

Education Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

This Bill amends the Education Act 1989. The Bill has 4 broad areas of policy focus to—

- introduce secondary-tertiary programmes to give greater opportunities for secondary students to spend time learning in a tertiary environment or in the workplace:
- exempt limited attendance centres from early childhood education licensing standards to make it easier for recreation facilities, shopping centres and similar organisations to provide short-term childcare:
- change the refund provisions for international students enrolled in private training establishments to improve the financial sustainability of New Zealand's export education market:
- update and clarify the law affecting private schools.

Minor policy changes to school enrolment scheme priorities for offering places to out-of-zone students are designed to give some priority to children of board members and of former pupils.

Secondary-tertiary programmes

The Bill proposes amendments to allow students enrolled in school to participate in a recognised full-time programme offering secondary

and tertiary education that may also involve apprenticeship training and work experience. The Minister of Education will be able to approve a number of organisations, which must include at least 1 school, forming a provider group to co-ordinate secondary-tertiary programmes. The Minister of Education will also be able to approve a school board of trustees, a registered private school, a tertiary institution, or an industry training organisation as a lead provider of secondary-tertiary programmes.

As a consequence, the Bill repeals section 17 of the Education (Polytechnics) Amendment Act 2009 that was enacted as an interim measure to allow the Manukau Institute of Technology to provide a secondary-tertiary programme.

Limited attendance centres

The Bill proposes to exclude from the meaning of an early childhood education and care centre those premises that are used to provide care for 3 or more children under the age of 6 and where—

- no child attends for more than 2 hours on any day;
- a parent or caregiver is in close proximity to the child and able to be contacted and to resume responsibility for the child at short notice.

Refund provisions for international students

The Bill proposes that the Minister of Education will, by notice in the *Gazette*, set the period during which international students on courses of 3 months or longer can withdraw from the course and receive a refund of their course fees. Private training establishments will still be required to refund the course fees paid by an international student who withdraws during the set period. The Bill proposes that the notice in the *Gazette* will also set the proportion of course fees that the private training establishment may retain.

Private schools

The Bill proposes amendments designed to update and clarify the current registration criteria for private schools and to establish a “fit and proper person” requirement for managers of private schools.

The Secretary for Education will continue to register private schools. The Bill proposes to introduce a graduated range of sanctions on private schools that breach the law or their registration conditions and describes the circumstances when the Secretary for Education may take action. The Bill specifies the process to be followed before the Secretary for Education can cancel a private school's registration.

Enrolment scheme priorities

The Bill proposes to amend the enrolment scheme priorities for offering places to out-of-zone students by—

- adding children of former students as the new fourth priority;
- making children of board employees the fifth priority and extending it to include children of members of the school board;
- making all other applicants the sixth priority.

The first 3 priorities remain unchanged.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that, with the exception of the provisions relating to private training establishments, the Bill comes into force on the day after the date on which it receives the Royal assent. The provisions relating to private establishments come into force 6 months after the date on which the Bill receives the Royal assent.

Clause 3 provides that the Bill amends the Education Act 1989 (the **Act**).

Part 1

Amendments to principal Act

Clause 4 amends section 2 of the Act by inserting definitions relevant to private schools and secondary-tertiary programmes.

Clause 5 inserts a *new section 4E* into the Act. *New section 4E* is the current section 35B of the Act, relocated from among provisions relating to private schools to a location that reflects its application to State schools and private schools.

Clause 6 amends section 11F, which relates to the order of priority when selecting applicants from outside a school's home zone. A

new fourth priority is for children of former students of the school. The current fourth priority, for children of employees of the school's board, becomes the fifth priority and is shared with children of board members.

Clause 7 amends section 25, which relates to compulsory school attendance, to reflect that section 25 applies to students participating in secondary-tertiary programmes only for any part of the programme during which the students are required to attend school.

Clause 8 amends section 30, which relates to employment of school-age children, so that it is an offence for a parent or employer if a participating student is undertaking paid employment that interferes with his or her ability to undertake the programme.

Clause 9 amends section 31, which relates to ensuring students attend school, so that it applies to students participating in secondary-tertiary programmes only in relation to any portion of the programme during which the student is required to attend school.

Clause 10 inserts *new sections 31A to 31L* into the Act, to provide for secondary-tertiary programmes, as follows:

- *new section 31A* sets out the nature of a secondary-tertiary programme:
- *new section 31B* allows the Minister to recognise provider groups for secondary-tertiary programmes. Provider groups have at least 1 secondary and at least 1 tertiary member organisation. Group members must act co-operatively and share the group's obligations and responsibilities, as set out in *new section 31B*:
- *new section 31C* allows provider groups to provide secondary-tertiary programmes in accordance with a written agreement with the Secretary. Matters the agreement may cover, as well as provisions for cancelling or varying the agreement, are also set out in *new section 31C*:
- *new section 31D* requires a provider group to have a plan for each secondary-tertiary programme:
- *new section 31E* requires provider groups to report at least annually to the Secretary:
- *new section 31F* allows the Minister to recognise the organisations listed in *new section 31F* as lead providers of secondary-tertiary programmes:

- *new section 31G* allows lead providers to co-ordinate secondary-tertiary programmes in accordance with arrangements, approved by the Secretary, that are made with organisations providing components of the programme. The Secretary's ability to withdraw approval of an arrangement is also set out in *new section 31G*:
- *new section 31H* allows the Minister to publish Government policies or priorities for secondary-tertiary programmes, provider groups, and lead providers, or to issue a policy or priority to a provider group or lead provider:
- *new section 31I* enables secondary students to apply for entry into secondary-tertiary programmes. Entry is at the discretion of the provider group or lead provider:
- *new section 31J* requires provider groups and lead providers to notify students and parents about any portion of a secondary-tertiary programme that requires the student to attend a school:
- *new section 31K* provides for withdrawal from secondary-tertiary programmes:
- *new section 31L* requires provider groups and lead providers to give priority to domestic students for entry into secondary-tertiary programmes over entry by foreign students who are not exempt students.

Clause 11 repeals sections 35A to 35C and inserts *new sections 35A to 35S*, in relation to schools registered under current section 35A (**private schools**), as follows:

- *new section 35A* sets out how private schools may be provisionally or fully registered:
- *new section 35B* allows the Secretary to require managers of an unregistered private school to apply for registration:
- *new section 35C* sets out the criteria a private school must meet for registration:
- *new section 35D* describes suitable premises for private schools:
- *new section 35E* requires the Secretary's approval for additional or different premises:
- *new section 35F* describes suitable tuition standards for private schools:

- *new section 35G* sets out what must be taken into account when assessing whether a person is a fit and proper person to be a manager of a private school, and also requires the new management of a registered private school to be assessed in the same way:
- *new section 35H* requires the managers of a private school to advise the Secretary if the school is about to cease operation:
- *new section 35I* provides for reviews of private schools when provisionally registered and while fully registered:
- *new section 35J* requires private schools with a significant number of foreign students to contribute proportionally to the costs of reviews. *New section 35J* corresponds to the current section 35A(14):
- *new section 35K* allows the Secretary to take corrective action (including suspension of a private school's registration) as set out in that section, in the adverse circumstances described:
- *new section 35L* also allows the Secretary to suspend a private school's registration at any time if the welfare of the students at the school is at risk:
- *new section 35M* sets out the duration of suspension under *new section 35K or 35L*:
- *new section 35N* provides the process for cancellation of a private school's registration:
- *new sections 35O to 35Q* provide for grants to private schools and correspond to the current section 35C:
- *new section 35R* sets out what must be done if a student is suspended or expelled from a private school, and corresponds in *new subsections (1) to (4)* to the current section 35AA:
- *new section 35S* sets out offences in relation to the operation of private schools, and corresponds to the current section 35A(12).

Clause 12 amends section 78B, which relates to entering private schools under warrants, in case of offences in relation to the operation of private schools. The amendments are required as a consequence of the relocation of the offence provisions from section 35A to *new section 35S*.

Clause 13 amends section 139A, which relates to the prohibition of corporal punishment in schools, to update cross-references to the private schools' provisions as amended by *clause 11*.

Clause 14 amends section 144A by updating references to private schools in accordance with amendments made in *clause 11*.

Clause 15 amends section 236, which relates to private training establishments and the criteria for granting them registration. The amendments will set up a different regime for refunds to be made to foreign students who withdraw in specified circumstances from courses of 3 months or more. A *new subsection 236(5)* also clarifies the meaning of an expression used in the section.

Clause 16 amends section 236A, which relates to information, withdrawals, and refunds for students at private training establishments. The amendments include the following:

- implementation of a new regime for refunds to foreign students in courses of 3 months or more who withdraw from those courses:
- giving effect to current section 236(1)(d)(iv), which contemplates refunds being made to foreign students who withdraw in specified circumstances from courses of less than 3 months' duration:
- clarifying the meaning of an expression used in the section.

Clause 17 inserts a *new section 236AB*, relating to how the new refund requirements in *new section 236A(1)(f)* are to be set. The Minister must give notice in the *Gazette* as to various matters relating to the refunds, after consultation as specified in *new section 236AB*.

Clause 18 amends section 310, which relates to the meaning of early childhood education and care centres. The effect of the amendment is that limited attendance centres are not early childhood education and care centres, so they are not required to be licensed under the Act.

Part 2

Amendments to other enactments and transitional provision

Amendments to Education Act 1964

Clause 19 amends the Education Act 1964 by repealing or amending definitions in relation to private schools that are no longer needed because of the amendments made by *clause 11*.

Amendment to Education (Polytechnics) Amendment Act 2009

Clause 20 repeals section 17 of the Education (Polytechnics) Amendment Act 2009. Section 17 of that Act allowed secondary students to be dual-enrolled at a secondary school and the Manukau Institute of Technology. That provision is superseded by the amendments in *clause 10* relating to secondary-tertiary programmes.

Transitional provision

Clause 21 sets out the transitional arrangements for private schools that are fully or provisionally registered under the current section 35A, and their requirements in relation to *new section 35A*.

Regulatory impact statement

The regulatory impact statement relating to this Bill can be found at www.minedu.govt.nz/EducationAmendmentBill2 and <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Hon Anne Tolley

Education Amendment Bill (No 2)

Government Bill

Contents

		Page
1	Title	3
2	Commencement	4
3	Principal Act amended	4
Part 1		
Amendments to principal Act		
4	Interpretation	4
5	New section 4E inserted	6
	4E Courses for foreign students	6
6	How to select applicants who live outside home zone	6
7	Students required to enrol must attend school	6
8	Employment of school-age children	7
9	Ensuring attendance of students	7
10	New sections 31A to 31L inserted	7
	31A Nature of secondary-tertiary programme	7
	31B Provider group for secondary-tertiary programme	8
	31C Secretary may enter into agreement with provider group	8
	31D Provider group plan for secondary-tertiary programme	9
	31E Report to Secretary by provider group	9
	31F Recognition as lead provider of secondary-tertiary programme	9
	31G Lead provider to co-ordinate secondary-tertiary programme	10
	31H Government policies or priorities	11

Education Amendment Bill (No 2)

	31I	Entry into secondary-tertiary programme	11
	31J	Provider group or lead provider to notify student and parents about any school attendance requirement	11
	31K	Withdrawal from secondary-tertiary programme	12
	31L	Foreign students and secondary-tertiary programmes	12
11		New headings and sections 35A to 35S substituted	12
		<i>Registration of private schools</i>	
	35A	Provisional and full registration of private schools	12
	35B	Secretary may require application for registration of school	13
		<i>Criteria for registration as private school</i>	
	35C	Criteria for registration as private school	13
	35D	Suitable premises	14
	35E	Additional and substituted premises to be approved	14
	35F	Tuition standards	14
	35G	Managers to be fit and proper persons	15
		<i>Managers to advise Secretary of private school ceasing operation</i>	
	35H	Managers must advise Secretary of school ceasing operation	16
		<i>Review of private schools registered under section 35A</i>	
	35I	Review of schools registered under section 35A	16
	35J	Private schools with significant number of foreign students to pay proportion of review costs	17
		<i>Actions by Secretary in regard to schools registered under section 35A</i>	
	35K	Secretary's actions in regard to schools registered under section 35A	17
	35L	Suspension of registration	18
	35M	Duration of suspension	18
	35N	Process for cancellation of registration	19
		<i>Grants for private schools</i>	
	35O	Grants for private schools	19
	35P	Record-keeping in relation to grants to private schools	20

35Q	Providing accounts to Secretary	21
	<i>Suspensions and expulsions from private schools</i>	
35R	Suspensions and expulsions of students from private schools to be notified to Secretary	21
	<i>Offences in relation to private schools</i>	
35S	Offences in relation to operation of private schools	22
12	Entry where school suspected of being unregistered	22
13	No corporal punishment in early childhood services or registered schools	23
14	Secretary may require information for proper administration of Act	23
15	Grant or refusal of application	23
16	Information, withdrawals, and refunds	24
17	New section 236AB inserted	26
	236AB Refund requirements set by <i>Gazette</i> notice	26
18	Meaning of early childhood education and care centre	26
Part 2		
Amendments to other enactments and transitional provision		
<i>Amendments to Education Act 1964</i>		
19	Amendments to Education Act 1964	27
	<i>Amendment to Education (Polytechnics) Amendment Act 2009</i>	
20	Amendment to Education (Polytechnics) Amendment Act 2009	27
<i>Transitional provision</i>		
21	Continuation of registration if school registered under repealed section 35A	27

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Education Amendment Act (No 2) **2010**.

2 Commencement

- (1) **Sections 15 to 17** come into force 6 months after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act amended

This Act amends the Education Act 1989.

Part 1**Amendments to principal Act****4 Interpretation** 10

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

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

“**criteria for registration**, in relation to a private school or proposed private school, means the criteria set out in **section 35C** 15

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

“**industry training organisation** has the same meaning as in section 2 of the Industry Training Act 1992 20

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

“**lead provider** means a provider of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under **section 31F** as a lead provider 25

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

“**participating student** means a student undertaking a secondary-tertiary programme who is enrolled in any of the following: 30

“(a) a secondary school:

“(b) a composite school:

- “(c) a school that is registered under **section 35A**, other than a school registered under that section only as a primary school:
- “(d) a special school that is a relevant school within the meaning of section 246 5
- “**provider group** means a group of providers of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under **section 31B** as a provider group
- “**registered establishment** has the same meaning as it has in section 159 10
- “**review officer** has the same meaning as it has in section 323
- “**secondary component**, in relation to a secondary-tertiary programme, means the portion of the programme that consists of participation in secondary education, whether or not provided by the school in which the participating student is enrolled 15
- “**secondary-tertiary programme** has the meaning given to it in **section 31A**
- “**serious criminal activity** means any offence involving fraud, violence, or harm to children, any sexual offence, or any crime involving dishonesty 20
- “**tertiary component**, in relation to a secondary-tertiary programme, means the portion of the programme that consists of the participating student’s apprenticeship training (as defined in section 5 of the Modern Apprenticeship Training Act 2000), or participation in tertiary education that— 25
- “(a) is provided by any 1 or more of the following:
- “(i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246: 30
- “(ii) the managers of a school registered under **section 35A**, other than a school registered under that section only as a primary school:
- “(iii) a government training establishment:
- “(iv) an industry training organisation: 35
- “(v) an institution:
- “(vi) a registered establishment; and

“(b) may include work experience (other than work experience obtained by a student under section 71) as part of the programme that is approved by the provider of the secondary or tertiary component of the programme”.

5 New section 4E inserted 5

The following section is inserted after section 4D:

“4E Courses for foreign students

“(1) The board of a State school or the managers of a school registered under **section 35A** must not establish, or permit any student to enrol or continue to be enrolled in, any class, course, or programme, intended exclusively or mainly for foreign students, unless the class, course, or programme is for the time being approved by the New Zealand Qualifications Authority. 10

“(2) The New Zealand Qualifications Authority must not approve a class, course, or programme under **subsection (1)** unless satisfied on reasonable grounds that— 15

“(a) the school has or will have adequate staff, equipment, and premises to provide it; and

“(b) the standard of instruction provided in it will be no lower than the standard that would be expected in any similar class, course, or programme for domestic students.” 20

6 How to select applicants who live outside home zone

(1) Section 11F(1) is amended by repealing paragraphs (d) and (e) and substituting the following paragraphs: 25

“(d) fourth priority must be given to any applicant who is a child of a former student of the school:

“(e) fifth priority must be given to any applicant who is either a child of an employee of the board of the school or a child of a member of the board of the school: 30

“(f) sixth priority must be given to all other applicants.”

(2) Section 11F(2) is amended by omitting “or fifth” and substituting “fifth, or sixth”.

7 Students required to enrol must attend school

Section 25 is amended by adding the following subsection: 35

“(4) Nothing in subsections (1) to (3) applies to a participating student who is enrolled at a registered school for the purposes of the secondary component of his or her secondary-tertiary programme, but he or she must attend the school for any portion of the programme as notified by the provider group or lead provider under **section 31J**.” 5

8 Employment of school-age children

(1) Section 30(1) is amended by inserting the following subsection after subsection (a):

“(ab) in the case of a person who is a student participating in a secondary-tertiary programme, when the employment interferes with the person’s ability to undertake the secondary-tertiary programme; or” 10

(2) Section 30(1)(d) is amended by inserting the following subparagraph after subparagraph (i): 15

“(ia) in the case of a person who is a participating student, interferes with the person’s ability to undertake his or her secondary-tertiary programme; or”.

9 Ensuring attendance of students

Section 31 is amended by adding the following subsection: 20

“(9) This section applies to a participating student only in relation to any portion of his or her secondary-tertiary programme during which he or she is required to attend school, as notified by the provider group or lead provider under **section 31J**.” 25

10 New sections 31A to 31L inserted

The following sections are inserted after section 31:

“31A Nature of secondary-tertiary programme

A **secondary-tertiary programme** means a full-time programme for a participating student that— 30

“(a) consists of a secondary component and a tertiary component; and

“(b) is co-ordinated by a provider group or a lead provider.

“31B Provider group for secondary-tertiary programme

- “(1) The Minister may, by notice in the *Gazette*, recognise as a provider group of secondary-tertiary programmes a group of organisations that consists of—
- “(a) any 1 or more of the following: 5
 - “(i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
 - “(ii) a body corporate that is the manager of a school registered under **section 35A**, other than a school registered under that section only as a primary school; and 10
 - “(b) any 1 or more of the following:
 - “(i) a government training establishment:
 - “(ii) an industry training organisation: 15
 - “(iii) an institution:
 - “(iv) a registered establishment.
- “(2) Each member of a provider group is jointly and severally liable with the other members of the group in respect of the group’s obligations and responsibilities. 20
- “(3) Each member of a provider group must take all reasonable steps to work in a co-operative manner with the other members of the group.

“31C Secretary may enter into agreement with provider group

- “(1) A provider group may co-ordinate a secondary-tertiary programme, if the provider group has entered into a written agreement with the Secretary in relation to the programme. 25
- “(2) The matters that an agreement under **subsection (1)** may provide for, in relation to a secondary-tertiary programme, may include (without limitation) any 1 or more of the following: 30
- “(a) its organisation and operation:
 - “(b) its curriculum, courses, and any qualification resulting from it:
 - “(c) selection of students to participate in it:
 - “(d) clarification of responsibility for the welfare and educational performance of participating students: 35
 - “(e) pastoral care and career guidance for participating students:

- “(f) its funding, and the responsibility of specific members of the provider group in relation to that funding:
- “(g) the maximum number of students that may participate in it.
- “(3) The Secretary and the provider group may agree at any time to cancel or vary an agreement under **subsection (1)**. 5
- “(4) The Secretary or the provider group may cancel an agreement under **subsection (1)** by giving at least 6 months’ notice in writing to the provider group or the Secretary (as the case may be). 10
- “31D Provider group plan for secondary-tertiary programme**
- “(1) A provider group must—
- “(a) prepare and maintain a plan that contains short-term and long-term goals for each secondary-tertiary programme that it co-ordinates; and 15
- “(b) provide the Secretary with a copy of the plan.
- “(2) A provider group that alters any plan provided to the Secretary under **subsection (1)(b)** must provide the Secretary with a copy of the changed plan as soon as practicable.
- “31E Report to Secretary by provider group** 20
- “(1) A provider group must report at least annually to the Secretary regarding its performance and progress.
- “(2) The Secretary may, by notice in the *Gazette*, specify the format, or content, or both, required for reports that are to be made under **subsection (1)**. 25
- “31F Recognition as lead provider of secondary-tertiary programme**
- The Minister may, by notice in the *Gazette*, recognise as a lead provider of secondary-tertiary programmes any of the following: 30
- “(a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:

- “(b) a body corporate that is the manager of a school registered under **section 35A**, other than a school registered under that section only as a primary school:
- “(c) a government training establishment:
- “(d) an industry training organisation: 5
- “(e) an institution:
- “(f) a registered establishment.
- “**31G Lead provider to co-ordinate secondary-tertiary programme**
- “(1) A lead provider may co-ordinate a secondary-tertiary programme, if the lead provider has made an arrangement for the safety, welfare, and educational programmes of participating students that is— 10
- “(a) agreed to by the Secretary; or
- “(b) in a form approved by the Secretary. 15
- “(2) Any of the following may provide a secondary component or a tertiary component of a secondary-tertiary programme, after making an arrangement as specified in **subsection (1)** with the lead provider of the programme:
- “(a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246: 20
- “(b) the managers of a school registered under **section 35A**, other than a school registered under that section only as a primary school: 25
- “(c) a government training establishment:
- “(d) an industry training organisation:
- “(e) an institution:
- “(f) a registered establishment:
- “(g) an employer providing work experience under the programme. 30
- “(3) The Secretary may withdraw his or her agreement under **subsection (1)(a)**, or his or her approval under **subsection (1)(b)**, by giving at least 6 months’ notice in writing to the lead provider. 35

“31H Government policies or priorities

“(1) The Minister may, by notice in the *Gazette*, publish Government policies, or priorities, or both that apply in relation to any 1 or more of the following:

“(a) secondary-tertiary programmes: 5

“(b) provider groups, or specified types of provider groups:

“(c) lead providers, or specified types of lead providers.

“(2) The Minister may, by written notice to a provider group or lead provider, issue a Government policy or priority that applies in relation to the group or provider. 10

“(3) A provider group or lead provider must take all reasonable steps to comply with any Government policy or priority—

“(a) published under **subsection (1)**; or

“(b) notified under **subsection (2)**.

“(4) In this section, **comply** means to give effect to the Government policy or priority or to have regard to the Government policy or priority, as the context requires. 15

“31I Entry into secondary-tertiary programme

“(1) A student who is enrolled in any of the following may apply to a provider group or lead provider for his or her entry into a secondary-tertiary programme: 20

“(a) a secondary school:

“(b) a composite school:

“(c) a school that is registered under **section 35A**, other than a school registered under that section only as a primary school: 25

“(d) a special school that is a relevant school within the meaning of section 246.

“(2) Approval for a student’s entry into a secondary-tertiary programme is at the discretion of the provider group or lead provider. 30

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

The provider group or lead provider co-ordinating a participating student’s secondary-tertiary programme must take all reasonable steps to notify the student and his or her parents in 35

writing about any portion of the programme during which the student's participation in the programme requires his or her attendance at school.

“31K Withdrawal from secondary-tertiary programme

“(1) A participating student may withdraw from his or her secondary-tertiary programme at any time. 5

“(2) A provider group or lead provider (as the case may be) may withdraw its approval for a student's participation in a secondary-tertiary programme after consulting with the student.

“31L Foreign students and secondary-tertiary programmes

10

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

15

11 New headings and sections 35A to 35S substituted

Sections 35A to 35C are repealed and the following headings and sections substituted:

20

“Registration of private schools

“35A Provisional and full registration of private schools

“(1) The managers of an unregistered or proposed private school must apply to the Secretary, on a form provided by the Secretary for the purpose, for its provisional registration as a primary, secondary, or special private school, or as a school of 2 or all of those descriptions. 25

“(2) The Secretary must provisionally register a school in respect of which an application is made under **subsection (1)** as a school of the description or descriptions concerned if he or she is satisfied that the school or proposed school meets or is likely to meet the criteria for registration as a private school. 30

“(3) Provisional registration of a school or proposed school continues—

“(a) for 12 months (unless it is revoked earlier); or 35

- “(b) until the expiry of any period specified by the Secretary under **subsection (4)**.
- “(4) The Secretary may renew the provisional registration of a school only once, for a period specified by the Secretary, if he or she is satisfied that— 5
- “(a) exceptional circumstances exist in relation to the school; and
- “(b) the school is likely to meet the criteria for registration as a private school in that period.
- “(5) The Secretary must fully register a school as a school of the description or descriptions concerned if he or she is satisfied, having considered the review officer’s report under **section 35I(2)**, that a provisionally registered school meets the criteria for registration as a private school. 10
- “**35B Secretary may require application for registration of school** 15
- The Secretary may require the managers of a school that is not registered under **section 35A** to apply for its registration under that section if he or she considers that the school is operating as a school, whether or not certificates of exemption under section 21 are held in respect of all or any of the students being taught there. 20
- “Criteria for registration as private school*
- “**35C Criteria for registration as private school** 25
- The criteria for registration as a private school under **section 35A** are that the school—
- “(a) has premises that are suitable, as described in **section 35D**; and
- “(b) usually provides tuition for 9 or more students who are of or over the age of 5 years but are under the age of 16 years; and 30
- “(c) has staffing that is suitable to the age range and level of its students, the curriculum taught at the school, and the size of the school; and
- “(d) has equipment that is suitable for the curriculum being delivered or to be delivered at the school; and 35

- “(e) has a curriculum for teaching, learning, and assessment and makes details of the curriculum and its programme for delivery available for parents; and
- “(f) has suitable tuition standards, as described in **section 35F**; and 5
- “(g) has managers who are fit and proper persons (as described in **section 35G**) to be managers of a private school.
- “**35D Suitable premises**
- “(1) Suitable premises for a school registered under **section 35A** are premises that are suitable for a school of its description and the number of students at the school. 10
- “(2) **Subsection (1)** applies to all premises used by the school for the regular delivery of courses, whether or not the managers of the school own or lease the premises for the school. 15
- “**35E Additional and substituted premises to be approved**
- “(1) The managers of a school registered under **section 35A** must, in the circumstances set out in **subsection (2)**, notify the Secretary and obtain his or her approval before using new premises for the regular delivery of courses. 20
- “(2) The circumstances are that the managers of the school propose that the school is to occupy—
- “(a) premises that are in addition to its current premises; or
- “(b) different premises that are to replace the premises currently occupied by the school. 25
- “(3) When considering whether to grant approval of premises under **subsection (1)**, the Secretary must consider whether the premises are suitable, as described in **section 35D**.
- “**35F Tuition standards**
- “(1) Tuition of a suitable standard at a school registered under **section 35A** must include giving students tuition of a standard no lower than that of the tuition given to students enrolled at State schools of the same class levels. 30
- “(2) In assessing the standard of tuition, the mode of curriculum delivery and the regularity of instruction must be considered. 35

“35G Managers to be fit and proper persons

- “(1) In assessing whether a person who is a manager of a school is a fit and proper person to be a manager of a school registered under **section 35A**, the following matters must be taken into account: 5
- “(a) any conviction for a serious criminal activity:
 - “(b) any health problems that may affect the person’s ability to comply with his or her obligations towards the school and its students:
 - “(c) any adjudication of bankruptcy under the Insolvency Act 2006, or prohibition from being a director or promoter of, or being concerned or taking part in the management of, a company under any of sections 382, 383, 385, and 386A of the Companies Act 1993: 10
 - “(d) any previous cancellation under this Act or section 186 of the Education Act 1964 of the registration of a school of which the person was a manager: 15
 - “(e) any serious breach of the person’s statutory duties as manager of a school registered under **section 35A** of this Act or section 186 of the Education Act 1964: 20
 - “(f) any conviction for an offence under **section 35S**:
 - “(g) all other relevant matters.
- “(2) If the manager of a school is— 25
- “(a) a company, the assessment under **subsection (1)** applies to its directors:
 - “(b) an incorporated society or an incorporated trust board, the assessment under **subsection (1)** applies to its members.
- “(3) When the management of a school registered under **section 35A** changes in its entirety or is transferred to a new entity, the new managers must give notice to the Secretary and an assessment under **subsection (1)** must be made of the new managers of the school. 30

*“Managers to advise Secretary of private school
ceasing operation*

“35H Managers must advise Secretary of school ceasing operation

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

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

10

*“Review of private schools registered under
section 35A*

“35I Review of schools registered under section 35A

“(1) As soon as practicable after provisionally registering a school or proposed school under **section 35A(2)**, the Secretary must inform the Chief Review Officer of the provisional registration.

15

“(2) The Chief Review Officer must ensure that a review officer—

- “(a) reviews any school in action that is provisionally registered under **section 35A(2)** either—
 - “(i) between 6 and 12 months after the provisional registration of the school or proposed school; or
 - “(ii) earlier, by agreement with its managers; and
- “(b) prepares a written report and gives copies of it to the Secretary and the school’s managers.

20

25

“(3) The Chief Review Officer must ensure that a school, while registered under **section 35A(5)**, is reviewed in accordance with Part 28.

“(4) The Chief Review Officer must also ensure that the review officer who conducts a review under **subsection (3)**—

30

- “(a) prepares a written report on the review; and
- “(b) gives copies of it to the Secretary and the school’s principal (or other chief executive) and managers.

“(5) A review officer’s written report on a review under this section must also include—

35

- “(a) information as to whether the school meets the criteria for registration as a private school; and

“(b) information as to the areas in which improvement is required, if it does not meet the criteria.

“**35J Private schools with significant number of foreign students to pay proportion of review costs**

- “(1) The managers of a school registered under **section 35A** at which a significant number of foreign students are or will be enrolled must pay a proportion of the cost to the Chief Review Officer of every review of the school undertaken by a review officer. 5
- “(2) The proportion of the cost of a review payable under **subsection (1)** is the proportion that bears the same relation to the review’s total cost as the proportion that the number of foreign students enrolled, or to be enrolled, at the school bears to the total number of students enrolled, or to be enrolled, there. 10
- “(3) The proportion of the cost of a review that is payable under **subsection (1)** is— 15
- “(a) payable to the Chief Review Officer; and
- “(b) payable on written demand by the Chief Review Officer; and
- “(c) a debt due to the Chief Review Officer. 20
- “(4) In this section, **significant number of foreign students** means 29 or more foreign students. 29

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

“**35K Secretary’s actions in regard to schools registered under section 35A** 25

- “(1) The Secretary may take action in regard to a school registered under **section 35A** if—
- “(a) he or she considers that the school is not meeting all or any of the criteria for registration as a private school; or 30
- “(b) a review conducted under **section 35I** indicates that the school does not, or is not likely to, meet all or any of the criteria for registration as a private school; or
- “(c) the managers of the school have breached or are breaching their statutory duties in relation to the school under this or any other enactment; or 35

- “(d) he or she has reasonable grounds to believe that serious criminal activity is occurring in the school.
- “(2) If the Secretary is satisfied that any 1 or more of the grounds set out in **subsection (1)** exist in relation to a school registered under **section 35A**, he or she may do any 1 or more of the following: 5
- “(a) issue the school’s managers with a notice to comply:
- “(b) require the managers of a school to inform parents of the students at the school that the school is not meeting the criteria for registration as a private school: 10
- “(c) impose conditions on the school’s registration:
- “(d) suspend the school’s registration:
- “(e) cancel the school’s registration under **section 35N**.
- “(3) Any action taken by the Secretary under **subsection (2)**—
- “(a) must be proportionate to the seriousness of the school’s situation; and 15
- “(b) is in addition to any fine incurred or other penalty imposed under **section 35S** or under any other enactment.
- “**35L Suspension of registration** 20
- The Secretary may at any time suspend the registration of a school registered under **section 35A** if he or she has reasonable grounds to believe that the welfare of the students at the school is at risk, and—
- “(a) that it is unlikely that the risk can be managed by any practicable means other than by suspension of the registration; or 25
- “(b) that, although the risk could be managed by means other than by suspension of the registration, the amount of time necessary to do so is likely, in the opinion of the Secretary, to be excessive. 30
- “**35M Duration of suspension**
- “(1) Suspension under **section 35K(2)(d)** continues until the Secretary—
- “(a) is satisfied that the managers of the school have complied with all requirements imposed by him or her under any of **paragraphs (a) to (c) of section 35K(2)**; or 35
- “(b) cancels the school’s registration under **section 35N**.

- “(2) Suspension under **section 35L** continues until the Secretary—
- “(a) is satisfied that the welfare of the students at the school is no longer at risk; or
- “(b) cancels the school’s registration under **section 35N**. 5
- “**35N Process for cancellation of registration**
- “(1) The Secretary may cancel the registration of a school if, following an action by him or her taken under any of **paragraphs (a) to (d) of section 35K(2)**,—
- “(a) the school— 10
- “(i) does not improve sufficiently to meet the criteria for registration under **section 35A**; and
- “(ii) is not likely to do so, in the opinion of the Secretary, within a further reasonable time; or
- “(b) the managers of the school are continuing in breach of their statutory duties in relation to the school; or 15
- “(c) serious criminal activity continues to occur in the school.
- “(2) Before cancelling a school’s registration under **subsection (1)**, the Secretary must— 20
- “(a) take reasonable steps to obtain and consider any relevant information, including any report by a review officer; and
- “(b) give written notice to the managers of the school that he or she is considering cancelling the school’s registration, and give reasons; and 25
- “(c) give the managers of the school a reasonable opportunity to respond to the notice.

“Grants for private schools

- “**35O Grants for private schools** 30
- “(1) The Minister may make grants to the managers of schools registered under **section 35A** out of money appropriated by Parliament for the purpose.
- “(2) The Minister must determine the amount of each grant made under **subsection (1)**. 35

- “(3) A grant may be made unconditionally, or subject to conditions determined by the Minister.
- “(4) The managers of a school to which a grant is made subject to conditions must take all reasonable steps to ensure that the conditions are complied with. 5
- “35P Record-keeping in relation to grants to private schools**
- “(1) The managers of a school to which a grant has been made unconditionally under **section 35O** must ensure that records are kept—
- “(a) in respect of the year in which the grant was made and the year after; and 10
- “(b) in a manner approved by the Minister.
- “(2) The records must—
- “(a) show fully and correctly all the managers’ financial transactions, assets, liabilities, and funds; and 15
- “(b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- “(3) The managers of a school to which a grant under **section 35O** has been made subject to conditions must ensure that all necessary records are kept— 20
- “(a) in respect of the year in which the grant was made and the year after; and
- “(b) in a manner approved by the Minister.
- “(4) The records must— 25
- “(a) show fully and fairly—
- “(i) any of the managers’ financial transactions, assets, liabilities, and funds, that relate to or are or were affected by the making of the grants; and
- “(ii) that the conditions have been complied with; and 30
- “(b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- “(5) For the purposes of this section and **section 35Q**, the financial year of a school’s managers ends— 35
- “(a) at the close of the day specified by the Minister for the purpose; or

“(b) at the close of 30 June, if the Minister has not specified a day for the purpose.

“35Q Providing accounts to Secretary

As soon as practicable after the end of each financial year during which a school’s managers are required by **section 35P** 5 to keep records, they must—

“(a) have prepared an income and expenditure account, showing all financial transactions for the year records of which are required to be kept; and

“(b) have the account audited by a chartered accountant; and 10

“(c) give the Secretary copies of the account and the audit report on it.

“Suspensions and expulsions from private schools

“35R Suspensions and expulsions of students from private schools to be notified to Secretary 15

“(1) Immediately after a student has been suspended from attendance at, or expelled from, a school registered under **section 35A**, the school’s principal or head teacher must give the Secretary— 20

“(a) written notice of—

“(i) the student’s name and last known address; and

“(ii) the day on which the student was suspended or expelled or, if the student was first suspended and later expelled, the days on which the student was suspended and expelled, and the length of the suspension; and 25

“(b) a written statement of the reasons for the student’s suspension or expulsion.

“(2) Unless the student is within a reasonable time reinstated at the school or enrolled at some other registered school, the Secretary must (if the student is younger than 16) and may (if the student is 16 or older)— 30

“(a) arrange for the student to be enrolled at some other reasonably convenient registered school that the student can attend; or 35

- “(b) direct the board of a State school that is not an integrated school to enrol the student at the school; and, in that case, the board must do so; or
- “(c) direct a parent of the student to have the student enrolled at a correspondence school. 5
- “(3) The Secretary must not give a direction under **subsection (2)** unless he or she has also made all reasonable attempts to consult the student, the student’s parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student’s education or welfare. 10
- “(4) A direction under **subsection (2)(b)** overrides section 11M.
- “(5) To the extent that there is any inconsistency between this section and a contract of enrolment at the school, this section prevails. 15

“Offences in relation to private schools

“35S Offences in relation to operation of private schools

- “(1) A manager of a private school that is not registered under **section 35A** commits an offence if it operates as a school.
- “(2) A manager of a private school that is registered under **section 35A** as a school of a particular description or descriptions commits an offence if the school operates as a school of another description or of other descriptions. 20
- “(3) The managers of a private school that is registered under **section 35A** commit an offence if the school ceases to operate before the managers tell the Secretary that it will cease to operate. 25
- “(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$200 for every day or part of a day on which the offence took place.” 30

12 Entry where school suspected of being unregistered

- (1) The heading to section 78B is amended by inserting “**private**” after “**where**”.
- (2) Section 78B(1) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of **section 35S**”. 35

- (3) Section 78B(3) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of **section 35S**”.
- (4) Section 78B(5) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of **section 35S**”.

13 No corporal punishment in early childhood services or registered schools

- (1) Section 139A(1)(b) is amended by omitting “(within the meaning of section 35A(1)) of a private school” and substituting “of a school registered under **section 35A**”.
- (2) Section 139A(2)(b) is amended by omitting “(within the meaning of section 35A(1)) of a private school” and substituting “of a school registered under **section 35A**”.

14 Secretary may require information for proper administration of Act

- (1) Section 144A(1)(c) is amended by omitting “(within the meaning of section 35A(1)) of any private school registered under that section” and substituting “of any school registered under **section 35A**”.
- (2) Section 144A is amended by repealing subsection (2) and substituting the following subsection:
- “(2) For the purposes of the provisions of this Act relating to the registration and inspection of private schools, the following information is relevant to the question of whether or not a school meets the criteria for registration as a private school:
- “(a) information that is required under subsection (1) to be given to the Secretary; and
- “(b) information that is reasonably necessary or desirable for the Secretary to have for the proper administration of this Act.”

15 Grant or refusal of application

- (1) Section 236(1)(c) is amended by inserting “and the notice made under **section 236AB**” after “section 236A”.

- (2) Section 236(1)(d)(ii) is amended by inserting “domestic” after “every”.
- (3) Section 236(1)(d)(iii) is amended by inserting “domestic” after “every”.
- (4) Section 236(1)(d) is amended by inserting the following subparagraphs after subparagraph (iii):
- “(iiia) allows, or will allow, every foreign student enrolled for a course of study or training (other than a course of less than 3 months’ duration) to withdraw from it at any time within the period specified in the notice made under **section 236AB**; and
- “(iiib) refunds, or will refund, to every foreign student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that course, and, if withdrawal from that course also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under **section 236AB**; and”.
- (5) Section 236 is amended by adding the following subsection:
- “(5) For the purposes of this section, **first day of the course for which the attendance of students at the establishment is required** means, in relation to a student enrolled for a course of study or training at the establishment, the first day on which the establishment requires the student to attend the establishment to begin the course of study or training.”
- 16 Information, withdrawals, and refunds**
- (1) Section 236A(1)(c) is amended by inserting “domestic” after “every”.
- (2) Section 236A(1)(d) is amended by—
- (a) inserting “domestic” after “every”; and
- (b) adding “; and”.
- (3) Section 236A(1) is amended by adding the following paragraphs:

- “(e) allow every foreign student enrolled for a course of study or training that is a course of 3 months or more to withdraw from it at any time within the period specified in the notice made under **section 236AB**; and
- “(f) refund to every foreign student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that course, and, if withdrawal from the course also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under **section 236AB**; and
- “(g) allow every foreign student enrolled for a course of study or training that is of less than 3 months’ duration to withdraw from it within a period (being less than 7 days) specified by the Qualifications Authority; and
- “(h) refund to every foreign student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the course.”
- (4) Section 236A(2) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- “(a) the establishment must ensure that there is paid to an independent person approved by the Qualifications Authority for the purpose out of that payment or those payments, to be held in trust to be available for refund to the student under paragraph (d) or (f) of subsection (1) (as the case may be), an amount equal to the amount required to be refunded to the student under that paragraph; and
- “(b) if satisfied that the student withdrew from the course within the period specified in subsection (1)(c) or (e) (as the case may be), the person must pay the amount held to the student; and
- “(c) if satisfied that the student did not withdraw from the course within the period specified in subsection (1)(c) or (e) (as the case may be), the person must (as the case requires) pay the amount held to the establishment, or hold it for the establishment’s creditors.”

(5) Section 236A is amended by adding the following subsection:

“(3) For the purposes of this section, **first day of the course for which the attendance of students at the establishment is required** means, in relation to a student enrolled for a course of study or training at an establishment, the first day on which the establishment requires the student to attend the establishment to begin the course of study or training.”

17 New section 236AB inserted

The following section is inserted after section 236A:

“**236AB Refund requirements set by *Gazette* notice** 10

“(1) The Minister must specify, by notice in the *Gazette*, for the purposes of refunds under **section 236A(1)(f)**,—

“(a) the period within which a foreign student may withdraw from a course of 3 months or more and be entitled to a refund under that section; and 15

“(b) the maximum percentage of the payment or payments that an establishment may retain; and

“(c) the cost components of the fee total on which the maximum percentage is determined; and

“(d) the expenses or categories of expense that the establishment must show that it has incurred in relation to a foreign student in order to deduct the maximum percentage. 20

“(2) Before giving notice in the *Gazette* under **subsection (1)**, the Minister must consult with any 1 or more of the following, as he or she considers appropriate: 25

“(a) private training establishments:

“(b) sector and industry representative organisations:

“(c) any other relevant bodies.

“(3) A notice under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and for the purposes of the Acts and Regulations Publication Act 1989.” 30

18 Meaning of early childhood education and care centre

Section 310(2) is amended by inserting the following paragraph after paragraph (h): 35

- “(ha) any premises, during any period of use for the education or care of 3 or more children under the age of 6, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children’s parents or caregivers are— 5
- “(i) in close proximity to the children and are able to be contacted; and
- “(ii) able to resume responsibility for the children at short notice.”.

Part 2 10

Amendments to other enactments and transitional provision

Amendments to Education Act 1964

19 Amendments to Education Act 1964

- (1) This section amends the Education Act 1964. 15
- (2) Section 2(1) is amended by repealing the definitions of **private primary school**, **private school**, and **private secondary school**.
- (3) The definition of **secondary education** in section 2(1) is amended by omitting “private secondary school” and substituting “secondary private school registered under **section 35A** of the Education Act 1989”. 20

Amendment to Education (Polytechnics) Amendment Act 2009

20 Amendment to Education (Polytechnics) Amendment Act 2009 25

- (1) This section amends the Education (Polytechnics) Amendment Act 2009.
- (2) Section 17 and the heading above section 17 are repealed.

Transitional provision

21 Continuation of registration if school registered under repealed section 35A 30

- (1) In this section,—

- (a) **old section 35A** means the section 35A of the Education Act 1989 repealed by **section 11** of this Act; and
- (b) **new section 35A** means the **section 35A** of the Education Act 1989 substituted by **section 11** of this Act.
- (2) A school that, immediately before new **section 35A** comes into force, is or is deemed to be fully registered as a school of a particular description or descriptions under old section 35A, is to be regarded as fully registered as a school of that description or those descriptions under new **section 35A**. 5
- (3) Despite **subsection (2)**, the managers of a school to which that subsection applies must comply with the criteria for registration as a private school under new **section 35A** as if it had been registered under that section. 10
- (4) A school that, immediately before new **section 35A** comes into force, is provisionally registered as a school of a particular description or descriptions under old section 35A, is to be regarded as provisionally registered as a school of that description or those descriptions under new **section 35A** when that section comes into force. 15
- (5) Despite **subsection (4)**, when the Secretary is deciding whether to fully register a school to which that subsection applies, he or she must do so as if— 20
- (a) old section 35A had not been repealed by **section 11** of this Act, but continued in force; and
- (b) he or she were considering under old section 35A whether to fully register a provisionally registered school. 25
-