

Industry Training Amendment Bill

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Tertiary Education Reform Bill as reported from the Education and Science Committee. The committee of the whole House has further amended the bill and has divided it into the following bills:

- This bill, comprising Part 3 and Schedules 3 and 4
 - The Education (Tertiary Reform) Amendment Bill, comprising clause 1, Parts 1 and 2 and Schedules 1 and 2
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Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act.

Text struck out unanimously

New (unanimous)

Subject to this Act.

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act.

Words inserted unanimously

As reported from the committee of the whole House

Struck out

Subject to this Act.

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New

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Text inserted

((Subject to this Act,))

Words struck out

Subject to this Act.

Words inserted

Hon Steve Maharey

Industry Training Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Industry Training Amendment Act **2002**.
- (2) In this Act, the Industry Training Act 1992¹ is called “the principal Act”.

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¹ 1992 No 55

2 Commencement

- (1) This Act, other than the sections referred to in **subsection (2)**, comes into force on **1 January 2003**.
- (2) **Sections 39(3) and (4), 40(1), (2), and (4), 41(1) and (2), 42(1), (2), and (5), 43, 44(2), (6), (7), and (8), 45A, 45B, 45C, 45E, and 46A** come into force on **1 January 2004**.

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New

38A Purpose

The purpose of this Act is to improve the effectiveness and responsiveness of the industry training system.

Struck out (unanimous)**39 Interpretation**

Section 2 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

“**statement of tertiary education priorities** means the statement of tertiary education priorities issued by the Minister under **section 1590** of the Education Act 1989”.

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New (unanimous)**39 Interpretation**

(1) Section 2 of the principal Act is amended by repealing the definitions of **Agency**, **applicant organisation**, and **Board**.

(2) Section 2 of the principal Act is amended by inserting, before the definition of **employment agreement**, the following definition:

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“**Commission** means the Tertiary Education Commission established by **section 159C** of the Education Act 1989”.

(3) Section 2 of the principal Act is amended by repealing the definition of **funding agreement**.

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(4) Section 2 of the principal Act is amended by inserting, after the definition of **Minister**, the following definition:

“**profile** means a document of the kind described in **section 159ZA** of the Education Act 1989”.

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(5) Section 2 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

“**statement of tertiary education priorities** means the statement of tertiary education priorities issued by the Minister under **section 159AC** of the Education Act 1989”.

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Struck out (unanimous)**40 New section 5 substituted**

The principal Act is amended by repealing section 5, and substituting the following section:

Struck out (unanimous)

- 5 How organisations get recognised**
- “(1) An organisation that wishes to be recognised in respect of an industry must get a charter under **sections 159S and 159T** of the Education Act 1989.
- “(2) Before approving the charter of an organisation that wishes to be recognised in respect of an industry, the Minister must— 5
- “(a) assess the proposed charter against—
- “(i) the criteria prescribed under **section 159Q** of the Education Act 1989; and 10
- “(ii) the criteria set out in section 6; and
- “(b) have regard to the matters set out in section 7.
- “(3) An organisation is recognised when the Minister has—
- “(a) approved that organisation’s charter; and
- “(b) published a notice in the *Gazette* specifying the name of the organisation and the industry in respect of which it is recognised.” 15

New (unanimous)

- 40 Board may recognise certain organisations**
- (1) The heading to section 5 of the principal Act is amended by omitting the word “**Commission**”, and substituting the word “**Minister**”. 20
- (2) Section 5 of the principal Act is amended by omitting the word “**Commission**” in both places where it occurs, and substituting in each case the word “**Minister**”.
- (3) Section 5 of the principal Act is amended by adding, as subsection (2), the following subsection: 25
- “(2) The Commission (~~may, at any time before an industry training organisation’s~~) may, at the request of an industry training organisation, at any time before that industry training organisation’s recognition expires, amend the description of the industry in respect of which that industry training organisation is recognised, by publishing a notice in the *Gazette* specifying the name of the industry training organisation and the 30

Industry Training Amendment

New (unanimous)

amended description of the industry in respect of which it is recognised.”

- (4) Section 5(2) of the principal Act is amended by omitting the word “Commission”, and substituting the word “Minister”.

- 41 Board to be satisfied of organisation’s abilities** 5
- (1) The heading to section 6 of the principal Act is amended by omitting the words (“**Board**”) “**Commission to**”, and substituting the words “**Minister must**”.
- (2) Section 6 of the principal Act is amended by omitting the (words “*Board shall not recognise an applicant organisation in respect of any industry unless satisfied*”, and substituting the words “*Minister must not approve the charter of an organisation seeking recognition unless, in addition to being satisfied that the criteria prescribed under **section 159Q** of the Education Act 1989 are met, he or she is satisfied*”) word 10
“**Commission**”, and substituting the word “**Minister**”. 15
- (3) Section 6 of the principal Act is amended by adding to paragraph (b) the word “; and” and also by adding the following paragraphs:
- “(c) provide leadership within the industry on matters relating to skill and training needs by— 20
- “(i) identifying current and future skill needs; and
- “(ii) developing strategic training plans to assist the industry to meet those needs; and
- “(iii) promoting training that will meet those needs to 25
employers and employees; and

New (unanimous)

“(d) develop arrangements for the collective representation of employees in the governance of the organisation.”

42 Matters to which Board is to have regard before recognising organisations

Struck out (unanimous)

- (1) Section 7 of the principal Act is amended by omitting the heading, and substituting the following heading “**Matters to which Minister is to have regard before approving charters**”.

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New (unanimous)

- (1) The heading to section 7 of the principal Act is amended by omitting the words “**Commission is to**”, and substituting the words “**Minister must**”.

Struck out (unanimous)

- (2) Section 7 of the principal Act is amended by omitting the words “The matters to which the Board is to have regard before recognising an applicant organisation are”, and substituting the words “Before approving the charter of an organisation seeking recognition, the Minister must have regard to”.

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New (unanimous)

- (2) Section 7 of the principal Act is amended by omitting the words “Commission is to”, and substituting the words “Minister must”.

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Struck out (unanimous)

- (3) Section 7 of the principal Act is amended by omitting paragraph (d), and substituting the following paragraph:
“(d) the extent to which the organisation has implemented mechanisms that will enable the collective representation of employees in the industry in the governance of the organisation; and”.

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Industry Training Amendment

- (4) Section 7 of the principal Act is amended by omitting paragraph (g), and substituting the following paragraphs:

Struck out (unanimous)

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| “(fa) the extent to which the organisation can demonstrate alignment with the Government’s statement of tertiary education priorities; and | 5 |
| “(fb) whether the organisation has considered the desirability of amalgamating with other recognised organisations or entering into other joint arrangements with other recognised organisations to avoid undue fragmentation of industry training; and | 10 |
| “(fc) whether the organisation has performed satisfactorily at other times when the organisation has been recognised or provisionally recognised; and | |
| “(g) any other criteria for assessing charters that the Minister has prescribed under section 159Q of the Education Act 1989. | 15 |

New (unanimous)

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| “(g) whether the organisation has performed satisfactorily at other times when the organisation has been recognised or provisionally recognised; and | |
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Struck out

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| “(h) the extent to which the organisation can demonstrate alignment with the Government’s statement of tertiary education priorities; and | 20 |
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| “(i) whether the organisation has taken reasonable steps to avoid fragmentation and to provide a clear and representative industry focus for each organisation; and | 25 |
| “(j) any other matters in that behalf specified in the Commission’s statement of intent.” | |

- (5) Section 7(j) of the principal Act is repealed.

43 Provisional recognition

- (1) Section 8(1) of the principal Act is amended by omitting the words “applicant organisation”, and substituting the words “organisation seeking recognition”. 5
- (2) Section 8(1)(b) of the principal Act is amended by omitting the *(word “Board”)* words “enter into funding agreements with”, and substituting the word (“*Commission*”) “fund”. 5
- (3) Section 8(1) of the principal Act is amended by omitting the words “*(Board)* Commission may”, and substituting the words “Minister may”. 10

44 Expiry and cancellation of recognition**Struck out (unanimous)**

- (1) Section 9 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 15
- “(1) The recognition of an industry training organisation under section 5 expires if that organisation ceases to have a charter under the Education Act 1989.”
- (2) Section 9(3) of the principal Act is amended by omitting the word (“*Board*”) “Commission” wherever it occurs, and substituting in each case the word “Minister”. 20
- (3) Section 9(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 20
- “(ab) if the circumstances in **subsection (3A)** apply; or”.
- (4) Section 9 of the principal Act is amended by inserting, after subsection (3), the following subsections: 25
- “(3A) The circumstances referred to in **subsection (3)(ab)** are that— 25
- “(a) the *(Minister)* Commission has issued a notice to the organisation, in accordance with **subsection (3B)**, stating that it considers that the organisation’s performance is inadequate because it is not meeting 1 or more of the requirements *(for the Minister’s approval of its charter)* under section 6(a) to *(c)(d)*; and 30
- “(b) the period of time specified in the notice within which the organisation must improve its performance has elapsed; and

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- “(c) the *(Minister) Commission* is satisfied that the organisation’s performance continues to be inadequate for the reason specified in the notice.
- “(3B) A notice under **subsection (3A)** must—
- “(a) be in writing; and 5
 - “(b) specify—
 - “(i) the areas in which the *(Minister) Commission* considers the organisation’s performance to be inadequate, with reference to the requirements *(for the Minister’s approval of its charter)* under section 6(a) to ~~(c)~~**(d)**; and 10
 - “(ii) what actions that the organisation should take to improve its performance; and
 - “(iii) the period, which must be a reasonable period, within which the organisation must improve its performance; and 15
 - “(iv) the fact that the *(Minister) Commission* may cancel the organisation’s recognition, under **subsection (3)(ab)**, if it fails to improve its performance within that period.” 20
- (5) Section 9 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) Nothing in this section prevents an organisation whose recognition has expired under subsection (1) or subsection (2), or been cancelled under subsection (3)(a) or **(ab)**, from seeking recognition in accordance with section 5 and being recognised in accordance with that section or section 8(1).” 25

New (unanimous)

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| <p>(6) Section 9(3A) of the principal Act is amended by omitting the word “Commission” in both places where it occurs, and substituting in each case the word “Minister”.</p> <p>(7) Section 9(3A)(a) of the principal Act is amended by omitting the words “it considers”, and substituting the words “he or she considers”.</p> <p>(8) Section 9(3B) of the principal Act is amended by omitting the word “Commission” in both places where it occurs, and substituting in each case the word “Minister”.</p> | <p>30</p> <p>35</p> |
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45 Board may agree with industry training organisation to fund setting of standards and administration of training

New (unanimous)

- (IAA) Section 10(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs:
- “(c) provide leadership within the industry on matters relating to skill and training needs by—
 - “(i) identifying current and future skill needs; and
 - “(ii) developing strategic training plans to assist the industry to meet those needs; and
 - “(iii) promoting training that will meet those needs to employers and employees; and
 - “(d) develop arrangements for the collective representation of employees in the governance of the organisation; and
 - “(e) receive funding from the Commission for the purpose.”
- (1) Section 10 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) The Commission may enter into a written agreement with an industry training organisation (or 2 or more industry training organisations) providing for the organisation (or organisations) to manage the delivery of industry training to employees of a particular employer, and to receive funding from the Commission for that purpose, even if that employer is not part of the industry specified in the *Gazette* notice published under section 5 relating to that industry training organisation, if—
- “(a) that employer has applied to the Commission in writing for industry training to be managed by that industry training organisation; and
 - “(b) the Commission is satisfied that the employer’s application should be granted because either—
 - “(i) the industry training organisation that manages training for that employer’s industry does not have the capacity to provide a satisfactory service to the employer; or
 - “(ii) the employer faces significant administrative and compliance costs (but not taking into account the cost of any training levies) because its training needs are covered by more than 1 industry training organisation; and

“(c) the Commission is satisfied that the industry training organisation is capable of managing delivery of industry training that will enable the employees of that employer to attain the skill standards applicable in the industry to which the training relates.”

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New (unanimous)

45A New sections 10 and 10A substituted

The principal Act is amended by repealing section 10, and substituting the following sections:

“10 **Industry training organisation’s profile must identify activities for which it seeks funding**

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“(1) An industry training organisation that seeks funding under **section 159ZJ** of the Education Act 1989 must—

“(a) prepare a charter in accordance with **section 159S** of the Education Act 1989 and have it approved under **section 159T** of that Act; and

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“(b) prepare a profile (or a combined profile if 2 or more organisations seek the funding) that identifies the activity or activities set out in **subsection 2** for which the funding is sought.

“(2) The activities are—

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“(a) setting skill standards for the industry (or industries); and

“(b) developing arrangements for the delivery (not being delivery by the organisation itself or organisations themselves) of industry training intended to enable trainees to attain those standards, including arrangements for—

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“(i) monitoring the training to ensure that it enables trainees to attain those standards; and

“(ii) assessing trainees and the extent to which they have in fact attained those standards; and

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“(c) making arrangements for the delivery (not being delivery by the organisation itself or organisations themselves) of industry training that will enable trainees to attain skill standards previously set by the organisation (or organisations) and registered by the qualifications authority, including arrangements accepted by the qualifications authority for—

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New (unanimous)

“10A Power to fund if employer switches industry training organisation

The Commission may approve, for funding purposes, the profile of an industry training organisation under which it seeks to manage the delivery of industry training to the employees of a particular employer who is not part of the industry specified in the *Gazette* notice published under section 5 relating to that industry training organisation, if—

- “(a) that employer has applied to the Commission in writing for industry training to be managed by that industry training organisation; and
- “(b) the Commission is satisfied that the employer’s application should be granted because either—
 - “(i) the industry training organisation that manages training for that employer’s industry does not have the capacity to provide a satisfactory service to the employer; or
 - “(ii) the employer faces significant administrative and compliance costs (but not taking into account the cost of any training levies) because its training needs are covered by more than 1 industry training organisation; and
- “(c) the Commission is satisfied that the industry training organisation is capable of managing delivery of industry training that will enable the employees of that employer to attain the skill standards applicable in the industry to which the training relates.”

45B New section 11 substituted

The principal Act is amended by repealing section 11, and substituting the following section:

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

In determining whether to approve an industry training organisation’s profile, or a part of its profile, for funding purposes, the Commission must have regard to the following matters:

New (unanimous)

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| <p>“(a) the amount of training to which it relates, and the likely number of trainees to be trained in accordance with it; and</p> <p>“(b) the desirability of introducing into the organisation’s industry (or the organisations’ industries) skills (whether new skills or enhanced existing skills) likely to increase its (or their) international competitiveness; and</p> <p>“(c) the desirability of extending industry training to industries, or areas of any industry (or industries), where industry training linked to nationally recognised qualifications has not traditionally been available; and</p> <p>“(d) the desirability of extending industry training to people of a kind or description specified in the Commission’s statement of intent as people to whom industry training linked to nationally recognised qualifications has not traditionally been available (whether within any industry or industries, or generally).”</p> | <p>5</p> <p>10</p> <p>15</p> |
| <p>45C Section 12 repealed</p> <p>Section 12 of the principal Act is repealed.</p> | <p>20</p> |
| <p>45D Additional functions of Commission</p> <p>Section 13 of the principal Act is amended by adding, after paragraph (e), the following paragraph:</p> <p>“(f) to exercise the powers and perform the functions of the Commission under Part 5.”</p> | <p>25</p> |
| <p>45E Transitional provision relating to recognition</p> <p>An industry training organisation that, immediately before the commencement of this section, was recognised or provisionally recognised, continues to be recognised or provisionally recognised after the commencement of this section until that recognition expires or is cancelled in accordance with section 9.</p> | <p>30</p> |

- 46 New Part 5 inserted**
The principal Act is amended by inserting, after section 23, the following Part:
- “Part 5**
“Training levies 5
- “24 Purpose**
The purpose of this Part is to enable the making of Orders in Council imposing a training levy on the members of an industry, payable to an industry training organisation, if there is sufficient support for the imposition of that levy following a ballot of those members. 10
- “25 Interpretation**
For the purposes of this Part,—
- “ballot** means a ballot under **section 27(1)(a)**
- “closing date** means the date, specified in the ballot paper under **section 36(b)**, by which ballot papers must be returned 15
- “levy group** means the members of an industry described in a levy order, or proposed to be described in a levy order, who have to, or will have to, pay that levy or proposed levy
- “member of an industry** means a person who employs persons who work in that industry or a self-employed person in that industry 20
- “qualifying member**, in relation to a levy group, means a member who does not have a certificate of exemption under **section 40** 25
- “relevant industry** means the industry described in the levy order, or proposed levy order.
- “Imposition of levy*
- “26 Governor-General may impose levy** 30
- “(1)** The Governor-General may, on the recommendation of the Minister, by Order in Council, impose a levy on qualifying members of a levy group, payable to an industry training organisation.
- “(2)** The Minister must not recommend the making of an Order in Council under **subsection (1)** unless the Minister is satisfied of the matters in **section 27**. 35

- “(3) Under a levy order under **subsection (1)**, a levy may be payable to—
- “(a) 1 industry training organisation by all qualifying members of the industry that is covered by that organisation; or 5
 - “(b) 1 industry training organisation by all qualifying members of a specific industry that is within the range of industries covered by that industry training organisation; or
 - “(c) more than 1 industry training organisation, jointly, by all qualifying members of an industry that is covered by those industry training organisations. 10

New (unanimous)

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| “(4) Every levy order is a regulation for the purposes of the Regulations (Disallowance) Act 1989. |
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- “27 **Restrictions on making of levy orders** 15
- “(1) The Minister must not recommend the making of a levy order unless he or she is satisfied that—
- “(a) the industry training organisation to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with **sections 31 to 38**, in relation to a proposal that the levy should be imposed on those members; and 20
 - “(b) at least 60% of the ballot papers distributed were validly completed and returned to the independent returning officer conducting the ballot before the closing date; and 25
 - “(c) out of those ballot papers validly completed and returned,—
 - “(i) more than 60% of the total supported the imposition of the levy; and 30
 - “(ii) more than 60%, weighted according to the size of the industry member that returned the ballot paper (calculated at the date that the ballot closed and on the same basis as the levy is proposed to be charged, as set out in the ballot paper), supported the imposition of the levy; and 35

- “(d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and
- “(e) the details specified in the order are acceptable to the Minister; and 5
- “(f) the industry training organisation has or will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
- “(g) all other relevant matters known to the Minister have been properly considered. 10
- “(2) When considering the matters in **subsection (1)**, the Minister must consult with the (*Tertiary Education*) Commission and may consult with any other persons the Minister considers appropriate. 15
- “28 **Matters to be specified in levy orders**
Every levy order must specify the matters set out in **Schedule 4**.
- “29 **Purposes for which levy may be required**
- “(1) A levy order must specify the purposes for which levy funds are to be used. 20
- “(2) A levy order may also specify any purpose or purposes for which no amount of levy may be used.
- “(3) In specifying how levy funds are to be used, a levy order may specify 1 or more purposes that will benefit the levy group as a whole and that are related to meeting the costs (including infrastructure and administration costs) associated with— 25
- “(a) designing qualifications and setting skill standards for the relevant industry; and
- “(b) providing leadership in the relevant industry in matters relating to skill and training needs by identifying present and future skill needs and promoting training to meet those needs. 30
- “(4) No levy order may specify a purpose for which levy funds may be used that is related to—
- “(a) meeting the costs of arranging delivery of industry training; or 35
- “(b) undertaking any commercial or trading activity; or

- “(c) any matter that directly benefits 1 or more individual members of the levy group, as opposed to generally benefiting the relevant industry as a whole.
- “(5) Nothing in **subsection (4)(b)** prevents an industry training organisation from— 5
- “(a) using any part of a levy to publish or sell any educational, informative, or promotional material (whether or not at a profit); or
- “(b) investing any part of a levy pending its expenditure.
- “30 **Levy order may require provision of information** 10
A levy order may require qualifying members of the levy group to provide information to the industry training organisation, or some other person or body, for the purpose of enabling or assisting the determination of the amount of levy payable.
- “Ballots* 15
- “31 **Independent returning officer must conduct ballot**
A ballot must be conducted by an independent returning officer appointed by the industry training organisation and approved by the Minister.
- “32 **Industry training organisation must identify potential members of levy group** 20
- “(1) An industry training organisation that proposes to impose a levy must take reasonable steps to ensure that it identifies all potential members of the levy group, including—
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- “(a) obtaining information that is able to be used from that industry training organisation’s records and from records that may be available from other organisations; and 25
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| <p>“(a) obtaining from that organisation’s records, and from records that may be available from other organisations, information that is able to be used to identify potential members; and</p> | |
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- “(b) giving adequate notice of the ballot in public newspapers and industry-specific publications, and inviting members of the relevant industry to register to receive information about the ballot and ballot papers. 5
- “(2) After satisfying the requirements of **subsection (1)**, the industry training organisation must provide to the independent returning officer who is administering the ballot a list of all potential members of the levy group of whom it is aware. 10
- “33 **Returning officer must notify potential members of levy group**
- “(1) The returning officer must give notice of the ballot to— 15
- “(a) every person named on the list of potential members of the levy group provided by the industry training organisation under **section 32(2)**; and
- “(b) any other person who the independent returning officer considers may be a member of the levy group. 20
- “(2) The notice under **subsection (1)** must advise the person about the ballot and must state—
- “(a) the description of the industry that is intended to be covered by the proposed levy order; and
- “(b) that the returning officer ~~(has been advised that the person is)~~ considers that the person is or may be a member of that industry; and 25
- “(c) that membership of the industry means that the person—
- “(i) is entitled to participate in the ballot; and 30
- “(ii) will be required to pay the levy if there is sufficient support for it in the ballot and the levy order is made; and
- “(d) that the person must notify the returning officer if the person disputes that he or she or it is a member of the industry intended to be covered by the proposed levy order (a **coverage dispute**); and 35

“(e) the date by which that notification of a coverage dispute must be received.

“34 **Commission resolves coverage disputes**

If the returning officer is notified by a person under **section 33(2)(d)** that the person wishes to raise a coverage dispute, the returning officer must refer that issue to the *(Tertiary Education) Commission* for determination in accordance with **section 49**.

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“35 **Population to be balloted**

As soon as practicable after all coverage disputes have been finally determined (including any appeals under **section 50(2)**), the returning officer must send ~~(ballot papers to the persons specified in **subsection (2)**)~~ a ballot paper to each person in the levy group.

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“(2) Ballot papers must be sent to—

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“(a) all persons who were notified of the ballot under **section 33** and who—

“(i) did not dispute membership of the industry intended to be covered by the levy order; or

“(ii) the *(Tertiary Education) Commission* has determined, under **section 49**, are members of the industry intended to be covered by the levy order (whether or not that person has appealed against that determination); and

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“(b) any other person who confirms to the returning officer that he or she or it is a member of the industry intended to be covered by the levy order.

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“36 **Requirements of ballot papers**

A ballot paper must state—

“(a) the address to which ballot papers must be returned; and

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“(b) the date by which ballot papers must be returned; and

“(c) full information on the nature of the levy power being sought, including all of the matters listed in **Schedule 4**.

- “37 **Returning officer must count votes**
 The returning officer must collect all validly completed ballot papers received by him or her at the closing date and calculate—
- “(a) the proportion of the total number of ballot papers distributed by him or her under **section 35** that have been validly completed and received by him or her at the closing date; and 5
 - “(b) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy; and 10
 - “(c) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy if the votes are weighted according to the size of the member of the industry that returned the ballot paper (calculated at the date that the ballot closed and on the same basis as the levy is proposed to be charged as set out in the ballot paper). 15
- “38 **Returning officer must keep ballot papers, etc** 20
 The returning officer must take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with a ballot conducted under this Part are preserved and kept for a period of 1 year after the completion of the ballot. 25
- “Collection of levy*
- “39 **Levy is payable by qualifying members to industry training organisation**
 If a levy order is made, the levy specified in that order is payable by every qualifying member of the levy group to the industry training organisation or organisations named in the levy order. 30
- “40 **Certificate of exemption**
 “(1) The chief executive of the (*Tertiary Education*) Commission may issue a certificate of exemption from payment of a levy to a member of the relevant industry who— 35
- “(a) was a member of the industry at the time of the ballot held in relation to that levy; and

- “(b) was, through no fault or neglect on that person’s part, not included in the ballot.
- “(2) The chief executive may revoke a certificate of exemption if—
- “(a) the person to whom it has been issued agrees; or 5
- “(b) it was issued in error.
- “41 **Method of collecting levy**
- “(1) An industry training organisation may collect levies directly from qualifying members of the levy group or by using a collection agent specified in the levy order in accordance with **section 42.** 10
- “(2) An industry training organisation may recover levies due from any qualifying member of the levy group—
- “(a) by deducting the amount due from any amount the organisation owes that qualifying member; or 15
- “(b) as a debt due to the organisation in any court of competent jurisdiction.
- “42 **Levy order may provide for collection by agent**
- “(1) A levy order may specify persons, other than the persons who are primarily responsible for paying the levy, who must collect levy money due from qualifying members and pay it to the industry training organisation. 20
- “(2) If a levy order specifies a person who must act as a collection agent under **subsection (1)**, that levy order must also specify an amount from, or a percentage of, the levy money collected that the person may retain as a fee for providing that collection service. 25
- “43 **Collection of levy if person switches industry training organisation**
- “(1) *((An person))* A person who is a qualifying member of an industry must continue to pay any levy that is payable to the industry training organisation or organisations that cover members of that industry (the **original organisation**) even if the Commission grants an application by that person under **section 10(2A)** for another industry training organisation (the **new organisation**) to manage that person’s industry training. 30
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- “(2) If a person must pay a levy to its original organisation under **subsection (1)**,—
- “(a) that person does not have to pay a levy to the new organisation as a result only of that new organisation managing that person’s training; but 5
- “(b) if the person was obliged to pay a levy to the new organisation before the employer’s application was granted, the employer must continue to pay that levy.
- “*Duties of industry training organisations and others in relation to levies* 10
- “44 **Levy funds must be kept in separate bank accounts and used only for authorised purposes**
- “(1) An industry training organisation that receives a levy under a levy order must open 1 or more bank accounts for the purpose of that levy and must use that account or those accounts for the following purposes only: 15
- “(a) the deposit of amounts of levy paid or recovered; and
- “(b) making payments out of levy funds.
- “(2) Only people expressly authorised by the organisation may operate that account or those accounts. 20
- “(3) No money may be paid out of that account or those accounts except for a purpose authorised in the levy order.
- “45 **Duty to keep records**
- An industry training organisation that receives a levy must ensure that accurate and up-to-date records are kept of— 25
- “(a) the names of all members of the levy group from whom the levy has been collected or recovered; and
- “(b) the amount of the levy collected or recovered from those members; and
- “(c) the names of all members of the levy group who are or may be liable to pay the levy but have not done so; and 30
- “(d) the use to which the levy funds have been put.
- “46 **Duty to provide annual report**
- “(1) As soon as is practicable after the end of a financial year during which a levy has been paid to an industry training organisation under a levy order, that organisation (*must pre-prepare in respect of that year*)— 35

Struck out (unanimous)

- “(a) statements (relating only to money paid to the organisation under the levy order and assets acquired or built up with or out of that money) of the organisation’s financial position at the end of the year; and
- “(b) statements of the organisation’s receipt and expenditure of money paid under the levy order; and 5
- “(c) all other statements necessary to show fully—
- “(i) the organisation’s financial position, as described in **paragraph (a)**; and
- “(ii) the financial results of all of the organisation’s activities involving the use of money paid to the organisation under the levy order or the use of assets acquired or built up with or out of money paid under the levy order. 10

New (unanimous)

- “(a) must prepare, in respect of that year, financial statements in accordance with generally accepted accounting practice; and 15
- “(b) must include in the financial statements required by **paragraph (a)** all the necessary information to explain—
- “(i) the balance of the levy fund; and 20
- “(ii) the movements in the levy fund over the course of the year, including receipts of money collected and payments of money made under the levy order; and
- “(iii) the use of assets acquired or built up with or out of money received under the levy order. 25
- “(2) The organisation must ensure that the financial statements prepared under **subsection (1)** are audited within 90 days of the end of that financial year.
- “(3) **(Statements)** Financial statements prepared under **subsection (1)** must be included in the organisation’s annual report for that year. 30
- “(4) An industry training organisation that is required by **subsection (3)** to include financial statements in its annual report must, as soon as that report has been completed, give a copy to the 35

Minister, and the Minister must present a copy to the House of Representatives not later than 6 sitting days after receiving it.

- “(5) Despite **subsection (4)**, if an enactment other than this Act requires an industry training organisation to give a Minister a copy of its annual report and requires the Minister to present a copy to the House of Representatives, that organisation must, to the extent that the enactment and **subsection (4)** impose different requirements, comply with that enactment and not that subsection. 5
- “(6) An industry training organisation that is required by **subsection (3)** to include financial statements in its annual report must take all reasonable steps to ensure that every person primarily liable for paying the levy (*to which the statements (or any of them) relate*) that is reflected in those financial statements receives a copy of the annual report as soon as is reasonably practicable after the report has been completed. 10 15
- “47 **Duty to protect commercially sensitive information**
Every person who receives commercially sensitive information for the purposes of carrying out a function or activity under this Part, or under a levy order, must take reasonable steps to protect that information. 20

“Disputes

- “48 **Arbitration or mediation system must be established**
- “(1) An industry training organisation that receives a levy under a levy order must establish a method of arbitration or mediation in the case of disputes as to— 25
- “(a) whether a person was included in the ballot relating to that levy; and
- “(b) whether a person has paid the levy; and
- “(c) the amount of levy payable; and 30
- “(d) any other matter relating to the levy, except for disputes about whether a person is within the levy group.
- “(2) Details of that arbitration or mediation system must be specified in the levy order, including—
- “(a) the method of appointment of arbitrators or mediators; and 35
- “(b) the procedures to be followed by arbitrators or mediators; and

- “(c) the remuneration of arbitrators or mediators; and
“(d) the payment of costs in relation to arbitration or mediation; and
“(e) any other matters relating to the resolution of disputes.
- “49 **Disputes about coverage** 5
- “(1) If there is a dispute about whether a person is within a levy group, whether before or after the ballot, that dispute must be referred to the (*Tertiary Education*) Commission, which must determine that matter.
- “(2) The industry training organisation that is proposing to impose a levy or, if a levy order has been made, that is responsible for administering that levy must pay the reasonable costs of the (*Tertiary Education*) Commission for determining disputes. 10
- “50 **Appeals to District Court**
- “(1) If a dispute is unresolved following arbitration or mediation in accordance with the method specified in the levy order, or if a party wishes to appeal a decision of an arbitrator or mediator, the dispute may be referred, or the decision may be appealed, to the District Court. 15
- “(2) A determination by the (*Tertiary Education*) Commission under **section 49** may be appealed on grounds of procedural error only. 20
- “(3) An appeal under **subsection (2)** may be made to the District Court by the person disputing membership of the levy group or by the industry training organisation that is proposing to impose, or responsible for administering, the levy. 25
- “Confirmation and expiry of orders*
- “51 **Orders must be confirmed**
- “(1) **Subsection (2)** applies to a levy order that is made on or after 1 January and before 1 July in any year, and that— 30
- “(a) has not been revoked with effect on or before 1 July in the next year; and
- “(b) has not ceased, and will not cease, to have effect on or before 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989. 35
- “(2) If **subsection (1)** applies to a levy order, that order is deemed to be revoked with the close of 30 June in that next year unless it

has been confirmed by an Act of Parliament passed on or before that day.

- “(3) **Subsection (4)** applies to a levy order that is made after 30 June and on or before 31 December in any year, and that—
- “(a) has not been revoked with effect on or before 1 January in the year after the next year; and
- “(b) has not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989. 5
- “(4) If **subsection (3)** applies to a levy order, that order is deemed to be revoked with the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed on or before that day. 10
- “(5) The Minister on whose recommendation a levy order was made must, by notice published in the *Gazette* at least 6 months before the day with the close of which the order may (under **subsection (2)** or **subsection (4)**) be deemed to have been revoked, indicate the Minister’s intentions with regard to its continuing in force (~~*unless a levy*~~) unless the levy order has already been— 15
- “(a) revoked; or
- “(b) disallowed under the Regulations (Disallowance) Act 1989; or
- “(c) confirmed by an Act of Parliament. 20
- “52 **Expiry of levy orders** 25
- “(1) A levy order expires 5 years after the day on which it was made unless it is sooner—
- “(a) revoked; or
- “(b) disallowed under the Regulations (Disallowance) Act 1989. 30
- “(2) A levy order is deemed to be revoked if the industry training organisation responsible for administering the levy ceases to be recognised under **section 5**.”

New

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| <p>46A Collection of levy if person switches industry training organisation Section 43 of the principal Act is amended by omitting the expression “10(2A)”, and substituting the expression “10A”.</p> | |
|--|--|
- 47 Part IV repealed** 5
Part IV of the principal Act is repealed.
- 48 New Schedule 4 inserted**
The principal Act is amended by inserting the **Schedule 4** set out in **Schedule 3** of this Act.
- 49 Consequential amendments to principal Act** 10
The principal Act is consequentially amended in the manner set out in **Schedule 4**.
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s 48

Schedule 3
New Schedule 4 inserted in Industry Training Act 1992

ss 28, 36

Schedule 4
Matters to be specified in levy orders 5

To whom levy is payable and who pays

- 1 The name of the industry training organisation or organisations that will receive the levy.
- 2 A description of the industry the members of which will be primarily liable to pay the levy. 10

Amount of levy

- 3 The basis on which the amount of the levy will be calculated or ascertained.
- 4 How the size of a qualifying member of the levy group will be calculated for the purposes of calculating the levy payable by that member, such as— 15
- (a) based on the number of employees of the member that work in the relevant industry; or
 - (b) based on the level of production of the member.
- 5 Whether the levy will be payable at a single rate or 2 or more different rates and, if it will be payable at different rates, the basis on which those different rates will apply. 20
- 6 How the rates of the levy will be notified.
- 7 Maximum and minimum amounts of levy payable (if any).
- 8 The amount of any additional charges, or the percentage increase in the levy payable, if amounts of levy otherwise payable are paid late or not paid at all (if applicable). 25

Schedule 4—continued*Uses to which levy may be put*

- 9 Either—
- (a) how the organisation is to spend the levy; or
 - (b) the means by which the organisation is to consult qualifying members of the levy group as to how the organisation is to spend it. 5
- 10 Whether the levy must be spent by the organisation or may be paid to, and spent by, branches or subsidiaries of the organisation.
- Payment of levy* 10
- 11 When and how the levy will be payable, including—
- (a) the period to which the levy will apply (**the levy period**); and
 - (b) how often levy payments will be required to be made; and 15
 - (c) the methods of payment of the levy that will be available to qualifying members of the levy group.
- 12 How the amount of the levy payable will be calculated when a person becomes a qualifying member of the levy group part way through a levy period. 20
- 13 How refunds of the levy will be calculated, and when they will be paid, if a qualifying member *((stops working in))* ceases to be a qualifying member of the levy group part way through a levy period.
- 14 What exemptions from payment of the levy will be available. 25
- 15 The circumstances (if any) in which, and the conditions subject to which, qualifying members of the levy group may be allowed extensions of time for the payment of any amount of levy.
- 16 The enforcement mechanisms that the industry training organisation receiving the levy may use to collect the levy. 30

Schedule 4—continued*Collection of levy by agent*

- 17 The persons (if any), other than the industry members primarily responsible for paying the levy, who are responsible for collecting the levy in accordance with **section 42**.
- 18 The amount from, or percentage of, the levy money collected that a collection agent may retain as a fee for providing the collection service. 5

Miscellaneous

- 19 The records to be kept by— 10
- (a) the industry training organisation receiving the levy; and
 - (b) persons collecting the levy; and
 - (c) persons who are, or may be, liable to pay the levy.
- 20 The details of the method of arbitration or mediation to apply in the case of disputes, as required by **section 48**. 15
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s 49

Schedule 4

Consequential amendments to Industry Training Act 1992

Section 2

Struck out (unanimous)

Repeal the definitions of the terms **Agency**, **applicant organisation**, and **Board**. 5

Insert, in its appropriate alphabetical order, the following definition:

“Commission means the Tertiary Education Commission established by **section 159C** of the Education Act 1989”.

Insert in the definition of **funding agreement**, after the expression “subsection (2)”, the words “or **subsection (2A)**”. 10

New (unanimous)

Omit, from the definition of **funding agreement** the words “subsection (1) or subsection (2) of section 10 of this Act” and substitute the words “section 10(1), (2), or (2A)”.

Section 5 and heading to section 5 15

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

Section 6 and heading to section 6

Omit the word “Board” in both places where it appears and substitute in each case the word “Commission”. 20

Section 7 and heading to section 7

Omit the word “Board” in both places where it appears and substitute in each case the word “Commission”.

Omit, from paragraph (d) the words “paragraphs (a) and (b) of section 6 of this Act” and substitute the words “section 6(a) to (c)”. 25

Section 8(1)

Omit the word “Board” in both places where it appears and substitute in each case the word “Commission”.

Section 9(3)

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”. 30

Section 10 and heading to section 10

Omit the word "Board" wherever it appears and substitute in each case the word "Commission".

Section 11 and heading to section 11

Omit the word "Board" wherever it appears and substitute in each case the word "Commission". 5

Omit from paragraph (d) the words "Board's charter" and substitute the words "Commission's statement of intent".

Omit from paragraph (e) the words "Board's document of accountability" and substitute the words "Commission's statement of intent". 10

Section 12 and heading to section 12

Omit the word "Board" wherever it appears and substitute in each case the word "Commission".

Section 13 and heading to section 13

Omit the word "agency" wherever it appears and substitute in each case the word "Commission". 15

Struck out (unanimous)

Omit the expression "Part XXI" and substitute the expression "**Part 13A**".

New (unanimous)

Omit the words "(and Part XXI of the Education Act 1989 shall have effect accordingly)". 20

Omit from paragraph (b) the words "Board's document of accountability" and substitute the words "Commission's statement of intent".

New (unanimous)

Omit from paragraph (d) the words "document of accountability" and substitute the words "statement of intent". 25

Omit from paragraph (e) the word "Board" and substitute the word "Commission".

Section 16

Omit the word "Board" and substitute the word "Commission". 30

Section 17 and heading to section 17

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

New (unanimous)

Omit from subsection (2) the word “Board’s” and substitute the word “Commission’s”.

5

Section 18 and heading to section 18

Omit the word “Board” wherever it appears and substitute in each case the word “Commission”.

New (unanimous)

Omit from paragraph (a) the word “Board’s” and substitute the word “Commission’s”.

10

Legislative history

3 December 2002

Divided from Tertiary Education Reform Bill
(Bill 180–2) as Bill 180–3B