

Education (Tertiary Reforms) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill implements the Government's reform of the system for planning, funding, and monitoring the provision of tertiary education. The public policy objective of the Bill is to ensure that the tertiary education sector contributes towards tertiary education outcomes that are more closely aligned with the social, economic, and environmental interests of New Zealand.

The Bill addresses this objective by introducing a more streamlined system for planning, funding, and monitoring the tertiary education system, in particular, by—

- providing a set of instruments for steering the tertiary education sector that focuses on outcomes and the distinctive roles of the various tertiary education sub-sectors; and
- enabling the Tertiary Education Commission (the **Commission**) to more effectively guide the contribution of tertiary education organisations and monitor the performance of tertiary education organisations; and
- enhancing the accountability of tertiary education organisations for the expenditure of public funds and strengthening the provisions aimed at safeguarding the Crown's interest in tertiary education organisations generally.

Overview of new system of steering instruments

A key part of the Government's reforms is the move away from an annually funded, demand-led, input-based tertiary education system

to a three-yearly, controlled, and outcome-based system. The main components of this new system are as follows:

- the Government periodically issues a tertiary education strategy setting out the long-term strategy and current to medium-term priorities; and
- the responsible Minister determines the design of funding mechanisms and specifies the amount of funding that will be available to tertiary education organisations in support of the tertiary education strategy; and
- the Commission publishes guidance on how different tertiary education organisations can contribute towards achieving the tertiary education strategy and the criteria for assessing that contribution; and
- a tertiary education organisation prepares a plan, in consultation with stakeholders, in response to the Commission's guidance and presents the proposed plan to the Commission for approval; and
- the Commission applies the relevant criteria for assessment to a tertiary education organisation's proposed plan and approves the plan in whole or in part for funding purposes, and determines the amount of funding and any conditions on funding having regard to the relevant funding mechanisms; and
- the Commission monitors the performance of a tertiary education organisation in relation to the specified outcomes in the approved plan or approved parts of the plan.

Responsibility for administering the new system

The Government retains responsibility for setting the long-term strategy and current to medium-term priorities for tertiary education. The Government will also determine the overall level of investment in the provision of tertiary education and how that investment should be apportioned between teaching and learning, research, organisational capability building, and between different tertiary sub-sectors.

The Commission will publish detailed guidance on the content of plans and assessment criteria for approval of plans. This will focus on the shifts required to give effect to the tertiary education strategy. Tertiary education organisations will respond with a proposed plan setting out how the organisation will contribute to the Government's strategy and priorities for the benefit of stakeholders.

The Commission is responsible for assessing and approving proposed plans for funding purposes and determining the amount of

funding for approved plans. The Commission has discretion to approve plans in whole or in part for funding purposes. The Commission may also decline to assess a proposed plan if it does not adequately reflect the Commission's requirements for a plan, for example, if the plan does not clearly show how stakeholders needs will be addressed.

Plans may be approved for funding by the Commission if the specified outcomes are consistent with the Government's tertiary education strategy. The amount of funding will be determined by applying the relevant funding mechanism or mechanisms. Approved plans will apply for three years or for a shorter period if determined by the Commission.

The Commission must monitor the performance of tertiary education organisations to ensure that they are achieving the outcomes specified in a plan. Plans can be reviewed and amended by tertiary education organisations in response to changing needs.

If a tertiary education organisation is having difficulty fulfilling its obligations under an approved plan, the Commission can require the organisation to review the plan. The Commission can, if necessary, propose amendments to a plan. If an organisation is failing to deliver on the outcomes specified in the plan, then the Commission can suspend or revoke approval for a plan and withdraw funding.

The Commission is also responsible for allocating funding other than by way of an approved plan, and monitoring organisations in relation to the use of that funding. The Chief Executive of the Commission is responsible for monitoring tertiary education institutions that receive funding for an approved plan to assess whether the operation of an institution poses a risk to the Crown's interests or the long term viability of the institution. The Chief Executive will report directly to the Minister on the outcome of such monitoring.

Consequential amendments

The Industry Training Act 1992 is amended by the Bill as a consequence of the changes to the Education Act 1989.

Commencement and transitional arrangements

The new legislation is to come into force on 1 January 2008 and tertiary education organisations that have existing charters and profiles must have a plan on that date. The transitional arrangements are as follows:

- the Tertiary Education Strategy and Statement of Tertiary Education Priorities under the existing Act will together constitute the tertiary education strategy which will apply until a new tertiary education strategy is issued:
- existing funding mechanisms will be deemed to be funding mechanisms under the new provisions:
- every tertiary education institution will have a new profile approved in 2007 which, together with the existing charter, will be deemed to be the institution's plan:
- for those tertiary education organisations that have existing charters and profiles, these will be deemed to be the organisation's approved plan. (The Commission can subsequently require an organisation to review a deemed plan at any time, or amend a deemed plan itself):
- if a tertiary education organisation has a charter but is currently exempt from the requirement to have a profile, then that organisation will be deemed to be exempt from the requirement to have an approved plan. (The Commission can subsequently withdraw the exemption at any time and direct an organisation to submit a plan for funding approval):
- tertiary education organisations that are exempt from the requirement to have a charter but have a profile will be deemed to be exempt from the requirement to have an approved plan. (The Commission can subsequently withdraw the exemption at any time and direct an organisation to submit a plan for funding approval)
- tertiary education organisations that have neither charters nor profiles but receive funding under a funding mechanism will be deemed to be an organisation that receives funding other than under an approved plan.

Clause by clause analysis

Clause 1 relates to the title of the Bill.

Clause 2 relates to the commencement of the Bill. The Bill comes into force on 1 January 2008.

Clause 3 sets out the Bill's purpose. The purpose of the Bill is to—

- simplify and streamline the processes supporting the operation of the tertiary education system in New Zealand by creating a group of instruments that recognise the differing

- roles of organisations within the tertiary education sector and require organisations to focus on outcomes; and
- replace the tertiary education strategy and the statement of tertiary education priorities with a single document called the tertiary education strategy; and
 - replace charters and profiles with a single document called a plan; and
 - enable the Commission to effectively—
 - guide the contribution made by organisations towards achieving the current and medium-term priorities set out in the Government’s tertiary education strategy; and
 - monitor the performance of organisations; and
 - enhance the accountability of organisations that receive public funding; and
 - safeguard the Crown’s interest in organisations generally; and
 - clarify the role of the New Zealand Qualifications Authority in undertaking quality assurance of providers of adult and community education; and
 - make other amendments to the Education Act 1989 that relate to the tertiary education sector.

Clause 4 provides that Part 1 amends the Education Act 1989.

Clause 5 repeals the definitions of **charter**, **profile**, and **statement of tertiary education priorities** and substitutes a new definition of **proposed plan**.

Clause 6 substitutes a *new section 159AA*. It requires the Minister of Education to issue a tertiary education strategy that sets out—

- the Government’s long-term strategic direction for tertiary education; and
- the Government’s current and medium-term priorities for tertiary education.

New section 159AA(2) requires the long-term strategic direction for tertiary education to address the following:

- economic goals:
- social goals:
- environmental goals:
- the development aspirations of Maori and other population groups.

Clause 7 makes an amendment to section 159AB to replace a reference to the service continued under Part 22 of the Act with a reference to Career Services.

Clause 8 substitutes a *new section 159AC*. *New section 159AC* describes the process for amending, or revoking and replacing, a tertiary education strategy.

Clause 9 makes an amendment to section 159AE to replace a reference to the service continued under Part 22 of the Act with a reference to Career Services.

Clause 10 substitutes *new sections 159A and 159ABA*. *New section 159A* sets out that the purpose of Part 13A of the Act is to establish—

- a Tertiary Education Commission; and
- a framework for planning, funding, and monitoring in the tertiary education sector.

New section 159ABA is an explanatory outline of the framework for planning, funding, and monitoring in the tertiary education sector.

Clause 11 amends section 159F, which relates to the functions of the Commission. New functions are added to section 159F to reflect the Commission's role in giving effect to the new approach to planning, funding, and monitoring in the tertiary education sector.

Clause 12 amends section 159I, which relates to the delegation of functions or powers of the Minister. The amendment prohibits the Minister from delegating the power to determine the design of funding mechanisms under *new section 159L*.

Clause 13 inserts a *new subsection (3A)* into section 159J. *New section 159J(3A)* provides that the Minister may, in accordance with section 112 of the Crown Entities Act 2004, direct the Commission to undertake additional functions that are consistent with its objectives.

Clause 14 inserts *new section 159KBA*, which sets out the monitoring and reporting functions of the chief executive of the Commission. The chief executive must monitor institutions that are receiving funding under Part 13A of the Act to assess whether the operation of any of those institutions presents a risk to—

- the financial or proprietary interests of the Crown; or
- the long-term viability of the institution concerned.

Clause 15 makes a consequential amendment to section 159KE(1)(a)(i) so that it refers to the tertiary education strategy.

Clause 16 amends section 159KF(1) to clarify that the tertiary education strategy is given effect to, rather than implemented by, the Commission.

Clause 17 inserts new headings and *new sections 159L to 159YO*.

New section 159L(1) provides for the Minister to determine the design of funding mechanisms. The Commission must use these mechanisms when determining the amount of funding to be given to organisations.

Under *new section 159L(2)* the Minister must identify the form and essential components of each funding mechanism. The Minister must also indicate which funding mechanisms relate to—

- funding to be paid by the Commission via plans that have funding approval; and
- funding otherwise paid under Part 13A; and
- any other types of funding.

New section 159L(3) sets out certain things the Minister may do when determining the design of funding mechanisms.

New section 159M places certain restrictions on the Minister's determination regarding the design of funding mechanisms.

New section 159N requires every funding mechanism to be consistent with the principle that receiving public funds is dependent on an organisation meeting the quality assurance requirements in the Education Act 1989.

New section 159O requires the Commission—

- to develop the details of how to implement the funding mechanisms; and
- to implement the funding mechanisms.

New section 159P provides for the requirements of what a proposed plan must do, including—

- describing how an organisation will give effect to the Government's current and medium-term priorities as described in the tertiary education strategy; and
- describing how an organisation will address the needs of its stakeholders; and
- describing an organisation's mission and role for the period of the plan; and
- setting out what an organisation will do to support its mission and role, including, without limitation, setting out a description of—

- all tertiary education programmes run by the organisation; and
- all activities, including, without limitation, programmes and initiatives, that will be undertaken by the organisation in order to build its capability; and
- describing an organisation's proposed outcomes and the performance indicators that the organisation will use to measure whether those outcomes have been achieved; and
- specifying the amount of funding an organisation seeks from the Commission.

New section 159Q(1) provides that the Commission may exempt an organisation from complying with certain of the requirements in *new section 159P*.

New section 159Q(2) provides that the Commission may not use the power in *new section 159Q(1)* in relation to institutions.

New section 159Q(3) sets out the criteria that the Commission may consider before exempting an organisation under *new section 159Q(1)*.

New section 159R enables the Commission to prescribe, and give public notice of, the content of proposed plans (being the particular matters that proposed plans must address or include in order to meet the requirements in *new section 159P*).

New section 159S provides that the Commission may exempt an organisation from complying with certain matters prescribed under *new section 159R(1)*.

New section 159T(1) sets out who must submit a proposed plan in order to receive funding. The new section provides that the following must submit a proposed plan:

- all institutions seeking funding from the Commission under a funding mechanism that requires a plan to have funding approval; and
- all other organisations seeking funding from the Commission under a funding mechanism that requires a plan to have funding approval.

New section 159T(2) provides that *new section 159T(1)* does not apply to an organisation that is exempt under *new section 159U*.

New section 159U allows the Commission to exempt certain organisations, that are otherwise required under *new section 159T*, from the need to submit a proposed plan in order to receive funding

under a funding mechanism that would otherwise require a plan to be submitted.

New section 159V provides for how often organisations must submit proposed plans for funding approval.

New section 159W provides that the Commission may permit more than 1 organisation to prepare and submit a combined proposed plan if the Commission considers it appropriate.

New section 159X sets out certain requirements relating to the preparation of, and consulting requirements in relation to, proposed plans.

New section 159Y provides that the Commission must prescribe, and give public notice of, criteria that the Commission will use to assess proposed plans to determine whether they will receive funding approval.

New section 159YA sets out how the Commission assesses a proposed plan against the assessment criteria prescribed under *new section 159Y* and makes a decision regarding whether or not to give funding approval to all or part of an organisation's plan. *New section 159YA* also provides for the Commission to determine the amount of funding payable under the relevant funding mechanism.

New section 159YB allows the Commission to decline to assess a proposed plan for funding approval in certain circumstances. The Commission may decline to assess a proposed plan if it is satisfied on reasonable grounds that the proposed plan does not satisfy the requirements of Part 13A.

New section 159YC provides for the conditions that are attached, and may be attached, to the giving of funding approval under *new section 159YA*.

New section 159YD provides for the matters in relation to which an organisation (other than an institution) is accountable for funding received via a plan with funding approval under *new section 159YA*.

New section 159YE provides that funding approval expires on its expiry date (being a date determined by the Commission that is not later than 3 years from the date on which funding approval has effect).

New section 159YF explains that the effect of funding approval expiring is—

- that the plan or part of the plan to which the funding approval relates expires; and

- that the Commission ceases payment of funding under *new section 159YA*.

Under *new section 159YG* the Commission may suspend or revoke funding approval in certain circumstances. If the Commission makes a decision to suspend or revoke funding approval it must notify the organisation of its decision and give its reasons.

New section 159YH sets out the circumstances in which the Commission may extend the suspension of an organisation's funding approval.

New section 159YI explains the effect of suspending or revoking funding approval.

New section 159YJ allows for a review of a decision to suspend or revoke funding approval for a plan if that decision was made by a person who was delegated that power under the Crown Entities Act 2004.

New sections 159YK to 159YN set out how plans may be amended, or replaced and the effect of amendment or replacement.

New clause 159YO sets out what an organisation with a plan that has funding approval must provide for in its plan summary.

Clause 18 substitutes *new sections 159ZC to 159ZH*. These new provisions relate to matters associated with funding received by organisations under a funding mechanism under Part 13A that does not require the organisation to have a plan that has funding approval.

Clause 19 consequentially amends section 180, which relates to the functions of councils of institutions.

Clause 20 repeals section 191A (which is spent).

Clause 21 amends section 192(5)(b). The amendment omits a reference to an institution granting a lease for a term that does not exceed 5 years and replaces it with a reference to granting a lease for a term that does not exceed 15 years. The effect of the amendment is that an institution no longer needs to seek the consent of the Secretary for Education in granting a lease for the longer 15-year period.

Clause 22 inserts *new section 195DA*. *New section 195DA* offers protection to commissioners appointed to act in the place of councils of institutions. The protection offered in *new section 195DA* is the same as that offered to statutory managers and commissioners appointed to act in the place of boards of trustees under section 78Q of the Act.

Clauses 23 and 24 make consequential amendments relating to plans to sections 195E(1) and 201A(1)(a) of the Act.

Clause 25 amends section 206(2). The amendment removes the requirement for the Minister to lay before the House of Representatives a copy of the document relating to granting to an institution leases, licences, easements, permits, or rights of any kind in respect of any assets or liabilities of the Crown.

Clauses 26 to 30 consequentially amend sections 220(2A)(f), 227(1A), 228(2A), 236C, and 238D of the Act respectively.

Clause 31 amends section 241(b) to include reference to Vice Chancellors committees exercising certain powers of the New Zealand Qualifications Authority in circumstances where the universities are providing adult and community education.

Clause 32 amends section 253 to clarify that certain specified functions of the New Zealand Qualifications Authority are able to be used in relation to organisations that are providing adult and community education.

Clauses 33 to 35 amend sections 255A(1), 258(1A), and 259(1A) respectively to include reference to organisations that provide adult and community education.

Clause 36 makes miscellaneous amendments to section 279 of the Education Act 1989, which relates to Career Services.

Clauses 37 to 42 are transitional provisions designed to facilitate the movement of certain instruments and situations from their existing position under the Education Act 1989 to the new position that will take effect once the amendments to be made by this Bill come into force.

Part 2

Related amendments to other enactments

Amendments to the Industry Training Act 1992

Clause 43 provides that *clauses 44 to 47* amend the Industry Training Act 1992.

Clauses 44 to 47 consequentially amend the Industry Training Act 1992, to reflect changes in terminology made to the Education Act 1989 by this Bill.

Hon Dr Michael Cullen

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Government Bill

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Part 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education (Tertiary Reforms) Amendment Act **2007**.

2 Commencement

This Act comes into force on 1 January **2008**.

5

3 Purpose

The purpose of this Act is to—

- (a) simplify and streamline the processes supporting the operation of the tertiary education system in New Zealand by creating a group of instruments that— 5
 - (i) recognise the differing roles of organisations within the tertiary education sector; and
 - (ii) require organisations to focus on outcomes; and
- (b) support the purpose described in **paragraph (a)** by— 10
 - (i) replacing the tertiary education strategy and the statement of tertiary education priorities with a single document called the tertiary education strategy; and
 - (ii) replacing charters and profiles with a single document called a plan; and 15
- (c) enable the Tertiary Education Commission to effectively—
 - (i) guide the contribution made by organisations towards achieving the current and medium-term priorities set out in the Government’s tertiary education strategy; and 20
 - (ii) monitor the performance of organisations; and
- (d) enhance the accountability of organisations that receive public funds; and
- (e) safeguard the Crown’s interest in organisations generally; and 25
- (f) clarify the role of the New Zealand Qualifications Authority in undertaking quality assurance of providers of adult and community education; and
- (g) make other amendments to the Education Act 1989 that 30
 - relate to the tertiary education sector.

Part 1

Amendments to Education Act 1989

4 Principal Act amended

This Part amends the Education Act 1989. 35

5 Interpretation

- (1) The definitions of **charter**, **profile**, and **statement of tertiary education priorities** in section 159(1) are repealed.

- (2) Section 159(1) is amended by inserting the following definition in its appropriate alphabetical order:
 “**proposed plan** means a plan in relation to which an organisation seeks funding approval from the Commission”.
- 6 New section 159AA substituted** 5
 Section 159AA is repealed and the following section substituted:
“159AA Tertiary education strategy
 “(1) The Minister must, from time to time, issue a tertiary education strategy that sets out— 10
 “(a) the Government’s long-term strategic direction for tertiary education; and
 “(b) the Government’s current and medium-term priorities for tertiary education.
 “(2) The part of the tertiary education strategy that sets out the Government’s long-term strategic direction for tertiary education must address the following: 15
 “(a) economic goals:
 “(b) social goals:
 “(c) environmental goals: 20
 “(d) the development aspirations of Maori and other population groups.
 “(3) Before issuing a tertiary education strategy, the Minister must consult with—
 “(a) those stakeholders in the tertiary education sector that he or she considers ought to be consulted; and 25
 “(b) the Commission.
 “(4) As soon as practicable after issuing a tertiary education strategy, the Minister must give public notice of it.”
- 7 Importance of tertiary education strategy** 30
 Section 159AB is amended by omitting “the service continued by Part 22” and substituting “Career Services”.
- 8 New section 159AC substituted**
 Section 159AC is repealed and the following section substituted: 35

- “159AC Revocation and replacement or amendment of tertiary education strategy**
- “(1) The Minister may, at any time, revoke and replace, or amend, a tertiary education strategy.
- “(2) Before revoking and replacing, or significantly amending, a tertiary education strategy, the Minister must consult with— 5
 “(a) those stakeholders in the tertiary education sector that he or she considers ought to be consulted; and
 “(b) the Commission.
- “(3) As soon as practicable after revoking and replacing, or significantly amending, a tertiary education strategy, the Minister must give public notice of the revocation and replacement, or amendment. 10
- “(4) An amendment forms part of the tertiary education strategy it amends.” 15
- 9 Ministry may hold and disseminate information**
 Section 159AE is amended by omitting “the service continued by Part 22” and substituting “Career Services”.
- 10 New sections 159A and 159ABA substituted**
 Section 159A is repealed and the following sections are substituted: 20
- “159A Purpose of Part**
 The purpose of this Part is to establish—
 “(a) a Tertiary Education Commission (the **Commission**); and 25
 “(b) a framework for planning, funding, and monitoring in the tertiary education sector that primarily, but not exclusively, relates to funding organisations via plans that have funding approval.
- “159ABA Outline of framework for planning, funding, and monitoring in tertiary education sector** 30
- “(1) This section—
 “(a) sets out a general outline of the framework for planning, funding, and monitoring in the tertiary education sector; and 35
 “(b) is by way of explanation only.

- “(2) If any other section in this Act conflicts with this section, the other section prevails.
- “(3) The following steps describe, in general terms, how the framework for planning, funding, and monitoring in the tertiary education sector works: 5
- “(a) the Minister determines the design of funding mechanisms and whether funding under those mechanisms is dependent on an organisation having a plan that has funding approval:
- “(b) the Commission develops the details of how to implement funding mechanisms: 10
- “(c) the Commission issues guidance on what must be contained in proposed plans:
- “(d) the Commission identifies criteria for assessing proposed plans: 15
- “(e) an organisation prepares a proposed plan—
- “(i) in consultation with its stakeholders and any other persons specified by the Commission; and
- “(ii) in a manner consistent with the Commission’s guidance: 20
- “(f) the organisation submits its proposed plan to the Commission:
- “(g) the Commission applies assessment criteria to the proposed plan and decides whether or not to give all or part of the plan funding approval: 25
- “(h) if the plan or part of the plan is given funding approval, the Commission determines the amount of funding payable to the organisation by applying the appropriate funding mechanism:
- “(i) if an organisation’s plan receives funding approval, the Commission monitors the organisation’s performance to determine if it is meeting, or has met, the outcomes it has specified in its plan.” 30

11 Functions of Commission

- (1) Section 159F(1) is amended by repealing paragraph (a) and substituting the following paragraph: 35
- “(a) to give effect to the tertiary education strategy by—
- “(i) prescribing and publishing guidance on the content of, and processes associated with seeking funding approval for, proposed plans; and 40

- “(ii) prescribing and publishing guidance on the criteria the Commission will use to assess proposed plans; and
- “(iii) assessing and approving proposed plans for funding by applying the relevant assessment criteria; and 5
- “(iv) determining the amount of funding payable to organisations by applying the appropriate funding mechanisms; and
- “(v) allocating funding to organisations that have plans that have funding approval; and 10
- “(vi) allocating funding to organisations that are not required to have plans that have funding approval in order to receive funding; and
- “(vii) prescribing what plan summaries must contain for the purposes of public inspection; and 15
- “(viii) building the capability of organisations; and”.
- (2) Section 159F(1)(b) is amended by repealing subparagraphs (i) and (ii) and substituting the following subparagraphs: 20
- “(i) the tertiary education strategy; and
- “(ii) the activities and performance of specific organisations and the tertiary education sector generally; and”.
- (3) Section 159F(1) is amended by inserting the following paragraphs after paragraph (b): 25
- “(ba) to develop details of how to implement funding mechanisms; and
- “(bb) to implement funding mechanisms; and”.
- (4) Section 159F(1) is amended by repealing paragraph (d) and substituting the following paragraphs: 30
- “(d) to monitor the performance of organisations that receive funding from the Commission including by measuring performance against specified outcomes; and
- “(da) to undertake any functions that the Minister directs the Commission to undertake under **section 159J**; and” 35
- (5) Section 159F(1)(e) is amended by omitting “section 159ZC” and substituting “**sections 159YA and 159ZC**”.

12 Delegation of functions or powers of Minister

Section 159I is amended by repealing subsection (1) and substituting the following subsection:

- “(1) The Minister may, either generally or specifically, delegate to the Commission all or any of the Minister’s functions and powers under this Act (other than those referred to in **section 159L**) or any other Act, including functions or powers delegated to the Minister under this Act or any other Act.” 5

13 Minister may direct Commission

- (1) Section 159J is amended by inserting the following subsection after subsection (3): 10

“(3A) The Minister may, in accordance with section 112 of the Crown Entities Act 2004, direct the Commission to undertake additional functions that are consistent with the Commission’s objectives.” 15

- (2) Section 159J(4) is amended by omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”.

14 New section 159KBA inserted

The following section is inserted after section 159KB:

“159KBA Monitoring and reporting function of chief executive” 20

The chief executive—

- “(a) must, on an ongoing basis, monitor institutions that receive funding under this Part to assess whether the operation of any of those institutions presents a risk to— 25

“(i) the financial or proprietary interests of the Crown; or

“(ii) the long-term viability of the institution concerned; and 30

- “(b) may report from time to time to the Minister on the outcome of that monitoring.”

15 Statement of intent

Section 159KE(1)(a)(i) is amended by omitting “statement of tertiary education priorities” and substituting “tertiary education strategy”. 35

16 Annual report

Section 159KF(1) is amended by omitting “implementing” and substituting “giving effect to”.

17 New headings and sections 159L to 159YO substituted

Sections 159L to 159Z and the headings above sections 159L and 159W are repealed and the following headings and sections substituted: 5

*“Funding mechanisms***“159L Minister determines design of funding mechanisms**

“(1) The Minister must, from time to time, determine the design of the funding mechanisms that the Commission must use to fund organisations. 10

“(2) Without limiting **subsection (1)**, in making a determination under that subsection, the Minister must—

“(a) identify the general form and essential components of each funding mechanism; and 15

“(b) indicate which of the funding mechanisms relates to—

“(i) funding to be paid by the Commission under **section 159YA** (relating to funding organisations via plans that have funding approval); and 20

“(ii) funding to be paid by the Commission under **section 159ZC** (relating to funding organisations under this Part other than via plans that have funding approval); and

“(iii) other types of funding (if any). 25

“(3) Without limiting **subsection (1)**, in making a determination under that subsection, the Minister may—

“(a) specify the amount of money, or the proportion of an amount of money, available under any particular funding mechanism; and 30

“(b) provide for funding to different groups of organisations or types of organisation; and

“(c) provide for different versions of, or modifications to, a funding mechanism when applying it to different groups of organisations or types of organisation; and 35

“(d) specify conditions that the Commission must attach to funding that is provided under any funding mechanism including, without limitation, conditions setting limits on the fees that an organisation may charge domestic students; and 40

“(e) provide for funding that targets particular groups of students.

“159M Restrictions on design of funding mechanisms

In determining a design for a funding mechanism under **section 159L**, the Minister may not—

“(a) identify a specified organisation or organisations to which funding is to be provided or denied under any funding mechanism; or

“(b) specify conditions under **section 159L(3)(d)** that set limits on the fees that organisations may charge domestic students until 2 months after the date on which the Minister has published a notice in the *Gazette* that—

“(i) states that the Minister proposes to specify conditions of that kind; and

“(ii) sets out the proposed conditions; and

“(iii) invites submissions on the proposed conditions; and

“(iv) specifies the date by which submissions must be received, which must be a date no later than 21 days after the date of the *Gazette* notice.

“159N Funding mechanisms consistent with quality assurance principle

Every funding mechanism must be consistent with the principle that receiving public funds is dependent on an organisation meeting the quality assurance requirements in this Act.

“159O Commission to implement funding mechanisms

The Commission must—

“(a) develop the details of how to implement the Minister’s determination of the design of funding mechanisms under **section 159L**; and

“(b) implement the funding mechanisms.

“Requirements for, and content of, proposed plans

“159P Requirements for proposed plans

A proposed plan must—

“(a) describe how an organisation will give effect to the Government’s current and medium-term priorities as described in the tertiary education strategy; and

- “(b) describe how an organisation will address the needs of its stakeholders (including, without limitation, students attending the organisation); and
- “(c) describe an organisation’s mission and role for the term of the plan’s funding approval; and 5
- “(d) set out what an organisation will do to support its mission and role, including, without limitation, setting out a description of—
- “(i) all tertiary education programmes run by the organisation for which the organisation is seeking funding from the Commission; and 10
- “(ii) all tertiary education programmes run by the organisation other than those for which the organisation is seeking funding from the Commission; and 15
- “(iii) all activities, including, without limitation, programmes and initiatives, that will be undertaken by the organisation in order to build its capability; and
- “(e) describe an organisation’s proposed outcomes and the performance indicators that the organisation will use to measure whether those outcomes have been achieved; and 20
- “(f) specify the amount of funding an organisation seeks from the Commission. 25

“159Q Exemption from certain requirements for proposed plans

- “(1) The Commission may, by notice in writing, exempt an organisation from having to comply with either or both of the requirements in the following sections: 30
- “(a) **section 159P(d)(ii)**;
- “(b) **section 159P(d)(iii)**.
- “(2) The Commission may not exercise the power in **subsection (1)** in relation to an institution.
- “(3) Before exempting an organisation under **subsection (1)**, the Commission must consider— 35
- “(a) the amount of funding sought by the organisation; and
- “(b) the amount of funding already received by the organisation; and
- “(c) the type and size of the organisation; and 40

- “(d) the effective operation of the tertiary education system; and
- “(e) the Government’s current and medium-term priorities as described in the tertiary education strategy; and
- “(f) any other matters the Commission considers relevant. 5

“159R Content of, and processes for submitting, proposed plans prescribed by Commission

- “(1) The Commission must prescribe and give public notice of—
 - “(a) the content of organisations’ proposed plans (being the particular matters that proposed plans must address or include in order to meet the requirements in **section 159P**); and 10
 - “(b) the kinds of background or supplementary information that the Commission requires an organisation to provide in relation to a proposed plan; and 15
 - “(c) the timetable and process for the submission of proposed plans to the Commission.
- “(2) When prescribing matters under **subsection (1)**, the Commission may include—
 - “(a) standard content, as well as different content applying to different organisations, groups of organisations, or types of organisation; and 20
 - “(b) different information, timetables, and processes for different organisations, groups of organisations, or types of organisation. 25
- “(3) Notices given under **subsection (1)** may be—
 - “(a) given at different times; and
 - “(b) amended by the Commission.
- “(4) The Commission must give public notice of a substantial amendment made under **subsection (3)(b)**. 30

“159S Commission may exempt organisation from complying with certain matters

The Commission may, by notice in writing, exempt an organisation from complying with any of the matters it has prescribed under **section 159R(1)**. 35

*“Submitting proposed plan***“159T Who must submit proposed plan**

- “(1) The following must submit a proposed plan to the Commission:
- “(a) all institutions seeking funding from the Commission under a funding mechanism that requires an institution to have a plan that has funding approval: 5
 - “(b) all other organisations seeking funding from the Commission under a funding mechanism that requires an organisation to have a plan that has funding approval. 10
- “(2) **Subsection (1)** does not apply to an organisation that is exempt under **section 159U**.

“159U Exemption from requirement to submit proposed plan in order to receive funding approval

- “(1) The Commission may, by notice in writing, exempt an organisation, a group of organisations, or a type of organisation from the requirement, in **section 159T(1)**, to submit a proposed plan in order to receive funding approval. 15
- “(2) The Commission may not exercise the power in **subsection (1)** in relation to an institution. 20
- “(3) The Commission may exempt an organisation or organisations under **subsection (1)** for—
- “(a) a certain period that the Commission considers appropriate; or
 - “(b) an indefinite period (which may end if the Commission withdraws the exemption by notice in writing). 25

“159V Frequency of submitting proposed plans

An organisation that is required to submit a proposed plan must submit a proposed plan to the Commission—

- “(a) at least once every 3 years; or 30
- “(b) if the Commission directs, at more frequent intervals specified by the Commission.

“159W Submitting combined proposed plan

The Commission may permit more than 1 organisation to prepare and submit a combined proposed plan for funding approval if the Commission considers it appropriate. 35

*“Preparing and consulting on proposed plans***“159X Preparing and consulting on proposed plans**

- “(1) An organisation that is required to submit a proposed plan must prepare the plan in accordance with this Part (including, unless it is exempt under **section 159S**, complying with the matters prescribed by the Commission under **section 159R**). 5
- “(2) A proposed plan must be prepared in consultation with—
 “(a) an organisation’s stakeholders; and
 “(b) any other person or group of persons that the Commission stipulates. 10
- “(3) An organisation must develop the content of its proposed plan in collaboration with the Commission, including collaborating with the Commission about ways in which the organisation can implement the matters prescribed by the Commission under **section 159R**. 15
- “(4) After completing the requirements in **subsections (1) to (3)**, an organisation must submit its proposed plan to the Commission.

*“Assessment of proposed plans for funding approval and giving of funding approval 20***“159Y Criteria for assessing proposed plans for funding approval**

- “(1) The Commission must prescribe and give public notice of the criteria that the Commission will use to assess proposed plans to determine if they will receive funding approval. 25
- “(2) The prescribed criteria must include, without limitation, criteria for assessing—
 “(a) how an organisation contributes to the Government’s current and medium-term priorities described in the tertiary education strategy; and 30
 “(b) the activities of an organisation, including, without limitation, programmes and initiatives that are aimed at building the organisation’s capability (other than an organisation that is subject to an exemption under **section 159Q(1)**); and 35
 “(c) the performance indicators used in measuring whether the specified outcomes in an organisation’s plan have been achieved; and

- “(d) the extent and nature of an organisation’s consultation over its proposed plan.
- “(3) When prescribing matters under **subsection (1)**, the Commission may include standard criteria, as well as different criteria applying to different organisations, groups of organisations, or types of organisation. 5
- “(4) Notices given under **subsection (1)** may be—
 “(a) given at different times; and
 “(b) amended by the Commission.
- “(5) The Commission must give public notice of a substantial amendment made under **subsection (4)(b)**. 10
- “159YA Commission’s assessment of proposed plans and giving of funding approval**
- “(1) The Commission must assess whether a proposed plan will receive funding approval by applying the assessment criteria prescribed under **section 159Y**. 15
- “(2) After applying the assessment criteria, the Commission may decide to—
 “(a) give a proposed plan funding approval; or
 “(b) give part of a proposed plan funding approval; or 20
 “(c) not give a proposed plan funding approval.
- “(3) Before deciding not to give a proposed plan funding approval or to only give funding approval to part of a proposed plan, the Commission must—
 “(a) notify the organisation of its proposed decision; and 25
 “(b) give the organisation a reasonable opportunity to be heard.
- “(4) The Commission must give its reasons to the affected organisation if it decides not to give funding approval to an organisation’s proposed plan or to give funding approval to only part of the organisation’s proposed plan. 30
- “(5) In giving all or part of an organisation’s plan funding approval, the Commission must—
 “(a) specify the date from which funding approval has effect; and 35
 “(b) determine the amount of funding payable to the organisation by applying the appropriate funding mechanism to the part or parts of the organisation’s plan to which funding approval has been given; and

“(c) arrange for the payment to the organisation of the amount of funding determined under **paragraph (b)**.

“159YB Commission may decline to assess proposed plan

- “(1) The Commission may decline to assess a proposed plan under **section 159YA** if the Commission is satisfied on reasonable grounds that the proposed plan does not adequately satisfy the requirements of this Part (including, unless the organisation is exempt under **section 159S**, complying with the matters prescribed by the Commission under **section 159R**). 5
- “(2) Before making a decision to decline to assess an organisation’s proposed plan, the Commission must discuss with the organisation why the proposed plan does not adequately satisfy the requirements of this Part. 10
- “(3) The Commission must give its reasons to the affected organisation if it declines to assess the organisation’s proposed plan for funding approval. 15

“159YC Conditions on receiving funding approval

- “(1) It is a condition of an organisation receiving funding approval for its plan or part of its plan that the organisation will supply to the Commission or Ministry, from time to time as required by the Commission or Ministry, and in a form specified by the Commission or Ministry, any financial, statistical, or other information that the Commission or Ministry requires the organisation to supply. 20
- “(2) The Commission may give funding approval to a plan or part of a plan subject to— 25
- “(a) any conditions the Minister has determined the Commission must attach to funding under **section 159L(3)(d)**; and
- “(b) any other conditions that the Commission considers necessary to ensure that the specified outcomes in a plan or part of a plan that has funding approval are being met or will be met. 30

“159YD Accountability for funding received via plan with funding approval

- “(1) An organisation (other than an institution) that receives funding via a plan that has funding approval must ensure that— 35

- “(a) it keeps records, in a form consistent with that required by the Commission, for the period to which the funding relates, that fully and fairly show—
- “(i) the transactions, assets, liabilities, and funds of the organisation that are or were affected by the funding; and 5
 - “(ii) whether any conditions on which the funding approval was given have been complied with; and
- “(b) the records are available for inspection by the Commission at all reasonable times. 10
- “(2) As soon as practicable after the end of any year in which an organisation (other than an institution) receives funding under **section 159YA**, the organisation must provide the Commission with— 15
- “(a) a financial report of the organisation for that year, including a statement of financial performance, a statement of financial position, a statement of movements in equity, a statement of cash flows, and a statement of service performance that compares the performance of the organisation with the outcomes specified in the organisation’s plan as measured by the performance indicators specified in the organisation’s plan; and 20
 - “(b) any financial reports, or statistical or other information, required by the Commission; and 25
 - “(c) any information necessary to demonstrate compliance with any condition attached to the funding.
- “(3) A report required under **subsection (2)(a)** must be prepared in accordance with generally accepted accounting practice and must be audited by an independent chartered accountant. 30
- “(4) The Commission may exempt any organisation, group of organisations, or types of organisation from complying with 1 or more of the requirements set out in **subsections (2) and (3)**.
- “(5) In exercising the powers conferred on it by **subsection (4)**, the Commission must have regard to— 35
- “(a) the amount of funding sought by the organisation; and
 - “(b) the amount of funding received by the organisation; and
 - “(c) the type and size of the organisation; and
 - “(d) any other matters that the Commission considers relevant. 40

“(6) Section 203 sets out the accountability requirements for institutions.

“Expiry of funding approval

“159YE Expiry of funding approval

- “(1) Every plan that has funding approval or part of a plan that has funding approval must specify the date on which funding approval expires (the **expiry date**), which must be a date determined by the Commission that is no later than 3 years after the date on which the funding approval comes into effect. 5
- “(2) Funding approval expires on the expiry date, unless funding approval is earlier revoked under this Part. 10
- “(3) Despite **subsection (2)**, if, on the expiry date, an organisation is discussing a proposed plan with the Commission or the proposed plan is awaiting funding approval under this Part, the funding approval for the existing plan continues in effect until the earlier of the following dates: 15
- “(a) the date that is 6 months after the expiry date of the existing funding approval; or
- “(b) the date that funding approval for the proposed plan comes into effect. 20

“159YF Effect of expiry of funding approval

The effect of the expiry of funding approval is that—

- “(a) the plan or part of the plan to which funding approval relates expires; and
- “(b) the Commission must cease payment, or cease any or all further payments, of funding under **section 159YA** in respect of that plan. 25

“Suspension or revocation of funding approval

“159YG Commission may suspend or revoke funding approval

- “(1) The Commission may suspend or revoke funding approval for a plan or part of a plan if it is satisfied on reasonable grounds that— 30
- “(a) the organisation to which the plan or part of the plan relates has not complied, or is not complying, with a condition on which funding approval was given; or 35

- “(b) when measured against performance indicators, the organisation has not achieved, or is not achieving, an outcome anticipated in its plan or part of its plan; or
- “(c) the organisation has not provided, or is not providing, adequate and timely information required by the Commission or Ministry under **section 159YC**. 5
- “(2) Before deciding whether to suspend or revoke funding approval for a plan or part of a plan under **subsection (1)**, the Commission must—
- “(a) notify the organisation of the specific matters of concern; and 10
- “(b) give the organisation a reasonable opportunity to be heard.
- “(3) The Commission must give its reasons to an organisation if it decides to suspend or revoke funding approval for all or part of an organisation’s plan. 15
- “(4) The Commission must advise an organisation of the following matters if it decides to suspend funding approval for all or part of the organisation’s plan:
- “(a) the date on which the suspension will end and, as a consequence, funding approval for all or part of the plan will be revoked; and 20
- “(b) what action the organisation must take in order to have the suspension lifted and avoid funding approval for all or part of the plan being revoked. 25
- “(5) A suspension must be for a period that the Commission considers reasonable, having considered—
- “(a) the specific matters referred to in **subsection (2)(a)**; and
- “(b) the action referred to in **subsection (4)(b)**.
- “159YH Extending suspension of funding approval 30**
- “(1) The date on which a suspension ends under **section 159YG(4)(a)** may be extended by the Commission.
- “(2) The Commission must advise an organisation of the following matters if it decides to extend the date on which a suspension will end: 35
- “(a) the date on which the extended suspension will end and, as a consequence, funding approval for all or part of the plan will be revoked; and

- “(b) what action the organisation must take in order to have the extended suspension lifted and avoid funding approval for all or part of the plan being revoked.
- “(3) An extension of a suspension must be for a period that the Commission considers reasonable, having considered— 5
- “(a) the specific matters referred to in **section 159YG(2)(a)**; and
- “(b) the action referred to in **section 159YG(4)(b)**.
- “159YI Effect of suspending or revoking funding approval**
- “(1) The effect of suspending funding approval is that the Commission must cease payment, or cease any or all further payments, of funding under **section 159YA** in respect of the plan or part of the plan in relation to which funding approval has been suspended. 10
- “(2) The effect of revoking funding approval is that—
- “(a) the plan or part of the plan to which funding approval relates is revoked; and 15
- “(b) the Commission must cease payment, or cease any or all further payments, of funding under **section 159YA** in respect of the plan or part of the plan in relation to which funding approval has been revoked. 20
- “159YJ Review of decision by delegate to suspend or revoke funding approval for plan**
- “(1) **Subsection (2)** applies to an organisation in relation to which a person has exercised any of the following powers under a delegation from the Commission under section 73 of the Crown Entities Act 2004: 25
- “(a) suspending funding approval for a plan under **section 159YG**; or
- “(b) revoking funding approval for a plan under **section 159YG**; or 30
- “(c) extending the suspension of funding approval for a plan under **section 159YH**.
- “(2) An organisation to which this subsection applies may ask the Commission to review the decision of the delegate.

*“Amending and reviewing plans***“159YK Organisation may amend, or review and replace, plan that has funding approval**

- “(1) An organisation may, at any time, propose an amendment to, or the review and replacement of, a plan that has funding approval. 5
- “(2) An organisation that proposes to make a significant amendment to, or to replace, a plan that has funding approval must consult with—
- “(a) the organisation’s stakeholders; and 10
 - “(b) any other person or group that the Commission stipulates.
- “(3) The Commission may, at any time, require an organisation to review a plan that has funding approval with a view to amending or replacing it. 15
- “(4) The Commission may prescribe the requirements for the following in relation to an amendment to, or a replacement of, a plan that has funding approval:
- “(a) the content of the amendment or replacement (which may be the same as the matters prescribed by the Commission under **section 159R**): 20
 - “(b) criteria for assessing the amendment or replacement (which may be the same as those prescribed by the Commission under **section 159Y**).
- “(5) In applying the requirements in **subsection (4)** to an amendment to a plan or a replacement plan, the Commission must take into account—
- “(a) the extent and significance of the amendment or replacement; and
 - “(b) the impact of the amendment or replacement on the needs of the organisation’s stakeholders. 30

“159YL Effect of amendment or replacement of plan under section 159YK

- “(1) An approved amendment, made under **section 159YK**, to a plan that has funding approval— 35
- “(a) forms part of the plan it amends; and
 - “(b) takes effect on the date specified by the Commission; and
 - “(c) does not affect the plan’s funding approval.

- “(2) An approved replacement under **section 159YK** of a plan that has funding approval—
- “(a) takes effect on the date specified by the Commission; and
- “(b) is treated as revoking the plan it replaces; and 5
- “(c) does not affect the plan’s funding approval.
- “159YM Commission may amend proposed plan or plan that has funding approval**
- “(1) The Commission may, at any time, on its own initiative, propose an amendment to— 10
- “(a) a proposed plan; or
- “(b) a plan that has funding approval.
- “(2) If the Commission proposes an amendment to a plan under **subsection (1)**, it must notify the organisation of the proposal and give it a reasonable period to make submissions (including, giving the organisation enough time to consult its stakeholders). 15
- “(3) After considering any submissions made by the organisation, the Commission may—
- “(a) approve the proposed amendment (with further amendment if necessary); or 20
- “(b) abandon the proposed amendment.
- “159YN Effect of amendment made to plan under section 159YM**
- An amendment made to a plan under **section 159YM**— 25
- “(a) forms part of the plan it amends; and
- “(b) takes effect on the date specified by the Commission; and
- “(c) does not affect a plan’s funding approval if the plan had funding approval before it was amended. 30

“Plan summary

- “159YO Summary of plans that have funding approval**
- “(1) The Commission must prescribe and give public notice of the matters that an organisation that has a plan that has funding approval must include in a plan summary. 35
- “(2) An organisation that has a plan that has funding approval must ensure that—

- “(a) a plan summary is available for inspection by the public; and
- “(b) copies of that plan summary may be obtained either at no cost or no more than a reasonable cost; and
- “(c) the plan summary contains the matters prescribed under **subsection (1)**.” 5

18 New heading and sections 159ZC to 159ZH substituted

Sections 159ZA to 159ZF and the heading above section 159ZA are repealed and the following heading and sections substituted: 10

“Funding under this Part other than via plans that have funding approval

“159ZC Funding other than via plans that have funding approval

- “(1) If a funding mechanism provides for funding for an organisation in circumstances where the organisation is not required to have a plan that has funding approval in order to receive funding, the Commission may, under this section, fund that organisation in accordance with that funding mechanism. 15
- “(2) Nothing in **subsection (1)** limits the Commission’s powers to fund organisations in other ways under a delegated authority or another enactment. 20

“159ZD Conditions on funding received under section 159ZC

- “(1) It is a condition of receiving funding under **section 159ZC** that the recipient will supply to the Commission or Ministry, from time to time as required by the Commission or Ministry, and in a form specified by the Commission or Ministry, any financial, statistical, or other information that the Commission or Ministry requires the organisation to supply. 25
- “(2) The Commission may impose conditions on funding received under **section 159ZC**, but only if the Minister has provided that, under the funding mechanism under which that funding is provided,— 30
- “(a) any or specified conditions may be imposed; or
- “(b) specified conditions must be imposed. 35
- “(3) The Commission may at any time (including during a funding period) amend any condition imposed under **subsection (2)**.

“(4) An amendment to a condition takes effect when the organisation has been given reasonable notice of it.

“**159ZE Accountability for funding received under section 159ZC**

- “(1) An organisation (other than an institution) that receives funding under **section 159ZC** must ensure that— 5
- “(a) it keeps records, in a form consistent with that required by the Commission, for the period to which the funding relates, that fully and fairly show— 10
- “(i) the transactions, assets, liabilities, and funds of the organisation that are or were affected by the funding; and
- “(ii) whether any conditions on which the grant was made have been complied with; and
- “(b) the records are available for inspection by the Commission at all reasonable times. 15
- “(2) As soon as practicable after the end of any year in which an organisation (other than an institution) receives funding under **section 159ZC**, the organisation must provide the Commission with— 20
- “(a) a financial report of the organisation for that year, including a statement of financial performance, a statement of financial position, a statement of movements in equity, a statement of cash flows, and a statement of service performance that compares the performance of the organisation with the outcomes agreed with the Commission as measured by any performance indicators agreed with the Commission; and 25
- “(b) any financial reports, or statistical or other information, required by the Commission; and 30
- “(c) any information necessary to demonstrate compliance with any condition attached to the funding.
- “(3) A report required under **subsection (2)(a)** must be prepared in accordance with generally accepted accounting practice and must be audited by an independent chartered accountant. 35
- “(4) The Commission may exempt any organisation, group of organisations, or type of organisation from complying with 1 or more of the requirements set out in **subsections (2) and (3)**.
- “(5) In exercising the powers conferred on it by **subsection (4)**, the Commission must have regard to— 40

- “(a) the amount of funding sought by the organisation; and
“(b) the amount of funding received by the organisation; and
“(c) the type and size of the organisation; and
“(d) any other matters that the Commission considers relevant. 5
- “(6) Section 203 sets out the accountability requirements for institutions.
- “159ZF Commission may suspend or revoke funding given under section 159ZC**
- “(1) The Commission may suspend or revoke payment, or any or all further payments, of any funding given to an organisation under **section 159ZC** if the Commission is satisfied on reasonable grounds that the organisation— 10
- “(a) has not complied, or is not complying, with a condition on which the funding was given; or 15
- “(b) is not providing, or has not provided, adequate and timely information required by the Commission or Ministry under **section 159ZD**.
- “(2) Before deciding whether to suspend or revoke payment under **subsection (1)**, the Commission must— 20
- “(a) notify the organisation of the specific matters of concern; and
- “(b) give the organisation a reasonable opportunity to be heard.
- “(3) The Commission must give its reasons to an organisation if it decides to suspend or revoke the organisation’s funding. 25
- “(4) The Commission must specify the following matters if it decides to suspend funding under **subsection (1)**:
- “(a) the date on which the suspension will end and, as a consequence, the funding will be revoked; and 30
- “(b) what action the organisation must take in order to have the suspension lifted and avoid funding being revoked.
- “159ZG Extending suspension of funding**
- “(1) The date on which a suspension ends under **section 159ZF(4)(a)** may be extended by the Commission. 35
- “(2) The Commission must advise an organisation of the following matters if it decides to extend the date on which a suspension will end:

- “(a) the date on which the extended suspension will end and, as a consequence, funding will be revoked; and
- “(b) what action the organisation must take in order to have the extended suspension lifted and avoid funding being revoked. 5
- “(3) An extension of a suspension must be for a period that the Commission considers reasonable having considered—
- “(a) the specific matters referred to in **section 159ZF(2)(a)**; and
- “(b) the action referred to in **section 159ZF(4)(b)**.
- “159ZH Review of decision made by delegate to suspend or revoke funding under section 159ZC 10**
- “(1) **Subsection (2)** applies to an organisation in relation to which a person has exercised any of the following powers under a delegation from the Commission under section 73 of the Crown Entities Act 2004: 15
- “(a) suspending the organisation’s funding under **section 159ZF**; or
- “(b) revoking the organisation’s funding under **section 159ZF**; or
- “(c) extending the suspension of the organisation’s funding under **section 159ZG**. 20
- “(2) An organisation to which this subsection applies may ask the Commission to review the decision of the delegate.”
- 19 Functions of councils**
- (1) Section 180(1) is amended by repealing paragraphs (b) to (e) and substituting the following paragraphs: 25
- “(b) to prepare and submit a plan for funding approval if the institution is seeking funding under a funding mechanism that requires the institution to have a plan that has funding approval: 30
- “(c) if the institution has a plan that has funding approval,—
- “(i) to ensure that the institution is managed in accordance with that plan; and
- “(ii) to determine policies to implement that plan: 35
- “(d) determine, subject to the State Sector Act 1988, the policies of the institution in relation to the management of its affairs.”
- (2) Section 180 is amended by repealing subsection (2).

- 20 Section 191A and heading above section 191A repealed**
Section 191A and the heading above section 191A are repealed.
- 21 Powers of institutions**
Section 192(5)(b) is amended by omitting “5 years” and substituting “15 years”. 5
- 22 New section 195DA inserted**
The following section is inserted after section 195D:
“195DA Protection of commissioners
A commissioner appointed under section 195D(1) is not personally liable for an act he or she has done or omitted to do, or for any loss arising from that act or omission, if he or she was acting— 10
“(a) in good faith; and
“(b) in the course of carrying out his or her powers, functions, or duties.” 15
- 23 Powers and functions of commissioner**
Section 195E(1) is amended by omitting “the institution’s charter” and substituting “, in the case of an institution that has a plan that has funding approval, that plan”. 20
- 24 How institutions may use income and capital**
Section 201A(1) is amended by repealing paragraph (a) and substituting the following paragraph:
“(a) apply its income and capital in doing whatever the council thinks will— 25
“(i) enable the institution to carry out the functions characteristic of an institution of the class to which the institution belongs; and
“(ii) in the case of an institution with a plan that has funding approval, enable the institution to achieve the outcomes set out in that plan; and”. 30
- 25 Transfer of Crown assets and liabilities to institutions**
Section 206(2) is amended by omitting “subsection (1) of this section” and substituting “subsection (1)(a) and (b)”.

- 26 Annual report**
 Section 220(2A)(f) is repealed and the following paragraph substituted:
 “(f) in the case of an institution that has a plan that has funding approval, a statement of service performance for that financial year reporting on the performance of the institution as compared with the proposed outcomes described in that plan.” 5
- 27 Fees for domestic students**
 Section 227(1A) is amended by— 10
 (a) omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”; and
 (b) omitting “section 159ZD(2)” and substituting “**section 159YC or 159ZD(2)** (whichever is applicable)”.
- 28 Fees for foreign students** 15
 Section 228(2A) is amended by omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”.
- 29 Fees for domestic students must not exceed maximums set in conditions of funding**
 Section 236C is amended by— 20
 (a) omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”; and
 (b) omitting “section 159ZD(2)” and substituting “**section 159YC or 159ZD(2)** (whichever is applicable)”.
- 30 Interpretation** 25
 The definition of **provider** in section 238D is amended by omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”.
- 31 Functions of Committee**
 Section 241 is amended by repealing paragraph (b) and substituting the following paragraph: 30
 “(b) to exercise in relation to universities (including when providing adult and community education) under section 260 of this Act the powers of the Qualifications Authority under sections 255A, 258, 258A, 259, and 259A:”. 35

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- 32 Functions of Authority**
- (1) Section 253(1)(d) is amended by omitting “and private training establishments” and substituting “, private training establishments, and bodies providing adult and community education”. 5
- (2) Section 253(1)(e) is amended by omitting “and private training establishments” and substituting “, private training establishments, and bodies providing adult and community education”. 10
- (3) Section 253(2) is amended by inserting the following paragraph after paragraph (a): 10
- “(ab) in the case of criteria or policies in respect of bodies that are providing adult and community education, consult—
- “(i) those bodies; or 15
- “(ii) a body that represents the interests of those bodies; and”.
- 33 Compliance notices**
- (1) Section 255A(1) is amended by inserting “bodies that provide adult and community education,” after “secondary schools,”. 20
- 34 Approval of courses**
- Section 258(1A) is amended by inserting “bodies that provide adult and community education,” after “secondary schools,”.
- 35 Accreditation to provide approved courses**
- Section 259(1A) is amended by omitting “or secondary school” and substituting “, secondary school, or body that provides adult and community education”. 25
- 36 Service continued for purposes of Part 22**
- (1) Section 279 is amended by omitting the heading and substituting the following heading: “**Career Services is service for purposes of this Part**”. 30
- (2) Section 279(1) is amended by omitting “by the name for the time being specified under section 301A” and substituting “as Career Services”.
- (3) Section 279 is amended by repealing subsection (6) and repealed and substituting the following subsection: 35

“(6) The Service is the same body as the Service that existed under this section immediately before the commencement of section 49 of the Education Amendment Act (No 2) 1998.”

- 37 Transitional provision: institutions and organisations with approved charters and approved profiles** 5
- (1) **Subsection (2)** applies to—
- (a) an institution that, immediately before this Act comes into force, has an approved charter and approved profile under the Education Act 1989; and
 - (b) an organisation (other than an institution) that, immediately before this Act comes into force, has an approved charter and approved profile under the Education Act 1989. 10
- (2) On the coming into force of this Act, an institution or organisation to which this subsection applies is to be treated as an institution or organisation that has a plan that has funding approval under the Education Act 1989 (as amended by this Act). 15
- 38 Transitional provision: organisations with approved charters that are exempt from need to have profile** 20
- (1) **Subsection (2)** applies to an organisation that, immediately before this Act comes into force,—
- (a) has an approved charter under the Education Act 1989; but
 - (b) is exempt from the need to have a profile under the Education Act 1989. 25
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has exempted, under **section 159U** (as substituted by **section 17** of this Act), from being required to submit a proposed plan in order to receive funding approval. 30
- 39 Transitional provision: organisations with approved profile and exempt from need to have charter**
- (1) **Subsection (2)** applies to an organisation that, immediately before this Act comes into force,—
- (a) has an approved profile under the Education Act 1989; but
- 35

- (b) is exempt from the need to have a charter under the Education Act 1989.
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that the Commission has exempted, under **section 159U** (as substituted by **section 17** of this Act), from being required to submit a proposed plan in order to receive funding approval. 5
- 40 Transitional provision: organisations funded under section 159ZC(3)**
- (1) **Subsection (2)** applies to an organisation that immediately before this Act comes into force is funded under section 159ZC(3) of the Education Act 1989. 10
- (2) On the coming into force of this Act, an organisation to which this subsection applies is to be treated as an organisation that is funded under **section 159ZC(1)** of the Education Act 1989 (as amended by this Act). 15
- 41 Transitional provision: tertiary education strategy and statement of tertiary education priorities**
- (1) **Subsection (2)** applies to the tertiary education strategy and the statement of tertiary education priorities in existence immediately before this Act comes into force. 20
- (2) On the coming into force of this Act, the documents to which this subsection applies must, when read together, be treated as if they are a tertiary education strategy made under **section 159AA** of the Education Act 1989 (as substituted by **section 6** of this Act). 25
- 42 Transitional provision: funding mechanisms**
- (1) **Subsection (2)** applies to funding mechanisms that fund organisations that have approved profiles that are determined and implemented under the Education Act 1989 immediately before this Act comes into force. 30
- (2) On the coming into force of this Act, a funding mechanism to which this subsection applies is treated as a funding mechanism that relates to funding via plans that have funding approval determined and implemented under the Education Act 1989 (as amended by this Act). 35

- (3) **Subsection (4)** applies to funding mechanisms that immediately before this Act comes into force fund organisations that do not have profiles.
- (4) On the coming into force of this Act, a funding mechanism to which this subsection applies must be treated as if it is a funding mechanism to fund organisations other than via plans that have funding approval determined and implemented under the Education Act 1989 (as amended by this Act). 5

Part 2

Related amendments to other enactments 10

Amendments to Industry Training Act 1992

- 43 Principal Act amended**
Sections 44 to 47 amend the Industry Training Act 1992.
- 44 Interpretation**
- (1) The definitions of **profile** and **statement of tertiary education priorities** in section 2 are repealed. 15
- (2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:
 “**proposed plan** has the meaning given to it in section 159 of the Education Act 1989”. 20
- 45 Industry training organisation’s profile must identify activities for which it seeks funding**
- (1) The heading to section 10 is amended by omitting “**profile**” and substituting “**proposed plan**”. 25
- (2) Section 10 is amended by repealing subsection (1) and substituting the following subsection: 25
- “(1) An industry training organisation that seeks funding under a funding mechanism that requires the organisation to submit a proposed plan must—
- “(a) prepare a proposed plan in accordance with **section 159X** of the Education Act 1989; and 30
- “(b) specify in the proposed plan the activities set out in subsection (2) in relation to which funding is sought; and
- “(c) submit the proposed plan for consideration of funding approval under **section 159YA** of that Act.” 35

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- (3) Section 10(3) is amended by omitting “profile” in each place where it appears and substituting in each case “proposed plan”.
- (4) Section 10 is amended by repealing subsection (4) and substituting the following subsection: 5
- “(4) Nothing in this section limits any other requirement as to the content of proposed plans that may be specified by the Commission under Part 13A of the Education Act 1989.”
- 46 Power to fund if employer switches industry training organisation** 10
- Section 10A is amended by omitting “profile” and substituting “proposed plan”.
- 47 Matters to which Commission must have regard in determining whether to approve profile for funding purposes** 15
- (1) The heading to section 11 is amended by omitting “**profile**” and substituting “**proposed plan**”.
- (2) Section 11 is amended by omitting “profile” in each place where it appears and substituting in each case “proposed plan”. 20