profile** is a document that—
- “(a) sets out the organisation’s operating plans, key policies, and proposed activities for the next 3 years; and
  - “(b) sets out the organisation’s objectives, and the performance measures and targets that the organisation will use to measure its performance; and
  - “(c) sets out the short- to medium-term strategic direction of the organisation; and
  - “(d) identifies the activities of the organisation for which it seeks or receives funding from the Commission; and
  - “(e) sets out the basis on which funding will be sought or received from the Commission; and
  - “(f) demonstrates how the organisation will give effect to its charter; and
  - “(g) identifies the information that the organisation will supply on an annual basis to the Commission; and
  - “(h) sets out any other matter that the Commission requires to be included in the profile.
- “(2) A profile may remain current for up to 3 years, but the Commission—
- “(a) may require an organisation to prepare a new profile before the end of the currency of its existing profile; and
  - “(b) may specify that an organisation’s profile remains current for any period less than 3 years.

**“159ZB Content of profiles and criteria for approval**

- “(1) The Commission must, at least once every 3 years, prescribe and give notice of—
- “(a) the content of profiles, being matters that profiles must address; and
  - “(b) the criteria that the Commission will use for the assessment, approval, rejection, and revocation of profiles, which must be criteria that are consistent with the statement of tertiary education priorities; and

- “(c) the kinds of background or supplementary information that the Commission may require an organisation to provide with its proposed profile or during the course of negotiations on a proposed profile; and
  - “(d) the timetable and process for the preparation of profiles.
- “(2) Notices given under **subsection (1)**—
- “(a) may prescribe different contents, criteria, information, timetables, and processes for different organisations, groups of organisations, or types of organisation; and
  - “(b) may be given at different times; and
  - “(c) may be amended by the Commission, in which case the Commission must give notice of the amendment.
- “(3) The Commission may permit organisations to prepare combined profiles for more than 1 organisation.
- “(4) The Commission may waive any requirement (other than a requirement imposed by this Act) as to the content of profiles, or the timing or process to be used in preparing them.

“159ZC **Organisations that must have a profile**

- “(1) After **1 January 2004**, every institution, and every organisation that seeks or receives funding from the Commission, must have a profile.
- “(2) At any time before **1 January 2004**, the Commission may, by notice in writing to an organisation, require the organisation to prepare a profile within a specified reasonable period; and an organisation that receives such a notice must prepare a profile.
- “(3) Despite **subsection (1)**, the Commission may,—
- “(a) by written notice to an organisation, exempt the organisation for a specified period from the requirement to have a profile; and
  - “(b) by notice in the *Gazette*, exempt any group of organisations, or type of organisation, from the requirement to have a profile.
- “(4) **Subsection (3)** does not apply in respect of institutions.

“159ZD **Preparation and approval of profiles**

- “(1) An organisation that wishes, or is obliged, to have a profile must—

- “(a) submit to the Commission a proposed profile that complies with the relevant requirements for the content of profiles; and
  - “(b) negotiate with the Commission over the content of the proposed profile; and
  - “(c) submit the proposed profile to the Commission for approval; and
  - “(d) comply with the Commission’s requirements as to timetables and processes for profiles, except to the extent that the Commission exempts any particular organisation from any of those requirements.
- “(2) The Commission may approve or reject a proposed profile.
- “(3) If a proposed profile is approved, the Commission must identify which parts of the profile are approved for funding purposes.
- “(4) If the Commission rejects a profile, or any part of it, the Commission must give reasons for the rejection.
- “(5) An organisation may revise and resubmit a proposed profile, in accordance with the timetable and processes for the preparation of profiles, as many times as necessary.
- “(6) If an institution does not have a profile that has been approved by the Commission in any particular year, then, for the purposes of complying with its accountability obligations under Part XV, the institution’s profile is the latest profile that was submitted to the Commission for approval.

“159ZE **Amendment of profiles**

- “(1) The profile of any organisation may be amended at any time by agreement between the organisation and the Commission.
- “(2) An amendment to an organisation’s profile may be initiated by either the organisation or the Commission, and **section 159ZD** applies to the amendment as if it were a profile.

“159ZF **Commission may monitor compliance with profile**

- “(1) The Commission may monitor an organisation’s compliance with its profile.
- “(2) For the purpose of monitoring compliance, the Commission may, at any time, require an organisation—
- “(a) to provide information that demonstrates whether and how it is complying with its profile, and to provide

- specific information or answers to specific questions;  
and
- “(b) to comply with **paragraph (a)** in accordance with a timetable (which must be reasonable in the circumstances) determined by the Commission.
- “(3) The Commission may at any time require an organisation to review its profile with a view to amending or replacing it.
- “(4) The Commission may suspend or cancel an organisation’s profile if—
- “(a) it believes, on reasonable grounds, that the organisation is not complying with its profile; or
  - “(b) the organisation has not substantially complied with a requirement under **subsection (2)** or **subsection (3)**.

“159ZG **Profiles must be publicly available**

An organisation that has a profile must ensure that the profile is available for inspection by the public, and that copies may be obtained at no more than a reasonable cost.

*“Funding by Commission*

“159ZH **Minister must identify funding mechanisms**

- “(1) The Minister must, from time to time, identify the mechanisms that the Commission must use to fund organisations, and must notify the Commission in writing of the mechanisms, or mix of mechanisms, that must be used.
- “(2) The Minister must, in consultation with the Commission, determine the formula for any formula-based funding mechanism, and the general form of any other funding mechanism.
- “(3) Every mechanism must be consistent with the principle that receipt by an organisation of public funds is dependent on the organisation meeting quality assurance requirements under this Act.
- “(4) When specifying the mechanisms that must be used, the Minister—
- “(a) may specify the amount of money, or proportion of an amount of money, available under any particular mechanism; and
  - “(b) may specify the general purposes to which any funding provided under a particular mechanism must be put; and

“(c) may not specify a mechanism that would have the effect of making funding available to a specific organisation.

**“159ZI Details of funding mechanisms**

“(1) If a formula funding mechanism is used, it may not be applied except in accordance with regulations made under **subsection (2)**.

“(2) The Governor-General may, on the recommendation of the Minister, make regulations prescribing 1 or more formulas for use in determining the funding available to an organisation from the Commission.

“(3) The Commission must develop—

“(a) specific criteria to be used to guide the allocation of funding under every mechanism that is not a formula funding mechanism; and

“(b) the operational details for how to allocate and pay funding under every mechanism.

“(4) The Commission may provide for different versions or modifications of a mechanism to apply to different groups of organisations, or types of organisation.

“(5) No mechanism or version of a mechanism (including any relevant criteria developed by the Commission) may be applied until its final form is approved by the Minister.

**“159ZJ Grants of funding**

“(1) Any organisation may apply to the Commission for funding.

“(2) The Commission must identify which funding mechanisms (if any) are applicable to the applicant organisation, and must advise the organisation of how much, if any, funding will be granted to it.

“(3) The Commission must arrange payment to the organisation of any funding granted to it.

“(4) The Commission must not fund any organisation before the start of the **2003** academic year.

**“159ZK Conditions on grants of funding**

“(1) It is a condition of a grant of funding under **section 159ZJ** that the recipient will supply to the Commission, at intervals and

in a form specified by the Commission, any financial, statistical, or other information relating to the use of the funding that the Commission requires the organisation to supply.

- “(2) The Commission may impose conditions on the use of any grant of funding provided under **section 159ZJ**, or any part of a grant, but only if the mechanism under which the grant (or that part of the grant) was made allows for the imposition of conditions by the Commission.
- “(3) The Commission may, at any time (including during a funding period), amend any condition imposed under **subsection (2)**.

“159ZL **Accountability for funding received under section 159ZJ**

- “(1) An organisation that receives funding under **section 159ZJ** must ensure that—
- “(a) records are kept, in a form approved 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 receives funding under **section 159ZJ**, the organisation must provide the Commission with—
- “(a) a statement of service performance reporting on the performance of the organisation as compared with the objectives and targets specified in the organisation’s profile for that year; and
  - “(b) financial reports reporting on the financial performance of the organisation for that year; and
  - “(c) any financial reports, or statistical or other information, required by the Commission as a condition of receipt of a grant; and
  - “(d) any information necessary to demonstrate compliance with any condition attached to the grant or part of the grant.

- “(3) The reports required under **subsection (2)(a) and (b)** must be prepared in accordance with generally accepted accounting practice and must be audited by an independent chartered accountant.
- “(4) This section does not apply to institutions.

**“159ZM Commission may suspend payment of grant**

The Commission may suspend or terminate payment, or any or all further payments, of funding to an organisation if it is satisfied on reasonable grounds that—

- “(a) the organisation has not, or is not, complying with a condition on which the grant was made; or
- “(b) the organisation is not, or has not, provided adequate and timely information when required to do so by the Commission.”

*Amendments to Part XIV (Establish and disestablishment of institutions) of principal Act*

**7 Establishment of institutions**

- (1) Section 162(2) of the principal Act is amended by inserting, after the words “a polytechnic,”, the words “a specialist college,”.
- (2) Section 162(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(ab) consider the interests of the tertiary education system and the nation as a whole; and”.
- (3) Section 162(4) of the principal Act is amended by inserting, after the words “a polytechnic,”, the words “a specialist college,”.
- (4) Section 162(4)(b) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:
- “(iia) 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:”.

**8 Disestablishment of institutions**

Section 164(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) is satisfied that the disestablishment is in the interests of the tertiary education system and the nation as a whole; and”.

*Amendments to Part XV (Administration of tertiary institution) of principal Act*

**9 Incorporation**

Section 166(1) of the principal Act is amended by inserting, after the word “polytechnic,”, the words “specialist college,”.

**10 Functions of Councils**

(1) Section 180 of the principal Act is amended by omitting paragraphs (b) to (e), and substituting the following paragraphs:

“(b) to prepare and negotiate a charter for the institution:

“(c) to prepare and negotiate a profile for the institution:

“(d) to ensure that the institution is managed in accordance with its charter and its profile:

“(e) to determine the policies of the institution in relation to the implementation of its charter, the carrying out of its profile, and, subject to the State Sector Act 1988, the management of its affairs.”

(2) Section 180 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) If, at any time before **1 January 2004**, an institution does not have a profile, the references in subsection (1) to a profile must be taken to refer instead to the statement of objectives that is required by **section 203(4)** to be included in the institution’s financial statements prepared under section 41 of the Public Finance Act 1989.”

**11 New section 184A inserted**

The principal Act is amended by inserting, after section 184, the following section:

**184A Interim arrangements for charters**

“(1) **Sections 159P to 159Z** (which are about charters made under **Part 13A**) do not apply to institutions that have charters approved under this Part, or to charters prepared or approved under this Part.

- “(2) Despite **subsection (1)**, the Commission may exercise its power under **section 159R(2)** with respect to an institution by requiring the institution to prepare a charter under **Part 13A** and, in that case, the institution must prepare a charter under that Part as required by the Commission.
- “(3) The charter of an institution that is approved under this Part is revoked on the earlier of—
- “(a) the date on which a charter for the institution approved under **Part 13A** comes into force; or
  - “(b) **1 January 2004**.
- “(4) The Secretary may delegate to the Commission, and the Commission may exercise, any of the Secretary’s functions and powers under this Part that relate to institutions’ charters.”

**12 Heading and sections 184 to 191 repealed**

The heading above section 184 and sections 184 to 191 of the principal Act are repealed.

**13 New section 199 substituted**

The principal Act is amended by repealing section 199, and substituting the following section:

**“199 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 of the institution thinks will accomplish the goals and purposes set out in the institution’s charter; 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 **paragraph (a)** of that subsection.”

**14 Application of Public Finance Act 1989**

Sections 203 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) Section 41 of the Public Finance Act 1989 applies to every institution, but every reference in that section to a financial year must be read as a reference to an academic year.

- “(3) Every institution must include in the financial statements required under section 41 of the Public Finance Act 1989 a statement of service performance reporting on the performance of the institution as compared with the institution’s objectives and performance measures and targets specified in the institution’s profile for that year.
- “(4) However, if at any time an institution does not have a profile, instead of complying with **subsection (3)**, the institution must include in the financial statements required under section 41 of the Public Finance Act 1989—
- “(a) a statement of objectives specifying the classes of outputs to be produced by the institution during the following academic year; and
  - “(b) a statement of service performance reporting on the classes of outputs produced by the institution during the previous academic year as compared with the classes of outputs established at the beginning of the financial year and specified in the statement of objectives.”

*Amendments to Part XVIII (Private training establishments)  
of principal Act*

**15 Grant or refusal of application**

- (1) Section 236(1) of the principal Act is amended by omitting all the words before paragraph (a), and substituting the words “The Authority must grant an application for registration of a private training establishment, and may only grant such an application, if it is satisfied that—”.
- (2) Section 236(1) of the principal Act is amended by—
- (a) omitting from paragraph (e) the word “education,—”, and substituting the word “education.”; and
  - (b) omitting all the words after paragraph (e).
- (3) Section 236 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) The Authority may make a grant of registration subject to conditions that are specific to that establishment, which means that the establishment is obliged to comply at all times with those conditions.”
- (4) Section 236 of the principal Act is amended by adding the following subsection:

- “(4) The Authority must give written notice to a private training establishment when it grants, or refuses to grant, registration and,—
- “(a) if it imposes conditions when granting registration on conditions, must set out the conditions; and
  - “(b) if it refuses registration, must give reasons for the refusal.”

**16 New section 237 substituted**

- (1) The principal Act is amended repealing section 237, and substituting the following section:

**“237 Suspension or cancellation of registration**

- “(1) The Authority may suspend or cancel the registration of an establishment if it is satisfied on reasonable grounds that—
- “(a) the establishment no longer meets 1 or more of the requirements set out in section 236(1); or
  - “(b) if the establishment’s registration is subject to conditions, the establishment is not, or has not, complied with 1 or more of the conditions applying to it.
- “(2) Before cancelling or suspending a registration, the Authority must—
- “(a) notify the establishment that it is considering suspending or cancelling 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; and
  - “(d) decide whether to suspend or cancel the registration, or whether to impose or amend any conditions on the establishment’s registration.
- “(3) If the Authority cancels or suspends a registration, or imposes or amends conditions, it must give notice of its decision to both the establishment and the Commission, with reasons.
- “(4) When a registration is suspended, the Authority may subsequently—
- “(a) lift the suspension; or
  - “(b) lift the suspension and impose new or amended conditions on the registration; or
  - “(c) cancel the registration.”
- (2) Section 238 of the principal Act is consequentially repealed.

**17 Section 238A repealed**

Section 238A of the principal Act is repealed.

*Amendments to Part XX (New Zealand Qualifications Authority) of principal Act*

**18 Approval of courses**

- (1) Section 258 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) When granting approval of a course, the Authority may impose conditions on the approval, provided that the imposition of conditions does not constitute a lowering of the standards for approval.”

- (2) Section 258 of the principal Act is amended by repealing subsections (8) and (9), and substituting the following subsections:

“(8) The Authority may suspend or cancel any approval of a course.

“(9) Before suspending or cancelling an approval, the Authority must—

“(a) notify the institution that it is considering suspending or cancelling approval, and give reasons; 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; and

“(d) decide whether to suspend or cancel the approval, or whether to impose or amend any conditions on the approval.

“(9A) If the Authority cancels or suspends approval, or imposes or amends conditions, it must give notice of its decision to both the institution and the Commission, with reasons.

“(9B) When an approval is suspended, the Authority may subsequently—

“(a) lift the suspension; or

“(b) lift the suspension and impose new or amended conditions on the approval; or

“(c) cancel the approval.”

- (3) Section 258(10) of the principal Act is amended by adding the words “, and may impose conditions on any such grant”.

**19 Accreditation to provide approved courses**

- (1) Section 259 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) When granting accreditation to an institution, the Authority may impose conditions on the accreditation, provided that the imposition of conditions does not constitute a lowering of the standards for accreditation.”

- (2) Section 259 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsections:

“(5) The Authority may suspend or cancel any accreditation.

“(6) Before suspending or cancelling an accreditation, the Authority must—

“(a) notify the institution that it is considering suspending or cancelling the accreditation, and give reasons; 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; and

“(d) decide whether to suspend or cancel the accreditation, or whether to impose or amend any conditions on the accreditation.

“(7) If the Authority cancels or suspends an accreditation, or imposes or amends conditions, it must give notice of its decision to both the institution and the Commission, with reasons.

“(8) When an accreditation is suspended, the Authority may subsequently—

“(a) lift the suspension; or

“(b) lift the suspension and impose new or amended conditions on the accreditation; or

“(c) cancel the accreditation.”

**20 Minister may consent to registered establishments using certain terms in their names**

- (1) Section 264A(2) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and”.

- (2) Section 264A of the principal Act is amended by adding the following subsections:
- “(4) The Minister may audit any registered establishment that has been given consent to use one of the terms in subsection (1) for continuous compliance with the requirements for consent to use the term.
- “(5) 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.”

*Repeal of Part XXI and Sixteenth Schedule of principal Act*

**21 Part XXI and Sixteenth Schedule repealed**

Part XXI and the Sixteenth Schedule of the principal Act are repealed.

*Amendments to Part XXVII (Recognition and funding of other services) of principal Act*

**22 Interpretation**

Section 320 of the principal Act is amended by inserting, before the definition of **financial year**, the following definition:

“**educational body**, or **body**, means a body corporate other than a tertiary education provider or industry training organisation (as those terms are defined in section 159) that is recognised by the Minister as a body that provides any educational or developmental service or facility”.

**23 Grants to other education services**

- (1) The heading to section 321 of the principal Act is amended by omitting the words “**other education services**”, and substituting the word “**educational bodies**”.
- (2) Section 321 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsection:

- “(1) An educational body may be paid grants out of public money appropriated by Parliament for the purpose.”

**24 Recognised bodies to keep accounts**

The heading of section 322 of the principal Act is amended by omitting the word “**Recognised**”, and substituting the word “**Educational**”.

*Transitional funding arrangements*

**25 Transitional funding arrangements**

- (1) Despite the repeal by **section 13** of section 199 of the principal Act, that section continues to apply to institutions with respect to any money paid or payable under that section in, or relating to, the **2002** academic year; and
- (2) Despite the repeal by **section 17** of section 238A of the principal Act, that section continues to apply to every registered establishment with respect to any money paid or payable under that section in, or relating to, the **2002** academic year.
- (3) Despite the amendment by **section 23** of section 321 of the principal Act, that section continues to apply as if it had not been amended to every recognised body with respect to any money paid or payable under that section in, or relating to, the **2002** academic year.

*New Schedule 13A inserted in principal Act*

**26 New Schedule 13A inserted**

The principal Act is amended by inserting, after Schedule 13, the Schedule 13A set out in **Schedule 1** of this Act.

*Transitional provisions*

**27 Interpretation**

In **sections 28 to 35**, 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 6** 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 Act

**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*

**28 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.

**29 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 28**.
- (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.

**30 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 a transfer of an asset or liability under **section 28** 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 28, section 29, or sections 31 to 35.**

*Transfer of employees to Commission***31 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 35.**

**32 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.

- 33 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.
- 34 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.
- 35 No compensation for technical redundancy**  
An employee who has transferred, or will transfer, to the Commission under **section 31** or **section 32** is not entitled to receive any compensation for redundancy or any severance payment 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.

*Miscellaneous*

- 36 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 1989 (as inserted by **section 26** of this Act) may be called the General Manager.

*Consequential amendments***37 Consequential amendments**

The enactments specified in **Schedule 2** are consequentially amended in the manner set out in that schedule.

**Part 3****Amendments to Industry Training Act 1992****38 Industry Training Act 1992 principal Act in this Part**

In this Part, the Industry Training Act 1992<sup>2</sup> is called “the principal Act”.

<sup>2</sup> 1992 No 55

**39 Interpretation**

Section 2 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

“**statement of tertiary education priorities** means the statement of tertiary education priorities issued by the Minister under **section 1590** of the Education Act 1989”.

**40 New section 5 substituted**

The principal Act is amended by repealing section 5, and substituting the following section:

**“5 How organisations get recognised**

“(1) An organisation that wishes to be recognised in respect of an industry must get a charter under **sections 159S and 159T** of the Education Act 1989.

“(2) Before approving the charter of an organisation that wishes to be recognised in respect of an industry, the Minister must—

“(a) assess the proposed charter against—

“(i) the criteria prescribed under **section 159Q** of the Education Act 1989; and

“(ii) the criteria set out in section 6; and

“(b) have regard to the matters set out in section 7.

“(3) An organisation is recognised when the Minister has—

“(a) approved that organisation’s charter; and

“(b) published a notice in the *Gazette* specifying the name of the organisation and the industry in respect of which it is recognised.”

**41 Board to be satisfied of organisation’s abilities**

- (1) The heading to section 6 of the principal Act is amended by omitting the word “**Board**”, and substituting the word “**Minister**”.
- (2) Section 6 of the principal Act is amended by omitting the words “Board shall not recognise an applicant organisation in respect of any industry unless satisfied”, and substituting the words “Minister must not approve the charter of an organisation seeking recognition unless, in addition to being satisfied that the criteria prescribed under **section 159Q** of the Education Act 1989 are met, he or she is satisfied”.
- (3) Section 6 of the principal Act is amended by adding the following paragraph:
  - “(c) provide leadership within the industry on matters relating to skill and training needs by—
    - “(i) identifying current and future skill needs; and
    - “(ii) developing strategic training plans to assist the industry to meet those needs; and
    - “(iii) promoting training that will meet those needs to employers and employees.”

**42 Matters to which Board is to have regard before recognising organisations**

- (1) Section 7 of the principal Act is amended by omitting the heading, and substituting the following heading “**Matters to which Minister is to have regard before approving charters**”.
- (2) Section 7 of the principal Act is amended by omitting the words “The matters to which the Board is to have regard before recognising an applicant organisation are”, and substituting the words “Before approving the charter of an organisation seeking recognition, the Minister must have regard to”.
- (3) Section 7 of the principal Act is amended by omitting paragraph (d), and substituting the following paragraph:
  - “(d) the extent to which the organisation has implemented mechanisms that will enable the collective representation of employees in the industry in the governance of the organisation; and”.
- (4) Section 7 of the principal Act is amended by omitting paragraph (g), and substituting the following paragraphs:

- “(fa) the extent to which the organisation can demonstrate alignment with the Government’s statement of tertiary education priorities; and
- “(fb) whether the organisation has considered the desirability of amalgamating with other recognised organisations or entering into other joint arrangements with other recognised organisations to avoid undue fragmentation of industry training; and
- “(fc) whether the organisation has performed satisfactorily at other times when the organisation has been recognised or provisionally recognised; and
- “(g) any other criteria for assessing charters that the Minister has prescribed under **section 159Q** of the Education Act 1989.”

#### **43 Provisional recognition**

- (1) Section 8(1) of the principal Act is amended by omitting the words “applicant organisation”, and substituting the words “organisation seeking recognition”.
- (2) Section 8(1)(b) of the principal Act is amended by omitting the word “Board” and substituting the word “Commission”.
- (3) Section 8(1) of the principal Act is amended by omitting the words “Board may” and substituting the word “Minister may”.

#### **44 Expiry and cancellation of recognition**

- (1) Section 9 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
  - “(1) The recognition of an industry training organisation under section 5 expires if that organisation ceases to have a charter under the Education Act 1989.”
- (2) Section 9(3) of the principal Act is amended by omitting the word “Board” wherever it occurs, and substituting in each case the word “Minister”.
- (3) Section 9(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
  - “(ab) if the circumstances in **subsection (3A)** apply; or”.
- (4) Section 9 of the principal Act is amended by inserting, after subsection (3), the following subsections:

- “(3A) The circumstances referred to in **subsection (3)(ab)** are that—
- “(a) the Minister has issued a notice to the organisation, in accordance with **subsection (3B)**, stating that it considers that the organisation’s performance is inadequate because it is not meeting 1 or more of the requirements for the Minister’s approval of its charter under section 6(a) to **(c)**; and
  - “(b) the period of time specified in the notice within which the organisation must improve its performance has elapsed; and
  - “(c) the Minister is satisfied that the organisation’s performance continues to be inadequate for the reason specified in the notice.
- “(3B) A notice under **subsection (3A)** must—
- “(a) be in writing; and
  - “(b) specify—
    - “(i) the areas in which the Minister considers the organisation’s performance to be inadequate, with reference to the requirements for the Minister’s approval of its charter under section 6(a) to **(c)**; and
    - “(ii) what actions that the organisation should take to improve its performance; and
    - “(iii) the period, which must be a reasonable period, within which the organisation must improve its performance; and
    - “(iv) the fact that the Minister may cancel the organisation’s recognition, under **subsection (3)(ab)**, if it fails to improve its performance within that period.”
- (5) Section 9 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) Nothing in this section prevents an organisation whose recognition has expired under subsection (1) or subsection (2), or been cancelled under subsection (3)(a) or **(ab)**, from seeking recognition in accordance with section 5 and being recognised in accordance with that section or section 8(1).”

**45 Board may agree with industry training organisation to fund setting of standards and administration of training**

(1) Section 10 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) The Commission may enter into a written agreement with an industry training organisation (or 2 or more industry training organisations) providing for the organisation (or organisations) to manage the delivery of industry training to employees of a particular employer, and to receive funding from the Commission for that purpose, even if that employer is not part of the industry specified in the *Gazette* notice published under section 5 relating to that industry training organisation, if—

“(a) that employer has applied in writing for industry training to be managed by that industry training organisation; and

“(b) the Commission is satisfied that the employer’s application should be granted because either—

“(i) the industry training organisation that manages training for that employer’s industry does not have the capacity to provide a satisfactory service to the employer; or

“(ii) the employer faces significant administrative and compliance costs (but not taking into account the cost of any training levies) because its training needs are covered by more than 1 industry training organisation; and

“(c) the Commission is satisfied that the industry training organisation is capable of managing delivery of industry training that will enable the employees of that employer to attain the skill standards applicable in the industry to which the training relates.”

**46 New Part 5 inserted**

The principal Act is amended by inserting, after section 23, the following Part:

**“Part 5  
“Training levies**

**“24 Purpose**

The purpose of this Part is to enable the making of Orders in Council imposing a training levy on the members of an industry, payable to an industry training organisation, if there is

sufficient support for the imposition of that levy following a ballot of those members.

“25 **Interpretation**

For the purposes of this Part,—

“**ballot** means a ballot under **section 27(1)(a)**

“**closing date** means the date, specified in the ballot paper under **section 36(b)**, by which ballot papers must be returned

“**levy group** means the members of an industry described in a levy order, or proposed to be described in a levy order, who have to, or will have to, pay that levy or proposed levy

“**member of an industry** means a person who employs persons who work in that industry or a self-employed person in that industry

“**qualifying member**, in relation to a levy group, means a member who does not have a certificate of exemption under **section 40**

“**relevant industry** means the industry described in the levy order, or proposed levy order.

“*Imposition of levy*

“26 **Governor-General may impose levy**

“(1) The Governor-General may, on the recommendation of the Minister, by Order in Council, impose a levy on qualifying members of a levy group, payable to an industry training organisation.

“(2) The Minister must not recommend the making of an Order in Council under **subsection (1)** unless the Minister is satisfied of the matters in **section 27**.

“(3) Under a levy order under **subsection (1)**, a levy may be payable to—

“(a) 1 industry training organisation by all qualifying members of the industry that is covered by that organisation; or

“(b) 1 industry training organisation by all qualifying members of a specific industry that is within the range of industries covered by that industry training organisation; or

- “(c) more than 1 industry training organisation, jointly, by all qualifying members of an industry that is covered by those industry training organisations.

“27 **Restrictions on making of levy orders**

- “(1) The Minister must not recommend the making of a levy order unless he or she is satisfied that—

- “(a) the industry training organisation to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with **sections 31 to 38**, in relation to a proposal that the levy should be imposed on those members; and

- “(b) at least 60% of the ballot papers distributed were validly completed and returned to the independent returning officer conducting the ballot before the closing date; and

- “(c) out of those ballot papers validly completed and returned,—

- “(i) more than 60% of the total supported the imposition of the levy; and

- “(ii) more than 60%, weighted according to the size of the industry member that returned the ballot paper (calculated at the date that the ballot closed and on the same basis as the levy is proposed to be charged, as set out in the ballot paper), supported the imposition of the levy; and

- “(d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and

- “(e) the details specified in the order are acceptable to the Minister; and

- “(f) the industry training organisation has or will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and

- “(g) all other relevant matters known to the Minister have been properly considered.

- “(2) When considering the matters in **subsection (1)**, the Minister must consult with the Tertiary Education Commission and may consult with any other persons the Minister considers appropriate.

- “28 **Matters to be specified in levy orders**  
Every levy order must specify the matters set out in **Schedule 4**.
- “29 **Purposes for which levy may be required**
- “(1) A levy order must specify the purposes for which levy funds are to be used.
- “(2) A levy order may also specify any purpose or purposes for which no amount of levy may be used.
- “(3) In specifying how levy funds are to be used, a levy order may specify 1 or more purposes that will benefit the levy group as a whole and that are related to meeting the costs (including infrastructure and administration costs) associated with—
- “(a) designing qualifications and setting skill standards for the relevant industry; and
  - “(b) providing leadership in the relevant industry in matters relating to skill and training needs by identifying present and future skill needs and promoting training to meet those needs.
- “(4) No levy order may specify a purpose for which levy funds may be used that is related to—
- “(a) meeting the costs of arranging delivery of industry training; or
  - “(b) undertaking any commercial or trading activity; or
  - “(c) any matter that directly benefits 1 or more individual members of the levy group, as opposed to generally benefiting the relevant industry as a whole.
- “(5) Nothing in **subsection (4)(b)** prevents an industry training organisation from—
- “(a) using any part of a levy to publish or sell any educational, informative, or promotional material (whether or not at a profit); or
  - “(b) investing any part of a levy pending its expenditure.
- “30 **Levy order may require provision of information**  
A levy order may require qualifying members of the levy group to provide information to the industry training organisation, or some other person or body, for the purpose of enabling or assisting the determination of the amount of levy payable.

*“Ballots***“31 Independent returning officer must conduct ballot**

A ballot must be conducted by an independent returning officer appointed by the industry training organisation and approved by the Minister.

**“32 Industry training organisation must identify potential members of levy group**

“(1) An industry training organisation that proposes to impose a levy must take reasonable steps to ensure that it identifies all potential members of the levy group, including—

“(a) obtaining information that is able to be used from that industry training organisation’s records and from records that may be available from other organisations; and

“(b) giving adequate notice of the ballot in public newspapers and industry-specific publications, and inviting members of the relevant industry to register to receive information about the ballot and ballot papers.

“(2) After satisfying the requirements of **subsection (1)**, the industry training organisation must provide to the independent returning officer who is administering the ballot a list of all potential members of the levy group of whom it is aware.

**“33 Returning officer must notify potential members of levy group**

“(1) The returning officer must give notice of the ballot to—

“(a) every person named on the list of potential members of the levy group provided by the industry training organisation under **section 32(2)**; and

“(b) any other person who the independent returning officer considers may be a member of the levy group.

“(2) The notice under **subsection (1)** must advise the person about the ballot and must state—

“(a) the description of the industry that is intended to be covered by the proposed levy order; and

“(b) that the returning officer has been advised that the person is a member of that industry; and

“(c) that membership of the industry means that the person—

“(i) is entitled to participate in the ballot; and

- “(ii) will be required to pay the levy if there is sufficient support for it in the ballot and the levy order is made; and
- “(d) that the person must notify the returning officer if the person disputes that he or she or it is a member of the industry intended to be covered by the proposed levy order (a **coverage dispute**); and
- “(e) the date by which that notification of a coverage dispute must be received.

“34 **Commission resolves coverage disputes**

If the returning officer is notified by a person under **section 33(2)(d)** that the person wishes to raise a coverage dispute, the returning officer must refer that issue to the Tertiary Education Commission for determination in accordance with **section 49**.

“35 **Population to be balloted**

- “(1) As soon as practicable after all coverage disputes have been finally determined (including any appeals under **section 50(2)**), the returning officer must send ballot papers to the persons specified in **subsection (2)**.
- “(2) Ballot papers must be sent to—
  - “(a) all persons who were notified of the ballot under **section 33** and who—
    - “(i) did not dispute membership of the industry intended to be covered by the levy order; or
    - “(ii) the Tertiary Education Commission has determined, under **section 49**, are members of the industry intended to be covered by the levy order (whether or not that person has appealed against that determination); and
  - “(b) any other person who confirms to the returning officer that he or she or it is a member of the industry intended to be covered by the levy order.

“36 **Requirements of ballot papers**

A ballot paper must state—

- “(a) the address to which ballot papers must be returned; and
- “(b) the date by which ballot papers must be returned; and

“(c) full information on the nature of the levy power being sought, including all of the matters listed in **Schedule 4**.

“37 **Returning officer must count votes**

The returning officer must collect all validly completed ballot papers received by him or her at the closing date and calculate—

- “(a) the proportion of the total number of ballot papers distributed by him or her under **section 35** that have been validly completed and received by him or her at the closing date; and
- “(b) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy; and
- “(c) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy if the votes are weighted according to the size of the member of the industry that returned the ballot paper (calculated at the date that the ballot closed and on the same basis as the levy is proposed to be charged as set out in the ballot paper).

“38 **Returning officer must keep ballot papers, etc**

The returning officer must take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with a ballot conducted under this Part are preserved and kept for a period of 1 year after the completion of the ballot.

*“Collection of levy*

“39 **Levy is payable by qualifying members to industry training organisation**

If a levy order is made, the levy specified in that order is payable by every qualifying member of the levy group to the industry training organisation or organisations named in the levy order.

**“40 Certificate of exemption**

- “(1) The chief executive of the Tertiary Education Commission may issue a certificate of exemption from payment of a levy to a member of the relevant industry who—
- “(a) was a member of the industry at the time of the ballot held in relation to that levy; and
  - “(b) was, through no fault or neglect on that person’s part, not included in the ballot.
- “(2) The chief executive may revoke a certificate of exemption if—
- “(a) the person to whom it has been issued agrees; or
  - “(b) it was issued in error.

**“41 Method of collecting levy**

- “(1) An industry training organisation may collect levies directly from qualifying members of the levy group or by using a collection agent specified in the levy order in accordance with **section 42**.
- “(2) An industry training organisation may recover levies due from any qualifying member of the levy group—
- “(a) by deducting the amount due from any amount the organisation owes that qualifying member; or
  - “(b) as a debt due to the organisation in any court of competent jurisdiction.

**“42 Levy order may provide for collection by agent**

- “(1) A levy order may specify persons, other than the persons who are primarily responsible for paying the levy, who must collect levy money due from qualifying members and pay it to the industry training organisation.
- “(2) If a levy order specifies a person who must act as a collection agent under **subsection (1)**, that levy order must also specify an amount from, or a percentage of, the levy money collected that the person may retain as a fee for providing that collection service.

**“43 Collection of levy if person switches industry training organisation**

- “(1) An person who is a qualifying member of an industry must continue to pay any levy that is payable to the industry training organisation or organisations that cover members of that

industry (the **original organisation**) even if the Commission grants an application by that person under **section 10(2A)** for another industry training organisation (the **new organisation**) to manage that person's industry training.

“(2) If a person must pay a levy to its original organisation under **subsection (1)**,—

“(a) that person does not have to pay a levy to the new organisation as a result only of that new organisation managing that person's training; but

“(b) if the person was obliged to pay a levy to the new organisation before the employer's application was granted, the employer must continue to pay that levy.

*“Duties of industry training organisations and others in relation to levies*

“44 **Levy funds must be kept in separate bank accounts and used only for authorised purposes**

“(1) An industry training organisation that receives a levy under a levy order must open 1 or more bank accounts for the purpose of that levy and must use that account or those accounts for the following purposes only:

“(a) the deposit of amounts of levy paid or recovered; and

“(b) making payments out of levy funds.

“(2) Only people expressly authorised by the organisation may operate that account or those accounts.

“(3) No money may be paid out of that account or those accounts except for a purpose authorised in the levy order.

“45 **Duty to keep records**

An industry training organisation that receives a levy must ensure that accurate and up-to-date records are kept of—

“(a) the names of all members of the levy group from whom the levy has been collected or recovered; and

“(b) the amount of the levy collected or recovered from those members; and

“(c) the names of all members of the levy group who are or may be liable to pay the levy but have not done so; and

“(d) the use to which the levy funds have been put.

“46 **Duty to provide annual report**

- “(1) As soon as is practicable after the end of a financial year during which a levy has been paid to an industry training organisation under a levy order, that organisation must prepare in respect of that year—
- “(a) statements (relating only to money paid to the organisation under the levy order and assets acquired or built up with or out of that money) of the organisation’s financial position at the end of the year; and
  - “(b) statements of the organisation’s receipt and expenditure of money paid under the levy order; and
  - “(c) all other statements necessary to show fully—
    - “(i) the organisation’s financial position, as described in **paragraph (a)**; and
    - “(ii) the financial results of all of the organisation’s activities involving the use of money paid to the organisation under the levy order or the use of assets acquired or built up with or out of money paid under the levy order.
- “(2) The organisation must ensure that the statements prepared under **subsection (1)** are audited within 90 days of the end of that financial year.
- “(3) Statements prepared under **subsection (1)** must be included in the organisation’s annual report for that year.
- “(4) An industry training organisation that is required by **subsection (3)** to include statements in its annual report must, as soon as that report has been completed, give a copy to the Minister, and the Minister must present a copy to the House of Representatives not later than 6 sitting days after receiving it.
- “(5) Despite **subsection (4)**, if an enactment other than this Act requires an industry training organisation to give a Minister a copy of its annual report and requires the Minister to present a copy to the House of Representatives, that organisation must, to the extent that the enactment and **subsection (4)** impose different requirements, comply with that enactment and not that subsection.
- “(6) An industry training organisation that is required by **subsection (3)** to include statements in its annual report must take all reasonable steps to ensure that every person primarily liable for paying the levy to which the statements (or any of them)

relate receives a copy of the annual report as soon as is reasonably practicable after the report has been completed.

**“47 Duty to protect commercially sensitive information**

Every person who receives commercially sensitive information for the purposes of carrying out a function or activity under this Part, or under a levy order, must take reasonable steps to protect that information.

*“Disputes*

**“48 Arbitration or mediation system must be established**

**“(1)** An industry training organisation that receives a levy under a levy order must establish a method of arbitration or mediation in the case of disputes as to—

“(a) whether a person was included in the ballot relating to that levy; and

“(b) whether a person has paid the levy; and

“(c) the amount of levy payable; and

“(d) any other matter relating to the levy, except for disputes about whether a person is within the levy group.

**“(2)** Details of that arbitration or mediation system must be specified in the levy order, including—

“(a) the method of appointment of arbitrators or mediators; and

“(b) the procedures to be followed by arbitrators or mediators; and

“(c) the remuneration of arbitrators or mediators; and

“(d) the payment of costs in relation to arbitration or mediation; and

“(e) any other matters relating to the resolution of disputes.

**“49 Disputes about coverage**

**“(1)** If there is a dispute about whether a person is within a levy group, whether before or after the ballot, that dispute must be referred to the Tertiary Education Commission, which must determine that matter.

**“(2)** The industry training organisation that is proposing to impose a levy or, if a levy order has been made, that is responsible for administering that levy must pay the reasonable costs of the Tertiary Education Commission for determining disputes.

**“50 Appeals to District Court**

- “(1) If a dispute is unresolved following arbitration or mediation in accordance with the method specified in the levy order, or if a party wishes to appeal a decision of an arbitrator or mediator, the dispute may be referred, or the decision may be appealed, to the District Court.
- “(2) A determination by the Tertiary Education Commission under **section 49** may be appealed on grounds of procedural error only.
- “(3) An appeal under **subsection (2)** may be made to the District Court by the person disputing membership of the levy group or by the industry training organisation that is proposing to impose, or responsible for administering, the levy.

*“Confirmation and expiry of orders***“51 Orders must be confirmed**

- “(1) **Subsection (2)** applies to a levy order that is made on or after 1 January and before 1 July in any year, and that—
- “(a) has not been revoked with effect on or before 1 July in the next year; and
- “(b) has not ceased, and will not cease, to have effect on or before 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989.
- “(2) If **subsection (1)** applies to a levy order, that order is deemed to be revoked with the close of 30 June in that next year unless it has been confirmed by an Act of Parliament passed on or before that day.
- “(3) **Subsection (4)** applies to a levy order that is made after 30 June and on or before 31 December in any year, and that—
- “(a) has not been revoked with effect on or before 1 January in the year after the next year; and
- “(b) has not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989.
- “(4) If **subsection (3)** applies to a levy order, that order is deemed to be revoked with the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed on or before that day.
- “(5) The Minister on whose recommendation a levy order was made must, by notice published in the *Gazette* at least

6 months before the day with the close of which the order may (under **subsection (2) or subsection (4)**) be deemed to have been revoked, indicate the Minister's intentions with regard to its continuing in force unless a levy order has already been—

“(a) revoked; or

“(b) disallowed under the Regulations (Disallowance) Act 1989; or

“(c) confirmed by an Act of Parliament.

**“52 Expiry of levy orders**

“(1) A levy order expires 5 years after the day on which it was made unless it is sooner—

“(a) revoked; or

“(b) disallowed under the Regulations (Disallowance) Act 1989.

“(2) A levy order is deemed to be revoked if the industry training organisation responsible for administering the levy ceases to be recognised under **section 5**.”

**47 Part IV repealed**

Part IV of the principal Act is repealed.

**48 New Schedule 4 inserted**

The principal Act is amended by inserting the **Schedule 4** set out in **Schedule 3** of this Act.

**49 Consequential amendments to principal Act**

The principal Act is consequentially amended in the manner set out in **Schedule 4**.

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**Schedule 1** s 26  
**New Schedule 13A inserted in Education Act 1992**

**Schedule 13A** s 159C(3)  
**Administrative provisions applying to Tertiary  
Education Commission**

**1 Interpretation**

In this schedule,—

**Commission** means the Tertiary Education Commission established under **section 159C**

**member** means a member of the Commission.

*Appointment of members*

**2 Method of appointment**

- (1) Every member is appointed by notice published in the *Gazette*.
- (2) The notice of appointment must specify the member's term of office.

**3 When appointment takes effect**

Every member takes office from the date stated in the notice of appointment.

**4 Restrictions on appointments**

- (1) The Minister may appoint a person as a member only if, in the Minister's opinion, the person has the appropriate skills and experience to assist the Commission to perform its functions and to achieve its objectives.
- (2) A person must not be appointed as a member unless, before that appointment, he or she—
  - (a) consents in writing to be a member; and
  - (b) discloses to the Minister the details of any interest the person would or may have if he or she were a member.

**5 Member may hold concurrent office**

A person appointed as a member may hold that office concurrently with any other office.

**Schedule 13A**—continued*Terms of appointment***6 Term of office**

- (1) The term of office of every member is 3 years or any shorter term specified by the Minister in the notice of appointment.
- (2) A member may be reappointed.
- (3) Despite **subclause (1)**, every member, unless ceasing to hold office under **clause 8 or clause 9**, continues in office until—
  - (a) the member is reappointed; or
  - (b) the member's successor is appointed; or
  - (c) the date specified in a letter from the Minister that informs the member that he or she is not to be reappointed and that no successor is to be appointed.

**7 Remuneration and allowances**

- (1) A member of the Commission is entitled to receive, from the Commission's funds, remuneration and other benefits not within **subclause (2)** for services as a member at a rate and of a kind determined by the Minister.
- (2) A member of the Commission is entitled to be paid, out of the Commission's funds, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

*Resignation and removal of members***8 Resignation**

- (1) A member may, at any time, resign from office by notice in writing to the Minister.
- (2) A member's resignation is effective from the date of receipt by the Minister of the notice or from any later time specified in the notice.

**9 Removal from office**

The Minister may, at any time, and entirely at his or her discretion, remove a member from office by written notice to the member.

**Schedule 13A**—continued**10 No compensation for resignation or removal**

- (1) A member who resigns from office under **clause 8** or who is removed from office under **clause 9** is not entitled to any compensation or other payment relating to that resignation or removal.
- (2) **Subclause (1)** does not apply to a chairperson or a deputy chairperson if the Minister expressly provides, at the time of appointment of that person to that position, for that person to be entitled to compensation or another payment upon resignation or removal from the position.

*Vacancies in membership***11 Position if vacancy in membership**

- (1) If a member, for any reason, ceases to hold office as a member, the Minister may appoint another person as a member.
- (2) A member who is appointed under **subclause (1)** is appointed for the residue of the term for which the vacating member was appointed.

**12 Proceedings not invalidated by vacancy**

No act or proceeding of the Commission is invalid merely because there was a vacancy in the membership of the Commission or because of any defect in the appointment or election of any member.

*Duties and liability of members***13 Duties of members**

- (1) When exercising powers or performing duties as a member, every member must act—
  - (a) in good faith; and
  - (b) with reasonable care, diligence, and skill; and
  - (c) with honesty and integrity; and
  - (d) in accordance with any code of conduct issued by a Minister of the Crown that applies to Crown entities generally.
- (2) No member, when exercising powers or performing duties as a member, may act as a representative of, or promote the views of, any particular person or group of persons.

**Schedule 13A**—continued**14 Collective duties of members**

The members, acting collectively,—

- (a) must ensure that the Commission acts in a manner that is consistent with its functions, powers, statement of intent, and any directions given under **section 159J**; and
- (b) must ensure that the activities of the Commission are conducted efficiently and effectively, and in a manner consistent with the spirit of service to the public; and
- (c) must endeavour to ensure that the Commission operates in a financially responsible manner that maintains the financial viability of the organisation.

**15 Members accountable to Minister**

- (1) A member is accountable to the Minister for performing his or her duties and responsibilities as a member.
- (2) If there is a breach of any of the collective duties of members set out in **clause 14**,—
  - (a) each member is accountable to the Minister for that breach; and
  - (b) that breach justifies all or any of the members being removed from office.
- (3) **Subclause (2)** does not apply to a member if—
  - (a) he or she did not know, and could not reasonably be expected to know, that the duty was to be or was being breached; or
  - (b) he or she took all reasonable steps to prevent the duty being breached.
- (4) The duties of members under **clause 13** are duties owed only to the Minister and the Commission, and the collective duties of members under **clause 14** are owed only to the Minister; a failure to adequately perform those duties does not give grounds for a cause of action against that member by any other person.

**16 Power of Minister to require information to be supplied**

- (1) The Minister may, by written notice, require the Commission to supply, at a specified time or times, or at specified intervals, any information that the Minister requires that relates to any aspect of the Commission's activities.

**Schedule 13A**—continued

- (2) The Commission must comply with requirements made under **subclause (1)** unless—
- (a) the supply of the information would infringe the privacy of any natural person or deceased natural person; and
  - (b) there is good reason for withholding the information under the Official Information Act 1982.

**17 Liability of members**

- (1) A member is not personally liable, in any action taken against him or her by the Commission, for any liability of the Commission, or for any act done or omitted to be done by the Commission or by any person acting under a delegation of the Commission's functions, duties, and powers, provided the member acted in good faith in pursuance or intended pursuance of the functions, duties, and powers of the Commission.
- (2) Every member is indemnified by the Commission for costs and damages arising from civil proceedings, and costs arising from successfully defended criminal proceedings, if the proceedings relate to actions taken by the member while he or she was acting in good faith in pursuance or intended pursuance of the functions, duties, or powers of the Commission.

**18 Members not in service of the Crown**

A person is not employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 merely as a result of being a member of the Commission.

*Disclosure of interests and confidentiality of information***19 Meaning of interested**

A member is **interested** in a transaction of, or other matter relating to, the Commission if, and only if, the member—

- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
- (b) has a material financial interest in another party to the transaction or a person to whom the matter relates; or

**Schedule 13A**—continued

- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (e) is otherwise directly or indirectly materially interested in the transaction or matter.

**20 Obligation to disclose interest**

- (1) A member who (otherwise than as a member) has a direct or indirect interest in any of the transactions or other matters listed in **subclause (2)** must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with **clause 21**.
- (2) The transactions and other matters are—
  - (a) the Commission’s performance of a function or exercise of a power:
  - (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Commission.

**21 Method of disclosure of interest**

- (1) If **clause 20** applies, the member must disclose the details listed in **subclause (2)** in an interests register and must also disclose them to—
  - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
  - (b) if the member concerned is the chairperson, or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
  - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
  - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

**Schedule 13A**—continued**22 Consequences of interest**

A member who is interested in a transaction or other matter relating to the Commission—

- (a) must not vote or take part in any deliberation or decision of the Commission or any committee relating to the transaction or matter; and
- (b) must be disregarded for the purpose of forming a quorum for that part of a meeting of the Commission or the committee during which a deliberation or decision relating to the transaction or matter occurs or is made.

**23 Effect of non-compliance**

- (1) If a member fails to comply with the disclosure requirements in **clause 20**, the validity of the Commission's performance of the function, or exercise of the power, or of the arrangement, agreement, or contract made or entered into by the Commission, is not affected.
- (2) The chairperson must report, as soon as practicable, to the Minister any failure (including his or her own) to disclose an interest in a transaction or other matter and any failure to act in a manner that is consistent with the limitations placed on interested members.

**24 Confidentiality of information**

- (1) A member of the Commission who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except—
  - (a) for the purposes of the Commission; or
  - (b) as required or permitted by law; or
  - (c) in accordance with **subclause (2)**.
- (2) **Subclause (1)** does not apply if the member is required or authorised by this Act or by the Commission to disclose, use, or act on the information.

*Chairperson and deputy chairperson***25 Appointment**

The Minister must appoint 1 of the members as the chairperson and a different member as the deputy chairperson.

**Schedule 13A**—continued**26 Term of office**

- (1) The term of office of the chairperson and of the deputy chairperson is 3 years.
- (2) The chairperson and the deputy chairperson may be reappointed.
- (3) Despite **subsection (1)**, a member appointed as the chairperson or as the deputy chairperson holds office until—
  - (a) the member is reappointed; or
  - (b) the member's successor is appointed; or
  - (c) the member is removed from that position by the Minister; or
  - (d) the member ceases to be a member.

**27 Resignation**

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from the office of chairperson or deputy chairperson by written notice to the Minister.
- (2) The resignation of the chairperson or deputy chairperson under **subsection (1)** is effective from the date of receipt by the Minister of the notice or at any later time specified in the notice.

**28 Appointment of new chairperson or deputy chairperson**

If the chairperson or deputy chairperson ceases to be the chairperson or deputy chairperson, the Minister may appoint an existing member or a new member as the chairperson or deputy chairperson.

**29 Performance and exercise of chairperson's functions, duties, and powers during vacancy**

- (1) During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform and exercise the functions, duties, and powers of the chairperson, the deputy chairperson has and may perform and exercise all of the functions, duties, and powers of the chairperson.
- (2) No act done by the deputy chairperson acting as the chairperson may, in any proceedings, be questioned on the grounds that the occasion for the deputy chairperson to act had not arisen or had ceased.

**Schedule 13A**—continued*Procedure of Commission***30 Procedure generally**

Except as otherwise provided in this Act, the Commission may regulate its own procedure.

**31 Times and places of meetings**

- (1) The Commission or the chairperson must appoint the times and places for meetings of the Commission.
- (2) Members must be given no less than 5 working days' notice of any Commission meeting, but the chairperson may convene an extraordinary meeting to be held within a shorter period than 5 working days if all members agree.
- (3) The chairperson must convene a meeting on receipt of a written request signed by no fewer than 4 members.
- (4) The chairperson may permit a member to participate in a particular meeting by any means of communication that allows that member to reasonably engage in the proceedings of the meeting.

**32 Quorum**

- (1) A quorum for a meeting of the Commission is—
  - (a) 5 members if the Commission has 9 members; or
  - (b) 4 members if the Commission has less than 9 members.
- (2) No business may be transacted at a meeting of the Commission if a quorum is not present, either in person or as permitted under **clause 31(4)**.

**33 Who presides at meetings**

- (1) The chairperson must preside at all meetings of the Commission at which he or she is present.
- (2) If the chairperson is not present, or if there is no chairperson, the deputy chairperson, if present, must preside.
- (3) The members present must elect 1 of their number to be chairperson for the meeting if—
  - (a) the chairperson or the deputy chairperson is not present; or
  - (b) there is no chairperson and no deputy chairperson.

**Schedule 13A**—continued

- (4) The elected person has and may perform and exercise all the functions, duties, and powers of the chairperson for the purposes of the meeting.

**34 Voting at meetings**

- (1) All questions arising at a meeting of the Commission must be decided by a majority of the votes cast by the members present, either in person or as permitted under **clause 31(4)**.
- (2) The member presiding at the meeting has a deliberative vote and, if the votes are equal, also has a casting vote.

**35 Resolutions**

- (1) A resolution in writing, signed or assented to by letter, fax, or electronic message by all members, is as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.
- (2) A resolution to which **subclause (1)** applies may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.

*Chief executive of Commission***36 Chief executive**

- (1) The Commission must appoint a chief executive.
- (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.

**37 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.

**Schedule 13A**—continued

- 38 Terms and conditions of employment of chief executive**
- (1) The chief executive must be appointed on terms and conditions determined by the Commission.
  - (2) However, the Commission must not determine any terms and conditions of employment for the chief executive without—
    - (a) consulting with the State Services Commissioner; and
    - (b) considering every recommendation made, within a reasonable time of being consulted, by the State Services Commissioner about those terms and conditions; and
    - (c) consulting with the Minister, if necessary, in accordance with **subsection (3)**.
  - (3) The Commission must consult with the Minister if, after considering a recommendation made by the State Services Commissioner about the terms and conditions of employment of the chief executive, the Commission does not intend to adopt that recommendation.
- 39 Declaration of interests**
- (1) A person who is proposed to be appointed as chief executive must declare any direct or indirect pecuniary interests 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 **clause 20(2)**, he or she must disclose that interest to the Commission.

*Employees of Commission*

- 40 Chief executive may appoint employees**
- The chief executive may appoint any employees (including employees on secondment from other organisations) that the chief executive thinks necessary or desirable to enable the Commission to perform its functions and duties.
- 41 Certain State Sector Act 1988 provisions apply**
- (1) Section 56(1) and (2) of the State Sector Act 1988 (which requires departments to be good employers) and section 58 of that Act (which relates to equal employment opportunities) apply to the Commission as if the Commission were a department referred to in those provisions.

**Schedule 13A**—continued

- (2) To avoid doubt, no person employed by the Commission is employed in the service of the Crown for the purposes of the State Sector Act 1988.

**42 Superannuation**

- (1) The Commission may subsidise or contribute to any registered superannuation scheme for the purpose of providing benefits for its employees.
- (2) Any person who, immediately before becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part II or Part IIA 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.
- (3) 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.
- (4) Nothing in **subclause (2)** entitles a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Commission is the "controlling authority".

*Committees***43 Commission may appoint committees**

- (1) The Commission may, by resolution, appoint 1 or more committees to—
- (a) advise the Commission on any matters relating to the Commission's functions, duties, or powers that are referred to the committee by the Commission; or
  - (b) perform or exercise any of the Commission's functions, duties, or powers that are delegated to the committee under **clause 55**; or
  - (c) develop specific strategies and recommendations, as determined by the Commission.
- (2) A committee must consist of at least 1 member of the Commission and may include any other persons that the Commission thinks fit.

**Schedule 13A**—continued

- (3) A person must not be appointed as a member of a Committee unless, before that appointment, he or she—
  - (a) consents in writing to be a member; and
  - (b) discloses to the chairperson the details of any interest the person would or may have if he or she were a member of that Committee.
- (4) The Commission may, by resolution, alter, discharge, continue, or reconstitute a committee appointed under **subclause (1)**.
- (5) A member or person who resigns from, or is removed from, a committee is not entitled to any compensation or other payment relating to that resignation or removal.

**44 Procedure of committees**

- (1) Subject to the Commission's direction, and except as otherwise provided in this Act, a committee may regulate its own procedure.
- (2) A Commission member must chair all committee meetings.

**45 Obligations of committee members who are not Commission members**

For the purposes of performing a function or exercising a power, a member of a committee who is not a member of the Commission must act in accordance with the duties of a member of the Commission.

**46 Fees and allowances for committee members**

- (1) A member of a committee appointed by the Commission may be paid, from the Commission's funds, remuneration and other benefits not within **subclause (2)** for services as a member of that committee at a rate and of a kind determined by the Minister.
- (2) A member of a committee appointed by the Commission is entitled to be paid, out of the Commission's funds, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her duties and responsibilities as a committee member.

**Schedule 13A**—continued*Commission's finances and method of contracting***47 Commission's finances**

The funds of the Commission consist of—

- (a) any money appropriated by Parliament for the purposes of the Commission; and
- (b) all money lawfully received by the Commission for its purposes; and
- (c) any funds transferred to the Commission, or received by it, on establishment; and
- (d) all accumulations of income derived from that money.

**48 Bank accounts**

- (1) The Commission must open at any registered bank or registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) any accounts that are necessary for the performance or exercise of its functions, duties, and powers.
- (2) All money received by the Commission, or by any member or employee of the Commission, for its purposes must, as soon as practicable after the money has been received, be paid into a Commission bank account.

**49 Restrictions on investments**

- (1) Surplus money that belongs to the Commission and that is not immediately required by it may only be invested in accordance with section 25 of the Public Finance Act 1989.
- (2) **Surplus money** includes money belonging to the Commission and other money that the Commission manages on any other person's behalf.

**50 No controlling interests**

- (1) The Commission must not control any other entity or hold a percentage of the voting rights in any other entity that would require it to seek control of that entity.
- (2) If a contravention of **subsection (1)** arises (through inadvertence or otherwise), the Commission must take all reasonable steps to remedy the default as soon as practicable.
- (3) For the purposes of this clause, an entity is **controlled** by the Commission if—
  - (a) the entity is a subsidiary of the Commission; or

**Schedule 13A**—continued

- (b) the Commission controls the entity within the meaning of any relevant approved financial reporting standard (within the meaning of section 2(1) of the Financial Reporting Act 1993); or
  - (c) the Commission can control directly or indirectly the composition of the board of the entity within the meaning of sections 7 and 8 of the Companies Act 1993 (which, for the purposes of this paragraph, are to be read with all necessary modifications).
- (4) For the purposes of this clause,—
- entity** means any person, whether corporate or unincorporate
- subsidiary**—
- (a) means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993; and
  - (b) includes an entity that is classified as a subsidiary in any relevant approved financial reporting standard (within the meaning of section 2(1) of the Financial Reporting Act 1993).

**51 Restrictions on borrowing**

The Commission may not borrow or contract to borrow money, or amend the terms of any loan made to it, without the prior written consent of the Minister of Finance.

**52 Restrictions on derivatives**

The Commission may not enter into a derivative instrument, or amend the terms of a derivative instrument, without the prior written consent of the Minister of Finance.

**53 Commission is public authority**

- (1) For the avoidance of doubt, the Commission is a public authority for the purposes of the Inland Revenue Acts.
- (2) In this section, Inland Revenue Acts has the same meaning as in section 3(1) of the Tax Administration Act 1994.

**54 Method of contracting**

The Commission may enter into a contract or other enforceable obligation as follows:

**Schedule 13A**—continued

- (a) an obligation required to be in writing may be entered into on behalf of the Commission, in writing, by a person acting under the express or implied authority of the Commission:
- (b) an obligation that may be entered into otherwise than by writing may be entered into on behalf of the Commission, in writing or orally, by a person acting under the express or implied authority of the Commission:
- (c) an obligation that is required to be entered into by deed must be signed by 2 members of the Commission.

*Delegations***55 Delegation by Commission of Commission's functions, duties, or powers**

The Commission may, by writing, either generally or specifically, delegate any of its functions, duties, or powers to any of the following:

- (a) any of its members:
- (b) a committee appointed under **clause 43**:
- (c) the chief executive:
- (d) any employee or employees of the Commission.

**56 Further delegation by member, chief executive, or committee**

- (1) If the Commission has, under **clause 55**, delegated any function, duty, or power to a member, the chief executive, or a committee, that member, chief executive, or committee may delegate that function, duty, or power to 1 or more employees of the Commission.
- (2) No delegation under **subclause (1)** may be made without the prior written approval of the Commission,
- (3) A delegation under **subclause (1)** must be in writing, signed by the member, the chief executive, or at least 2 of the members of the committee, as the case may be.

**57 Delegation by chief executive of chief executive's functions, duties, or powers**

- (1) The chief executive of the Commission may, either generally or specifically, delegate any of his or her functions, duties, or

**Schedule 13A**—continued

powers under this Act or any other Act to 1 or more employees of the Commission.

- (2) For the avoidance of doubt, the chief executive must not delegate functions, duties, or powers delegated by the Commission to the chief executive except in accordance with **clause 56**.
- (3) If the chief executive has delegated any functions, duties, or powers to an employee of the Commission under **subclause (1)**, that employee may delegate those functions, duties, or powers to any other employee of the Commission.
- (4) No delegation under **subclause (3)** may be made without the prior written approval of the chief executive.
- (5) A delegation under **subclause (3)** must be in writing and signed by the employee.

**58 Delegations to employees and to classes of employees**

- (1) A delegation to an employee or employees may be to—
  - (a) any named person or persons; or
  - (b) any holder or holders of a particular office specified in the delegation; or
  - (c) any member of a class of persons specified in the delegation.
- (2) If a delegation is to a class of persons, it applies, subject to any express terms of the delegation, to the members of the class for the time being, irrespective of any change in the membership of the class.

**59 Effect of delegation**

- (1) Subject to the Commission's direction, or the chief executive's direction, as the case may be, a person to whom any powers are delegated may 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.
- (2) A delegation does not affect or prevent the performance of any function or duty, or the exercise of any power, by the delegator, or affect the responsibility of the delegator for the actions of any person acting under the delegation.
- (3) If a function, duty, or power of the Commission is delegated to a person, that person, for the purposes of performing or

**Schedule 13A**—continued

exercising the delegated function, duty, or power, must act in accordance with the Commission's duties as if he or she were a member of the Commission.

**60 Presumption of acting in accordance with delegation**

A person who appears to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

**61 Certain powers must not be delegated**

The Commission must not delegate any of the following powers:

- (a) the power to appoint a chief executive; or
- (b) its power to delegate, except in accordance with **clause 56**; or
- (c) any other power that the Minister specifies by notice in writing to the Commission.

**62 Duration of delegation**

- (1) Every delegation—
    - (a) is revocable at will, but the revocation does not take effect until it is communicated to the delegate; and
    - (b) continues in force according to its terms until it is revoked despite any change in the membership of the Commission or in the identity of the chief executive.
  - (2) A revocation of a delegation must be made or confirmed in writing.
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## Schedule 2

### Consequential amendments

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#### **Education Amendment Act 1990** (1990 No 60)

Repeal section 43.

Omit from Schedule 2 the item that inserts paragraph (cb) into the Government Superannuation Act 1975.

Omit from Schedule 2 the item that inserts the Education Training and Support Agency into Part 2 of Schedule 1 of the Ombudsmen Act 1975.

#### **Education Amendment Act 1993** (1993 No 51)

Repeal section 19.

#### **Education (Change of Name of Education Entities) Order 2000** (SR 2000/117)

Revoke clause 3(3) and so much of the Schedule as relates to Skill New Zealand.

#### **Government Superannuation Act 1956** (1956 No 47)

Omit paragraph (cb) from the definition of **controlling authority** in section 2, and substitute the following paragraphs:

“(cb) a contributor employed by Career Services established under Part XXII of the Education Act 1989 means the general manager of that Service:

“(cc) a contributor employed by the Tertiary Education Commission established under **Part 13A** of the Education Act 1989 means the chief executive of that Commission:”.

#### **Modern Apprenticeship Training Act 2000** (2000 No 94)

Repeal the definition of **Agency** in section 4.

Omit from the definition of **apprenticeship co-ordinator** in section 4 the word “Agency” and substitute the word “Commission”.

Insert in section 4, in its appropriate alphabetical order, the following definition:

“**Commission** means the Tertiary Education Commission established by **section 159C** of the Education Act 1989”.

Omit from the definition of **funding agreement** in section 4 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading above section 9 the word “Agency’s” and substitute the word “*Commission’s*”.

**Modern Apprenticeship Training Act 2000** (2000 No 94)—  
continued

Omit from the heading to section 9 and section 9 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 10(1) the word “Agency” and substitute the word “Commission”.

Omit from section 11 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading to section 12 and section 12 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading to section 13 and section 13 the word “Agency” wherever it appears and substitute in each case the word “Commission”.

Omit from the heading to section 14 and section 14 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 18(2) the word “Agency” and substitute the word “Commission”.

Omit from section 20(1) the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 23 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 24 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 25 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 27 the word “Agency” wherever it appears and substitute in each case the word “Commission”.

**New Zealand Council for Educational Research (Electoral College) Order 1998** (SR 1998/336)

Revoke clause 2(11) and substitute the following clause:

“(11) the chief executive of the Tertiary Education Commission:”

**Ombudsmen Act 1975** (1975 No 9)

Insert in the First Schedule, in its appropriate alphabetical order, the item “Tertiary Education Commission”.

Omit from the First Schedule the item relating to Skill New Zealand.

**Public Finance Act 1989** (1989 No 44)

Insert in the Fourth, Fifth, Sixth, and Seventh Schedules, in its appropriate alphabetical order, the item “Tertiary Education Commission”.

Omit from the Fourth, Fifth, Sixth, and Seventh Schedules the item relating to Skill New Zealand.

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**Schedule 3**  
**New Schedule 4 inserted in Industry Training**  
**Act 1992**

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**Schedule 4**  
**Matters to be specified in levy orders**

*To whom levy is payable and who pays*

- 1 The name of the industry training organisation or organisations that will receive the levy.
- 2 A description of the industry the members of which will be primarily liable to pay the levy.

*Amount of levy*

- 3 The basis on which the amount of the levy will be calculated or ascertained.
- 4 How the size of a qualifying member of the levy group will be calculated for the purposes of calculating the levy payable by that member, such as—
  - (a) based on the number of employees of the member that work in the relevant industry; or
  - (b) based on the level of production of the member.
- 5 Whether the levy will be payable at a single rate or 2 or more different rates and, if it will be payable at different rates, the basis on which those different rates will apply.
- 6 How the rates of the levy will be notified.
- 7 Maximum and minimum amounts of levy payable (if any).
- 8 The amount of any additional charges, or the percentage increase in the levy payable, if amounts of levy otherwise payable are paid late or not paid at all (if applicable).

**Schedule 4**—continued*Uses to which levy may be put*

- 9 Either—
- (a) how the organisation is to spend the levy; or
  - (b) the means by which the organisation is to consult qualifying members of the levy group as to how the organisation is to spend it.
- 10 Whether the levy must be spent by the organisation or may be paid to, and spent by, branches or subsidiaries of the organisation.

*Payment of levy*

- 11 When and how the levy will be payable, including—
- (a) the period to which the levy will apply (the **levy period**); and
  - (b) how often levy payments will be required to be made; and
  - (c) the methods of payment of the levy that will be available to qualifying members of the levy group.
- 12 How the amount of the levy payable will be calculated when a person becomes a qualifying member of the levy group part way through a levy period.
- 13 How refunds of the levy will be calculated, and when they will be paid, if a qualifying member stops working in the levy group part way through a levy period.
- 14 What exemptions from payment of the levy will be available.
- 15 The circumstances (if any) in which, and the conditions subject to which, qualifying members of the levy group may be allowed extensions of time for the payment of any amount of levy.
- 16 The enforcement mechanisms that the industry training organisation receiving the levy may use to collect the levy.

**Schedule 4**—continued*Collection of levy by agent*

- 17 The persons (if any), other than the industry members primarily responsible for paying the levy, who are responsible for collecting the levy in accordance with **section 42**.
- 18 The amount from, or percentage of, the levy money collected that a collection agent may retain as a fee for providing the collection service.

*Miscellaneous*

- 19 The records to be kept by—
- (a) the industry training organisation receiving the levy; and
  - (b) persons collecting the levy; and
  - (c) persons who are, or may be, liable to pay the levy.
- 20 The details of the method of arbitration or mediation to apply in the case of disputes, as required by **section 48**.
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**Schedule 4**  
**Consequential amendments to Industry Training**  
**Act 1992**

**Section 2**

Repeal the definitions of the terms **Agency**, **applicant organisation**, and **Board**.

Insert, in its appropriate alphabetical order, the following definition:

“**Commission** means the Tertiary Education Commission established by **section 159C** of the Education Act 1989”.

Insert in the definition of **funding agreement**, after the expression “subsection (2)”, the words “or **subsection (2A)**”.

**Section 10 and heading to section 10**

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

**Section 11 and heading to section 11**

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

Omit from paragraph (d) the words “Board’s charter” and substitute the words “Commission’s statement of intent”.

Omit from paragraph (e) the words “Board’s document of accountability” and substitute the words “Commission’s statement of intent”.

**Section 12 and heading to section 12**

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

**Section 13 and heading to section 13**

Omit the word “agency” wherever it appears and substitute in each case the word “Commission”.

Omit the expression “Part XXI” and substitute the expression “**Part 13A**”.

Omit from paragraph (b) the words “Board’s document of accountability” and substitute the words “Commission’s statement of intent”.

Omit from paragraph (e) the word “Board” and substitute the word “Commission”.

**Section 16**

Omit the word “Board” and substitute the word “Commission”.

**Section 17 and heading to section 17**

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

**Section 18 and heading to section 18**

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.