

# **Education Amendment Bill (No 4)**

Government Bill

As reported from the Education and Science  
Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Education Amendment Bill (No 4) and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This bill seeks to amend the Education Act 1989. It includes provisions concerned with three broad policy areas.

The bill would strengthen the regulation of the tertiary education system by improving and modernising the New Zealand Qualifications Authority's legal arrangements. It would facilitate the expansion of international education in New Zealand by establishing Education New Zealand as a Crown agency, and would safeguard the quality and reputation of the New Zealand education system by updating and strengthening NZQA's compliance and enforcement regime. It would increase transparency and accountability in the tertiary education system regarding compulsory student services fees, student loans, and allowances.

This commentary covers the major amendments that we recommend.

### **Compulsory student services fees**

We recommend amending clause 26 by deleting new subsections 227A(1) and (2), and inserting new subsections 227A(1) to (2A). Section 227A(1) as introduced would allow the responsible Minister to give a direction to institutions on a number of matters for the purpose of ensuring accountability in the use of compulsory student services fees. The amendments would enable the Minister to give a direction listing the categories of student services an institution may make available to students, and would also enable the Minister to require institutions to establish adequate arrangements for joint or consultative decision-making with students over which actual categories were to be provided. We recommend that equivalent amendments be made to section 235CA in clause 30.

We recommend a consequential amendment to clause 25, inserting new subsection 227(1BA). This would make it clear that where an institution had been given a ministerial direction regarding categories of services, the fee fixed by the institution's council would be limited to covering services in those categories.

### **Private training establishments**

We recommend amending clause 30, which would repeal Part 18 (Private training establishments) of the Act and insert new Part 18, consisting of new sections 232 to 236A.

Removing new section 233(1)(i)(i) would remove the requirement for the New Zealand Qualifications Authority to take into account whether a Private Training Establishment was a signatory to the Code of Practice for the Pastoral Care of International Students when considering the PTE's application for registration. A PTE can become a signatory to the code of practice only if it is already registered, so this requirement of the bill as introduced was circular and unworkable.

Inserting new section 234(1A) would allow a PTE's registration to continue, instead of lapsing, where NZQA had granted an extension to the PTE's accreditation to deliver a programme or approval to provide a training scheme.

Amending new section 236A(1)(a) would place an explicit duty on PTEs to keep accurate enrolment and academic records for each student in a programme or training scheme.

### **New Zealand Qualifications Authority**

We recommend amending clause 36, which would repeal Part 20 (New Zealand Qualifications Authority) of the Act and insert new Part 20, consisting of new sections 246 to 256G.

Amendments to new sections 249, 251, 252, 254, 254A, and 255 would include express reference to industry training organisations. This would avoid confusion over whether ITOs were included in the expression “other bodies”.

Further amendments to new section 251 would align the definition of “industry training organisation” with the existing definition in Part 13, section 159(1), of the Education Act 1989; and would exempt the workplace training components of training schemes from the requirement for training scheme approval.

Amending new section 255A(2) would require an officer inspecting a PTE to provide a list of all documents removed and to return the originals unless this would prejudice any investigation.

### **Education New Zealand**

We recommend amending clause 37, which would insert new Part 21 (Education New Zealand), consisting of new sections 269 to 274A, into the Act.

Amending new section 272B would remove the power for the responsible Minister to give directions on the advice that the stakeholder advisory committee provides to the board of “Education New Zealand”. The new section would allow the Minister to specify the committee’s terms of reference for topics or subject areas on which the committee could advise the board. We do not believe the Minister should also need to give directions on the advice itself.

Amending new section 274 would remove the blanket exemption from the Commerce Act 1986, and provide that specified actions or arrangements of “Education New Zealand” may be exempted from the application of that Act as indicated in section 43 of the Commerce Act 1986.

Inserting new section 274B would limit liability for redundancy compensation arising out of the re-employment of Education New Zealand Trust employees in the new entity. There would otherwise be a risk of technical redundancies arising from the transfer of employees to the new entity.

### **Transitional provisions**

We recommend inserting new clause 40(2) to provide for the expiry on 31 December 2012 of all existing policies and criteria under former section 253 and rules under former section 265 that are deemed to be rules made under the new section 253. We believe that this sunset provision is desirable, as an indefinite timeframe for the conversion of existing policies, criteria, and rules to new rules would create uncertainty.

### **Green Party minority view**

The Green Party supports the main aims of the bill, including changes to international education and the New Zealand Qualifications Authority, but believes this legislation should not proceed because of the unacceptable changes to student services fees. The Green Party believes the student service fee changes address the symptom and not the cause of increasing fees, gives too much power to the Minister for Tertiary Education, and that the rules made in regulation will reduce flexibility and site-specific need, delivering worse outcomes for student services.

The Green Party is concerned that student services fees have increased dramatically in recent years, but believes this is in large part due to the fee maxima, which only applies to tuition fees and other funding pressures faced by institutions. The Green Party does agree with the regulatory impact statement that there is no evidence that recent rises would become the norm in the future.

This bill gives extensive powers to the Minister to dictate the terms on which institutions can charge services fees, including for which services and potentially setting dollar limits. Given the Government's support for the Education (Freedom of Association) members' bill and the change to a compulsory "opt-in student membership" environment, institutions will likely have to take responsibility for providing or funding many of the services currently provided by students' associations, and there is a risk that this bill could constrain their ability to do so. It is possible that needed services could fall through the gaps under these changes.

Student needs can differ across New Zealand or after unforeseen events like natural disasters, and by ministerial regulation prescribing

services that can be funded, flexibility is reduced with the perverse outcome that students' needs may not be met.

Different models were presented by submitters to achieve the bill's aim of increased accountability and transparency, which the Green Party believes would have been better at achieving those aims than concentrating decision-making power in the Minister's hands.

The Green Party supports institutions having the decision-making powers when they involve and consult widely with students. The Green Party agrees with some submitters that the best way to ensure accountability is to empower students and their representatives to have influence over the levies including forming a part of the governance of these services. The Green Party notes exactly how students will be involved in decision-making is left up to the Minister to issue a directive on, and would have preferred to have seen an explicit role for student decision-making included in legislation.

## **Appendix**

### **Committee process**

The Education Amendment Bill (No 4) was referred to the committee on 12 April 2011. The closing date for submissions was 13 May 2011. We received and considered 18 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Ministry of Education and the New Zealand Qualifications Authority.

### **Committee membership**

Allan Peachey (Chairperson)

Kelvin Davis

Catherine Delahunty

Jo Goodhew

Colin King

Sue Moroney

Hon Heather Roy

David Shearer

Louise Upston

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Education Amendment Bill (No 4)

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~

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*Hon Steven Joyce*

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Government Bill

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

**1 Title**

This Act is the Education Amendment Act (No 4) **2011**.

**2 Commencement**

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 Education Act 1989**

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*Amendments to Part 1 of principal Act*

**4 Interpretation**

(1) The definitions of **assisted student**, **exempt student**, and **foreign student** in section 2(1) are repealed.

(2) The definition of **domestic student** in section 2(1) is amended by omitting “foreign” and substituting “international”. 15

(3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**international student**, at any time, means a person who is not then a domestic student”. 20

(4) Section 2(3) is repealed.

**5 Right to free primary and secondary education**

Section 3 is amended by omitting “a foreign” and substituting “an international”.

**6 Enrolment of foreign students**

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(1) The heading to section 4 is amended by omitting “foreign” and substituting “international”.

(2) Section 4(1), (2), (7), and (8) are amended by omitting “a foreign” and substituting in each case “an international”.



- (3) Section 4 is amended by repealing subsections (3) to (6) and substituting the following subsections:
- “(3) Except as provided in **subsection (5)**, no international student may be enrolled at a State school if the student’s enrolment has the effect that a domestic student who is entitled to enrol there and has applied for enrolment is not able to be enrolled. 5
- “(4) Except as provided in **subsection (5)**, no international student may be enrolled in any subject, course, or programme at a State school if the student’s enrolment has the effect that a domestic student who is entitled to enrol in the subject, course, or programme and has applied for enrolment in it is not able to be enrolled in it. 10
- “(5) Although domestic students may not be able to be enrolled, an international student may be enrolled at a State school, or in any subject, course, or programme at a State school, if the enrolment is in a vacant place— 15
- “(a) that the board established for international students; and
- “(b) the continued availability of which is dependent on the fees payable by international students enrolled in it.” 20

#### 7 **Certain foreign students may enrol at State schools as of right**

- (1) The heading to section 4A is amended by omitting “**foreign**” and substituting “**international**”.
- (2) Section 4A(1) is amended by omitting “foreign” and substituting “international”. 25
- (3) Section 4A(3) is amended by omitting “a foreign” and substituting “an international”.

#### 8 **Fees for foreign students**

- (1) The heading to section 4B is amended by omitting “**foreign**” and substituting “**international**”. 30
- (2) Section 4B(1) and (2) are amended by omitting “foreign” and substituting in each case “international”.
- (3) Section 4B(3), (4), and (7) are amended by omitting “a foreign” and substituting in each case “an international”. 35

**9 Minister may exempt certain foreign students from payment of fees**

- (1) The heading to section 4C is amended by omitting “foreign” and substituting “international”.
- (2) Section 4C is amended by omitting “foreign” and substituting “international”. 5

**10 Boards to reimburse the Crown for expenditure in respect of foreign students**

- (1) The heading to section 4D is amended by omitting “foreign” and substituting “international”. 10
- (2) Section 4D(1), (2), and (4) are amended by omitting in each place where it appears “foreign” and substituting in each case “international”.
- (3) Section 4D(3) is amended by omitting “a foreign” and substituting “an international”. 15

**11 Courses for foreign students**

- (1) The heading to section 4E is amended by omitting “foreign” and substituting “international”.
- (2) Section 4E(1) is amended by omitting “foreign” and substituting “international”. 20

**12 Right of reconsideration**

Section 10(1)(b) is amended by omitting “a foreign” and substituting “an international”.

*Amendments to Part 3 of principal Act*

**13 New Zealand citizens and residents between 6 and 16 to go to school 25**

Section 20(1) is amended by omitting “a foreign” and substituting “an international”.

**14 Foreign students and secondary-tertiary programmes**

- (1) The heading to section 31L is amended by omitting “foreign” and substituting “international”. 30

- (2) Section 31L is amended by omitting “a foreign student (other than an exempt student)” and substituting “an international student”.
- (3) Section 31L is amended by omitting “, or any exempt student,”. 5

*Amendments to Part 7 of principal Act*

**15 Interpretation**

- (1) The definitions of **assisted student**, **domestic student**, **exempt student**, and **foreign student** in section 60 are repealed.
- (2) Section 60 is amended by inserting the following definitions 10  
in their appropriate alphabetical order:  
“**domestic student** has the same meaning as in section 2(1)  
“**international student** has the same meaning as in section 2(1)”.

- 15A Object of provisions relating to tertiary education** 15  
Section 159AAA(2) is amended by omitting “Career Services” and substituting “Careers New Zealand”.

*Amendments to Part 13 of principal Act*

**16 Interpretation**

- (1) The definitions of **accreditation**, **approval**, **approved nationally recognised course**, **assisted student**, **award**, **course of study or training**, **exempt student**, **foreign student**, and **nationally recognised award** in section 159(1) are repealed. 20
- (2) Section 159(1) is amended by inserting the following definitions in their appropriate alphabetical order: 25  
“**accreditation** means an accreditation granted by the Qualifications Authority under **section 250**  
“**approved programme** means a programme approved by the Qualifications Authority under **section 249**  
“**approved programme or training scheme** means an approved programme or approved training scheme 30  
“**approved training scheme** means a training scheme approved by the Qualifications Authority under **section 251**

- “**award** means—
- “(a) a certificate, diploma, degree, or other qualification that is listed on the Qualifications Framework; or
- “(b) a certificate or other document granted in recognition of a student’s achievement and completion of a training scheme; or 5
- “(c) a certificate granted in recognition of a student’s achievement in scholarship examinations at secondary education
- “**international student** has the meaning given in section 2(1) 10
- “**programme**, in relation to an institution within the meaning of **section 249(1)**, means a programme of study or training leading to a qualification listed on the Qualifications Framework
- “**Qualifications Framework** means the framework referred to in **section 248** 15
- “**training scheme** means study or training that—
- “(a) leads to an award; but
- “(b) does not, of itself, lead to an award of a qualification listed on the Qualifications Framework”. 20
- (3) The definition of **domestic student** in section 159(1) is amended by omitting “foreign” and substituting “international”.
- 16A** **Importance of tertiary education strategy**
- Section 159AB is amended by omitting “Career Services” and substituting “Careers New Zealand”.** 25
- 16B** **Ministry may hold and disseminate information**
- Section 159AE is amended by omitting “Career Services” and substituting “Careers New Zealand”.**
- Amendments to Part 15 of principal Act* 30
- 17** **Powers of institutions**
- Section 192(11)(b) is amended by omitting “course” and substituting “programme”.

**18 Effect of disestablishment**

Section 217(4) is amended by omitting “course” in each place where it appears and substituting in each case “programme”.

*Amendments to Part 16 of principal Act***19 Heading to Part 16 amended**

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The heading to Part 16 is amended by omitting “**Courses**” and substituting “**Programmes**”.

**20 Courses**

(1) The heading to section 223 is amended by omitting “**Courses**” and substituting “**Programmes**”.

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(2) Section 223(1) is amended by omitting “courses” and substituting “programmes”.

(3) Section 223(2) and (3) are amended by omitting “course” in each place where it appears and substituting in each case “programme”.

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**21 New section 224 substituted**

Section 224 is repealed and the following section substituted:

**“224 Enrolment of students**

“(1) In this section,—

“**eligible student**, in relation to a programme or training scheme at an institution, means a person who is eligible to be enrolled as a student in that programme or scheme by virtue of **subsection (2)**

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“**year** means a period of 12 months commencing on 1 January.

“(2) Subject to this section, a person is eligible to be enrolled as a student at any institution in a programme or training scheme provided by the institution if, and only if,—

25

“(a) either—

“(i) the person is a domestic student; or

“(ii) the council of the institution consents; and

30

“(b) the person holds the minimum entry requirements for the programme or scheme as determined by the council; and

“(c) the person has attained,—

- “(i) if the institution has fixed a minimum age for enrolment at the institution, the age so fixed; and
- “(ii) if the institution has fixed a minimum age for enrolment in the programme or scheme, the age so fixed. 5
- “(3) **Subsection (2)(b) and (c)** do not apply to a person if—
- “(a) the person has attained the age of 20 years; or
- “(b) the council of the institution is satisfied that the person is capable of undertaking the programme or scheme concerned. 10
- “(4) An eligible student who applies for enrolment in a programme or training scheme at an institution is, subject to this section, entitled to be enrolled in that programme or scheme.
- “(5) If the council of an institution is satisfied that it is necessary to do so because of insufficiency of staff, accommodation, or equipment, the council may determine the maximum number of students who may be enrolled in a particular programme or training scheme at the institution in a particular year. 15
- “(6) Where—
- “(a) the maximum number of students who may be enrolled at an institution in a particular programme or training scheme in a particular year is determined by the council of the institution under **subsection (5)**; and 20
- “(b) the number of eligible students who apply for enrolment in that programme or training scheme in that year exceeds the maximum number so determined,— 25
- the council may, in the selection of the students to be enrolled, give preference to eligible persons who are included in a class of persons that is under-represented among the students undertaking the programme or training scheme. 30
- “(7) The council of an institution must not permit the enrolment at the institution of an international student for all or part of a programme unless—
- “(a) the programme is approved by the Qualifications Authority and the institution is accredited to provide the programme; or 35
- “(b) the programme is exempted under **section 232B**.

- “(8) The council of an institution must not permit the enrolment at the institution of an international student for all or part of a training scheme unless the scheme is an approved training scheme or exempted under section **232B**.
- “(9) Except as provided in **subsection (11)**, no international student may be enrolled at an institution if the student’s enrolment at the institution would have the effect that a domestic student who is eligible to enrol at the institution and has applied for enrolment would not be able to be enrolled. 5
- “(10) Except as provided in **subsection (11)**, no international student may be enrolled in any programme or training scheme at an institution if the student’s enrolment in that programme or scheme would have the effect that a domestic student who is eligible to enrol in the programme or scheme and has applied for enrolment in the programme or scheme would not be able to be enrolled in it. 10 15
- “(11) Although domestic students may not be able to be enrolled at an institution or in a programme or training scheme at an institution, an international student may be enrolled at the institution, or in that programme or scheme at the institution, if the enrolment is in a vacant place— 20
- “(a) that the council of the institution established for international students; and
  - “(b) whose continued availability is dependent on the fees payable by international students enrolled in it. 25
- “(12) Nothing in this section prevents the council of an institution from refusing to permit, or from cancelling, the enrolment of a person as a student at the institution, or in a particular programme or scheme at the institution, on the ground that— 30
- “(a) the person is not of good character; or
  - “(b) the person has been guilty of misconduct or a breach of discipline; or
  - “(c) the person is enrolled for full-time instruction in another institution or in a school; or
  - “(d) the person has made insufficient progress in the person’s study or training after a reasonable trial at the institution or at another institution. 35
- “(13) The chief executive of an institution that provides approved programmes of pre-service teacher training must ensure that

the appropriate authorities of the institution liaise with the appropriate authorities of other institutions that provide such programmes so as to establish common requirements to govern the selection of people for enrolment, and the enrolment of people, in those programmes.” 5

## 22 Records relating to students

Section 225(1) is amended by omitting “course” in each place where it appears and substituting in each case “programme”.

## 23 Disclosure of enrolment information by institutions

- (1) Section 226A(6) is amended by repealing paragraph (c) and substituting the following paragraph: 10

“(c) details of the education or training in which they are so enrolled, and details of the fees for that education or training.”

- (2) Sections 226A(6)(d) and (e) are amended by omitting “course” and substituting in each case “education or training”. 15

- (3) Section 226A(6)(h) is amended by adding “or for the determination or provision of an allowance or a benefit”. 15

## 24 Offences concerning information requests

- (1) Section 226B is amended by inserting the following subsection after subsection (1): 20

“(1A) An institution commits an offence and is liable on summary conviction to a penalty specified in subsection (2) if, in response to any requirement to supply information under **section 226A**, the institution intentionally— 25

“(a) makes a false or misleading statement; or

“(b) makes a statement from which any material matter has been omitted; or

“(c) provides any false or misleading paper, document, or record; or 30

“(d) provides a paper, document, or record from which any material matter has been omitted.”

- (2) Section 226B(2) is amended by inserting “or (1A)” after “subsection (1)”. 30



**25 Fees for domestic students**

(1) Section 227(1) and (2) are amended by omitting “course” and substituting in each case “programme”.

(2) Section 227 is amended by inserting the following subsections after subsection (1A):

“(1B) The council of an institution may fix, or specify a means for calculating or ascertaining, a fee for the provision of student services that are provided by the institution or by another person or body on behalf of the institution.

“(1BA) If the Minister gives an institution a direction under **section 227A(1)(a)** listing the categories of student services that the institution may make available, the council of the institution must ensure that any fees fixed under **subsection (1B)** for the provision of student services relate only to the types of student services that fall within those categories.

“(1C) If an institution is given a direction under **section 227A(3)**, the council of the institution must not fix, in relation to the amount that students may be charged for student services, a fee that exceeds the maximum amount specified in the direction.”

(3) Section 227(2) is amended by inserting the following paragraph after paragraph (a):

“(ab) the fee for the provision of student services (if any) determined under **subsection (1B)**; and”.

**26 New section 227A inserted**

The following section is inserted after section 227:

**“227A Ministerial direction to institutions relating to compulsory student services fees**

“(1) ~~For the purpose of ensuring accountability in the use of compulsory student services fees determined under **section 227(1B)**, the Minister may give a written direction to an institution or institutions to do 1 or more of the following things:~~

~~“(a) hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited;~~

- ~~“(b) establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the institution, or their representatives, on all or any of the following matters:~~
- ~~“(i) the particular type of student services to be made available to students: 5~~
  - ~~“(ii) the amount that students may be charged for those student services (the student services fee):~~
  - ~~“(iii) the procurement of student services:~~
  - ~~“(iv) the method for authorising expenditure on student services: 10~~
- ~~“(c) include in the institution’s annual report (under section 220) a description of the services funded out of the student services fee and a statement of the fee income and expenditure for each particular type of student services. 15~~
- ~~“(2) A direction given under **subsection (1)**—~~
- ~~“(a) may, if it relates to a decision to be made on a matter described in **subsection (1)(b)(i)** (the particular type of student services to be made available to students), specify the categories of student services or a range of student services in respect of which the decision is to be made: 20~~
  - ~~“(b) must specify when the direction must be complied with.~~
- ~~“(1) For the purpose of ensuring accountability in the use of compulsory student services fees determined under **section 227(1B)**, the Minister may give an institution or institutions a written direction that—~~
- ~~“(a) lists the categories of student services that the institution or institutions may make available to students: 25~~
  - ~~“(b) requires the institution or institutions to hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited: 30~~
  - ~~“(c) requires the institution or institutions to establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the institution, or their representatives, on all or any of the following matters: 35~~

- “(i) the types of student services that, subject to **subsection (2)(a)**, are to be made available to students:
- “(ii) the categories of student services that, subject to **subsection (2)(b)**, are to be made available to students: 5
- “(iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**):
- “(iv) the procurement of student services: 10
- “(v) the method for authorising expenditure on student services:
- “(d) requires the institution or institutions to include in the institution’s annual report (under section 220) a description of the services funded out of the student services fee and a statement of the fee income and expenditure for each type of student service. 15
- “(2) If the Minister lists under **subsection (1)(a)** categories of student services that may be made available to students (**listed categories**),— 20
- “(a) the types of student services described in **subsection (1)(c)(i)** must fall within the listed categories; and
- “(b) the categories of student services described in **subsection (1)(c)(ii)** must be listed categories.
- “(2A) A direction given under **subsection (1)**— 25
- “(a) may include all or any of the things specified in **paragraphs (a) to (d)** of that subsection:
- “(b) must specify when the direction must be complied with.
- “(3) If an institution does not comply with a direction given under **subsection (1)**, the Minister may give a written direction to that institution specifying— 30
- “(a) the ~~particular type~~ **types** of student services that the institution may make available to students; and
- “(b) the maximum amount that students may be charged for those services; and 35
- “(c) when the direction must be complied with.
- “(4) Before giving a direction under **subsection (1) or (3)**, the Minister must,—
- “(a) by notice in the *Gazette*,—

- “(i) set out the proposed direction; and  
 “(ii) invite submissions on it; and  
 “(iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and 5  
 “(b) consider the submissions (if any) on the proposed direction.  
 “(5) The council of an institution that is given a direction under **subsection (1) or (3)** may make statutes under section 194(1) for the purpose of giving effect to the direction.” 10

## 28 Fees for foreign students

- (1) The heading to section 228 is amended by omitting “**foreign**” and substituting “**international**”.  
 (2) Section 228(2), (2A), (3), (4) and (7) are amended by omitting “course” in each place where it appears and substituting in each case “programme”. 15  
 (3) Section 228(1), (2), (2A), (3), (4), and (7) are amended by omitting “a foreign” in each place where it appears and substituting in each case “an international”.  
 (4) Section 228(2) and (7)(c) are amended by omitting “foreign” 20 and substituting in each case “international”.

## 29 Tertiary institutions to give prospective students information about fees

- (1) Section 228A(a) is amended by omitting “courses” and substituting “programmes”. 25  
 (2) Section 228A(b) is amended by omitting “course” and substituting “programme”.  
 (3) Section 228A is amended by adding “; and” and also by adding the following paragraph:  
 “(c) any fee fixed under **section 227(1B)** that must be paid 30 to the institution for the provision of student services.”

### *New Part 18 of principal Act substituted*

## 30 New Part 18 substituted

Part 18 is repealed and the following Part substituted:

**“Part 18**  
**“Private training establishments**

*“Interpretation*

**“232 Interpretation**

In this Part, unless the context otherwise requires,— 5

“**Authority** means the Qualifications Authority

“**code** means the code of practice established under section 238F

“**governing member**, in relation to a private training establishment, means— 10

“(a) any director:

“(b) any member occupying a position equivalent to that of a director:

“(c) if the establishment is a trust, any trustee:

“(d) if the establishment is a partnership, any partner: 15

“(e) any senior manager:

“(f) any shareholder with a controlling interest in the establishment

“**senior manager**, in relation to a private training establishment, means— 20

“(a) the chief executive officer or person occupying an equivalent position; or

“(b) any member of staff in charge of academic issues, marketing, administration, finance, student fee trust funds, or student services. 25

*“Programmes and training schemes in which international students enrolled*

**“232A Requirements that private training establishments must comply with before enrolling international students**

“(1) A private training establishment must not enrol an international student in, or permit an international student to begin to undertake, all or part of a programme at the establishment unless— 30

“(a) the establishment is registered under **section 233** and is a signatory to the code; and 35

“(b) either—

- “(i) the programme is an approved programme and the establishment is accredited to provide the entire programme; or
- “(ii) the programme is of less than 3 months’ duration and is exempted under **section 232B**; and 5
- “(c) if standards from the Directory of Assessment Standards are included in the programme, the establishment has a consent to assess against standards.
- “(2) A private training establishment must not enrol an international student to begin to undertake a training scheme at the establishment unless— 10
- “(a) the establishment is a registered establishment and is a signatory to the code; and
- “(b) either—
- “(i) the training scheme is an approved training scheme; or 15
- “(ii) the training scheme is of less than 3 months’ duration and is exempted under **section 232B**; and
- “(c) if standards from the Directory of Assessment Standards are included in the training scheme, the establishment has a consent to assess against those standards. 20
- “(3) For the purposes of this section and **section 232B**, a programme or training scheme is of less than 3 months’ duration if the period starting on the day on which the programme or scheme starts and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which the programme or training scheme is, or is proposed to be, provided. 25
- “Compare: 1989 No 80 s 232
- “**232B Exemptions** 30
- “(1) The Authority may, by notice in the *Gazette*,—
- “(a) exempt programmes for the purposes of **section 232A(1)(b)(ii)**; or
- “(b) exempt training schemes for the purposes of **section 232A(2)(b)(ii)**. 35
- “(2) A notice under **subsection (1)**—

- “(a) may exempt only programmes or training schemes that are, or are likely to be, of less than 3 months’ duration; and
- “(b) may identify programmes or training schemes, or classes of programmes or training schemes, that are exempt; and 5
- “(c) may identify programmes or training schemes by reference to a provider, or a class of providers, that offers them; and
- “(d) may be in respect of programmes or training schemes that have been completed, are in progress, or have not yet started. 10

“Compare: 1989 No 80 s 232(2) and (3)

**“232C Requirement to be registered before providing approved programmes or training schemes 15**

A private training establishment must be registered before it can provide an approved programme or training scheme to a student.

“Compare: 1989 No 80 s 233

*“Applications for registration 20*

**“232D Applications for registration of private training establishments**

- “(1) A private training establishment that is a body corporate may apply to the Authority for registration of the establishment as a private training establishment for the purposes of this Act. 25
- “(2) The application must—
  - “(a) include a written statement setting out—
    - “(i) the kinds of education the establishment proposes to provide; and
    - “(ii) the outcomes it seeks to achieve through the provision of those kinds of education; and 30
  - “(b) demonstrate how the establishment intends to meet the requirements of **sections 233(1), 233A(1), and 233B(1) and (2)**; and
  - “(c) contain a statutory declaration from each governing member of the establishment in respect of— 35

- “(i) any material conflicts of interest arising from the person’s role as a governing member of the establishment; and
- “(ii) any interests that the person has in organisations in the education or immigration sector that provide goods or services to tertiary students; and 5
- “(d) contain a statutory declaration from each governing member of the establishment in respect of the matters described in **section 233A(1)(a) to (g)**; and
- “(e) describe the arrangements that the establishment has in place to manage conflicts of interest that may arise; and 10
- “(f) be in a form and contain any other information that the Authority requires; and
- “(g) be accompanied by an amount that the Authority requires as a deposit on the fee charged under **section 254(2)(vii)**. 15
- “(3) The Authority must not consider an application for registration if the applicant does not provide all the information required under **subsection (2)**. 20
- “Compare: 1989 No 80 ss 234, 235
- “232E Authority may verify identity of governing members of private training establishment**
- “(1) The Authority may require a private training establishment to provide, to the satisfaction of the Authority, evidence of the identities of its governing members— 25
- “(a) before considering an application for registration from the establishment; or
- “(b) at any time there is a change in the membership of the governing members of the establishment.
- “(2) When acting under **subsection (1)**, the Authority may interview any governing member of the establishment for the purpose of verifying his or her identity. 30



*“Determination of application***“233 Grant or refusal of application**

- “(1) The Authority must grant an application for registration of a private training establishment, and may grant the application, only if it is satisfied that— 5
- “(a) every governing member of the establishment is a fit and proper person (after considering the criteria set out in **section 233A**); and
  - “(b) the establishment has in place effective arrangements for managing any conflicts of interest that exist or may arise; and 10
  - “(c) no governing member of the establishment has a material conflict of interest that the Authority considers is or is likely to be unmanageable; and
  - “(d) no governing member of the establishment has an interest of a kind described in **section 232D(2)(c)(ii)** that the Authority considers is or is likely to be unmanageable; and 15
  - “(e) the establishment has, or will at the relevant time have, adequate staff, equipment, and premises to provide its programmes or training schemes; and 20
  - “(f) the establishment,—
    - “(i) in the case of an establishment that is already operational, has acceptable financial management practices and performance (for example, is able to pay its staff, taxes, and creditors); and 25
    - “(ii) in the case of an establishment that is not yet operational, is likely to have acceptable financial management practices and performance (for example, is likely to be able to pay its staff, taxes, and creditors); and 30
  - “(g) the establishment complies, or is capable of complying and likely to comply, with the conditions of registration under **section 233B**; and
  - “(h) before accepting the enrolment of any prospective student, the establishment provides or will provide that student with a written statement of— 35
    - “(i) the total costs and other financial commitments associated with the programme or training

- scheme for which the student seeks ~~enrolment:~~  
enrolment; and
- “(ii) any material conflicts of interest of any of the governing members of the establishment; and
- “(iii) any interests of a kind described in **section 232D(2)(c)(ii)**; and 5
- ~~“(i) in the case of an establishment that intends to enrol international students, that the establishment—~~
- ~~“(i) is a signatory to the code established under section 238F; or 10~~
- ~~“(ii) will become a signatory to the code before enrolling any international students.~~
- “(i) in the case of an establishment that intends to enrol international students, the establishment will become a signatory to the code before enrolling any international students. 15
- “(2) Registration may be granted without limitation as to time or for a specified period.
- “(3) The grant of registration does not entitle the establishment or any of its students to receive financial assistance out of public money appropriated by Parliament. 20
- “(4) The Authority may refuse to grant registration to a private training establishment or withdraw the establishment’s registration (if already granted) if the Authority is satisfied that a governing member of the establishment has provided a false or misleading declaration under **section 232D(2)(c)**. 25
- “(5) The Authority must give written notice to a private training establishment—
- “(a) when it grants, refuses to grant, or withdraws registration; and 30
- “(b) if it refuses or withdraws registration, give reasons for doing so.
- “233A Criteria for determining whether governing member of private training establishment is fit and proper person**
- “(1) For the purpose of determining under **section 233(1)(a)** whether a governing member of a private training establishment is a fit and proper person for that position, the Authority 35

must give any weight that it considers appropriate to all of the following matters:

- “(a) the person’s experience in the provision of education services (for example, any previous involvement in a registered private training establishment); and 5
  - “(b) whether the person was a governing member of a registered private training establishment that was closed, sold due to insolvency, or taken over; and
  - “(c) whether the person has been convicted of any offence involving fraud, violence, or dishonesty, or any offence under this Act or section 352 of the Immigration Act 2009; and 10
  - “(d) whether the person is a defendant in proceedings in respect of an offence described in **paragraph (c)**; and
  - “(e) whether the person was adjudicated bankrupt under the Insolvency Act 2006 or the Insolvency Act 1967; and 15
  - “(f) whether the person is prohibited from being a director or promoter of, or from being concerned or taking part in the management of, a company under any of sections 382, 383, 385, and 386A of the Companies Act 1993; and 20
  - “(g) whether the person has failed to disclose any material conflict of interest as required under **section 232D(2)(c)(i)**; and
  - “(h) any other matter that the Authority considers relevant. 25
- “(2) If the applicant has had direct involvement in the provision of education services that have failed, the Authority must give the applicant an opportunity to explain why the risk of this occurring again is unlikely.

*“Conditions and other requirements of registration”* 30

**“233B Conditions of registration**

- “(1) It is a condition of registration of a private training establishment that it will at all times comply with the requirements in the rules made under **section 253**, except to the extent that the Authority exempts the establishment, by a condition on its registration, from compliance. 35

- “(2) It is a condition of registration that a registered establishment will keep the written statement required under **section 232D(2)(a)** up to date.
- “(3) It is a condition of registration that a registered establishment will ensure that— 5
- “(a) existing governing members keep the declarations required under **section 232D(2)(c) and (d)** up to date; and
- “(b) any new governing member ~~submit~~ submits the declarations required under ~~sections~~**section 232D(2)(c) and (d)** before commencing as a governing member of the establishment. 10
- “(4) The Authority may impose conditions on the registration of an establishment that are specific to the establishment or a group or class of establishments. 15
- “(5) The Authority may at any time, with the agreement of the establishment,—
- “(a) impose new conditions on the establishment’s registration; or
- “(b) amend or revoke any existing conditions. 20
- “(6) The Authority may, without the agreement of an establishment, impose conditions on the establishment’s registration, or amend or revoke any existing conditions, but only if the Authority has first—
- “(a) given written notice to the establishment of its intentions; and 25
- “(b) given the establishment a reasonable opportunity to respond to the notice; and
- “(c) considered any submissions made by the establishment in response to the notice. 30
- “(7) When conditions are imposed, amended, or revoked, the Authority must give written notice to the establishment of the new, amended, or revoked conditions.

“Compare: 1989 No 80 s 236AA

**“233C Annual fee**

Every registered private training establishment must pay the Authority an annual registration fee of an amount prescribed by or determined under rules made under **section 253**.

*“Cancellation and lapse of registration”* 5

**“233D Cancellation of registration**

**“(1)** The Authority may cancel the registration of a registered private training establishment—

**“(a)** if it is satisfied on reasonable grounds that—

**“(i)** the establishment no longer meets 1 or more of the criteria set out in **section 233(1)**; or 10

**“(ii)** the establishment is not complying, or has not complied, with 1 or more of the conditions applying to it; or

**“(b)** if the establishment has provided false or misleading information in its application for registration; or 15

**“(c)** at the written request of the establishment.

**“(2)** The Authority must cancel the registration of a private training establishment if—

**“(a)** the establishment has been convicted of an offence against— 20

**“(i)** this Act; or

**“(ii)** section 352 of the Immigration Act 2009; or

**“(b)** a governing member of the establishment is convicted of any serious criminal activity or any offence referred to in **paragraph (a)**, and the establishment fails to comply with a written notice issued by the Authority on reasonable grounds requiring that the person be removed, within 2 months of receipt of the notice, from his or her position as a governing member and from every other position in the establishment. 25 30

**“(3)** Before cancelling a registration under **subsection (1)(a) or (b)**, the Authority must—

**“(a)** notify the establishment that it is considering cancelling the establishment’s registration, and give reasons; and 35

**“(b)** give the establishment a reasonable opportunity to respond to the notice; and

- “(c) consider any submissions made by the establishment in response to the notice.
- “(4) If the Authority cancels a registration, it must give notice of its decision to both the establishment and the Commission, with reasons. 5
- “(5) Nothing in this section limits the Authority’s powers under **section 255(7)(a)** to cancel an establishment’s registration.  
“Compare: 1989 No 80 s 237
- “**233E Effect of cancellation** 10
- “(1) Cancellation of registration under **section 233D** takes effect on the date specified by the Authority in the notice given under **section 233D(4)** (the **date of cancellation**). 10
- “(2) If the registration of a registered private training establishment is cancelled under **section 233D**,—
- “(a) from the date of cancellation,— 15
- “(i) all approved programmes or training schemes granted to the establishment are withdrawn; and
- “(ii) all accreditations granted to the establishment are withdrawn; and
- “(iii) all consents to assess against standards granted to the establishment are withdrawn; and 20
- “(b) no notice is required to be given to the establishment for those withdrawals.
- “Compare: 1989 No 80 237(5), (6)
- “**234 Lapse of registration** 25
- “(1) The registration of a registered private training establishment lapses—
- “(a) on the date that is 1 year after registration is granted if,—
- “(i) within that period, the establishment does not provide an approved programme that it is accredited to provide to enrolled students; and 30
- “(ii) within that period, the establishment does not provide an approved training scheme to enrolled students: 35
- “(b) on the date that is 1 year after the establishment has ceased to provide to enrolled students—

- “(i) any approved programme it is accredited to provide; and
- “(ii) any approved training scheme.
- “(1A) **Subsection (1)** does not affect the registration of a private training establishment if— 5
- “(a) the time for the lapse of the establishment’s accreditation is extended under **section 250B(2)** beyond either of the dates specified in **subsection (1)** of this section, in which case the establishment’s registration lapses when the accreditation lapses; or 10
- “(b) the time for the lapse of the establishment’s training scheme approval is extended under **section 251C(2)** beyond either of the dates specified in **subsection (1)** of this section, in which case the establishment’s registration lapses when the training scheme approval lapses. 15
- “(2) If a registered private training establishment is required under this Act to pay any fees to the Authority, and fails to pay those fees after receiving 2 reminder notices within 3 months, the registration of the establishment lapses on the date that is 1 calendar month after the date of the second reminder notice 20 from the Authority.
- “(3) The Authority must give written notice of the lapse of an accreditation to the establishment.

*“Fees for domestic students*

- “**234A Fees for domestic students must not exceed maximums set in conditions of funding** 25
- “(1) A registered private training establishment that receives funding under section 159YA or 159ZC must not exceed the maximum amount when fixing a tuition fee or a fee of a particular kind for any programme or training scheme at the establishment. 30
- “(2) If a registered private training establishment is given a direction under **section 235CA(3)**, the establishment must not fix, in relation to the amount that students may be charged for student services, a fee that exceeds the maximum amount specified in the direction. 35

“(3) In **subsection (1)**, the **maximum amount** means the maximum specified in a condition imposed under section 159YC or 159ZD(2) (whichever is applicable) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.

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“Compare: 1989 No 80 s 236C

*“Information that must be given to prospective students*

“**234B Information that private training establishments must give prospective students**

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Every private training establishment must—

“(a) ensure that all printed and other information made available to prospective students has full details of—

“(i) the total fees for each programme or training scheme, including fees for class or lecture materials, books, special clothing, safety equipment, tools, and any other items that are or may be provided to students enrolled for that programme or training scheme, and including any students association membership fees; and

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20

“(ii) the class or lecture materials, books, special clothing, safety equipment, tools, and other items that are or may be required by the establishment to be bought or provided by students enrolled for each programme or scheme; and

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“(b) before accepting the enrolment of any prospective student, give the student a written statement of—

“(i) the total costs of the programme or training scheme and all other financial commitments associated with the programme or training scheme; and

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“(ii) the cost of fees charged for student services provided by the establishment; and

“(iii) any material conflicts of interest of any of the governing members of the establishment; and

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“(iv) any interests of a kind described in any statement required under **section 232D(2)(c)(ii)**; and



- “(c) give every prospective student a written statement of his or her entitlements under **sections 235 and 235A**, in the event that the student withdraws from a programme or training scheme.

“Compare: 1989 No 80 s 236A

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*“Protection of student fees*

**“234C Interpretation**

- “(1) In **sections 234D to 235C**,—

~~“refund period means, in relation to a domestic student who is enrolled in a programme or part of a programme, or enrolled in a training scheme, the 7 days after the first day of the programme or scheme for which the attendance of the student at the establishment is required~~

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“independent trustee, in relation to a private training establishment, means a trustee that does not provide any other service to the establishment other than that referred to in **section 234E**

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“refund period means, in relation to a domestic student who is enrolled in a programme or part of a programme, or enrolled in a training scheme, the 7 days after the first day of the programme or scheme for which the attendance of the student at the establishment is required

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“trustee means Public Trust, a trustee company under the Trustee Companies Act 1967, a chartered accountant in public practice, or a lawyer whose practising certificate allows the holding of trust funds.

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- “(2) In **sections 234D to 235C**, the requirement that funds paid by or on behalf of a student be deposited with an independent trustee applies to all components of any fee payable by the student (for example, it includes any component of the fee payable by the student in respect of accommodation costs or agent commissions).

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**“234D Application of rules relating to student fee protection**

- “(1) This section applies to a person who receives money from a student for the purpose of enrolling, or helping the student to

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enrol, in a programme or training scheme at a private training establishment.

“(2) A person to whom this section applies must comply with the requirements of the rules made under **section 253** that relate to student fee protection. 5

“**234E Student fees must be deposited with independent trustee**

“(1) If a private training establishment receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the establishment must— 10

“(a) deposit those funds, as soon as practicable, with an independent trustee approved by the Authority; and

“(b) hold those funds on trust for the student until they are deposited with the independent trustee.

“(2) If a person to whom **section 234D** applies receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the person must— 15

“(a) deposit those funds, as soon as practicable, with an independent trustee approved by the Authority unless the establishment has made alternative arrangements that are acceptable to the Authority; and 20

“(b) hold those funds on trust for the student until they are deposited with the independent trustee or in accordance with the alternative arrangements referred to **paragraph (a)**. 25

~~“(3) The requirement that funds paid by or on behalf of a student be deposited with an independent trustee applies to all components of any fee payable by a student who has enrolled with the establishment through a person to whom **section 234D** applies (for example, it includes any component of the fee payable by the student in respect of accommodation costs or agent commissions). 30~~

“(4) An independent trustee approved by the Authority must comply with the requirements of any rules made under **section 253** relating to student fee protection. 35

“(5) The Authority—

- “(a) may withdraw its approval of a particular trustee if satisfied that the trustee is not managing the trust funds in accordance with the requirements of the rules; and
- “(b) must, if approval for a trustee is withdrawn, appoint a new trustee in accordance with the rules. 5

**“235 Refund entitlements of domestic students**

- “(1) A domestic student who is enrolled at a private training establishment for all or part of a programme or training scheme that is of more than 3 months’ duration and who withdraws from that programme or scheme within the refund period is entitled to a refund, without deduction, of so much of any payment, or of the sum of any payments, made by the student in respect of the programme or scheme, and, if withdrawal from the programme or scheme also constitutes complete withdrawal from the establishment, in respect of enrolment at the establishment, as exceeds \$500 or 10% of the amount of that payment or of the sum of those payments, whichever is the lesser. 10 15
- “(2) If the student withdraws from a programme or training scheme within the refund period, the independent trustee must refund all payments made ~~by the student~~ to it by the private training establishment in respect of the programme or scheme— 20
- “(a) to the trustee of the student’s new education provider; or
- “(b) if the fee has been paid for by student loan money, to the department defined in **section 235E(1)**; or 25
- “(c) to the student, if neither **paragraph (a)** nor **(b)** applies.
- “(3) When the refund period, in relation to any fees paid by or behalf of a student, has expired,—
- “(a) the fees paid must continue to be held in trust by the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under **section 253**; or 30
- “(b) the private training establishment may, if the Authority approves, make alternative arrangements in relation to the fees paid. 35
- ~~“(4) A private training establishment must—~~
- ~~“(a) allow every student enrolled for a programme or training scheme that is of less than 3 months’ duration to~~

- ~~withdraw from it within a period (being less than 7 days) specified by the Authority; and~~
- ~~“(b) refund to every student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the programme or training scheme.”~~ 5
- ~~“(5) For the purposes of **subsection (4)**, a programme or a training scheme is of less than 3 months’ duration if the period starting on the day on which the programme or scheme starts and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which the programme or training scheme is, or is proposed to be, provided.”~~ 10
- “235A Refund entitlements of international students**
- “(1) A private training establishment must— 15
- “(a) allow every international student enrolled for a programme or training scheme that is of 3 months’ duration or more to withdraw from it at any time within the refund period; and
- “(b) refund to every international student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that programme or training scheme, and, if withdrawal from the programme or scheme also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under **section 235B**; and 20 25
- “(c) allow every international student enrolled for a programme or training scheme that is of less than 3 months’ duration to withdraw from it within a period (being less than 7 days) specified by the Authority; and 30
- “(d) refund to every international student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the programme or training scheme. 35

- “(2) For the purposes of **subsection (1)(c)**, a programme or training scheme is of less than 3 months’ duration if the period starting on the day on which the programme or scheme starts and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which the programme or training scheme is, or is proposed to be, provided. 5
- “(3) When the refund period, in relation to any fees paid by or on behalf of an international student, has expired,—
- “(a) the fees paid must continue to be held in trust with the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under **section 253**; or 10
- “(b) the private training establishment may, if the Authority approves, make alternative arrangements in relation to the fees paid. 15
- “(4) In this section, **refund period** means the period referred to in **section 235B(1)(a)** as specified in the notice made under **section 235B**.
- “**235B Refund requirements set by Gazette notice** 20
- “(1) The Minister must specify, by notice in the *Gazette*, for the purposes of refunds under **section 235A**,—
- “(a) the period within which an international student may withdraw from a programme or training scheme of 3 months’ duration or more and be entitled to a refund under that section; and 25
- “(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 30
- “(d) the expenses or categories of expenses that the establishment must show that it has incurred in relation to an international student in order to deduct the maximum percentage.
- “(2) Before giving notice in the *Gazette* under **subsection (1)**, the Minister must, as the Minister considers appropriate, consult with any 1 or more of the following: 35
- “(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. 5
- “**235C Rules apply if students withdraw because of programme or training scheme closure**  
Any fees paid by or on behalf of any student who withdraws from a programme or training scheme because of the closure of the programme or scheme are subject to the protections set out in the rules made under **section 253**. 10
- “**235CA Ministerial direction to registered private training establishments relating to compulsory student services fees**
- “(1) For the purposes of ensuring accountability in the use of compulsory student services fees, the Minister may give a written direction to a registered private training establishment or registered private training establishments to do 1 or more of the following things: 15
- “(a) hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services); and if the fees are to be held in an account, ensure that the account is audited: 20
- “(b) establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the establishment, or their representatives, on all or any of the following matters: 25
- “(i) the particular type of student services to be made available to students: 30
- “(ii) the amount that students may be charged for those student services (the **student services fee**):
- “(iii) the procurement of student services:
- “(iv) the method for authorising expenditure on student services:
- “(c) provide each year to students a written report describing the services that have been funded out of the student 35

~~services fee and a statement of the fee income and expenditure on each particular type of student services.~~

- “(1) For the purpose of ensuring accountability in the use of compulsory student services fees, the Minister may give a registered private training establishment or registered private training establishments a written direction that— 5
- “(a) lists the categories of student services that the establishment or establishments may make available to students:
- “(b) requires the establishment or establishments to hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited: 10
- “(c) requires the establishment or establishments to establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the establishment, or their representatives, on all or any of the following matters: 15
- “(i) the types of student services that, subject to **subsection (2)(a)**, are to be made available to students: 20
- “(ii) the categories of student services that, subject to **subsection (2)(b)**, are to be made available to students:
- “(iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**): 25
- “(iv) the procurement of student services:
- “(v) the method for authorising expenditure on student services: 30
- “(d) requires the establishment or establishments to provide each year to students a written report describing the services that have been funded out of the student services fee and a statement of the fee income and expenditure on each type of student service. 35
- ~~“(2) A direction given under **subsection (1)**—~~
- ~~“(a) may, if it relates to a decision to be made on a matter described in **subsection (1)(b)(i)** (the particular type of student services to be made available to students),~~

- ~~specify the categories of student services or a range of student services in respect of which the decision is to be made.~~
- ~~“(b) must specify when the direction must be complied with.~~
- “(2) If the Minister lists under **subsection (1)(a)** categories of student services that may be made available to students (**listed categories**),— 5
- “(a) the types of student services described in **subsection (1)(c)(i)** must fall within the listed categories; and
- “(b) the categories of student services described in **subsection (1)(c)(ii)** must be listed categories. 10
- “(2A) A direction given under **subsection (1)**—
- “(a) may include all or any of the things specified in **paragraphs (a) to (d)** of that subsection:
- “(b) must specify when it must be complied with. 15
- “(3) If a registered private training establishment does not comply with a direction given under **subsection (1)**, the Minister may give a written direction to that establishment specifying—
- “(a) the ~~particular type~~ types of student services that the establishment may make available to students; and 20
- “(b) the maximum amount that students may be charged for those services; and
- “(c) when the direction must be complied with.
- “(4) Before giving a direction under **subsection (1) or (3)**, the Minister must,— 25
- “(a) by notice in the *Gazette*,—
- “(i) set out the proposed direction; and
- “(ii) invite submissions on it; and
- “(iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and 30
- “(b) consider the submissions (if any) on the proposed direction.
- “(5) In **subsection (1)**, **compulsory student services fees** are fees for the provision of student services that a student must pay to a registered private training establishment as a condition of enrolment in a programme or training scheme at the establishment. 35



*“Information sharing with other government departments*

**“235D Private training establishment to notify immigration officer if student withdraws from programme or training scheme**

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“(1) A private training establishment must ensure that, within 7 days of the withdrawal of any student from a programme or training scheme at the establishment, an immigration officer (within the meaning of section 4 of the Immigration Act 2009) is given written notice of the name of the student and the programme or training scheme, and the day on which the student withdrew.

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“(2) **Subsection (1)** does not apply to a student if the establishment is satisfied on reasonable grounds that the student is a domestic student.

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“Compare: 1989 No 80 s 236B

**“235E Disclosure of enrolment information by private training establishments**

“(1) In this section, unless the context otherwise requires,—

“**allowance** means an allowance established by regulations made under section 303, or identified by *Gazette* notice under section 307AB

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“**benefit** means an unemployment benefit or a sickness benefit under the Social Security Act 1964, or an independent youth benefit under section 60F of that Act

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“**chief executive** means the chief executive of the department

“**department** means the department for the time being responsible for the administration of the Social Security Act 1964 and for the administration of Part 25 of this Act

“**specified period** means any period specified in a notice under **subsection (3)**

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“**student loan** and **student loan scheme** have the same meanings as they have in section 2(1) of the Student Loan Scheme Act 1992.

“(2) The purpose of this section is to facilitate the disclosure of information by governing bodies of private training establishments to the department, in order to verify—

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- “(a) the entitlement or eligibility of any person to or for any benefit or allowance or student loan; or
- “(b) the amount of any benefit or allowance or student loan to which any person is or was entitled or for which any person is or was eligible. 5
- “(3) For the purpose of this section, the chief executive may from time to time, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive and any institution (or, where they are unable to agree, in accordance with arrangements under that Act settled by the Privacy Commissioner appointed under the Privacy Act 1993), by notice in writing, or electronically, require the institution to supply all or any of the information set out in **subsection (4)**, in respect of people— 10
- “(a) who are (or were in any specified period) enrolled as students at the private training establishment; or 15
- “(b) whose name and date of birth (being the name and date of birth of any person who is, or was during any specified period, receiving a benefit or allowance or student loan) is supplied to the private training establishment by the chief executive, together with the notice. 20
- “(4) A notice under **subsection (3)** may require the private training establishment to supply the information specified in the notice either immediately or at specified times during the academic year, or both, and in the latter case may require the private training establishment to supply at those times only details of any changes to the information the private training establishment has previously supplied under this section. 25
- “(5) A notice under **subsection (3)** may include— 30
- “(a) an identification number assigned by the chief executive to any person who is referred to in the notice; or
- “(b) an identification number assigned to any such person by the private training establishment; or
- “(c) both.
- “(6) The details referred to in **subsection (3)** are— 35
- “(a) their—
- “(i) full names and addresses; and
- “(ii) dates of birth:

- “(b) their identification numbers (being either or both of the identification numbers referred to in **subsection (5)**):
- “(c) details of the education or training in which they are so enrolled, and details of the fees for that education or training: 5
- “(d) if, during the specified period, they enrolled for any such education or training or ceased to be so enrolled or ceased to be enrolled as a student, the details of each such event and the respective dates on which the event occurred: 10
- “(e) details of their academic performance in any such education or training:
- “(f) details of their citizenship or residency status in New Zealand:
- “(g) details of any allowances granted to them by the private training establishment on behalf of the Secretary in any academic year before the 1999 academic year: 15
- “(h) details reasonably required by the chief executive for the administration of the student loan scheme or for the provision or determination of a benefit or allowance. 20
- “(7) As soon as possible after the time or times specified in a requirement under **subsection (3)**, a private training establishment must supply the information required to the chief executive or any employee or agent of the department authorised by the chief executive to receive such information. 25
- “(8) Information supplied by a private training establishment under **subsection (7)** must be in a form previously agreed between the private training establishment and the chief executive under the Privacy Act 1993 (or, where they are unable to agree, in a form settled by the Privacy Commissioner appointed under the Privacy Act 1993), and may include coded information. 30
- “(9) Section 104 of the Privacy Act 1993 applies as if subsection (1) of that section also provided that, in relation to the information matching programme in section 226A of this Act, the Commissioner, before seeking a report on any of the matters in section 104(2)(a), (d), or (e) from a private training establishment, must first seek a report on the matter from the de- 35

partment for the time being responsible for the administration of the Social Security Act 1964.

“Compare: 1989 No 80 s 238B

“**236 Offences concerning information requests**

“(1) A private training establishment that intentionally fails or refuses to comply with **section 235E(7)** commits an offence and is liable on summary conviction to the penalty specified in **subsection (3)**. 5

“(2) A private training establishment commits an offence and is liable on summary conviction to the penalty specified in **subsection (3)** if, in response to any requirement to supply information under **section 235E(7)**, the establishment intentionally— 10

“(a) makes a false or misleading statement; or

“(b) makes a statement from which any material matter has been omitted; or 15

“(c) provides any false or misleading paper, document, or record; or

“(d) provides a paper, document, or record from which any material matter has been omitted. 20

“(3) The maximum penalty for an offence against **subsection (1) or (2)** is a fine not exceeding \$5,000, and, if the offence is a continuing one, a fine not exceeding \$500 for each day the offence continues.

“Compare: 1989 No 80 s 238C 25

“*Student records*

“**236A Duties of private training establishments to maintain student records**

“(1) Every private training establishment must—

“(a) keep accurate enrolment and academic records for each student enrolled in a programme or training scheme provided by the establishment; and 30

“(b) comply with rules made under **section 253(1)(n)** in respect of those records; and

“(c) ensure that the enrolment records required to be kept under this section are up to date; and 35

- “(d) ensure that the enrolment records are readily available, upon request, to—
- “(i) the Authority:
  - “(ii) Immigration New Zealand:
  - “(iii) the administrator of the code (within the meaning of Part 18A): 5
  - “(iv) the department for the time being responsible for the administration of the Social Security Act 1964 and for the administration of Part 25 of this Act: 10
  - “(v) Public Trust, if it is approved as an independent trustee for the private training establishment.
- “(2) If a private training establishment closes, the establishment must, in respect of each student, forward his or her records kept under this section to the student’s new education provider, or to the student if there is no new education provider.” 15

*Amendments to Part 18A of principal Act*

**31 Interpretation**

The definition of **international student** in section 238D is amended by repealing paragraph (c) and substituting the following paragraph: 20

“(c) in relation to a provider, is an international student as defined in section 2(1)”.

**32 New section 238EA inserted**

The following section is inserted after section 238E: 25

**“238EA Obligation on provider to enrol person as international student**

A provider must enrol a person as an international student if the person is not a domestic student and the provider—

- “(a) provides the person with educational instruction for more than 2 weeks; or 30
- “(b) accepts tuition fees from the person.”

**33 Code**

Section 238F(2)(e) is amended by—

- (a) inserting “or their authorised representatives” after “international students”; and
- (b) inserting “to investigate and determine complaints from the administrator about alleged breaches of the code,” after “exhausted.” 5
- 34 Export education levy**
- (1) Section 238H(2)(b) is amended by omitting “, and the period to which it, or any part of it, relates”.
- (2) Section 238H(4) is repealed.
- Amendments to Part 19 of principal Act* 10
- 35 Functions of Committee**
- Section 241 is amended repealing paragraph (b) and substituting the following paragraphs:
- “(b) to exercise in relation to universities ~~under section 260~~ in accordance with section 253A the powers of the Qualifications Authority under **sections 249 to 251C, 254A(2)(b), and 255:** 15
- “(ba) to list university qualifications on the Qualifications Framework.”.
- New Part 20 of principal Act substituted* 20
- 36 New Part 20 substituted**
- Part 20 is repealed and the following Part substituted:
- “Part 20**
- “New Zealand Qualifications Authority**
- “Interpretation* 25
- “246 Interpretation**
- In this Part, unless the context otherwise requires,—
- “**Authority** means the ~~New Zealand~~ Qualifications Authority ~~continued by section 256A~~
- “**chief executive** means the chief executive of the Authority 30
- “**member** means a member of the Authority

“**relevant school** means—

“(a) a secondary school (as that term is defined in section 2(1)); or

“(b) a composite school (as that term is defined in section 2(1)); or

“(c) a school that is registered under section 35A, but does not include any school registered under that section only as a primary school (as that term is defined in section 2(1)); or

“(d) a special school (as that term is defined in section 2(2), except that a special school is not deemed to be a primary school for the purposes of this Part, despite the proviso to section 98(1) of the Education Act 1964)

“**rules** means rules made under **section 253**.

“*Functions of Qualifications Authority*

“**246A Functions of Authority**

“(1) The Authority has the following functions:

“(a) to oversee the setting of standards for qualifications in relevant schools and in tertiary education:

“(b) to monitor and regularly review, and advise the Minister on, the standards for qualifications in relevant schools and in tertiary education, either generally or in relation to a particular organisation (within the meaning of section 159B) or a particular programme or training scheme:

“(c) to maintain mechanisms for the recognition of learning (for example, the recognition of learning through qualifications gained and standards met):

“(d) to maintain the Qualifications Framework and Directory of Assessment Standards:

“(e) to make rules, not inconsistent with this Act, under any provision of this Part that empowers the Authority to make rules:

“(f) to ensure there are mechanisms in place to guarantee that secondary schools and tertiary education providers that provide programmes or training schemes that, in the view of the Authority, require national consistency have assessment and moderation procedures that are

- fair, equitable, and consistent, and comply with the appropriate standards:
- “(g) to assist overseas governments, and agencies of those governments, by—
    - “(i) conducting examinations and assessments: 5
    - “(ii) approving programmes and training schemes:
    - “(iii) granting accreditations for the provision of approved programmes:
    - “(iv) assisting governments and agencies to develop and conduct examinations, and to develop and confer awards: 10
  - “(h) to maintain effective liaison with overseas certifying and validating bodies, in order to recognise overseas educational and vocational qualifications in New Zealand and to achieve recognition overseas of New Zealand educational and vocational qualifications: 15
  - “(i) to ensure that post-school educational and vocational qualifications maintain international comparability:
  - “(j) to promote and monitor the delivery of inter-institutional programmes and training schemes: 20
  - “(k) any other functions that are conferred on it by this Act or any other enactment.
- “(2) The Authority may consult any persons, authorities, and bodies as it considers appropriate for the purposes of performing any of its functions. 25
- “Compare: 1989 No 80 s 253

**“247 Certain functions of Authority in relation to entrance to universities**

- “(1) In addition to its other functions, the Authority has,—
- “(a) in relation to the rights of people who have not attained the age of 20 years to obtain entrance to universities, the function of establishing and maintaining by any means that it considers appropriate a common educational standard as a prerequisite for entrance to a university, other than provisional entrance and entrance *ad eundem statum*; and 30
- 35



- “(b) the function of consulting the universities as to the criteria to be established for provisional entrance, or entrance *ad eundem statum*, to universities.
- “(2) A person who is refused provisional entrance or entrance *ad eundem statum* to a university on grounds relating to the person’s educational qualifications may appeal to the Authority against the refusal. 5
- “(3) The Authority must consider the appeal and,—
- “(a) if it is satisfied that the person meets the criteria established by the universities, as mentioned in **subsection (1)(b)**, must allow the appeal and direct the council of the university concerned to admit the person as a student and, where appropriate, to grant the person such status as the Authority determines; or 10
- “(b) if it is not so satisfied, must dismiss the appeal. 15
- “(4) The council of a university must comply with a direction given to it by the Authority under **subsection (3)(a)**.
- “(5) Before establishing standards for entrance to universities, the Authority must consult the council of each university and the Vice-Chancellors Committee. 20
- “Compare: 1989 No 80 s 257

“*New Zealand Qualifications Framework*

“**248 New Zealand Qualifications Framework**

- “(1) The New Zealand Qualifications Framework—
- “(a) consists of all qualifications that have been approved and listed by the Authority in accordance with the rules made under **section 253**; and 25
- “(b) includes the rules relating to the Qualifications Framework made under that section.
- “(2) The Authority— 30
- “(a) must list on the Qualifications Framework all qualifications that it has approved in accordance with the rules:
- “(b) may, in accordance with the rules, amend, add to, remove, or alter the status of any qualification on the framework. 35
- “(3) If a qualification is removed from the Qualifications Framework,—

- “(a) any programme approval held by an institution in respect of the qualification lapses; and
  - “(b) any accreditation granted to an institution in respect of the qualification lapses.
- “(4) To avoid doubt, **qualifications** includes university qualifications. 5

*“Directory of Assessment Standards*

“**248A Directory of Assessment Standards**

- “(1) In this section, **institution** includes institutions, government training establishments, registered establishments, relevant schools, and other bodies. 10
- “(2) The Directory of Assessment Standards consists of all standards approved by the Authority for use by institutions as standards for the assessment of students.
- “(3) An application to have standards listed on the Directory— 15
  - “(a) may only be made by an approved standard-setting body; and
  - “(b) must be made in accordance with the rules.

“**248B Standard-setting bodies**

- “(1) An approved standard-setting body includes— 20
  - “(a) an industry training organisation within the meaning of the Industry Training Act 1992; and
  - “(b) the Ministry of Education; and
  - “(c) the Authority; and
  - “(d) any other body approved by the Authority under **sub-section (3)**. 25
- “(2) A body may apply, in accordance with the rules, to the Authority for approval as a standard-setting body.
- “(3) In deciding whether to approve a standard-setting body, the Authority must apply the criteria set out in the rules, and must be satisfied that the applicant is able to— 30
  - “(a) draft standards that meet the requirements in the rules; and
  - “(b) manage consistency across New Zealand in learning outcomes in the relevant subject areas; and 35
  - “(c) carry out national moderation of assessment of students.

*“Approval of programmes***“249 Approval of programmes**

- “**(1)** In this section, **institution** includes ~~institutions, government training establishments, registered establishments, relevant schools, and other bodies~~ any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 5
- “**(2)** An institution may apply to the Authority for approval of a programme. 10
- “**(3)** The Authority— 10
- “**(a)** may grant or refuse to grant approval of the programme to the applicant; and
- “**(b)** is required only to consider the programme as a whole; and
- “**(c)** must give the applicant written notice of its decision to grant or refuse approval; and 15
- “**(d)** may grant approval without limitation as to time or for a specified period.
- “**(4)** If 2 or more institutions have prepared a programme together, they may make a joint application for approval of the programme. 20
- “**(5)** If the Authority considers that there may be grounds for withdrawing approval of a programme,—
- “**(a)** the Authority must give written notice to the institution concerned stating the grounds on which the Authority is considering withdrawing approval; and 25
- “**(b)** the Authority must give the institution a reasonable time (as specified in the notice) to make submissions on the matter; and
- “**(c)** after considering those submissions, the Authority— 30
- “**(i)** may withdraw approval if it considers there are reasonable grounds to do so; and
- “**(ii)** must notify the institution of the withdrawal (if any) and the reasons for it.
- “**(6)** The Authority may withdraw approval of a programme at the written request of the institution concerned. 35
- “**(7)** This section—
- “**(a)** is subject to **section 253A**:

- “(b) does not limit the Authority’s power to withdraw an approval under **section 255(7)**:  
“(c) does not apply to secondary school qualifications.

**“249A Conditions on programme approvals**

- “(1) Every programme approval is subject to the condition that the institution will at all times comply with the relevant rules, except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance. 5
- “(2) When approving a programme, the Authority may impose conditions on the approval that are specific to the programme or to a class of programmes. 10
- “(3) The Authority may at any time, with the agreement of the institution that holds the programme approval,—  
“(a) impose new conditions on the approval; or  
“(b) amend or revoke any existing conditions. 15
- “(4) The Authority may, without the agreement of the institution, impose conditions on a programme approval, or amend or revoke any existing conditions, but only if the Authority has first—  
“(a) given written notice to the institution of its intentions; and  
“(b) given the institution a reasonable opportunity to respond to the notice; and  
“(c) considered any submissions made by the institution in response to the notice. 20 25
- “(5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the institution that holds the approval of the new, amended, or revoked conditions.

*“Accreditation to provide approved programmes*

- “250 Accreditation to provide approved programmes** 30
- “(1) In this section, **institution** means an institution, government training establishment, registered establishment, or relevant school.
- “(2) An institution must not offer or provide all or part of an approved programme unless the institution is granted accreditation to provide the programme or part of the programme. 35

- “(3) An institution may apply to the Authority for a grant of accreditation to provide all or part of a programme.
- “(4) If the programme for which accreditation is sought incorporates standards from the Directory of Assessment Standards, the applicant must obtain consent to assess against those standards. 5
- “(5) The Authority—
- “(a) may grant or refuse to grant accreditation to the institution to provide all or part of the programme; and
- “(b) must give the institution written notice of its decision to grant or refuse accreditation; and 10
- “(c) may grant accreditation without limitation as to time or for a specified period.
- “(6) This section—
- “(a) does not apply to any secondary school ~~qualifications~~ qualification or class of secondary school qualification that the Authority exempts, by notice in the *Gazette*, from the application of this section: 15
- “(b) does not apply to any workplace training components of any programmes: 20
- “(c) is subject to **section 253A**.
- “Compare: 1989 No 80 s 261

**“250A Conditions on accreditation**

- “(1) Every accreditation is subject to the condition that the institution will at all times comply with the rules made under **section 253(1)(d) and (e)**, except to the extent that the Authority exempts the institution, by a condition on the accreditation, from compliance. 25
- “(2) When granting accreditation to an institution to provide an approved programme, the Authority may impose conditions on the accreditation that are— 30
- “(a) specific to the programme or a particular class of programmes; or
- “(b) specific to the institution or a particular class of institutions. 35

- “(3) The Authority may at any time, with the agreement of the accredited institution, impose new conditions on the accreditation and may amend or revoke any existing conditions.
- “(4) The Authority may, without the agreement of the institution, impose conditions on an accreditation, or amend or revoke any existing conditions, but only if the Authority has first— 5
- “(a) given written notice to the institution of its intentions; and
  - “(b) given the institution a reasonable opportunity to respond to the notice; and 10
  - “(c) considered any submissions made by the institution in response to the notice.
- “(5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the accredited institution of the new, amended, or revoked conditions. 15

**“250B Lapse of accreditation**

- “(1) An accreditation granted to an institution lapses when—
- “(a) 12 months have passed since accreditation was granted and the institution has not during that time provided all or part of the programme to which the accreditation relates; or 20
  - “(b) 12 months have passed since the institution last provided all or part of the programme to which the accreditation relates; or
  - “(c) the programme to which the accreditation relates ceases to be an approved programme; or 25
  - “(d) the status of the qualification to which the accreditation relates is discontinued on the Qualifications Framework.
- “(2) Despite **subsection (1)**, the Authority may, if it considers that the circumstances so require, extend the time specified in **subsection (1)(a) or (b)**. 30
- “(3) The Authority must give written notice of the lapse of an accreditation to the institution concerned.

**“250C Withdrawal of accreditation**

- “(1) If the Authority considers that there may be grounds for withdrawing an accreditation from an institution, the Authority must give written notice to the institution—
- “(a) setting out the grounds on which the Authority is considering withdrawing the approval; and 5
- “(b) giving the institution a reasonable period to make submissions on the matter.
- “(2) After that period, and having considered any submission made by the institution, the Authority may, on any reasonable grounds, withdraw the accreditation. 10
- “(3) If the Authority withdraws an accreditation under **subsection (2)**, it must give notice of the withdrawal, with reasons, to the institution concerned.
- “(4) The Authority may withdraw an accreditation at the written request of the institution concerned. 15
- “(5) This section does not limit the Authority’s power to withdraw an accreditation under **section 255(7)**.

*“Training schemes and consents to assess  
against standards”* 20

**“251 Application for training scheme approval**

- “(1) ~~In this section,—~~
- ~~“industry training organisation means an industry training organisation within the meaning of the Industry Training Act 1992”~~ 25
- ~~“institution includes institutions, government training establishments, registered establishments, relevant schools, and other bodies.”~~
- “(1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 30
- “(2) An institution may apply to the Authority for a grant of approval to provide a training scheme under this section.
- “(3) An industry training organisation may apply jointly with an institution for a grant of approval to provide a training scheme if the scheme will be provided by the institution on behalf of the organisation. 35

- “(4) The Authority—
- “(a) may grant or refuse to grant approval to the training scheme; and
  - “(b) must give the institution and any joint applicant written notice of its decision to grant or refuse approval; and 5
  - “(c) may grant approval without limitation as to time or for a specified period.
- “(5) If the training scheme incorporates assessment standards listed on the Directory of Assessment Standards, the Authority must not grant training scheme approval until the institution has obtained consent to assess against those standards. 10
- ~~“(6) This section does not apply to secondary schools offering secondary qualifications.~~
- “(6) This section does not apply to—
- “(a) any secondary school qualification or class of secondary school qualification that the Authority exempts, by notice in the *Gazette*, from the application of this section. 15
  - “(b) any workplace training component of any training scheme.
- “**251A Conditions of training scheme approval** 20
- “(1) Every training scheme approval is subject to the condition that the institution will at all times comply with the rules made under **section 253(1)(c)** except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance. 25
- “(2) The Authority may impose conditions on a training scheme approval, and for that purpose, **section 250A(2) to (5)** apply as if each reference to accreditation were a reference to a training scheme approval under this section.
- “**251B Withdrawal of training scheme approval** 30
- “(1) If the Authority considers that there may be grounds for withdrawing a training scheme approval from an institution, the Authority must give written notice to the institution—
- “(a) setting out the grounds on which the Authority is considering withdrawing the approval; and 35



- “(b) giving the institution a reasonable period to make submissions on the matter.
- “(2) After the period referred to in **subsection (1)(b)**, and having considered any submission made by the institution, the Authority— 5
- “(a) may, on reasonable grounds, withdraw the training scheme approval; and
- “(b) must give notice of the withdrawal, with reasons, to the institution concerned.
- “(3) This section does not limit the Authority’s power to withdraw training scheme approval under **section 255(7)**. 10
- “(4) The Authority may withdraw a training scheme approval at the written request of the institution concerned.

**“251C Lapse of training scheme approval**

- “(1) A training scheme approval granted to an institution lapses when— 15
- “(a) 12 months have passed since approval was granted and the institution has not during that time provided all or part of the training scheme to which the approval relates; or 20
- “(b) 12 months have passed since the institution last provided all or part of the training scheme to which the approval relates.
- “(2) Despite **subsection (1)**, the Authority may, if it considers that the circumstances so require, extend the time specified in **subsection (1)(a) or (b)**. 25
- “(3) The Authority must give written notice of the lapse of a training scheme approval to the institution concerned.

*“Consent to assess against standards*

- “252 Consent to assess against standards** 30
- “(1) In this section, **institution** includes ~~institutions, government training establishments, registered establishments, relevant schools, and other bodies~~ any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 35

- “(2) An institution that proposes to assess its students against standards listed on the Directory of Assessment Standards must apply to the Authority for a grant of consent to assess against those standards.
- “(3) The Authority may grant or refuse consent to assess against those standards. 5
- “(4) The Authority—
- “(a) may, when granting the consent, impose conditions on the consent:
- “(b) may, at any time, with the agreement of the institution, impose new conditions on the consent and may amend or revoke any existing conditions: 10
- “(c) may, without the agreement of the institution, impose conditions, or amend or revoke any existing conditions, but only after complying with **subsection (6)**. 15
- “(5) The Authority may withdraw a consent, but only after complying with **subsection (6)**.
- “(6) Before the Authority withdraws a consent or acts under **subsection (4)(c)**, it must—
- “(a) give written notice of its intentions to the institution; 20  
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. 25
- “(7) The Authority must give the institution written notice of its decision under **subsection (4)(c) or (5)**, and must give reasons for its decision.
- “(8) Despite **subsection (5)**, the Authority may withdraw a consent at the written request of the institution concerned. 30
- “252A Conditions**
- “(1) Every consent to assess against standards is subject to the condition that the institution will at all times comply with the rules made under **section 253(1)(c)** except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance. 35

“(2) The Authority may impose conditions on a consent to assess against standards, and for that purpose **section 250A(2) to (5)** apply as if each reference to accreditation were a reference to a consent to assess against standards.

**“252B When a consent expires or ceases to have effect** 5

“(1) A consent to assess against standards expires—

“(a) when any training scheme approval or accreditation to which the consent relates is withdrawn, lapses, expires, or otherwise ceases to have effect:

“(b) when the status of all standards to which the consent relates is discontinued on the Directory of Assessment Standards. 10

“(2) If the status of any standard to which the consent relates is discontinued on the Directory of Assessment Standards, the consent ceases to have effect in respect of that standard. 15

*“Rules*

**“253 Rules**

“(1) The Authority may make rules—

“(a) prescribing the process for, and the information required in, an application for— 20

“(i) registration of a private training establishment:

“(ii) approval of a programme:

“(iii) approval of a training scheme:

“(iv) accreditation:

“(v) consent to assess against standards: 25

“(vi) approval as a standard-setting body:

“(vii) the listing of a qualification on the Qualifications Framework:

“(viii) the listing of a standard on the Directory of Assessment Standards: 30

“(b) prescribing criteria that the Authority must apply when considering—

“(i) each class of application described in **paragraph (a)**; and

“(ii) different kinds of application within each class: 35

- “(c) prescribing requirements that the applicant must meet in order to maintain the registration, approval, accreditation, or consent granted by the Authority:
- “(d) prescribing the amount of, or the method for determining, the annual registration fee required under **section 233C**: 5
- “(e) prescribing the requirements for the protection of student fees that must be met by a private training establishment, any person to whom **section 234D** applies, any agent or person purporting to act as an agent for a student or private training establishment, and any independent trustee: 10
- “(f) prescribing matters relating to the general operation of the Qualifications Framework and the Directory of Assessment Standards: 15
- “(g) prescribing the quality assurance requirements that must be met by providers of adult and community education:
- “(h) providing for the review, amendment, removal, or alteration of the status of qualifications and standards, including their components (including where amendments to titles occur, consequential amendments to programmes of study or training titles, accreditations, and consents to assess against standards): 20
- “(i) providing any special requirements for NCEA and other secondary school qualifications or awards for the purposes of the Qualifications Framework: 25
- “(j) providing for the conduct of assessments and examinations relating to any qualifications or awards:
- “(k) prescribing the details for credits, cross credits, recognition of prior learning, and moderation: 30
- “(l) prescribing requirements for qualifications in respect of which the Authority is the qualifications developer:
- “(m) prescribing requirements relating to workplace training:
- “(n) providing for the following matters for the purposes of **section 236A**: 35
- “(i) the kinds of enrolment and academic records that must be kept:
- “(ii) the manner in which the records must be kept:

- “(iii) the length of time for which the records must be kept:
- “(o) prescribing reporting requirements that institutions (within the meaning of **section 254(1)**) must comply with in relation to the student’s record of achievement that is maintained by the Qualifications Authority: 5
- “(p) for the purposes of rules made under **paragraph (o)**, specifying the qualifications or standards for which institutions are required to report the credits gained by students undertaking or who have undertaken study or training towards those qualifications or standards: 10
- “(q) providing for any other matters contemplated by this Part or **Part 18**, necessary for their administration, or necessary for giving them full effect.
- “(2) Rules made under **subsection (1)(n)** may specify different requirements for different qualifications. 15
- “(3) Before making rules under this section that apply to a class of institutions, the Authority must consult,—
- “(a) if the rules relate to universities, the Vice-Chancellors Committee; and 20
- “(b) if the rules relate to bodies that provide adult and community education, those bodies or a body that represents their interests; and
- “(c) if the rules relate to a class of institutions in respect of which there is a body whose function is to set up programme approval and moderation procedures, the representative bodies of those institutions, and any other bodies as the Authority considers appropriate. 25
- “(4) Any proposed rules under this section must be approved by the board of the Authority and the Minister before being made, but, if the rules relate to any matter described in **subsection (1)(n)(j)**, the approval of the Minister is not required. 30
- “(5) Any rules made under this section must be—
- “(a) published on an Internet site maintained by or on behalf of the Authority; and 35
- “(b) made available in printed form for purchase at a reasonable price on request by members of the public.
- “(6) Any rules made under this section are regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not

regulations for the purposes of the Acts and Regulations Publication Act 1989.

*“Functions and powers of Authority in relation to universities*

- “253A Exercise of certain powers of Authority by Vice-Chancellors Committee** 5
- “(1) In this section, **the powers of the Authority** means the Authority’s powers under **sections 249 to 251C, 254A(2)(b), and 255.**
- “(2) The powers of the Authority as far as they are applicable to universities may, subject to this section, be exercised by the Vice-Chancellors Committee in relation to universities. References to the Authority in the relevant sections must be read as references to the Vice-Chancellors Committee. 10
- “(3) The Vice-Chancellors Committee in exercising the powers of the Authority must apply the relevant rules made under **section 253.** 15
- “(4) The Vice-Chancellors Committee may charge fees to an institution for the grant of any approval or accreditation.
- “(5) The Vice-Chancellors Committee may— 20
- “(a) list or arrange for the listing of university qualifications on the Qualifications Framework; and
- “(b) correct any errors or omissions in the listing of the qualification on the framework.
- “(6) To avoid doubt, this section does not limit the Authority’s power to delegate its functions or powers under the Crown Entities Act 2004. 25
- “Compare: 1989 No 80 s 260

*“Granting of awards*

- “253B Powers of Authority in granting of awards** 30
- “(1) A person may apply to the Authority for its consent—
- “(a) to grant an award that is described as a degree or the description of which includes the word bachelor, master, or doctor:

- “(b) to grant an award that is described as a post-graduate qualification, for example, a post-graduate certificate or diploma.
- “(2) The Authority may, in accordance with this section, grant or refuse its consent. 5
- “(3) The Authority must not consent to the granting of an award of a kind referred to in **subsection (1)** unless it is satisfied that the award recognises the completion of a programme of advanced learning that—
- “(a) is taught mainly by people engaged in research; and 10
- “(b) emphasises general principles and basic knowledge as the basis for self-directed work and learning.
- “(4) The Authority must not withhold its consent to the use of any particular term or the granting of an award that, or whose name or description, includes any particular word, unless satisfied on 15 reasonable grounds that it should do so.
- “Compare: 1989 No 80 s 254

*“Use of certain terms in name of registered establishment*

- “**253C Minister may consent to registered establishments using certain terms in their names** 20
- “(1) In this section, **institution** means a college of education, a polytechnic, a specialist college, a university, or a wananga.
- “(2) A registered establishment may apply to the Minister for consent to use the term university, college of education, polytechnic, or institute of technology to describe a registered establishment that is not an institution. 25
- “(3) Before deciding whether to grant consent under **subsection (2)**, the Minister must—
- “(a) take into account the characteristics of institutions as described in section 162(4); and 30
- “(b) receive advice on the application from the Authority; and
- “(c) be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and. 35

- “(d) consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.
- “(4) In deciding whether to grant consent under **subsection (2)** to the use of the term “institute of technology”, the relevant characteristics that the Minister must take into account are the characteristics of a polytechnic. 5
- “(5) The Minister may audit any registered establishment that has been given consent to use one of the terms in **subsection (2)** for continuous compliance with the requirements for consent to use the term. 10
- “(6) If the Minister is not satisfied that a registered establishment is continuing to comply with the requirements for consent to use the term for which consent has been given, the Minister may— 15
- “(a) withdraw the consent; or
- “(b) suspend the consent for a specified period, at the expiry of which the Minister must either lift the suspension or withdraw the consent.
- “Compare: 1989 No 80 s 264A 20

### “Fees

#### “254 Fees

- “(1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 25
- “(2) The Authority may—
- “(a) charge fees to any person or institution for any of the following:
- “(i) programme approval:
- “(ii) training scheme approval: 30
- “(iii) accreditation:
- “(iv) consent to assess against standards:
- “(v) approval to list qualifications on the Qualifications Framework:
- “(vi) approval to list standards on the Directory of Assessment Standards: 35
- “(vii) registration of a private training establishment:



- “(viii) approval to be a standard-setting body:
- “(ix) consent to award a degree:
- “(x) consent for the use by a registered establishment of certain terms in its name:
- “(xi) reporting credits for the purposes of rules made under **section 253(1)(o) and (p)**: 5
- “(b) charge fees to any person or institution for any services provided by the Authority, including fees in relation to sitting for an examination conducted by the Authority, in relation to the making of any assessment by the Authority, or in relation to the granting to any person of an award certifying that the person had passed such an examination or been so assessed: 10
- “(c) charge fees to any person or institution for any quality assurance activities undertaken by the Authority. 15
- “(3) A fee may not be charged under **subsection (2)(b)** to a person who is a student at a relevant school unless the Minister has consented to the charging of the fee.
- “(4) All fees that are to be charged under **subsection (2)** must be— 20
- “(a) published on an Internet site maintained by or on behalf of the Authority; and
- “(b) made available in printed form for purchase at a reasonable price on request by members of the public. 25

“Compare: 1989 No 80 s 266

*“Enforcement powers of Authority*

**“254A Power to obtain information**

- “(1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 30
- “(2) The chief executive or a person authorised by the chief executive may, subject to **subsection (3)**,—
- “(a) by written notice to the Secretary, require the Secretary, within such period (being a reasonable period) as is specified in the notice, to supply to the Authority such information or documents relating to institutions, being 35

- information or documents in the possession of the Secretary, as are specified in the notice; and
- “(b) by written notice to the chief executive of an institution, require the chief executive, within such period (being a reasonable period) as is specified in the notice, to supply to the Authority such information or documents relating to the institution as are specified in the notice. 5
- “(3) The powers conferred by **subsection (2)** may be exercised only where the obtaining of the information or documents is necessary for the purposes of the performance of the functions of the Authority. 10
- “Compare: 1989 No 80 s 255
- “**255 Compliance notices**
- “(1) In this section, **institution** includes any institution, government training establishment, registered establishment, relevant school, industry training organisation, or other body. 15
- “(2) The Authority may issue a compliance notice to an institution requiring the institution to do, or refrain from doing, a particular thing in relation to—
- “(a) the institution’s registration as a registered establishment; or 20
- “(b) the institution’s programme approvals, training scheme approvals, or accreditation; or
- “(c) any consent that the institution has to assess against standards; or 25
- “(d) any quality assurance conditions on workplace training; or
- “(e) any notice issued under **section 254A(2)(b)**.
- “(3) Every compliance notice must be in writing and must— 30
- “(a) state the date on which it is issued; and
- “(b) state a time on or before which, or a period within which, the institution must comply with the notice; and
- “(c) state the consequences or possible consequences of non-compliance with the notice.
- “(4) The Authority may publish any compliance notice, or a summary of a compliance notice, in a manner designed to give public notice of the compliance notice. 35

- “(5) An institution that receives a compliance notice must comply with it within the time or during the period stated in the notice.
- “(6) The Authority may, before the expiry of the time or period referred to in **subsection (3)(b)**, extend that time or period, in which case the extended time or period is for all purposes the time or period within or during which the notice must be complied with. 5
- “(7) If the institution does not comply with the compliance notice, the Authority may immediately,—
- “(a) if the notice related to the registration of a registered establishment, cancel the registration, or impose new conditions or amend or revoke any existing conditions on the registration; or 10
- “(b) if the notice related to a programme or training scheme approval, withdraw the approval, or impose new, or amend or revoke any existing, conditions on the approval; or 15
- “(c) if the notice related to an accreditation, withdraw the accreditation, or impose new conditions, or amend or revoke any existing conditions on the accreditation; or 20
- “(d) if the notice related to a consent to assess against standards, withdraw the consent, impose new conditions, or amend or revoke any existing conditions on the approval; or
- “(e) if the notice related to any quality assurance conditions on workplace training, withdraw the programme or training scheme approval to which the training relates, impose new conditions, or amend or revoke any existing conditions. 25
- “(8) The Authority may not do any of the things specified in **subsection (7)** until the later of— 30
- “(a) 10 days from the date of issue of the notice; or
- “(b) the expiry of the time or period referred to in **subsection (3)(b)**.
- “(9) If the Authority withdraws programme approval it must also withdraw any consent to assess against standards or any accreditation in respect of the programme approval. 35

“(10) If the Authority withdraws any training scheme approval it must also withdraw any consent to assess against standards in respect of the training scheme approval.

“Compare: 1989 No 80 s 255A

**“255A Powers of entry and inspection** 5

“(1) For the purpose of ensuring that a private training establishment (whether registered or not) and any agent of the establishment comply with the provisions of this Act, the rules, and any approval, consent, or other authorisation granted by the Authority, the chief executive may authorise any person to do, 10  
at any reasonable time, any 1 or more of the following things:

“(a) enter and inspect any premises (other than a dwelling-house) that are occupied by the private training establishment or its agent:

“(b) require any person to produce documents or information under the control of the person: 15

“(c) inspect, photocopy, print out, or copy any documents (whether held in electronic or paper form) produced under **paragraph (b)** or that the authorised person believes on reasonable grounds to belong to the establishment: 20

“(d) remove any document referred to in **paragraph (c)**, whether in its original form or as an electronic or paper copy:

“(e) require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies: 25

“(f) inspect any education and training work and any related materials:

“(g) meet and talk with any person. 30

~~“(2) A person authorised by the chief executive under **subsection (4)** must provide evidence of his or her authorisation to the person in charge of the premises, when the person first enters the premises, and at any later time, at the request of the person in charge.~~ 35

“(2) A person authorised by the chief executive under **subsection (1)** must—

- “(a) provide evidence of his or her authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and
- “(b) give that person a list of all documents that have been removed (if any); and 5
- “(c) return any documents that have been removed unless to do so would prejudice any investigation.
- “(3) An authorisation under **subsection (1)** must be in writing and contain— 10
- “(a) a reference to this section; and
- “(b) the full name of the person authorised; and
- “(c) a statement of the powers conferred on that person by under this section.
- “Compare: 1989 No 80 s ~~327~~78A 15

*“Research*

**“256 Research**

The Authority has power to carry out any research activities that it considers relevant to the performance of its functions.

“Compare: 1989 No 80 s 256 20

*“Provisions relating to continuation,  
constitution, and operation of New Zealand  
Qualifications Authority*

**“256A Continuation of New Zealand Qualifications Authority**

- “(1) There continues to be a New Zealand Qualifications Authority, which is the same body as the body of that name existing immediately before the commencement of the **Education Amendment Act (No 4) 2011**. 25
- “(2) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 30
- “(3) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.
- “(4) The members of the Authority are the board for the purposes of the Crown Entities Act 2004.

“Compare: 1989 No 80 s 248 35

**“256B Constitution**

“(1) The Authority must consist of not fewer than 8 nor more than 10 members.

“(2) In appointing members, the Minister must consult such persons, authorities, and bodies as the Minister considers appropriate and must have regard to the interests of industry, the professions, and the authorities and bodies that are respectively responsible for providing compulsory and post-compulsory education. 5

“(3) **Subsection (2)** does not limit section 29 of the Crown Entities Act 2004. 10

“Compare: 1989 No 80 s 249

**“256C Chief executive**

The Authority must from time to time appoint a chief executive of the Authority, on terms and conditions agreed by the Authority and the person appointed in accordance with section 117 of the Crown Entities Act 2004. 15

“Compare: 1989 No 80 s 254B

**“256D Delegation by Authority**

“(1) The Authority must not delegate the power to appoint a chief executive. 20

“(2) **Subsection (1)** applies despite section 73 of the Crown Entities Act 2004.

“(3) A delegation under section 73 of the Crown Entities Act 2004 to the chief executive, if there is no chief executive for the time being, or if the chief executive is absent from duty, continues to have effect as if made to the person for the time being acting in place of the chief executive. 25

“Compare: 1989 No 80 s 251

**“256E Membership of Government Superannuation Fund 30**

Employment in the service of the Authority is Government service within the meaning of the Government Superannuation Fund Act 1956.

**“256F Child care allowances**

A member may be paid any allowances in respect of child care that the Authority determines.

**“256G Taxation**

“(1) The Authority is deemed to be the agent of the Crown in respect of its property and the performance of its functions and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations. 5

“(2) **Subsection (1)** does not exempt the Authority from— 10

“(a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or

“(b) any obligation imposed by that Act.

“Compare: 1989 No 80 s 254E”.

*New Part 21 of principal Act inserted*

15

**37 New Part 21 inserted**

The following Part is inserted after **Part 20**:

**“Part 21****“Education New Zealand****“269 Education New Zealand established**

20

“(1) An organisation called Education New Zealand is established.

“(2) Education New Zealand is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

“(3) The Crown Entities Act 2004 applies to Education New Zealand except to the extent that this Act expressly provides otherwise. 25

**“269A Interpretation**

In this Part, unless the context otherwise requires, **board** means the board of Education New Zealand.

**“270 Functions**

30

“(1) In performing its functions under this Act or any other enactment, Education New Zealand must give effect to the Government’s policy on international education.

- “(2) The functions of Education New Zealand are—
- “(a) to deliver strategies, programmes, and activities for promoting, together with providers and other government agencies, New Zealand education overseas; and
  - “(b) to promote New Zealand as an educational destination for international students; and 5
  - “(c) to promote the provision of New Zealand education and training services overseas; and
  - “(d) to manage, in collaboration with other government agencies, activities undertaken by representatives appointed to act on behalf of the New Zealand Government in relation to international education; and 10
  - “(e) to carry out research on international education markets and marketing strategies; and
  - “(f) to administer any international programmes or activities that are consistent with the Government’s policy on international education; and 15
  - “(g) to provide information, advice, and assistance, to providers on strategies to promote industry co-ordination and professional development; and 20
  - “(h) to provide information to international students about living and studying in New Zealand; and
  - “(i) to work with other agencies to ensure that international students are adequately supported while living and studying in New Zealand; and 25
  - “(j) to foster collaborative networks with former international students; and
  - “(k) to perform any other function directed by the Minister under **subsection (3)**.
- “(3) The Minister may direct Education New Zealand to perform any function that the Minister considers consistent with the Government’s policy on international education. 30
- “(4) In this section, **providers** means any organisation that provides education, training, or education-related services.
- “**271 International education strategy** 35
- “(1) The Minister may, from time to time, issue an international education strategy that sets out—



- “(a) the Government’s long-term strategic direction for international education; and
- “(b) the Government’s current and medium-term priorities for international education.
- “(2) Before issuing the Government’s international education strategy, the Minister must consult with organisations or people that, in the Minister’s opinion, have a substantial interest in international education and ought to be consulted. 5
- “272 Membership of board of Education New Zealand**
- “(1) The board of Education New Zealand consists of at least 5 members and no more than 7 members appointed by the Minister under section 28 of the Crown Entities Act 2004. 10
- “(2) Before appointing any member to the board, the Minister must consult with—
- “(a) the bodies that represent the organisations involved in the provision of international education; and 15
- “(b) any organisations or people that, in the Minister’s opinion, have a substantial interest in the board’s operations.
- “272A Special advisers to the board**
- “(1) The Minister may appoint as special advisers to the board— 20
- “(a) the Secretary for Education; and
- “(b) the chief executive of the department responsible for the administration of the Immigration Act 2009; and
- “(c) any other person as the Minister determines.
- “(2) The function of a special adviser is to assist the board to align its strategies and activities with Government policy. 25
- “(3) A special adviser may attend any meeting of the board or any board committees but may not vote.
- “(4) The board (including any board committee) must give the special advisers sufficient notice of its meetings and copies of all documents and materials to be considered at each meeting. 30
- “(5) A special adviser may delegate to any person his or her functions and powers conferred by this section, and the delegate may exercise those functions and powers in the same manner and with the same effect as if they had been conferred directly by this section and not by delegation. 35

- “(6) Every person purporting to act under a delegation under **subsection (5)** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- “**272B International education stakeholder advisory committee** 5
- “(1) The Minister may establish a stakeholder advisory committee to provide expert advice to the board on matters relating to the exercise of its functions.
- “(2) The board must consider any advice it receives from the committee. 10
- “(3) The members of the committee must be appointed by the Minister, on terms and conditions that the Minister determines, by written notice to each member.
- “(4) When appointing members of the committee, the Minister must ensure, as far as practicable, that— 15
- “(a) the committee’s membership is broadly representative of the international education industry; and
- “(b) the members collectively have sufficient experience and knowledge of the international education industry to give appropriate advice to the board. 20
- ~~“(5) The Minister may, whether generally or in relation to a particular matter, give terms of reference or directions on the advice that the committee provides to the board.~~
- “(5) The Minister may give terms of reference on the topics or subject areas on which the committee may advise the board. 25
- “(6) The committee must comply with any terms of reference ~~or directions~~ given by the Minister.
- “(7) The committee may, ~~subject to subsection (6),~~ determine its own procedure.
- “**273 Chief executive** 30
- “(1) The board—
- “(a) must appoint a chief executive of Education New Zealand; and
- “(b) must act independently when appointing the chief executive; and 35
- “(c) may not delegate its duty under **paragraph (a)**.

“(2) The chief executive must not be a member of the board.

“**273A Responsibilities of chief executive**

The chief executive is responsible for—

- “(a) the effective and efficient management and administration of Education New Zealand; and 5
- “(b) the achievement of outcomes identified in the statement of intent of Education New Zealand.

“**273B Superannuation**

- “(1) Any person who, immediately before becoming an employee of Education New Zealand, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service so long as he or she continues to be an employee of Education New Zealand. 10 15
- “(2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person’s service as an employee of Education New Zealand were Government service.
- “(3) **Subsection (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 20
- “(4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Education New Zealand is the controlling authority.

“~~274 Application of Commerce Act 1986~~ 25

~~Despite section 6 of the Commerce Act 1986, nothing in that Act applies to Education New Zealand.~~

“274 Application of Part 2 of Commerce Act 1986

- “(1) For the purposes of section 43 of the Commerce Act 1986, the Governor-General may by, Order in Council, specifically authorise any act, matter, or thing, or kind of act, matter or thing, to be done or omitted to be done by Education New Zealand. 30

“(2) Part 2 of the Commerce Act 1986 does not apply to any act, matter, or thing, or kind of act, matter, or thing that is specifically authorised under **subsection (1)**.”

**“274A Transfer of Ministry employees to Education New Zealand**

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“(1) The chief executive of the Ministry of Education must identify the employees of the Ministry—

“(a) whose duties are overall more closely connected with the functions of Education New Zealand than with the Ministry; and

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“(b) whose positions will, as a result of the establishment of Education New Zealand, cease to exist within the Ministry.

“(2) An employee who is identified under **subsection (1)** must be offered equivalent employment by Education New Zealand, being employment that is—

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“(a) in substantially the same position; and

“(b) in the same general locality; and

“(c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that employee; and

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“(d) on terms that treat the period of service with the Ministry of Education (and every other period of service recognised by the Ministry of Education as continuous service) as if it were continuous service with Education New Zealand.

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“(3) The employee is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Ministry of Education has ceased to exist if—

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“(a) the employee’s position ceases to exist because the duties of the position are more closely connected with the functions of Education New Zealand; and

“(b) the employee is offered employment in an equivalent position in Education New Zealand (whether or not the employee accepts the offer).

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“(4) This section overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.

**“274B No compensation for technical redundancy of employees of Education New Zealand Trust**

- “(1) An employee of Education New Zealand Trust is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Trust has ceased to exist if the employee’s position ceases to exist because the duties of the position are more closely connected with the functions of Education New Zealand, and—**
- 5
- “(a) the employee is offered employment in an equivalent position in Education New Zealand (whether or not the employee accepts the offer); or**
- 10
- “(b) the employee is offered and accepts employment in Education New Zealand.**
- “(2) In subsection (1)(a), employment in an equivalent position means employment that is—**
- 15
- “(a) in substantially the same position; and**
- “(b) in the same general locality; and**
- “(c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date of the offer of employment is made to that employee; and**
- 20
- “(d) on terms that treat the period of service with Education New Zealand Trust (and every other period of service recognised by Education New Zealand Trust as continuous service) as if it were continuous service with Education New Zealand.”**
- 25

*Amendments to Part 22 of principal Act*

**37A Heading to Part 22 substituted**

The heading to Part 22 is omitted and the following heading substituted: “Careers New Zealand”.

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**37B Career Services is service for purposes of this Part**

- (1) The heading to section 279 is amended by omitting “Career Services” and substituting “Careers New Zealand”.**
- (2) Section 279(1) is amended by omitting “Career Services” and substituting “Careers New Zealand”.**
- 35

(3) Section 279 is amended by repealing subsection (6) and substituting the following subsection:

“(6) The Service is the same body as the Service that existed under this section immediately before the commencement of **sections 37A and 37B** of the **Education Amendment Act (No 4) 2011.**” 5

*Amendments to Part 24 of principal Act*

**38 New sections 292 to 292H substituted**

Section 292 is repealed and the following sections are substituted: 10

**“292 Offences relating to use of certain terms**

**“(1) A person commits an offence who—**

**“(a) uses the term university to describe an educational establishment or facility unless the educational establishment and facility—** 15

**“(i) is a university; or**

**“(ii) is a registered establishment that has the Minister’s consent under **section 253C** to use the term; or**

**“(iii) was a university but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a university as set out in section 162(4)(a) and (b)(iii):** 20

**“(b) uses the term college of education to describe an educational establishment or facility unless the educational establishment or facility—** 25

**“(i) is a college of education; or**

**“(ii) is a registered establishment that has the Minister’s consent under **section 253C** to use the term; or** 30

**“(iii) was a college of education but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a college of education as set out in section 162(4)(b)(i):**

**“(c) uses the term polytechnic to describe an educational establishment or facility unless the educational establishment or facility—** 35

- “(i) is a polytechnic or institute of technology; or  
“(ii) is a registered establishment that has the Minister’s consent under **section 253C** to use the term; or  
“(iii) was a polytechnic or institute of technology but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a polytechnic as set out in section 162(4)(b)(ii): 5  
“(d) uses the term institute of technology to describe an educational establishment or facility unless the educational establishment or facility— 10  
“(i) is an institute of technology or a polytechnic; or  
“(ii) is a registered establishment that has the Minister’s permission under **section 253C** to use the term; or 15  
“(iii) was an institute of technology or a polytechnic but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a polytechnic as set out in section 162(4)(b)(ii). 20  
“(2) A person (other than a university) commits an offence who grants or purports to grant an award that is described as a degree, or the description of which includes the word bachelor, master, doctor, or postgraduate, unless— 25  
“(a) the person has the consent of the Qualifications Authority ~~or a body subject to a delegation by the Qualifications Authority~~; or  
“(b) as provided by section 192(11).  
“(3) A person commits an offence who, without the consent of the Qualifications Authority, grants or purports to grant an award which, or the name or description of which, includes the word national or the words New Zealand. 30  
“(4) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000. 35  
“Compare: 1989 No 80 s 292

**“292A Offences relating to false representations**

- “(1) A person commits an offence who falsely represents, expressly or by implication, that—
- “(a) a qualification is listed on the Qualifications Framework; or 5
  - “(b) a programme is an approved programme; or
  - “(c) a training scheme is an approved training scheme; or
  - “(d) a body is a registered establishment; or
  - “(e) a programme or training scheme provided by a body— 10
    - “(i) is an approved programme or training scheme; or
    - “(ii) leads to a qualification listed on the Qualifications Framework; or
  - “(f) a body has accreditation to provide an approved programme or training scheme; or
  - “(g) a body is providing or purports to provide an approved training scheme; or 15
  - “(ga) a body is providing or purports to provide an approved programme; or
  - “(h) a body has consent to assess against standards; or
  - “(i) a standard is on the Directory of Assessment Standards; 20
    - or
  - “(j) the person is an agent of an institution (as that term is defined in **section 249(1)**) when the person is not.
- “(2) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000. 25

**“292B Liability of body corporate and directors in respect of false representations**

- “(1) If, in proceedings in respect of conduct engaged in by a body corporate, being conduct in relation to which **section 292A(1)** applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of that person’s actual or apparent authority, had that state of mind. 30
- “(2) For the purpose of **section 292A**, any conduct engaged in on behalf of a body corporate— 35



- “(a) by a director, an employee, or an agent of the body corporate, acting within the scope of that person’s actual or apparent authority; or
- “(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee or agent,—
- is deemed to have been engaged in also by the body corporate.
- “(3) If a body corporate is convicted of an offence under **section 292A(1)**, any director of the body corporate, and, if the body corporate is a private training establishment, any governing member of the establishment, is to be treated as having committed the same offence, if—
- “(a) the director or governing member approved of the act that constituted the offence; or
- “(b) the director or governing member knew the offence was to be or was being committed and failed to take all reasonable steps to prevent it.
- “(4) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for that intention, opinion, belief, or purpose.
- “(5) In this section, **governing member** has the meaning given to it in **section 232**.
- “Compare: 1986 No 121 s 45(1), (2), (5)
- “**292C Offence to issue false qualifications and falsify records**
- “(1) A person commits an offence who knowingly or recklessly issues an award that falsely represents that a person has achieved a qualification listed on the Qualifications Framework.
- “(2) A person commits an offence who receives an award knowing that the award falsely represents that he or she has achieved a qualification listed on the Qualifications Framework.
- “(3) A person commits an offence—

- “(a) who enters or changes results on a student’s record of achievement, knowing that the results or changes have the effect of falsifying the student’s record:
- “(b) who, without reasonable excuse or lawful authority, causes entries or changes to be made on a student’s record that have the effect of falsifying the student’s record. 5
- “(4) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000.
- “**292D Offence to fail to comply with section 236A (student records)** 10
- “(1) A private training establishment commits an offence that fails, without reasonable excuse, to comply with the requirements of **section 236A**.
- “(2) A private training establishment that commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000. 15
- “**292E Offence to provide or advertise cheating services**
- “(1) A person commits an offence if the person provides any service specified in **subsection (4)** with the intention of giving a student an unfair advantage over other students. 20
- “(2) A person commits an offence if the person advertises any service described in **subsection (4)** knowing that the service has or would have the effect of giving a student an unfair advantage over other students. 25
- “(3) A person commits an offence who, without reasonable excuse, publishes an advertisement for any service described in **subsection (4)**.
- “(4) The services referred to in **subsections (1) to (3)** are as follows: 30
- “(a) completing an assignment or any other work that a student is required to complete as part of a programme or training scheme:
- “(b) providing or arranging the provision of an assignment that a student is required to complete as part of a programme or training scheme: 35

- “(c) providing or arranging the provision of answers for an examination that a student is required to sit as part of a programme or training scheme:
- “(d) sitting an examination that a student is required to sit as part of a programme or training scheme or providing another person to sit the exam in place of the student. 5
- “(5) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$10,000.
- “(6) In this section,—
- “**programme** has the meaning given to it in section 159(1) 10
- “**student** means a student of a programme or training scheme
- “**training scheme** has the meaning given to it in section 159(1).
- “**292F Offences relating to enrolment of international students and registration of private training establishments** 15
- “(1) Where the Council of an institution contravenes **section 224(7)**, the institution commits an offence.
- “(2) A private training establishment that contravenes **section 232A(1), 232A(2), or 232C** commits an offence.
- “(3) A body that commits an offence against this section is liable, on summary conviction, to a fine not exceeding \$10,000. 20
- “**292G Offence to contravene requirements in section 234E relating to student fees**
- “(1) A private training establishment that contravenes **section 234E(1)** commits an offence. 25
- “(2) A person who contravenes **section 234E(2)** commits an offence.
- “(3) A private training establishment or person that commits an offence against this section is liable, on summary conviction, to a fine not exceeding \$10,000. 30
- “**292H Injunctions and orders of High Court**
- “(1) If a person has engaged, is engaging, or proposes to engage, in conduct that contravenes **section 224(7)** or any of **sections 292 to 292E 292F**, the High Court may, on application by

the Qualifications Authority, grant an injunction or make any appropriate order—

“(a) restraining the person from engaging in that conduct; or

“(b) for the purpose of ensuring that the person does not engage in that conduct. 5

“(2) The court may grant an injunction or make an order under **subsection (1)** on any terms that it considers appropriate.

“Compare: 1989 No 80 s 292(12)”.

## Part 2

### Transitional arrangements and amendments to other enactments 10

#### *Transitional provisions*

#### 39 Qualifications and standards existing before commencement of this Act

On the commencement of this Act,— 15

(a) all qualifications listed on the Qualifications Framework immediately before the commencement of this Act are deemed to be qualifications listed on the Qualifications Framework under **section 248** of the principal Act; and 20

(b) all standards listed on the Directory of Assessment Standards immediately before the commencement of this Act are deemed to be standards listed under **section 248A** of the principal Act.

#### 40 Policies and criteria under former section 253 and rules under former section 265 25

(1) On the commencement of this Act,—

(a) all policies and criteria made under former section 253 of the principal Act and in force immediately before the commencement of this Act are deemed to be rules made under **section 253** of the principal Act; and 30

(b) all rules made under former section 265 of the principal Act and in force immediately before the commencement of this Act are deemed to be rules made under **section 253** of the principal Act. 35

(2) All policies and criteria that exist by the operation of **subsection (1)(a)** and all rules that exist by the operation of **subsection (1)(b)** expire on the close of 31 December 2012.

**41 Course approvals, accreditations, consents, etc**

- (1) On the commencement of this Act,— 5
- (a) a course approval granted under former section 258 of the principal Act and that existed immediately before commencement is deemed to be a programme approval granted under **section 249** of the principal Act:
- (ab) a course approval granted under former section 258 of the principal Act that does not lead to a qualification on the New Zealand Qualifications Framework is deemed to be a training scheme approval granted under **section 251** of the principal Act: 10
- (b) an accreditation granted under former section 259 of the principal Act and that existed immediately before commencement is deemed to be an accreditation granted under **section 250** of the principal Act: 15
- (c) a consent to assess against standards granted by the Qualifications Authority and that existed immediately before commencement is deemed to be a consent to assess against standards granted under **section 252** of the principal Act: 20
- (d) a consent granted under former section 254 of the principal Act and that existed immediately before commencement is deemed to be a consent granted under **section 253B** of the principal Act: 25
- (e) fees charged under former section 266 of the principal Act that, immediately before commencement, were owed to the Authority are deemed to be fees charged under **section 254** of the principal Act. 30
- (1A) If, immediately before commencement, an institution provided study or training under a consent to assess against standards,—
- (a) the institution must, within 12 months of commencement, apply for training scheme approval for the study or training; and 35

- (b) if it fails to apply for training scheme approval within that period, the consent to assess against standards that it holds by the operation of **subsection (1)(c)** lapses on the date that is 12 months after commencement.
- (1B) **Subsection (1A)** does not apply where the institution had a course approval or an accreditation to provide the study or training. 5
- (2) In this section, **commencement** means commencement of this Act.
- Transitional provisions relating to private training establishments* 10
- 42 Transitional arrangements for private training establishments**
- (1) A registered private training establishment that existed immediately before the commencement of this Act must, in order to maintain its registration— 15
- (a) do the following things within 6 months of the commencement of this Act:
- (i) give the Authority a statutory declaration from each governing member of the establishment that satisfies the requirements of **section 232D(2)(c)(i) and (ii)**; and 20
- (ii) satisfy the Authority that it complies with the requirements of **section 233(1)(h)** relating to the provision of certain information; and 25
- (b) provide, within 6 months of receiving a request from the Authority, any application or information required by the Authority for the purpose of determining whether each governing member of the establishment is a fit and proper person; and 30
- (c) satisfy the Authority, within 3 years of the commencement of this Act, that each governing member of the establishment is a fit and proper person.
- (2) A failure to comply with **subsection (1)** is a failure to meet the relevant criteria set out in **section 233(1)**, and **section 233D** applies accordingly. 35

- (3) In **subsection (1)**, a **registered private training establishment** means a private training establishment that was granted registration by the Authority under section 236 of the principal Act before it was amended by this Act.

*Amendments to other enactments*

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**43 Amendment to Crown Entities Act 2004**

- (1) This section amends the Crown Entities Act 2004.

(1A) Part 1 of Schedule 1 is amended by omitting the item relating to Career Services and substituting the following item: “Careers New Zealand”.

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- (2) Part 1 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: “Education New Zealand”.

**43A Government Superannuation Fund Act 1956**

(1) This section amends the Government Superannuation Fund Act 1956.

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(2) Paragraph (cb) of the definition of **controlling authority** in section 2(1) is amended by omitting “Career Services” and substituting “Careers New Zealand”.

**44 Amendment to Ombudsmen Act 1975**

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- (1) This section amends the Ombudsmen Act 1975.

(2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: “Education New Zealand”.

(3) Part 2 of Schedule 1 is amended by omitting the item relating to Career Services and substituting the following item: “Careers New Zealand”.

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**45 New Zealand Council for Educational Research (Electoral College) Order 2009**

(1) This section amends the New Zealand Council for Educational Research (Electoral College) Order 2009.

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(2) Item 8 of the Schedule is amended by omitting “Career Services” and substituting “Careers New Zealand”.

*Revocation*

**46 Education (Change of Name of Education Entities) Order 2000 revoked**

The Education (Change of Name of Education Entities) Order 2000 (SR 2000/117) is revoked.

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**Legislative history**

6 April 2011  
12 April 2011

Introduction (Bill 279–1)  
First reading and referral to Education and Science  
Committee

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