

**Education (Tertiary Education and Other Matters)
Amendment Bill**

Government Bill

As reported from the committee of the whole House

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Amendment Bill**

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

Hon Chris Hipkins

Education (Tertiary Education and Other Matters) Amendment Bill

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**Education (Tertiary Education and Other Matters)
Amendment Bill**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Education (Tertiary Education and Other Matters) Amendment Act **2016**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Education Act 1989 (the **principal Act**).

Part 1 10
Amendments to principal Act relating to international and domestic school students

- 4A Section 2 amended (Interpretation)**
In section 2(1), insert in its appropriate alphabetical order:
contract of enrolment, in relation to an international student, means a written contract entered into between the student (or the student’s parent if the student is under the age of 18) and the board of a State school that entitles the student to receive tuition at the school 15
- 5 Section 4 amended (Enrolment of international students)**
- (1) In section 4(2), replace “section 4B and to subsections (3) and (4)” with “sections 4B and **13A** and to subsections (**2A**) to (4)” 20
- (2) After section 4(2), insert:

- (2A) If an international student’s conduct is in breach of the contract of enrolment, the board of the school may take appropriate disciplinary action against the student.
- (2B) For the purposes of **subsection (2A)**, disciplinary action, including suspension, exclusion, or the termination of the student’s enrolment, is appropriate disciplinary action if it is taken in accordance with the most recent code of practice published under section 238F and the contract of enrolment. 5
- 6 Cross-heading above section 13 amended**
In the cross-heading above section 13, after “*of*”, insert “*domestic*”.
- 7 Section 13 amended (Purpose)** 10
In section 13, replace “of a student” with “of a domestic student”.
- 8 New section 13A inserted (Application of sections 14 to 18AA)**
After section 13, insert:
- 13A Application of sections 14 to 18AA** 15
Sections 14 to 18AA (and any rules made under section 18AA) apply only in relation to domestic students.

Part 2

Amendments to principal Act and other enactment relating to tertiary education

- 9 Section 159 amended (Interpretation)** 20
- (1) In section 159(1), insert in their appropriate alphabetical order:
- community tertiary education provider** means a registered establishment that has been recognised by the Minister under **section 232AA**
- educational outcome** means a credit, grade, mark, or other measure of student achievement that contributes towards the student gaining— 25
- (a) a qualification listed on the Qualifications Framework; or
- (b) an award that recognises the successful completion of a training scheme; or
- (c) recognition for successfully meeting the learning outcomes of a standard listed on the Directory of Assessment Standards 30
- record of achievement** means a record of a student’s educational outcomes maintained by the Qualifications Authority, a tertiary education provider, or an industry training organisation
- (2) In section 159(1), definition of **tertiary education provider**, paragraph (d), delete “(for example, community education providers)”. 35

10 Section 159E amended (Charging)

In section 159E, insert as **subsections (2A) to (5)**:

- (2A) The Commission may charge an organisation a fee relating to the cost of the Commission investigating whether the organisation has breached or is breaching a condition subject to which the organisation was given funding approval under section 159YA or funding under section 159ZC if the Commission finds that the organisation has breached or is breaching such a condition. 5
- (2B) However, the Commission may charge a fee under **subsection (2A)** only if the Commission has notified the affected organisation of the proposed investigation and the date on which the investigation will start. 10
- (3) In reaching a decision on whether to charge an organisation a fee under **subsection (2A)** and on the amount of the fee (if one is to be charged), the Commission must have regard to—
- (a) the nature and seriousness of the breach; and
 - (b) the effect that a fee would have on the operation, long-term viability, and performance of the organisation. 15
- (4) The Governor-General may, by Order in Council, on the recommendation of the Minister made in accordance with **subsection (5)**, make regulations—
- (a) prescribing the criteria against which the Commission must assess a breach to determine the nature and seriousness of the breach for the purposes of **subsection (3)**; and 20
 - (b) prescribing the criteria against which the Commission must assess a proposed fee to determine, for the purposes of **subsection (3)**, the effect that the fee would have on the operation, long-term viability, and performance of an organisation; and 25
 - (c) specifying the maximum percentage or proportion of the cost incurred by the Commission in its investigation that may be charged as a fee by the Commission under **subsection (2A)**.
- (5) Before making a recommendation under **subsection (4)**, the Minister must consult all persons and organisations that the Minister considers ought to be consulted. 30

11 Section 159M amended (Restrictions on design of funding mechanisms)

In section 159M, after “section 159L”, insert “or in varying a determination under **section 159OA**.”.

14 New section 159OA inserted (Variation of determination of design of funding mechanisms) 35

After section 159O, insert:

159OA Variation of determination of design of funding mechanisms

- (1) After the Commission has implemented, or started to implement, the funding mechanisms under section 159O, the Minister may vary the determination of the design of the funding mechanisms.
- (2) The Minister may only vary a determination— 5
- (a) if it is reasonably necessary to do so; and
 - (b) by making changes in relation to the matters mentioned in section 159L(2) and (3).
- (3) Before deciding to vary a determination, the Minister must consult— 10
- (a) all organisations that would be affected by a variation that the Minister proposes; and
 - (b) all other persons and organisations that the Minister considers ought to be consulted.
- (3A) However, the Minister is not required to consult under **subsection (3)** in relation to a variation of the conditions under section 159L(3)(d) that set limits on the fees that organisations may charge domestic students. 15
- (4) If the Minister varies a determination, an organisation affected by the variation must—
- (a) consider whether any amendments are needed to its plan as a result of the variation; and 20
 - (b) if it considers that a significant amendment is needed to its plan, or that its plan needs to be replaced, ask the Commission to approve the significant amendment to, or the replacement of, its plan under section 159YK.
- (5) If the Minister varies a determination and, as a result of the variation, the Commission must attach new conditions to funding under a funding mechanism,— 25
- (a) the Commission must attach the new conditions to any funding approval that it has given under that funding mechanism; and
 - (b) the Commission must notify any affected organisation of the attachment of the new conditions to the organisation’s funding approval; and
 - (c) the new conditions take effect on the date on which the affected organisation is so notified. 30
- (6) If the Minister varies a determination, the variation takes effect on a date specified by the Minister that must be no earlier than whichever is the later of the following:
- (a) the day that is 3 months after the date on which the Minister varies the determination; 35
 - (b) the beginning of the calendar year after the calendar year during which the Minister varies the determination.

- 15 Section 159U amended (Exemption from requirement to submit proposed plan)**
- After section 159U(3), insert:
- (4) If the Commission exempts an organisation under subsection (1), the Commission may fund that organisation under section 159ZC as if it were an organisation for which a funding mechanism provides for funding other than via plans. 5
- 16 Section 159YC amended (Conditions on receiving funding under section 159YA)**
- (1) In section 159YC(2)(b), after “will be achieved”, insert “; or”.
- (2) After section 159YC(2)(b), insert: 10
- (c) conditions that the Commission considers reasonably necessary to enable the Commission to effectively monitor the performance of organisations and the tertiary education sector generally.
- (3) After section 159YC(2), insert:
- (2A) If the Commission intends to give funding approval subject to a condition of the type described in **subsection (2)(c)**, the Commission must, before giving funding approval,— 15
- (a) give the affected organisation at least 21 days’ notice of the proposed condition; and
- (b) consider any submissions on the proposed condition made by the organisation. 20
- 17 Section 159YD amended (Accountability for funding received under section 159YA)**
- In section 159YD(1), delete “(other than an institution)”.
- 18 Section 159YE amended (Expiry of funding approval)** 25
- In section 159YE(2), after “revoked”, insert “or withdrawn”.
- 19 Section 159YG amended (Commission may suspend or revoke funding given under section 159YA)**
- (1) In the heading to section 159YG, replace “**or revoke**” with “, **revoke, or withdraw**”. 30
- (2) After section 159YG(5), insert:
- (6) The Commission may withdraw some or all funding given under section 159YA at the written request of the organisation to which the funding has been given.
- (7) If the Commission withdraws some or all funding under **subsection (6)**, it must advise the organisation of the date on which the funding will be withdrawn. 35

- 20 Section 159YI amended (Effect of suspending or revoking funding given under section 159YA)**
- (1) In the heading to section 159YI, replace “or revoking” with “, revoking, or withdrawing”.
- (2) In section 159YI(2), after “revoking”, insert “or withdrawing”. 5
- (3) In section 159YI(2)(b), after “revoked”, insert “or withdrawn”.
- 21 Section 159YK amended (Organisation may seek approval for significant amendment, or replacement, of plan)**
- (1) In section 159YK(2), after “plan”, insert “if the organisation considers that the criteria for significant amendment to a plan or the criteria for replacement of a plan are satisfied”. 10
- (2) After section 159YK(2), insert:
- (2A) The Commission must—
- (a) set the criteria for significant amendment to a plan; and
- (b) set the criteria for replacement of a plan; and 15
- (c) publish those criteria in the *Gazette*.
- (5) In section 159YK(7), after “it”, insert “if the Commission considers that the criteria for significant amendment to a plan or the criteria for replacement of a plan are satisfied”.
- 22 Section 159ZE amended (Accountability for funding received under section 159ZC)** 20
- In section 159ZE(1), delete “(other than an institution)”.
- 23 Section 159ZF amended (Commission may suspend or revoke funding given under section 159ZC)**
- (1) In the heading to section 159ZF, replace “or revoke” with “, revoke, or withdraw”. 25
- (2) After section 159ZF(4), insert:
- (5) The Commission may, at the written request of an organisation, withdraw some or all payment, or any or all further payments, of any funding given to the organisation under section 159ZC. 30
- (6) If the Commission withdraws funding under **subsection (5)**, it must advise the organisation of the date on which the funding will be withdrawn.
- 24 Section 167 replaced (Affixing of council’s common seal)**
- Replace section 167 with:
- 167 Common seal** 35
- (1) An institution may have a common seal if its council adopts one by statute.

- (2) A council may, by statute,—
- (a) specify the type or class of documents that may be executed by affixing the common seal to them; and
 - (b) specify the type or class of documents that may be executed only by affixing the common seal to them; and
 - (c) specify any member or members of the council, and any member or members of the staff of the institution, who may countersign documents (or a specified type or class of documents) to which the common seal is affixed.
- (3) The common seal of an institution must be judicially noticed in all courts and for all purposes.

25 New section 167A inserted (Method of contracting)

After section 167, insert:

167A Method of contracting

- (1) An institution may enter into a contract or other enforceable obligation as provided in this section.
- (2) An obligation that, if entered into by an individual, is required to be entered into by deed may be entered into by the council in writing, signed under the name of the institution by 2 or more members of the council.
- (3) An obligation that, if entered into by an individual, is required to be entered into in writing may be entered into by the council in writing, signed by 1 person or more than 1 person acting under the institution's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be entered into in writing may be entered into by the council in writing or orally by a person acting under the institution's express or implied authority.
- (5) This section applies to a contract or other enforceable obligation—
- (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.

26 Section 176 amended (Casual vacancies)

In section 176(2), replace “3” with “6”.

27 Section 178 amended (Meetings of councils)

After section 178(4), insert:

- (4A) Meetings may be held by means of audio, audio and visual, or electronic communication if—

- (a) each member who wishes to participate in the meeting has access to the technology needed to participate in the meeting; and
 - (b) a quorum of members can simultaneously communicate with each other throughout the meeting.
- (4B) If a meeting is held in accordance with **subsection (4A)**, each member who participates in the meeting by means of audio, audio and visual, or electronic communication is present at the meeting for the purposes of subsections (5) to (9). 5

29 New sections 201C to 201E inserted

After section 201B, insert: 10

201C Council may establish common fund

- (1) This section and **sections 201D and 201E** are for the avoidance of doubt.
- (2) The council of an institution may—
 - (a) establish a common fund; and
 - (b) subject to **subsections (3) and (4)**, invest any trust funds in its possession, in whole or in part, in the common fund (whether the funds came into the council's possession before or after this section came into force). 15
- (3) If the council has in its possession trust funds of a trust of which the council is a co-trustee, the council may only invest those trust funds in the common fund with the consent of all the other co-trustees. 20
- (4) The council may not invest trust funds in the common fund if this would be inconsistent with the terms of any trust instrument governing the investment of the trust funds.

201D Investment of funds held in common fund

- (1) The council may invest funds that are held in a common fund only in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds. 25
- (2) Investments of funds held in a common fund must not be made on account of, and do not belong to, any particular trust, but the council must, at all times, maintain an account showing the entitlement of each trust in the common fund. 30
- (3) If trust funds are invested in a type or class of investment in which the common fund may be invested, the council may transfer that investment to the common fund and, if it does so,—
 - (a) the investment ceases, at the time of transfer, to belong to the trust that held the investment; and 35
 - (b) the council must give credit in the common fund to the trust for the fair market value of the investment at the time of transfer.

- (4) Any profit or loss upon the realisation of any investment in a common fund is to be credited or debited to the common fund.

201E Income and capital of common fund

- (1) Each financial year, the council must—
- (a) pay or allocate the income from the common fund to the trusts entitled to the amounts invested in the common fund— 5
 - (i) in proportion to the value of their respective interests in the common fund; and
 - (ii) at a uniform rate determined by the council; and
 - (b) hold the capital of the common fund on behalf of the trusts entitled to the amounts invested in the common fund in proportion to the value of their respective interests in the common fund; and 10
 - (c) hold any income that is not paid or allocated to trusts, and any capital that is not held on behalf of trusts, in a reserve fund separate from other trust funds. 15
- (2) The council may apply funds held in the reserve fund, including any income derived from investments of the reserve fund, for any of the following purposes:
- (a) augmenting the capital of the common fund:
 - (b) reinstating any losses of capital in the common fund: 20
 - (c) increasing or supplementing the income paid or allocated to trusts that have interests in the common fund.
- (3) The council may withdraw any amount from the common fund to the credit of a trust that has an interest in the common fund—
- (a) for the purpose of investing the amount on a separate account for the trust; or 25
 - (b) for any other purpose relating to the exercise and discharge of its duties, powers, authorities, and functions.
- (4) If any amount is withdrawn from the common fund to the credit of a trust that has an interest in the common fund,— 30
- (a) that amount may, at the discretion of the council, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments; and
 - (b) as from the date of its withdrawal, the trust has no claim on the fund in respect of the amount, whether for interest or otherwise. 35
- (5) The council—
- (a) may charge a reasonable fee, payable out of the income received by the common fund, for services provided by the council in relation to the administration or management of the common fund; and

- (b) must publish the amount of any such fee, and the method by which the fee is calculated or applied (and any change to that method), in the annual report.

30 Section 220 amended (Annual report)

After section 220(2B), insert:

5

- (2C) A statement of service performance under subsection (2A)(f) must be prepared in accordance with generally accepted accounting practice, within the meaning of section 8 of the Financial Reporting Act 2013.

31 Section 227A amended (Ministerial direction to institutions relating to compulsory student services fees)

10

Replace section 227A(1)(d) with:

- (d) requires the institution or institutions to include the following information in the institution's annual report (under section 220):

(i) a description of the services funded out of the student services fee:

(ii) a statement of the fee income and expenditure for each type of student service:

15

(iii) the student services fee expressed as an amount payable per student:

(iv) a statement describing how the institution has complied with any requirement to hold fees in a manner specified in a direction given under paragraph (b):

20

- (e) requires the institution or institutions to publish information about the following matters on an Internet site maintained by the institution:

(i) the student services fee expressed as an amount payable per student:

25

(ii) the arrangements that the institution has established for decisions to be made jointly or in consultation with students or their representatives in accordance with paragraph (c):

(iii) how students can participate in the process of joint decision making or consultation mentioned in paragraph (c).

30

31A New section 232AA and cross-heading inserted

After section 232, insert:

Recognition of community tertiary education provider

232AA Minister may recognise community tertiary education provider

- (1) The Minister may, by notice in the *Gazette*, recognise a registered establishment as a community tertiary education provider.

35

- (2) The Minister must, by notice in the *Gazette*, specify the criteria for recognition of a registered establishment as a community tertiary education provider.

32 Section 235 amended (Refund entitlements of domestic students)

After section 235(1), insert:

- (1A) A private training establishment must— 5
- (a) allow every domestic 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 domestic 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. 10

33 Section 235D amended (Ministerial direction to registered private training establishments relating to compulsory student services fees)

Replace section 235D(1)(d) with: 15

- (d) requires the establishment or establishments to provide each year to students a written report including the following information: 20
- (i) a description of the services funded out of the student services fee;
 - (ii) a statement of the fee income and expenditure for each type of student service;
 - (iii) the student services fee expressed as an amount payable per student;
 - (iv) a statement describing how the establishment has complied with any requirement to hold fees in a manner specified in a direction given under paragraph (b): 25
- (e) requires the establishment or establishments to publish information about the following matters on an Internet site maintained by the establishment: 30
- (i) the student services fee expressed as an amount payable per student;
 - (ii) the arrangements that the establishment has established for decisions to be made jointly or in consultation with students or their representatives in accordance with paragraph (c):
 - (iii) how students can participate in the process of joint decision making or consultation mentioned in paragraph (c). 35

34 Section 238I amended (Purpose and administration of export education levy)

- (1) In section 238I(1A)(a), after “establishment”, insert “or a private school”.

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(2)	In section 238I(1A)(b), after “18”, insert “, or the private school held a current registration under section 35A”.	
(3)	In section 238I(1A)(c), after “establishment”, insert “or private school”.	
(4)	In section 238I(1B)(a), (b), and (c)(ii), after “establishment”, insert “or private school” in each place.	5
35	Cross-heading above section 253C replaced	
	Replace the cross-heading above section 253C with:	
	<i>Use of certain terms in name or description of registered establishment or wananga</i>	
36	Section 253C amended (Minister may consent to registered establishments using certain terms in their names)	10
(1)	Replace the heading to section 253C with “ Minister may consent to use of certain terms in name or description of registered establishment or wananga ”.	
(2)	Repeal section 253C(1).	15
(3)	Replace section 253C(2) with:	
(2)	A registered establishment may apply to the Minister for consent to describe itself using the term university, college of education, polytechnic, or institute of technology.	
(2A)	A wananga may apply to the Minister for consent to describe itself using the term university, college of education, polytechnic, or institute of technology.	20
(4)	In section 253C(3) and (4), after “(2)”, insert “or (2A) ”.	
(5)	In section 253C(3)(b), after “Authority”, insert “and from the Commission”.	
<u>(5A)</u>	<u>In section 253C(3)(d), after “appropriate”, insert “; and”.</u>	
<u>(5B)</u>	<u>After section 253C(3)(d), insert:</u>	25
<u>(e)</u>	<u>in the case of a wananga, consult with such persons or bodies who are knowledgeable in āhuatanga Māori (Māori tradition) and tikanga Māori (Māori custom) within a kaupapa Māori pedagogy as the Minister considers appropriate.</u>	
(6)	Replace section 253C(5) with:	30
(5)	The Minister may grant consent under subsection (2) or (2A) subject to conditions that the Minister considers reasonably necessary to—	
(a)	ensure that students, employers, and members of the public are adequately informed of the legal status or characteristics of the registered establishment or wananga to which the consent is granted; and	35
(b)	ensure adequate protection of the quality and reputation of the institutions that may use the term without applying to do so; and	

- (c) protect the interests of the tertiary education system and the nation as a whole.
- (5A) The Minister may, at any time, carry out a review of a registered establishment or wananga to assess whether it is continuing to comply with any conditions subject to which it was granted consent under **subsection (2) or (2A)**. 5
- (7) In section 253C(6), after “If”, insert “, having regard to a review carried out under **subsection (5A)**,”.
- (8) In section 253C(6), after “establishment”, insert “or wananga”.
- (9) In section 253C(6), replace “requirements for consent to use the term for which consent has been given” with “conditions subject to which it was granted consent under **subsection (2) or (2A)**”. 10
- 37 Section 292 amended (Offences relating to use of certain terms)**
In section 292(1)(a)(ii), (b)(ii), (c)(ii), and (d)(ii), after “registered establishment”, insert “or wananga”.
- 38 Section 292C amended (Offence to issue false qualifications and falsify records)** 15
- (1) Replace section 292C(3) with:
- (3) A person commits an offence if the person—
- (a) enters or changes an educational outcome on a student’s record of achievement, knowing that or being reckless as to whether the entry or change has the effect of falsifying the student’s record; or 20
- (b) fails to enter an educational outcome on a student’s record of achievement, knowing that or being reckless as to whether the omission has the effect of falsifying the student’s record; or
- (c) without reasonable excuse or lawful authority, causes an entry or a change to be made on a student’s record of achievement that has the effect of falsifying the student’s record. 25
- (2) In section 292C(4), replace “against this section” with “under subsection (2)”.
- (3) After section 292C(4), insert:
- (5) A person who commits an offence under subsection (1) or **(3)** is liable on conviction to a fine not exceeding \$50,000. 30
- 39 New Part 5A of Schedule 1 inserted**
In Schedule 1, after Part 5, insert the **Part 5A** set out in **Schedule 1** of this Act.
- 41 Consequential amendment** 35
Amend the enactment specified in **Schedule 3** as set out in that schedule.

Schedule 1
New Part 5A of Schedule 1 inserted

s 39

Part 5A		
Provisions relating to Education (Tertiary Education and Other Matters) Amendment Act 2016		5
11A Interpretation	In this Part, commencement date means the date on which the Education (Tertiary Education and Other Matters) Amendment Act 2016 comes into force.	
11B Variation of determination of design of funding mechanisms (section 159OA)	A variation of a determination under section 159OA may affect an organisation whose plan has been given funding approval, and may involve the attachment of new conditions to the funding approval, whether the funding approval was given before, on, or after the commencement date.	10 15
11C Accountability for funding (sections 159YD and 159ZE)	Sections 159YD and 159ZE as amended by the Education (Tertiary Education and Other Matters) Amendment Act 2016 apply in relation to funding received by an organisation after the commencement date.	
11D Casual vacancies (section 176)	Section 176 as amended by the Education (Tertiary Education and Other Matters) Amendment Act 2016 applies in relation to any vacancy that arises after the commencement date.	20
11E Annual report (section 220)	The first statement of service performance to which section 220(2C) applies is the statement of service performance for the first financial year that begins after the commencement date.	25
11F Ministerial direction relating to compulsory student services fees (sections 227A and 235D)	Sections 227A and 235D as amended by the Education (Tertiary Education and Other Matters) Amendment Act 2016 apply in the first academic year that begins after the commencement date and all subsequent academic years.	30

11G Refund entitlements of domestic students (section 235)

Section 235(1A) applies in relation to domestic students who enrol for a programme or training scheme on or after the date that is 6 months after the commencement date.

Schedule 3
Consequential amendment

s 41

Public Bodies Contracts Act 1959 (1959 No 98)

In Schedule 1, Part 1, repeal the item relating to tertiary institutions.

5

Legislative history

8 February 2017

11 May 2017

8 November 2017

16 February 2018

22 February 2018

27 February 2018

Introduction (Bill 210–1)

First reading and referral to Education and Science Committee

Reinstated before Education and Workforce Committee

Reported from Education and Workforce Committee

(Bill 210–2)

Second reading

Committee of the whole House (Bill 210–3)