

Education (Tertiary Reforms) Amendment Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation

The Education and Science Committee has examined the Education (Tertiary Reforms) Amendment Bill and the majority of us recommend that it be passed with the amendments shown.

Introduction

The bill amends the Education Act 1989 (the Act) to align the tertiary education sector's outcomes more closely with the social, economic, and environmental interests of New Zealand.

Its provisions include the following:

- the creation of a single document, the Tertiary Education Strategy, which sets out the Government's long-term strategy and shorter-term priorities for tertiary education
- a requirement that tertiary education organisations seeking Government funding prepare a three-year plan in consultation with stakeholders
- legal mechanisms to allow plans to be changed, and to manage performance or relationship issues
- a requirement for tertiary education organisations to collaborate with the Tertiary Education Commission on the development of their plans

- powers to enable the Commission to manage the new capped funding system.

The bill also provides for the recognition of the monitoring and reporting functions of the chief executive of the Commission in respect of tertiary education institutions, and clarifies the role of the New Zealand Qualifications Authority in the quality assurance of adult and community education providers.

This commentary outlines the main issues we have considered and the amendments the majority of us recommend to the bill.

Commercially sensitive information

We heard conflicting views on the possibility that a tertiary education organisation might be required to include commercially sensitive information in its proposed plan. Some submitters argued for full disclosure of such information, others that it could breach contractual obligations. We note that the Commission will require enough information from a tertiary organisation to make an informed decision on approving a plan for funding purposes.

We have considered these arguments and note that tertiary education institutions must comply with the Official Information Act 1982, as must the Commission. We understand that the Act provides the Commission with grounds to withhold information provided by these institutions. If the Commission received an information request it would likely seek the view of the institution when considering whether to withhold such information, or transfer the information request to the institution under clause 14 of the Act.

We believe that the Office of the Ombudsman is the appropriate forum to determine the balance between the need to protect sensitive information and the public disclosure of that information.

While we were assured that the Commission would be highly unlikely to ever require such detailed information about private contractual arrangements that it would raise matters of commercial sensitivity, we will continue to scrutinise this area closely.

Procedural fairness

Concern has been expressed about the lack of procedural safeguards against misuse of the Commission's statutory powers. We understand that the powers of the Commission are constrained in that it must exercise its statutory powers according to the principles of

natural justice and fairness. We note that, while the bill does not provide for a right of appeal, affected parties can either make a complaint to the Ombudsman or seek a judicial review.

We note in this regard that the intent of the bill is to establish the Commission as the final arbiter on whether to fund a programme or activity, as the total amount of Government funding it will be allocating will be capped as from 1 January 2008.

Academic freedom

There is concern about academic freedom and the institutional autonomy of tertiary education organisations. To allay this concern, we recommend an amendment to clause 3 to make it explicit that the new functions conferred on the responsible Minister and the Tertiary Education Commission are to be exercised in accordance with the principal Act, which makes provision for the preservation of academic freedom and institutional autonomy.

Charters

We have considered arguments for the retention of charters as an instrument for long-term planning. An organisation's charter and profile are to be replaced by a plan, which provides a single mechanism of accountability.

We believe that long-term planning is integral to the governance of an institution, and therefore the majority of us recommend an amendment to clause 19 to require institutions to undertake planning relating to their long-term strategic direction.

Funding approval

The majority of us recommend that clause 5 include definitions of "funding approval" and "plan", to make it clear that the Commission's power of approval applies only to those aspects of a plan for which government funding is being sought. We believe that this clarification should allay concerns that the bill allowed the Commission to control non-Government funded programmes and activities.

The majority of us recommend consequential amendments to reflect these definitions.

Monitoring and reporting function of chief executive

Clause 14 inserts new section 159KBA, which sets out the monitoring and reporting functions of the chief executive of the Commission in respect of tertiary education institutions. Clause 14 is intended to be aligned to sections 195A to 195G of the Act, which sets out the chief executive's function, duties, and powers in respect of tertiary education institutions at risk. We believe that the current wording of new section 159KBA(a) goes further than is necessary to achieve this purpose.

The majority of us recommend deleting section 159KBA and inserting new section 159KBA to require the chief executive to carry out his or her monitoring function to assess the operational or long-term viability of an institution at risk.

Powers to obtain information

Currently the Secretary for Education can obtain information from tertiary education organisations that may be at risk. However, we note that clause 14 requires the chief executive of the Commission to monitor, and report to the Minister on, institutional risk. We believe that the chief executive of the Commission should therefore hold the power to obtain information from tertiary institutions that may be at risk.

The majority of us recommend the insertion of clause 21A, which amends section 195B of the Act to transfer the power to obtain information from the Secretary for Education to the chief executive of the Tertiary Education Commission.

Requirements for proposed plans

New section 159P sets out the requirements for a proposed plan.

The majority of us recommend an amendment to clause 17 new section 159P(d) to make explicit the requirements of a tertiary education organisation seeking Government funding.

The majority of us recommend an amendment to new paragraph (e) to make it clear that an organisation must specify the proposed outcomes towards which funding is being sought, and the related performance indicators.

The majority of us recommend the insertion of new paragraph (f) requiring an organisation to provide a description of those tertiary programmes for which it is not seeking Government funding. This

additional information is necessary to help the Commission to make an appropriate decision to approve a plan or part of a plan.

Exemption from requirement to submit a plan

New section 159U provides that the Commission may exempt, in writing, an organisation (other than an institution) from the requirement to submit a proposed plan in order to receive funding, for a specified or an indefinite period. We do not believe that an exemption should be indefinite, and recommend amending new section 159U accordingly.

Consultation with stakeholders

Some submitters suggested that the bill should include a definition of stakeholder. We believe that the term “stakeholder” could be difficult to define legally. The bill provides that tertiary education organisations must consult their stakeholders. We are concerned that the consultation process could become unwieldy. We believe that tertiary education organisations should be able to decide who their stakeholders are, and which stakeholders ought to be consulted. The majority of us recommend an amendment to clause 10 (new section 159ABA(3)(e)) and clause 17 (new sections 159X(2), 159YK(2), 159YM(2)) to provide that tertiary education organisations must consult with such stakeholders as they deem appropriate.

Conditional funding approval

New section 159YC provides that the Commission may place conditions on funding approval. The majority of us recommend an amendment to new section 159YC to enable the Commission to amend any conditions placed upon the receipt of funding approval, and to require that the Commission give the organisation in question reasonable notice before the proposed amendment takes effect.

Collaboration on amending plans

We note that the Commission and tertiary education organisations are required to collaborate in the development of proposed plans. As a plan may be approved for up to three years, we recognise that an approved plan may on occasion need to be amended or replaced.

However, we were concerned that there was no parallel requirement for them to collaborate on amending or replacing an approved plan.

We believe that this is inconsistent with the policy intent of developing a relationship of trust between the Commission and tertiary education organisations.

New section 159YK allows a tertiary education organisation to amend or replace an approved plan. The majority of us recommend the insertion of new subclause 159YK(1AA), to define “significant amendment”, and consequential amendments. Where a tertiary education organisation proposes a significant amendment to an approved plan, it must consult with its stakeholders.

The majority of us recommend the insertion of new subclause 159YK(3) to provide that a tertiary education organisation must prepare the significant amendment in collaboration with the Commission.

Furthermore, the majority of us recommend the insertion of subclause (7) to clarify that a tertiary education organisation may make an amendment to a plan that is not a significant amendment without seeking approval from the Commission.

New section 159YM allows the Commission to amend a plan. The majority of us recommend the insertion of new subclause (1) to allow the Commission to propose a significant amendment to an organisation’s plan if it is satisfied that this is reasonably necessary to ensure accountability for public funding. We also recommend that the Commission be required to prepare the significant amendment in collaboration with the organisation, and to give the organisation a reasonable opportunity to make a submission on it.

Functions of New Zealand Qualifications Authority

The bill contains a number of provisions to give legal status to the authority’s voluntary quality assurance regime for adult education and community education providers. As drafted these provisions would have a number of unintended consequences, imposing a significant administrative burden and compliance costs upon these providers if formal course approval were required for each of their programmes and activities.

The majority of us recommend an amendment to clause 32 to allow the Authority to establish policies and criteria for the quality assurance of providers of adult and community education. The majority of us recommend that clause 33 (the power to issue compliance notices), clause 34 (the power to approve courses), and clause 35 (the accreditation of courses) be deleted.

Power to obtain information

The powers of the Authority, as set out in Part 20 of the Education Act 1989, are exercised over a wide range of organisations, including secondary schools. The majority of us recommend the insertion of clause 32A to provide an expanded definition of “institution” that includes private training establishments, secondary schools, and other bodies. The purpose of this clause is to allow the New Zealand Qualifications Authority to seek information from these organisations with regard to quality assurance matters.

Provision of policy advice

Section 159AD(1) of the Act provides that the Minister of Education is the Minister’s principal policy advisor on tertiary education matters.

We understand that section 159AD(1) has no clear legal effect and therefore recommend that it be repealed.

Transitional provisions

Currently tertiary education organisations such as schools, community organisations, and small private training establishments that receive funding for a specific tertiary education programme or activity are exempt from producing a charter and a profile.

The majority of us recommend that a transitional provision be inserted into the bill to allow these organisations to be treated as exempt under clause 17 new section 159U from the requirement to submit a plan for funding approval.

New clause 42A

We have examined a written request by the Minister which proposes the insertion of new clause 42A into the bill. The majority of us recommended that clause 42A be inserted into the bill. This clause provides for validating a determination which amended the design of the funding mechanism for the student component fund by specifying the conditions on setting limits on student fees for 2007. We note the Minister cannot specify conditions of this kind until two months after the publication of notice in the *Gazette*. We understand that such a notice had not been published prior to making the determination.

Minor amendments

The majority of us recommend a number of other minor amendments to clarify the intention of the bill, to address omissions or drafting errors, or to make other improvements.

National Party minority view

The National Party members remain concerned that the bill does not achieve the fundamental objectives stated on the general policy statement, of introducing a “more streamlined system for planning, funding and monitoring the tertiary education system”.

While we support such objectives, we consider that the Tertiary Education Commission is already a large bureaucracy and by taking on further “investment managers” and “stakeholder engagement managers”, it only creates more complexity and more costs. Even before the bill is implemented, we hear reports that the experiences with these managers has been patchy.

The Government has stated that it wishes to implement a “high trust, low compliance” system. However, with the added central controlling powers the Commission is taking on, as well as the increased bureaucracy, we consider the very opposite applies. We are relieved the committee has agreed to insert the reference to the relevant section of the Education Act 1989 dealing with academic freedom. This goes some way to allaying the concerns in the submission from the New Zealand Vice-Chancellors’ Committee, where they stated that “none of the world’s leading universities are subject to the degree of control proposed in the Bill”, and that “in no other western democracy has a state sought this degree of control over a university’s teaching and research”.

National members are also concerned that the Commission could require from tertiary education organisations inappropriate “commercially sensitive” information relating to private and philanthropic funding streams, in order to agree on an “investment plan”. This is likely to particularly affect universities and their commercial arms, where to release commercially sensitive information could damage a joint venture partnership with industry. Research, development, and their commercialisation are rapidly becoming an important source of revenue for universities. If this revenue is to grow, it is necessary that industry has confidence it can deal competently with universities.

Appendix

Committee process

The Education (Tertiary Reforms) Amendment Bill was referred to the committee on 9 May 2007. The closing date for submissions was 29 June 2007. We received and considered 23 submissions from interested groups and individuals, and heard evidence from 12 of them.

We received advice from the Ministry of Education, the Tertiary Education Commission, the New Zealand Qualifications Authority, and Parliamentary Counsel.

Committee membership

Hon Brian Donnelly (Chairperson)

Moana Mackey (Deputy Chairperson)

Paula Bennett

Dr Ashraf Choudhary

Te Ururoa Flavell

Hon Marian Hobbs

Colin King

Allan Peachey

Katherine Rich

Dianne Yates

Mētīria Tūrei (non-voting member)

Dr Paul Hutchison replaced Paula Bennett for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act.>

Words struck out by a majority

(Subject to this Act.)

Words struck out unanimously

<Subject to this Act.>

Words inserted by a majority

Subject to this Act.

Words inserted unanimously

Hon Dr Michael Cullen

Education (Tertiary Reforms) Amendment Bill

Government Bill

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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**.

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, without affecting the academic freedom and autonomy of institutions preserved and enhanced by the principal Act, by creating a group of instruments that—
 - (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—
 - (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
- (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
 - (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
- (f) clarify the role of the New Zealand Qualifications Authority in (undertaking) relation to quality assurance of providers of adult and community education; and
- (g) make other amendments to the Education Act 1989 that relate to the tertiary education sector.

Part 1

Amendments to Education Act 1989

4 Principal Act amended

This Part amends the Education Act 1989.

New (majority)**4A Object of provisions relating to tertiary education**

Section 159AAA(2) is amended by omitting “the service continued by Part 22” and substituting “Career Services”.

5 Interpretation

- (1) The definitions of **charter**, **profile**, and **statement of tertiary education priorities** in section 159(1) are repealed. 5
- (2) Section 159(1) is amended by inserting the following definitions in *<its>* *<their>* appropriate alphabetical order:

New (majority)

“**funding approval**, means a decision made by the Commission under **section 159YA** to fund (in whole or in part) some or all of the tertiary education programmes and activities described in an organisation’s proposed plan under **section 159P(d)(i) and (ii)** 10

“**plan** means a plan in relation to which funding approval has been given 15

“**proposed plan** means a *<proposed>* plan in relation to which an organisation *<seeks>* *<is seeking>* funding approval *<from the Commission>*”.

New (majority)

- (3) The definition of **tertiary education strategy** in section 159(1) is amended by omitting “approved” and substituting “issued”. 20

6 New section 159AA substituted

Section 159AA is repealed and the following section substituted:

“159AA Tertiary education strategy 25

- “(1) The Minister must, from time to time, issue a tertiary education strategy that sets out—

- “(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: 5
- “(a) economic goals;
- “(b) social goals;
- “(c) environmental goals; 10
- “(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 15
- “(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 20**
- Section 159AB is amended by omitting “the service continued by Part 22” and substituting “Career Services”.
- 8 New section 159AC substituted 25**
- Section 159AC is repealed and the following section substituted:
- “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— 30
- “(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. 35

“(4) An amendment forms part of the tertiary education strategy it amends.”

New (majority)

8A Roles within tertiary education sector

Section 159AD(1) is repealed.

9 Ministry may hold and disseminate information

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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:

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“159A Purpose of Part

The purpose of this Part is to establish—

“(a) a Tertiary Education Commission (the **Commission**);
and

“(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>*.

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“159ABA Outline of framework for planning, funding, and monitoring in tertiary education sector

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“(1) This section—

“(a) sets out a general outline of the framework for planning, funding, and monitoring in the tertiary education sector;
and

“(b) is by way of explanation only.

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“(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:

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“(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>* <via plans>:

- “(b) the Commission develops the details of how to implement funding mechanisms:
- “(c) the Commission issues guidance on what must be contained in proposed plans:
- “(d) the Commission identifies criteria for assessing proposed plans: 5
- “(e) an organisation prepares a proposed plan—
- “(i) in consultation with *<its stakeholders>* <the stakeholders the organisation considers ought to be consulted> and any other persons specified by the Commission; and 10
- “(ii) in a manner consistent with the Commission’s guidance:
- “(f) the organisation submits its proposed plan to the Commission: 15
- “(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:
- “(h) if the <proposed> 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: 20
- “(i) if an organisation’s <proposed> plan receives funding approval, the Commission monitors the organisation’s performance to determine if it is *<meeting>* <achieving>, or has *<met>* <achieved>, the outcomes it has specified in its plan.” 25

New (majority)

10A Composition of Commission

Section 159D(2) is amended by omitting “(other than a replacement member appointed under clause 11(1) of Schedule 13A)”. 30

11 Functions of Commission

- (1) Section 159F(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) to give effect to the tertiary education strategy by— 35

- “(i) prescribing and publishing guidance on the content of, and processes associated with seeking funding approval for, proposed plans; and
- “(ii) prescribing and publishing guidance on the criteria the Commission will use to assess proposed plans; and 5
- “(iii) assessing *<and approving>* proposed plans *<for>* *<and deciding whether they will receive>* funding *<approval>* by applying the relevant assessment criteria; and 10
- “(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 15
- “(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 20
- “(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:
- “(i) the tertiary education strategy; and
- “(ii) the activities and performance of *<specific organisations and>* the tertiary education sector generally; and” 25
- (3) Section 159F(1) is amended by inserting the following paragraphs after paragraph (b):
- “(ba) to develop details of how to implement funding mechanisms; and 30
- “(bb) to implement funding mechanisms; and”.
- (4) Section 159F(1) is amended by repealing paragraph (d) and substituting the following paragraphs:
- “(d) to monitor the performance of organisations that receive funding from the Commission including by measuring performance against specified outcomes; and 35
- “(da) to undertake any functions that the Minister directs the Commission to undertake under **section 159J**; and” 40

- (5) Section 159F(1)(e) is amended by omitting “section 159ZC” and substituting “**section 159YA** *<and>* *<or>* **159ZC**”.

12 Delegation of functions or powers of Minister

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

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- “(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.”

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13 Minister may direct Commission

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

“(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.”

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

14 New section 159KBA inserted

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The following section is inserted after section 159KB:

Struck out (majority)

“159KBA Monitoring and reporting function of chief executive

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—

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

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

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

New (majority)

“159KBA Monitoring and reporting function of chief executive in relation to institutions

The chief executive of the Commission—

- “(a) must, on an ongoing basis, monitor institutions that receive funding under this Part in order to assess whether the operation or long-term viability of any of those institutions is at risk; and
- “(b) may report from time to time to the Minister on the outcome of that monitoring.”

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15 Statement of intent

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

16 Annual report

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

17 New headings and sections 159L to 159YO substituted

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

*“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.

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“(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

“(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

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“(ii) funding to be paid by the Commission under **section 159ZC** (relating to funding organisations

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- under this Part other than via plans *<that have funding approval>*); and
- “(iii) other types of funding (if any).
- “(3) Without limiting **subsection (1)**, in making a determination under that subsection, the Minister may— 5
- “(a) specify the amount of money, or the proportion of an amount of money, available under any particular funding mechanism; and
- “(b) provide for funding to different groups of organisations or types of organisation; and 10
- “(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
- “(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 15
- “(e) provide for funding that targets particular groups of students. 20
- “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 25
- “(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— 30
- “(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 35
- “(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.

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“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

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“(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

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“(b) describe how an organisation will address the needs of its stakeholders (including, without limitation, students *<attending>* *<enrolled with>* the organisation); and

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“(c) describe an organisation’s mission and role for the term of the *<plan’s funding approval>* *<plan>*; and

Struck out (majority)

“(d) set out what an organisation will do to support its mission and role, including, without limitation, setting out a description of—

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“(i) all tertiary education programmes run by the organisation for which the organisation is seeking funding from the Commission; and

“(ii) all tertiary education programmes run by the organisation other than those for which the organisation is seeking funding from the Commission; and

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“(iii) all activities, including, without limitation, programmes and initiatives, that will be undertaken by the organisation in order to build its capability; and

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New (majority)

- “(d) set out a description of all—
- “(i) tertiary education programmes run by the organisation for which the organisation is seeking funding under **section 159YA** and specify the amount of funding sought in relation to those programmes; and 5
 - “(ii) activities (including, without limitation, programmes and initiatives that will be undertaken by the organisation in order to build its capability) for which the organisation is seeking funding under **section 159YA** and specify the amount of funding sought in relation to those activities; and 10

- “(e) describe an organisation’s proposed outcomes <(including, without limitation, in relation to the tertiary education programmes and activities described in **paragraph (d)(i) and (ii)** in relation to which funding is sought)> and the performance indicators that the organisation will use to measure whether those outcomes have been achieved; and 15

Struck out (majority)

- “(f) specify the amount of funding an organisation seeks from the Commission. 20

New (majority)

- “(f) set out a description of all tertiary education programmes run by the organisation other than those in relation to which funding is sought.

“159Q Exemption from certain requirements for proposed plans

Struck out (majority)

- “(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:
- “(a) **section 159P(d)(ii)**;
- “(b) **section 159P(d)(iii)**.

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New (majority)

- “(1) The Commission may, by notice in writing, exempt an organisation from having to comply with the requirements in **section 159P(f)**.

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- “(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—

- “(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
- “(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.

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

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- “(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
- “(b) the kinds of background or supplementary information that the Commission requires an organisation to provide in relation to a proposed plan; and

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- “(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 5
- “(b) different information, timetables, and processes for different organisations, groups of organisations, or types of organisation. 10
- “(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⟩* *⟨significant⟩* amendment made under **subsection (3)(b)**. 15
- “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)**. 20

“Submitting proposed plan

“159T Who must submit proposed plan

Struck out (majority)

- “(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: 25
- “(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. 30

New (majority)

“(1) An organisation that is seeking funding from the Commission under a funding mechanism that provides for funding via plans must submit a proposed plan.

“(2) **Subsection (1)** does not apply to an organisation that is exempt under **section 159U**.

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“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 ⟨that is seeking funding under a funding mechanism that provides for funding via plans⟩ from the requirement, in **section 159T(1)**, to submit a proposed plan *⟨in order to receive funding approval⟩*.

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“(2) The Commission may not exercise the power in **subsection (1)** in relation to an institution.

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Struck out (majority)

“(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).

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New (majority)

“(3) The Commission may exempt an organisation, a group of organisations, or a type of organisation under **subsection (1)** for a specified period that the Commission considers appropriate.

“159V Frequency of submitting proposed plans

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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

“(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.

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“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 *<proposed>* 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**).

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“(2) A proposed plan must be prepared in consultation with—

Struck out (majority)

“(a) an organisation’s stakeholders; and

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New (majority)

“(a) the stakeholders that the organisation considers ought to be consulted; and

“(b) any other person or group of persons that the Commission stipulates.

“(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**.

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“(4) After completing the requirements in **subsections (1) to (3)**, an organisation must submit its proposed plan to the Commission.

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“*Assessment of proposed plans <for funding approval> and giving of funding approval*”

“**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. 5
- “(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 10
- “(b) the <tertiary education programmes and> 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)**)> <in relation to which funding is sought under **section 159YA**>; and 15
- “(c) the performance indicators used in measuring whether the specified outcomes <in an organisation’s plan have been achieved> <relating to those tertiary education programmes and activities are being or have been achieved>; and 20
- “(d) the extent and nature of an organisation’s consultation over its proposed plan. 25
- “(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. 30
- “(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> <significant> amendment made under **subsection (4)(b)**. 35

“**159YA Commission’s assessment of proposed plans <and><,> giving of funding approval<, and payment of funding>**”

- “(1) The Commission must assess whether a proposed plan will receive funding approval by applying the assessment criteria prescribed under **section 159Y**. 40

Struck out (majority)

- “(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
 - “(c) not give a proposed plan funding approval.

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New (majority)

- “(2) After applying the assessment criteria, the Commission may decide to—
- “(a) fund (in whole or in part) all of the tertiary education programmes and activities described in the proposed plan under **section 159P(d)(i) and (ii)** in relation to which funding is sought; or
 - “(b) fund (in whole or in part) some of the tertiary education programmes and activities described in the proposed plan under **section 159P(d)(i) and (ii)** in relation to which funding is sought; or
 - “(c) not fund any of the tertiary education programmes or activities described in the proposed plan under **section 159P(d)(i) and (ii)** in relation to which funding is sought.
- “(3) Before deciding not to *⟨give a proposed plan funding approval or to only give funding approval to part of a proposed plan⟩* ⟨fund some or any, or part of some or any, of the tertiary education programmes or activities described in the proposed plan under **section 159P(d)(i) and (ii)** in relation to which funding is sought⟩, the Commission must—
- “(a) notify the organisation of its proposed decision; and
 - “(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⟩* ⟨to fund some or any, or part of some or any, of the tertiary education programmes or activities described in the proposed plan under **section 159P(d)(i) and (ii)** in relation to which funding is sought⟩.

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“(5) In *<giving all or part of an organisation’s plan funding approval>* *<deciding to give funding approval>*, the Commission must—

“(a) specify the date from which *<that>* funding approval has effect; and

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“(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)**.

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“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**).

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“(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.

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“(3) The Commission must give its reasons to the affected organisation if it declines to assess the organisation’s proposed plan *<for funding approval>*.

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“159YC Conditions on receiving funding *<approval>* *<under section 159YA>*

“(1) It is a condition of an organisation receiving funding *<approval for its plan or part of its plan>* *<under section 159YA>* 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.

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“(2) The Commission may give funding approval *<to a plan or part of a plan>* subject to *<conditions, but only if the conditions are>*—

- “(a) *<any>* conditions the Minister has determined the Commission must attach to funding under **section 159L(3)(d)**; *<and>* *<or>*
- “(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>* *<that relate to tertiary education programmes and activities in relation to which funding is being given>* are being *<met>* *<achieved>* or will be *<achieved>* *<met>*.”

New (majority)

- “(3) The Commission may at any time (including during a funding period) amend any condition imposed under **subsection (2)**. 10
- “(4) The amendment to the condition takes effect when the organisation has been given reasonable notice of it.

- “159YD Accountability for funding received *<via plan with funding approval>* *<under section 159YA>*** 15
- “(1) An organisation (other than an institution) that receives funding *<via a plan that has funding approval>* *<under section 159YA>* must ensure that—
- “(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— 20
- “(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 funding approval was given have been complied with; and 25
- “(b) the records are available for inspection by the Commission at all reasonable times.
- “(2) As soon as practicable after the end of any year in which an organisation (other than an institution) receives funding under **section 159YA**, the organisation must provide the Commission with— 30
- “(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 35

- 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
- “(b) any financial reports, or statistical or other information, required by the Commission; and 5
- “(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. 10
- “(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— 15
- “(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. 20
- “(6) Section 203 sets out the accountability requirements for institutions.

“Expiry of funding approval

- “**159YE Expiry of funding approval** 25
- “(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>* *<takes>* effect. 30
- “(2) Funding approval expires on the expiry date, unless funding approval is earlier revoked under this Part.
- “(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: 35

- “(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.

“159YF Effect of expiry of funding approval

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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.

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“Suspension or revocation of funding <approval> <given under section 159YA>”

“159YG Commission may suspend or revoke funding

<approval> <given under section 159YA>

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- “(1) The Commission may suspend or revoke <some or all> funding *<approval for a plan or part of a plan>* <given under section 159YA> if it is satisfied on reasonable grounds that—

“(a) *<the>* <an> 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>* <has been> given <under section 159YA>; or

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“(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>* <for a tertiary education programme or activity in relation to which funding has been given under section 159YA>; or

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“(c) the organisation has not provided, or is not providing, adequate and timely information required by the Commission or Ministry under **section 159YC**.

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- “(2) Before deciding whether to suspend or revoke <some or all> funding *<approval for a plan or part of a plan under subsection (1)>* <given under section 159YA,> the Commission must—

“(a) notify the organisation of the specific matters of concern; and

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“(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 <some or all> funding *<approval*

for all or part of an organisation's plan <given under **section 159YA**>.

- “(4) The Commission must advise an organisation of the following matters if it decides to suspend <some or all> funding <*approval for all or part of the organisation's plan*> <given under **section 159YA**>: 5
- “(a) the date on which the suspension will end and, as a consequence, <some or all> 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 suspension lifted and avoid <some or all> funding <*approval for all or part of the plan*> being revoked. 10
- “(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 15
- “(b) the action referred to in **subsection (4)(b)**.

“159YH Extending suspension of funding <approval>

- “(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: 20
- “(a) the date on which the extended suspension will end and, as a consequence, <some or all> funding <*approval*> for all or part of the plan will be revoked; and 25
- “(b) what action the organisation must take in order to have the extended suspension lifted and avoid <some or all> 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— 30
- “(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> <given under section 159YA>

- “(1) The effect of suspending funding <*approval*> <given under **section 159YA**> is that the Commission must cease payment, or cease any or all further payments, of funding <given> under 35

section 159YA in respect of the plan or part of the plan in relation to which funding *<approval>* has been suspended.

- “(2) The effect of revoking funding *<approval>* *<given under section 159YA>* is that—
- “(a) the plan or part of the plan to which *<the>* funding *<approval>* relates is revoked; and 5
- “(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. 10
- “**159YJ Review of decision by delegate to suspend or revoke funding *<approval for plan>* *<given under section 159YA>***
- “(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 funding *<approval for a plan>* under **section 159YG**; or
- “(b) revoking funding *<approval for a plan>* under **section 159YG**; or 20
- “(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. 25

“Amending <and reviewing> <or replacing> plans

- “**159YK Organisation may *<amend, or review and replace, plan that has funding approval>* *<seek approval for significant amendment, or replacement, of plan>***

New (majority)

- “(1AA) In this section and **sections 159YL to 159YN**, **significant amendment** means an amendment to a plan that relates to— 30
- “(a) a tertiary education programme or an activity in relation to which funding has been given under **section 159YA**; or

New (majority)

“(b) any of the performance indicators that an organisation uses to measure whether proposed outcomes for tertiary education programmes or activities in relation to which funding has been given under **section 159YA** are being or have been achieved.

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“(1) An organisation may, at any time, ~~propose an~~ ~~ask the Commission to approve a significant~~ amendment to, or the ~~review and~~ replacement of, a plan ~~that has funding approval~~.

“(2) An organisation that proposes to make a significant amendment to, or to replace, a plan ~~that has funding approval~~ must consult with—

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“(a) the ~~organisation’s~~ stakeholders ~~that the organisation considers ought to be consulted~~; and

“(b) any other person or group that the Commission stipulates.

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Struck out (majority)

“(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.

New (majority)

“(3) An organisation that proposes a significant amendment to, or replacement of, a plan must prepare the significant amendment or replacement 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 **subsection (4)**.

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“(4) The Commission may prescribe the requirements for the following in relation to ~~an~~ ~~a significant~~ amendment to, or a replacement of, a plan ~~that has funding approval~~:

“(a) the content of the ~~significant~~ amendment or replacement (which may be the same as the matters prescribed by the Commission under **section 159R**):

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“(b) criteria for assessing the <significant> 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,> <in order to determine whether or not to approve a significant amendment to, or replacement of, a plan,> the Commission must take into account—

“(a) the extent <and significance> of the <significant> amendment or replacement; and

“(b) the impact of the <significant> amendment or replacement on the needs of the <organisation’s> stakeholders <and any other persons consulted by the organisation under **subsection (2)**>.

New (majority)

“(6) The Commission may, at any time, require an organisation to review a plan with a view to amending or replacing it.

“(7) Nothing in this section prohibits an organisation from making an amendment to a plan that is not a significant amendment.

“159YL Effect of <significant> amendment or replacement of plan under **section 159YK**

“(1) <An approved amendment, made under **section 159YK**,> <If the Commission approves a significant amendment> to a plan <that has funding approval><, the significant amendment>—

“(a) forms part of the plan it amends; and

“(b) takes effect on the date specified by the Commission.

Struck out (majority)

“(c) does not affect the plan’s funding approval.

“(2) <An approved replacement> <If the Commission approves a replacement plan> under **section 159YK** <of a plan that has funding approval><, the replacement plan>—

“(a) takes effect on the date specified by the Commission; and

“(b) is treated as revoking the plan it replaces.

Struck out (majority)

“(c) does not affect the plan’s funding approval.

“159YM Commission may *<amend proposed>* *<make significant amendment to>* plan *<or plan that has funding approval>*

Struck out (majority)

“(1) The Commission may, at any time, on its own initiative, propose an amendment to—
 “(a) a proposed plan; or
 “(b) a plan that has funding approval.

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New (majority)

“(1) The Commission may, at any time, on its own initiative, propose a significant amendment to an organisation’s plan if it is satisfied that the significant amendment is reasonably necessary to ensure accountability for public funding.

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Struck out (majority)

“(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).

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New (majority)

“(2) If the Commission proposes a significant amendment to an organisation’s plan under **subsection (1)**, it must prepare it in collaboration with the organisation (including giving the organisation a reasonable period to consult the stakeholders it considers ought to be consulted).

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New (majority)

“(2A) After collaborating with the organisation on the proposed significant amendment, the Commission must, if it decides to proceed with the significant amendment, determine the content of the significant amendment and give the organisation a reasonable opportunity to make submissions on it. 5

“(3) After considering any submissions made by the organisation, the Commission may—
 “(a) approve the proposed <significant> amendment (with further amendment if necessary); or
 “(b) abandon the proposed <significant> amendment. 10

“159YN Effect of <significant> amendment made to plan under section 159YM

<An> <A significant> amendment made to a plan under **section 159YM**—
 “(a) forms part of the plan it amends; and 15
 “(b) takes effect on the date specified by the Commission.

Struck out (majority)

“(c) does not affect a plan’s funding approval if the plan had funding approval before it was amended.

“Plan summary

“159YO Summary of plans *<that have funding approval>* 20

“(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.

“(2) An organisation that has a plan *<that has funding approval>* must ensure that— 25

“(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).**” 30

- 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:
- “*Funding under this Part other than via plans* *<that have funding approval>* 5
- “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>* *<other than via plans>*, the Commission may, under this section, fund that organisation in accordance with that funding mechanism. 10
- “(2) Nothing in **subsection (1)** limits the Commission’s powers to fund organisations in other ways under a delegated authority or another enactment. 15
- “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. 20
- “(2) The Commission may impose conditions on funding received *<by an organisation>* under **section 159ZC**, but only if the Minister has provided that, under the funding mechanism under which that funding is provided,— 25
- “(a) any or specified conditions may be imposed; or 30
- “(b) specified conditions must be imposed.
- “(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** 35
- “(1) An organisation (other than an institution) that receives funding under **section 159ZC** must ensure that—

-
- “(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 grant was made 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 159ZC**, the organisation must provide the Commission with—
- “(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 15 20
 - “(b) any financial reports, or statistical or other information, required by the Commission; and
 - “(c) any information necessary to demonstrate compliance with any condition attached to the funding. 25
- “(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.
- “(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)**. 30
- “(5) In exercising the powers conferred on it by **subsection (4)**, the Commission must have regard to—
- “(a) the amount of funding sought by the organisation; and 35
 - “(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.
- “(6) Section 203 sets out the accountability requirements for institutions. 40

“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— 5
- “(a) has not complied, or is not complying, with a condition on which the funding was given; or
- “(b) is not providing, or has not provided, adequate and timely information required by the Commission or Ministry under **section 159ZD**. 10
- “(2) Before deciding whether to suspend or revoke payment under **subsection (1)**, the Commission must—
- “(a) notify the organisation of the specific matters of concern; and 15
- “(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.
- “(4) The Commission must specify the following matters if it decides to suspend funding under **subsection (1)**: 20
- “(a) the date on which the suspension will end and, as a consequence, the funding will be revoked; and
- “(b) what action the organisation must take in order to have the suspension lifted and avoid funding being revoked. 25

“159ZG Extending suspension of funding

- “(1) The date on which a suspension ends under **section 159ZF(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: 30
- “(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. 35
- “(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)**. 40

“159ZH Review of decision made by delegate to suspend or revoke funding under section 159ZC

- “(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: 5
- “(a) suspending the organisation’s funding under **section 159ZF**; or
- “(b) revoking the organisation’s funding under **section 159ZF**; or 10
- “(c) extending the suspension of the organisation’s funding under **section 159ZG**.
- “(2) An organisation to which this subsection applies may ask the Commission to review the decision of the delegate.”

19 Functions of councils 15

- (1) Section 180(1) is amended by repealing paragraphs (b) to (e) and substituting the following paragraphs:
- “(b) to prepare and submit a *<proposed>* 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>* *<provides for funding via plans>*: 20
- “(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 25
- “(ii) to determine policies to implement that plan:
- “(d) *<to>* determine, subject to the State Sector Act 1988, the policies of the institution in relation to the management of its affairs: 30

New (majority)

“(e) to undertake planning relating to the institution’s long-term strategic direction.”

- (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
- New (majority)**
- 21A Institutions to provide information if required**

(1) Section 195B(1) is amended by omitting “Secretary” and substituting “chief executive of the Commission”.

(2) Section 195B(2) is amended by omitting “Secretary” in each place where it appears and substituting in each case “chief executive of the Commission”. 10

(3) Section 195B(3) is amended by omitting “Secretary” and substituting “chief executive of the Commission”.

(4) Section 195B(4) is amended by omitting “Secretary” and substituting “chief executive of the Commission”. 15

(5) Section 195B is amended by adding the following subsection:
“(5) In this section, **Commission** means the Tertiary Education Commission established under section 159C.”
- 22 New section 195DA inserted** 20
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— 25
“(a) in good faith; and
“(b) in the course of carrying out his or her powers, functions, or duties.”
- 23 Powers and functions of commissioner** 30
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”.

- 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— 5
- “(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>* *<that has>* a plan *<that has funding approval>*, enable the institution to achieve the outcomes set out in that plan; and”. 10
- 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)”. 15
- 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.” 20
- 27 Fees for domestic students**
Section 227(1A) is amended by— 25
- (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** 30
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—

- (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)”.

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30 Interpretation

The definition of **provider** in section 238D is amended by omitting “section 159ZC” and substituting “**section 159YA or 159ZC**”.

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Struck out (majority)

31 Functions of Committee

Section 241 is amended by repealing paragraph (b) and substituting the following paragraph:

- “(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:”.

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32 Functions of Authority

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Struck out (majority)

- (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”.

- (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”.

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New (majority)

- (1) Section 253(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) to establish policies and criteria relating to the quality assurance of providers of adult and community education:”.

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- (2) Section 253(2) is amended by omitting “or (e)” and substituting “(e), or **(ea)**”.

- (3) Section 253(2) is amended by inserting the following paragraph after paragraph (a):

“(ab) in the case of criteria or policies in respect of bodies that are providing adult and community education, consult—

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“(i) those bodies; or

“(ii) a body that represents the interests of those bodies; and”.

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New (majority)

- (4) Section 253(3) is amended by omitting “and (e)” and substituting “(e), and **(ea)**”.

32A Power to obtain information

Section 255 is amended by inserting the following subsection before subsection (1):

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“(1AA) In this section, **institution** includes institutions, government training establishments, registered establishments, secondary schools, and other bodies.”

Struck out (majority)**33 Compliance notices**

Section 255A(1) is amended by inserting “bodies that provide adult and community education,” after “secondary schools,”.

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34 Approval of courses

Section 258(1A) is amended by inserting “bodies that provide adult and community education,” after “secondary schools,”.

Struck out (majority)**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”.

36 Service continued for purposes of Part 22

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(1) Section 279 is amended by omitting the heading and substituting the following heading: “**Career Services is service for purposes of this Part**”.

(2) Section 279(1) is amended by omitting “by the name for the time being specified under section 301A” and substituting “as Career Services”.

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

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

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New (majority)**36A Functions of Service**

Section 280(1)(a) is amended by omitting “data base” and substituting “database”.

36B Duties of Board

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Section 282(a) is amended by omitting “data base” and substituting “database”.

37 Transitional provision: institutions and organisations with approved charters and approved profiles

(1) **Subsection (2)** applies to—

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(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

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charter and approved profile under the Education Act 1989.

- (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 been given funding approval under the Education Act 1989 (as amended by this Act) that takes effect from the date on which this Act comes into force. 5
- 38 Transitional provision: organisations with approved charters that are exempt from need to have profile** 10
- (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. 15
- (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 under a funding mechanism that provides for funding via plans, until the Commission decides that the organisation is no longer exempt under section 159U.> 20
- 39 Transitional provision: organisations with approved profile and exempt from need to have charter** 25
- (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 30
- (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 under a funding mechanism that provides for funding via plans, until 35

the Commission decides that the organisation is no longer exempt under **section 159U**》.

New (majority)

39A Transitional provision: organisations exempt from need to have profile and charter

- (1) **Subsection (2)** applies to an organisation that, immediately before this Act comes into force,— 5
- (a) is exempt from the need to have a profile under the Education Act 1989; and
- (b) is exempt from the need to have a charter under 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 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 under a funding mechanism that provides for funding via plans, until the Commission decides that the organisation is no longer exempt under **section 159U**. 15

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. 20
- (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* 《the Commission has decided to fund》 under **section 159ZC(1)** of the Education Act 1989 (as amended by this Act) 《for the remainder of the funding period to which the section 159ZC(3) funding relates》. 25

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. 30

- (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). 5
- 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. 10
- (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>* *<provides for>* funding via plans *<that have funding approval>* determined and implemented under the Education Act 1989 (as amended by this Act). 15
- (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). 20

New (majority)

- 42A Validation of determination of design of funding mechanism for student component fund** 25
- (1) In this section,—
- consequences**, in relation to any action, or any failure or refusal to act, includes the availability of any power (on the part of any person) to take action in respect of, or because of, the action, failure, or refusal 30
- Minister** means the Minister for Tertiary Education
- SCF funding determination** means the determination of the Minister, communicated to the chair of the Tertiary Education Commission by a letter dated 23 January 2007, specifying amendments to the design of the funding mechanism for the student component fund. 35

New (majority)

- | | | |
|-----|---|----|
| (2) | The SCF funding determination must be treated as being, and having always been, as valid and effectual as it would have been if the Minister had taken the actions described in subsection (4) . | 5 |
| (3) | The validity or invalidity, and the consequences, of any action (and of any failure or refusal to act) of any person, whether occurring before or after the commencement of this section, must be determined as if the Minister had taken the actions described in subsection (4) . | 5 |
| (4) | The actions referred to in subsections (2) and (3) are— | 10 |
| (a) | more than 2 months before 23 January 2007, publishing in the <i>Gazette</i> a notice, complying in all respects with former section 159ZA of the principal Act, relating to all the new or amended conditions setting limits on the fees that organisations may charge domestic students that were in fact specified in the SCF determination (whether directly, or by the modification of the application of existing conditions); and | 15 |
| (b) | before making the SCF determination, considering all submissions received before the specified date. | 20 |

Part 2**Related amendments to other enactments***Amendments to Industry Training Act 1992*

- | | | |
|-----------|--|----|
| 43 | Principal Act amended
Sections 44 to 47 amend the Industry Training Act 1992. | 25 |
| 44 | Interpretation | |
| (1) | The definitions of profile and statement of tertiary education priorities in section 2 are repealed. | |
| (2) | Section 2 is amended by inserting the following definitions in <i><its></i> <i><their></i> appropriate alphabetical order: | 30 |

Struck out (majority)

<p>“proposed plan has the meaning given to it in section 159 of the Education Act 1989</p>

New (majority)

“**funding approval** means a decision made by the Commission under section **159YA** of the Education Act 1989 to fund (in whole or in part) some or all of the activities described in section 10(2) in relation to which funding is sought

“**plan** means a plan in relation to which funding approval has been given

“**proposed plan** means a proposed plan in relation to which an organisation is seeking funding for activities in section 10(2) under **section 159YA** of the Education Act 1989”.

- 45 Industry training organisation’s profile must identify activities for which it seeks funding** 10
- (1) The heading to section 10 is amended by omitting “**profile**” and substituting “**proposed plan**”.
- (2) Section 10 is amended by repealing subsection (1) and substituting the following subsection: 15
- “(1) An industry training organisation that seeks funding under a funding mechanism that *requires the organisation to submit a proposed plan* *provides for funding via plans (as indicated by the Minister under **section 159L(2)(b)** of the Education Act 1989)* must— 20
- “(a) prepare a proposed plan in accordance with **section 159X** of the Education Act 1989; and
- “(b) specify in the proposed plan the activities set out in subsection (2) in relation to which funding is sought; and 25
- “(c) submit the proposed plan for consideration of funding approval under **section 159YA** of that Act.”
- (3) Section 10(3) is amended by omitting “profile” in each place where it appears and substituting in each case “proposed plan”. 30
- (4) Section 10 is amended by repealing subsection (4) and substituting the following subsection:
- “(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.” 35

46 Power to fund if employer switches industry training organisation

Section 10A is amended by omitting “<approve, for funding purposes, the> profile <of>” and substituting “<give funding approval to a> proposed plan <of>”.

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47 Matters to which Commission must have regard in determining whether to approve profile for funding purposes

- (1) The heading to section 11 is amended by omitting “<approve> profile <for funding purposes>” and substituting “<give funding approval to> proposed plan”.

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Struck out (majority)

- (2) Section 11 is amended by omitting “profile” in each place where it appears and substituting in each case “proposed plan”.

New (majority)

- (2) Section 11 is amended by omitting “approve an industry training organisation’s profile, or a part of its profile, for funding purposes” and substituting “give an industry training organisation’s proposed plan funding approval”.

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Legislative history

2 May 2007

Introduction (Bill 114–1)

9 May 2007

First reading and referral to Education and Science Committee

