

**Reprint
as at 1 August 2020**

Education (Tertiary Reform) Amendment Act 2002

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Education (Tertiary Reform) Amendment Act 2002: repealed, on 1 August 2020, pursuant to section 669(3)(b) of the Education and Training Act 2020 (2020 No 38).

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Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint. See the notes at the end of this reprint for further details.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Education (Tertiary Reform) Amendment Act 2002.
- (2) In this Act, the Education Act 1989 is called “the principal Act”.

2 Commencement

- (1) This Act, other than the sections referred to in subsections (2) to (4), comes into force on 1 January 2003.
- (2) Section 21 comes into force on 1 July 2003.
- (3) Sections 15, 17, 18, and 26 come into force on 1 January 2004.

- (4) Sections 27 to 31 come into force on the day after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the Education Act 1989 in order to reshape the tertiary education sector, so as to achieve coherence between different parts of the sector and strategic use of resources, by—

- (a) establishing a Tertiary Education Commission and incorporating Skill New Zealand within it; and
- (b) extending the requirements for charters, and introducing profiles, to steer the tertiary education sector; and
- (c) introducing a new approach to funding for the sector to create consistency and strategic use of resources across the sector as a whole; and
- (d) allowing the New Zealand Qualifications Authority to set conditions on the registration of private training establishments, and on course approvals and accreditations, and providing for the enforcement of those conditions; and
- (e) providing for the imposition of an export education levy; and
- (f) making other minor changes to provisions relating to the tertiary education sector and international students.

Amendments to Part I (Rights to Primary and Secondary Education) of principal Act

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing paragraph (b) of the definition of **domestic student**, and substituting the following paragraph:
 - (b) the holder of a residence permit under the Immigration Act 1987 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or.
- (2) Section 2 of the principal Act is amended by adding the following subsections:
 - (4) The Governor-General may, by Order in Council, make regulations prescribing criteria that the holder of a residence permit under the Immigration Act 1987 must satisfy in order to fulfil the requirements of paragraph (b) of the definition of **domestic student** in subsection (1).
 - (5) Regulations made under subsection (4),—
 - (a) if made on or before 30 June in any year, expire on the close of 31 December of that year unless they are expressly confirmed by Act of Parliament passed during that year; and

- (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year unless they are expressly confirmed by Act of Parliament passed before the end of that following year.
- (6) The expiry of regulations made under subsection (4) does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.

Amendments to Part XIII (Interpretation) of principal Act

5 Heading to Part XIII amended

The principal Act is amended by omitting the heading to Part XIII, and substituting the following heading: “General provisions relating to tertiary education”.

6 New section 159AAA inserted

The principal Act is amended by inserting in Part XIII, before section 159, the following section:

159AAA Object of provisions relating to tertiary education

- (1) The object of this Part, Parts 13A to XVIII, and Part XIX (which relate to tertiary education), and of the provisions of Parts 18A and XX to XXIV that relate to tertiary education, is to foster and develop a tertiary education system that—
 - (a) fosters, in ways that are consistent with the efficient use of national resources, high quality learning and research outcomes, equity of access, and innovation; and
 - (b) contributes to the development of cultural and intellectual life in New Zealand; and
 - (c) responds to the needs of learners, stakeholders, and the nation, in order to foster a skilled and knowledgeable population over time; and
 - (d) contributes to the sustainable economic and social development of the nation; and
 - (e) strengthens New Zealand’s knowledge base and enhances the contribution of New Zealand’s research capabilities to national economic development, innovation, international competitiveness, and the attainment of social and environmental goals; and
 - (f) provides for a diversity of teaching and research that fosters, throughout the system, the achievement of international standards of learning and, as relevant, scholarship.
- (2) In making decisions under this Part, Parts 13A to XVIII, and Part XIX, and under the provisions of Parts 18A and XX to XXIV that relate to tertiary education, the Minister, the Commission, the Qualifications Authority, and the ser-

vice continued by Part XXII must take into account the objects specified in subsection (1), so far as is practicable in the circumstances.

7 Interpretation

- (1) Section 159(1) of the principal Act is amended by omitting the words “Parts XIV to XXIV of this Act, and in the Thirteenth to the Eighteenth Schedules to this Act”, and substituting the words “Part 13A to Part XXIV, and in the Thirteenth to Seventeenth Schedules”.
- (2) Section 159(1) of the principal Act is amended by repealing paragraph (b) of the definition of **domestic student**, and substituting the following paragraph:

(b) the holder of a residence permit under the Immigration Act 1987 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or.

- (3) Section 159(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

charter means a document of the kind described in section 159L or, in the case of an institution that has a charter approved under Part XV, a document of the kind described in section 184

Commission means the Tertiary Education Commission established under section 159C

give public notice means to publish a notice in the *Gazette* that—

- (a) gives notice of the fact that something has been made, approved, or done; and
- (b) includes information about how or where the public can see and obtain a copy of the thing that has been made, approved, or done

industry training organisation means a body corporate for the time being recognised under section 5 or section 8(1) of the Industry Training Act 1992

profile means a document of the kind described in section 159W

specialist college means, subject to subsection (3), a body established as a specialist college under section 162(2)

statement of tertiary education priorities means the latest statement issued by the Minister under section 159AC

tertiary education provider means all or any of the following, but does not include an industry training organisation

- (a) an institution;
- (b) a registered establishment;
- (c) a government training establishment;
- (d) any other person or body that provides, or proposes to provide, tertiary education and that is funded through non-departmental output classes from Vote Education (for example, community education providers)

tertiary education strategy means the latest strategy document approved under section 159AA.

- (4) Section 159(1) of the principal Act is amended by inserting in the definition of **institution**, after paragraph (b), the following paragraph:
 - (ba) specialist college; or.
- (5) Section 159(1) of the principal Act is amended by repealing the definition of **association**.
- (6) Section 159(3) of the principal Act is amended by inserting, after the word “polytechnic,”, the words “specialist college,”.
- (7) Section 159 of the principal Act is amended by adding the following subsections:
 - (4) The Governor-General may, by Order in Council, make regulations prescribing criteria that the holder of a residence permit under the Immigration Act 1987 must satisfy in order to fulfil the requirements of paragraph (b) of the definition of **domestic student** in subsection (1).
 - (5) Regulations made under subsection (4),—
 - (a) if made on or before 30 June in any year, expire on the close of December of that year unless they are expressly confirmed by Act of Parliament passed during that year; and
 - (b) if made on or after 1 July in any year, expire on the close of 31 December in the following year unless they are expressly confirmed by Act of Parliament passed before the end of that following year.
 - (6) The expiry of regulations made under subsection (4) does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.

8 New sections 159AA to 159AF inserted

The principal Act is amended by inserting in Part XIII, after section 159, the following sections:

159AA Tertiary education strategy

- (1) The Minister must from time to time approve a tertiary education strategy that sets out the Government’s medium- to long-term strategy for tertiary education.
- (2) The tertiary education strategy must address the following:
 - (a) the economic context:
 - (b) the social context:
 - (c) the environmental context:
 - (d) the development aspirations of Maori and other population groups.

- (3) Before approving a tertiary education strategy, the Minister must consult, either directly or through the Secretary, with those stakeholders in the tertiary education sector that he or she considers ought to be consulted.
- (4) As soon as practicable after approving a tertiary education strategy, the Minister must—
 - (a) give public notice of it; and
 - (b) present a copy of it to the House of Representatives.

159AB Importance of tertiary education strategy

In exercising their functions under this Act or any other enactment, the Commission, the Qualifications Authority, and the service continued by Part XXII must have regard to the tertiary education strategy.

159AC Statement of tertiary education priorities

- (1) The Minister must, at least once in every 3 years, issue a statement of tertiary education priorities that—
 - (a) is based on, and is not inconsistent with, the tertiary education strategy; and
 - (b) sets out the Government's current priorities for tertiary education.
- (2) The Minister must consult with the Commission before issuing or amending a statement of tertiary education priorities.
- (3) The Minister may, at any time after a statement of tertiary education priorities has been in force for a year, revoke and replace, or amend the statement. Any amendment forms part of the statement it amends.
- (4) The Minister must—
 - (a) give public notice of every statement of tertiary education priorities and of every amendment to it; and
 - (b) present a copy of it, and every amendment to it, to the House of Representatives.

159AD Roles within tertiary education sector

- (1) Nothing in this Act affects the fact that the Ministry is the Minister's principal policy adviser on tertiary education matters.
- (2) The Qualifications Authority (or, in the case of universities, the New Zealand Vice-Chancellors Committee) is the body primarily responsible for quality assurance matters in the tertiary education sector.
- (3) This section is for the avoidance of doubt.

159AE Ministry may hold and disseminate information

Any information collected and held by the Commission, the Qualifications Authority, or the service continued by Part XXII may be held by the Ministry on behalf of the relevant agency and be disclosed by the Ministry to—

- (a) the agency on whose behalf it is held; and
- (b) any other person or agency that is entitled to receive it.

159AF Secretary may delegate certain powers and functions to Commission

- (1) The Secretary may delegate to the Commission any powers or functions of the Secretary under regulations made pursuant to section 303 or section 306 or section 307 (which relate to student allowances).
- (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may not include a power to further delegate any power or function; and
 - (c) may be revoked at any time by notice in writing.
- (3) The Commission may exercise any powers or functions delegated to it under this section in the same manner and with the same effect as if the powers or functions had been conferred on the Commission directly, rather than by delegation.
- (4) If the Commission purports to act under a delegation under this section, the Commission is presumed, in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

New Part 13A inserted in principal Act

9 New Part 13A inserted

The principal Act is amended by inserting, after Part XIII, the following Part:

Part 13A
Tertiary Education Commission

Preliminary provisions

159A Purpose of Part

The purpose of this Part is to establish a Tertiary Education Commission and the means by which the Government will exercise leadership of the tertiary education sector to ensure the strategic use of resources.

159B Definition of organisation

- (1) In this Part, unless the context otherwise requires, **organisation** means—
 - (a) a tertiary education provider:

- (b) an industry training organisation:
 - (c) a person or body that provides tertiary education-related services and is identified in accordance with subsection (2) as an organisation for the purposes of this Part.
- (2) The Minister may, by notice in the *Gazette*, identify organisations for the purpose of this Part, and may do so by describing a type of person or body that is an organisation, or by naming individual persons or bodies as organisations.

Establishment of Commission

159C Establishment of Commission

- (1) The Commission is established as a body corporate owned by the Crown.
- (2) The Commission is a Crown entity for the purposes of the Public Finance Act 1989, and is named in the Fourth, Fifth, Sixth, and Seventh Schedules of that Act.
- (3) Schedule 13A applies to the Commission and its members.

159D Composition of Commission

- (1) The Commission comprises at least 6, but not more than 9, members appointed by the Minister after consultation with the Minister of Maori Affairs.
- (2) At least 2 months before appointing a member (other than a replacement member appointed under clause 11(1) of Schedule 13A), the Minister must advertise his or her intention to appoint a member and must seek responses from interested persons.
- (3) Subsection (2) does not apply if the Minister appoints as a member a person who, immediately before the appointment, was a member of the Transition Tertiary Education Commission.

159E Powers of Commission

- (1) The Commission has—
 - (a) all the rights, powers, and privileges of a natural person of full age and capacity; and
 - (b) the power to do anything it is authorised to do by or under this Act, any other enactment, or any rule of law.
- (2) The Commission may exercise its powers only for the purpose of carrying out its functions.
- (3) The Commission may provide goods and services that are consistent with its functions and may, with the approval of the Minister, charge a commercial rate for any goods and services provided.

Functions of Commission

159F Functions of Commission

- (1) The functions of the Commission are—
- (a) to give effect to the statement of tertiary education priorities through—
 - (i) negotiating charters with organisations; and
 - (ii) negotiating and approving profiles, or parts of profiles, for the purpose of funding; and
 - (iii) allocating funds to organisations; and
 - (iv) building the capability of organisations; and
 - (b) to provide advice to the Minister on—
 - (i) the tertiary education strategy and the statement of tertiary education priorities; and
 - (ii) the activities and performance of the sector generally; and
 - (iii) any policy implications arising from any research, monitoring, or evaluation conducted under paragraph (c); and
 - (c) to conduct applied policy and programme research, monitoring, and evaluation; and
 - (d) to monitor the performance of organisations against their profiles for the purpose of assessing overall achievement in relation to the tertiary education strategy and the statement of tertiary education priorities; and
 - (e) to undertake any functions delegated to the Commission, including (without limitation) functions relating to the funding of organisations other than under section 159ZC; and
 - (f) to undertake any other function given by this Act, the Industry Training Act 1992, the Modern Apprenticeship Training Act 2000, or any other enactment; and
 - (g) to undertake any other function that is necessary or desirable for the purpose of fulfilling its other functions under this subsection.
- (2) In addition, the Commission may provide information and other tertiary-related services to the Crown, provided that these functions are consistent with the Commission's statement of intent and are consistent with, and do not displace, any of its functions under subsection (1).

159G Principles guiding how Commission operates

In performing its functions, the Commission must, in addition to complying with section 159AB,—

- (a) comply with any written direction of the Minister given under section 159J; and

- (b) work closely with the stakeholders of tertiary education providers and industry training organisations; and
- (c) work closely with tertiary education providers and industry training organisations.

159H Minister may review performance of Commission

- (1) The Minister may, by written notice to the Commission, review the performance, or any aspect of the performance, of the Commission.
- (2) Before the Minister undertakes a review under this section, he or she must—
 - (a) consult with the Commission on the purpose and nature of the review; and
 - (b) consider any submissions made by the Commission on the proposed review.
- (3) The Minister may appoint any agency to conduct a review under this section on behalf of the Minister, and in that case clause 16 of Schedule 13A applies to the agency as if it were the Minister.

159I Delegation of functions or powers of Minister

- (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 or any other Act, including—
 - (a) functions or powers delegated to the Minister under this Act or any other Act; and
 - (b) the Minister's powers relating to charters.
- (2) A delegation under this section must be in writing.
- (3) No delegation under this section may include the power to delegate under this section.
- (4) The power of the Minister to delegate under this section—
 - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
 - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given, or conditions imposed, by the Minister, the Commission may exercise any functions or powers delegated to the Commission under this section in the same manner and with the same effect as if they had been conferred on the Commission directly by this section and not by delegation.

- (6) If the Commission purports to act under any delegation under this section, the Commission is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (7) A delegation does not affect or prevent the exercise of any function or power by the Minister, or affect the responsibility of the Minister for the actions of any person acting under the delegation.

159J Minister may direct Commission

- (1) The Minister may, from time to time, give a formal direction under this section to the Commission specifying the policy that the Government wants the Commission to pursue in fulfilling its functions, and the Minister may revoke or amend any existing direction in the same way.
- (2) The Minister may not give a direction unless he or she has first notified the Commission of his or her intention to do so and invited comment from the Commission on the proposal.
- (3) Every direction under this section must be consistent with the tertiary education strategy and the functions of the Commission.
- (4) The Minister may not, under this section, direct the Commission to provide or deny funding under section 159ZC to any specified organisation.
- (5) As soon as practicable after giving, amending, or revoking a direction under subsection (1), the Minister must—
 - (a) give public notice of the direction, amendment, or revocation; and
 - (b) present a copy of it to the House of Representatives.
- (6) If the Minister gives a direction under this section, the Commission must include in its annual report for every year to which the direction relates—
 - (a) a copy of the direction; and
 - (b) a report on how the Commission has responded to it.

159K Application of Commerce Act 1986

Despite section 6 of the Commerce Act 1986, nothing in that Act applies to the Commission except to the extent that the Commission engages in supplying goods and services for which it charges.

Charters

159L What is a charter?

An organisation's **charter** is a document that—

- (a) sets out the organisation's mission and role in the tertiary education system; and
- (b) is intended to cover a medium- to long-term timeframe; and
- (c) provides the basis for development of the organisation's profile; and

- (d) is prepared by the organisation in accordance with the requirements for the contents of charters prescribed by the Minister under section 159M; and
- (e) is approved by the Minister in accordance with the criteria for assessment of charters identified by the Minister under section 159M.

159M Content of charters, and assessment criteria

- (1) The Minister must, in consultation with the Commission, prescribe and give public notice of—
 - (a) the content of charters, being the matters that charters must address; and
 - (b) the criteria that the Minister will use to assess proposed charters.
- (2) When prescribing, under subsection (1), the content of charters and assessment criteria for charters, the Minister may prescribe standard contents and criteria, as well as prescribing different contents and different criteria applying to different organisations, groups of organisations, or types of organisation.
- (3) The criteria for assessment may (without limitation) include criteria that relate to the process used to develop a charter as well as to the content of the charter.
- (4) If the Minister requires an organisation, by notice in writing, to consult over its charter with any specified person or group of persons, that requirement is for all purposes to be treated as assessment criteria that have been prescribed under this section.

159N Organisations that must or may have a charter

- (1) After 1 January 2004, the following must have a charter prepared and approved under this Part:
 - (a) all institutions;
 - (b) all other organisations that seek or receive funding from the Commission, unless exempt under subsection (4).
- (2) At any time before 1 January 2004, the Commission may require, by notice in writing to the organisation, any organisation referred to in subsection (1) to prepare a charter under this Part within a specified reasonable period, and an organisation that receives such a notice must prepare a charter as required.
- (3) Before 1 January 2004, any organisation that is not required under subsection (2) to have a charter, but that wishes to have one may, with the agreement of the Minister, prepare and seek approval for a charter.
- (4) The Minister may, on the advice of the Commission,—
 - (a) by notice in writing to an organisation, exempt the organisation from the requirement to have a charter or from any requirement about the content of charters; and

- (b) by notice in the *Gazette*, exempt any group of organisations or type of organisation from the requirement to have a charter or from any requirement about the content of charters.
- (5) Subsection 4 does not apply to institutions.

159O Preparing charters

- (1) An organisation that wishes, or is obliged, to have a charter must—
 - (a) identify its stakeholders and publish a list of them in at least 1 daily newspaper circulating in each area served by the organisation; and
 - (b) prepare a proposed charter; and
 - (c) consult with its stakeholders over the proposed charter; and
 - (d) consult with any other person or group of persons with whom the Minister requires the organisation to consult.
- (2) After completing the consultation required under subsection (1)(c) and (d), the organisation must submit the proposed charter to the Commission for comment and consultation.
- (3) Following consultation with the Commission over, and (if necessary) modification of, the proposed charter, the organisation must submit the proposed charter to the Commission for approval by the Minister.

159P Minister's approval of charters

- (1) The Minister must assess a proposed charter against the criteria prescribed under section 159M(1).
- (2) The Minister must approve a proposed charter unless satisfied on reasonable grounds that he or she should not do so.
- (3) A charter comes into effect on the date specified by the Minister.
- (4) If the Minister rejects a proposed charter, he or she must give reasons for the rejection.
- (5) An organisation may submit a revised proposed charter to the Minister as many times as is necessary, but only if, before resubmitting it, the organisation has consulted further with the Commission and, if the revisions are significant, with the people or groups with whom it is required to consult under section 159O(1)(c) and (d).

159Q Minister's special powers in relation to charters of institutions

- (1) If the Minister and an institution cannot agree over the content of the institution's charter, the Minister must, after consulting as he or she thinks appropriate, determine the matter.
- (2) The Minister may, at any time, on his or her own initiative, propose amendments to an institution's charter or proposed charter.

- (3) If the Minister proposes an amendment to a charter or proposed charter, he or she must notify the institution of the proposal and give the institution a reasonable period in which to make submissions in response to it.
- (4) After considering any submissions made by an institution on the proposal, the Minister may approve the proposed amendment, with or without further amendment, or abandon the proposal.
- (5) Nothing in this section limits the right or ability of an institution to propose any amendment to its own charter or proposed charter.

159R Minister may approve interim charters for institutions

- (1) In any of the following circumstances, the Minister may, on his or her own initiative, approve an interim charter for an institution:
 - (a) when an institution is newly established:
 - (b) when an institution has changed its status:
 - (c) when an institution has merged with another institution or had another institution incorporated into it:
 - (d) when an institution's charter has expired or been revoked:
- (2) An interim charter approved under subsection (1) remains in force until a new charter is approved under section 159P.

159S Amendments to, and review of, charters

- (1) Sections 159O and 159P apply to an amendment or proposed amendment to a charter (other than an amendment proposed by the Minister under section 159Q) as if the amendment or proposed amendment were a charter or proposed charter.
- (2) If the Minister approves an amendment to a charter, the amendment forms part of the charter from the date set by the Minister.
- (3) The Minister may, at any time, require an organisation to review its charter with a view to amending or replacing it.

159T Expiry of charters

- (1) Every charter must specify the date on which it expires, which must be—
 - (a) an expiry date as agreed with the Minister, which must be a date no later than 10 years after the date on which the charter comes into effect; or
 - (b) in the case of an industry training organisation, the date on which its recognition under section 5 or section 8(1) of the Industry Training Act 1992 expires.
- (2) Every charter, unless revoked earlier, expires on its expiry date.

159U Charter may lapse if organisation does not receive funding

The charter of an organisation (other than an institution) lapses if the provider does not receive funding from the Commission for 2 consecutive years.

159V Charters must be available

An organisation that has a charter must ensure that the charter is available for inspection by the public, and that copies may be obtained at no more than a reasonable cost.

Profiles

159W What is a profile?

An organisation's profile is a document that—

- (a) is prepared annually; and
- (b) sets out the organisation's operating plans, key policies, and proposed activities for the next 3 years; and
- (c) sets out the organisation's objectives, and the performance measures and targets that the organisation will use to measure its performance; and
- (d) sets out the short- to medium-term strategic direction of the organisation; and
- (e) identifies the activities of the organisation for which it seeks or receives funding from the Commission; and
- (f) sets out the basis on which funding will be sought or received from the Commission; and
- (g) demonstrates how the organisation will give effect to its charter (unless it is exempt under section 159N(4) from the requirement to have one); and
- (h) identifies the information that the organisation will supply on an annual basis to the Commission; and
- (i) includes the content prescribed under section 159X(1)(a), and is in the form prescribed under that section.

159X Content of profiles and criteria for approval

- (1) The Commission must, at least once every 3 years, prescribe and give public notice of—
 - (a) the content and form of profiles; and
 - (b) the criteria on which the Commission will approve profiles, or parts of profiles, for funding purposes; and
 - (c) the kinds of background or supplementary information that the Commission may require an organisation to provide when it submits its profile to the Commission; and

- (d) the timetable and process for the submission of profiles to the Commission.
- (2) Notices given under subsection (1)—
 - (a) may prescribe different content and form, criteria, information, timetables, and processes for different organisations, groups of organisations, or types of organisation; and
 - (b) may be given at different times; and
 - (c) may be amended by the Commission, in which case the Commission must give public notice of the amendment.
- (3) The Commission may permit organisations to prepare combined profiles for more than 1 organisation.
- (4) The Commission may waive any requirement (other than a requirement imposed by this Act) as to the content or form of profiles, or the timing or process to be used in submitting them.

159Y Organisations that must have a profile

- (1) After 1 January 2004, the following organisations must have a profile:
 - (a) all institutions;
 - (b) all other organisations that seek or receive funding from the Commission, unless exempt under subsection (3).
- (2) At any time before 1 January 2004, the Commission may, by notice in writing to an organisation, require the organisation to prepare a profile within a specified reasonable period; and an organisation that receives such a notice must prepare a profile.
- (3) Despite subsection (1), the Commission may,—
 - (a) by written notice to an organisation, exempt the organisation for a specified period from the requirement to have a profile; and
 - (b) by notice in the *Gazette*, exempt any group of organisations, or type of organisation, from the requirement to have a profile.
- (4) Subsection (3) does not apply to institutions.

159Z Profiles must be publicly available

An organisation that has a profile must ensure that the profile is available for inspection by the public, and that copies may be obtained at no more than a reasonable cost.

Funding by Commission

159ZA Minister must determine design of funding mechanisms

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

- (2) Without limiting the generality of subsection (1), when determining the design of funding mechanisms the Minister—
 - (a) must identify the general form and essential components of each mechanism; and
 - (b) must indicate which mechanisms relate to funding provided under section 159ZC, and which (if any) relate to other funding; and
 - (c) may specify the amount of money, or the proportion of an amount of money, available under any particular mechanism; and
 - (d) may provide for different versions or modifications of a mechanism to apply to different groups of organisations; and
 - (e) may specify conditions that the Commission must attach to funding provided under any funding mechanism, including conditions setting limits on the fees that an organisation may charge domestic students; and
 - (f) may make provision for funding that targets particular student groups.
- (3) However, the Minister may not identify a specified organisation or organisations to which funding is to be provided or denied under any mechanism.
- (4) Every mechanism must be consistent with the principle that receipt by an organisation of public funds is dependent on the organisation meeting quality assurance requirements under this Act.
- (5) The Commission must develop the details of how to implement the Minister's determinations under this section.
- (6) The Minister may not, under subsection (2)(e), specify conditions setting 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—
 - (a) states that the Minister proposes to specify such conditions; and
 - (b) sets out the proposed conditions; and
 - (c) invites submissions on the proposed conditions; and
 - (d) specifies the date by which submissions must be received, which must be a date no more than 21 days after the date of the *Gazette* notice.

159ZB Approval of profiles for funding purposes

- (1) An organisation that has a profile may submit it to the Commission for approval for funding purposes.
- (2) The Commission may, after discussion and, if necessary, negotiation with the organisation, approve all or any part of the organisation's profile for funding purposes.
- (3) If the Commission does not approve a profile or part of a profile for funding purposes, it must notify the organisation and give reasons for the non-approval.

- (4) If the Commission approves an organisation's profile, or part of its profile, for funding purposes, the organisation is eligible for funding from the Commission.

159ZC Payment of funding

- (1) The Commission must determine the amount of funding payable to an organisation that is eligible for funding by applying the appropriate funding mechanism or mechanisms to the part or parts of the organisation's profile that are approved for funding purposes.
- (2) The Commission must arrange for payment to the organisation of the amount of funding determined under subsection (1).
- (3) If a funding mechanism provides that funding may be provided under it to an organisation that does not have a profile, the Commission may, in accordance with the funding mechanism, fund an organisation under this section even if it does not have a profile.
- (4) Nothing in this section limits the Commission's powers, under a delegated authority or any other enactment, to fund organisations other than under this section.

159ZD Conditions on funding

- (1) It is a condition of payment of funding under section 159ZC that the recipient will supply to the Commission or Ministry, at intervals 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.
- (2) The Commission may impose conditions on the use of any funding provided under section 159ZC, but only if the Minister has provided that, under the mechanism under which that funding is provided,—
- (a) any or specified conditions may be imposed; or
 - (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), but no such amendment takes effect until the organisation has had reasonable notice of it.

159ZE Accountability for funding received under section 159ZC

- (1) An organisation, other than an institution, that receives funding under section 159ZC must ensure that—
- (a) records are kept, in a form not inconsistent 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

- (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.
- (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 objectives and targets specified in the organisation's profile for that year; and
 - (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 any funding.
- (3) The reports 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) Section 203 sets out the accountability requirements for institutions.

159ZF Commission may suspend funding

The Commission may suspend or terminate payment, or any or all further payments, of any funding to an organisation if the Commission is satisfied on reasonable grounds that the organisation—

- (a) has not complied, or is not complying, with a condition on which the funding was provided; or
- (b) in the case of funding provided under section 159ZC, is not providing, or has not provided, adequate and timely information when required to do so by the Commission or Ministry.

Amendments to Part XIV (Establishment and disestablishment of institutions) of principal Act

10 Establishment of institutions

- (1) Section 162(2) of the principal Act is amended by inserting, after the words “a polytechnic,”, the words “a specialist college,”.
- (2) Section 162(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- (ab) satisfy himself or herself that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole; and.
- (3) Section 162(4) of the principal Act is amended by inserting, after the words “a polytechnic,”, the words “a specialist college,”.
- (4) Section 162(4)(b) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:
 - (ia) a specialist college is characterised by teaching and (if relevant) research of a specialist nature that maintains, enhances, disseminates, and assists in the application of knowledge and expertise:

11 Disestablishment of institutions

Section 164(3) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- (ab) is satisfied that the disestablishment is in the interests of the tertiary education system and the nation as a whole; and.

Amendments to Part XV (Administration of tertiary institution) of principal Act

12 Incorporation

Section 166(1) of the principal Act is amended by inserting, after the word “polytechnic,”, the words “specialist college,”.

13 Functions of Councils

- (1) Section 180 of the principal Act is amended by omitting paragraphs (b) to (e), and substituting the following paragraphs:
 - (b) to prepare, negotiate, and adopt a charter for the institution:
 - (c) to adopt a profile for the institution:
 - (d) to ensure that the institution is managed in accordance with its charter and its profile:
 - (e) to determine the policies of the institution in relation to the implementation of its charter, the carrying out of its profile, and, subject to the State Sector Act 1988, the management of its affairs.
- (2) Section 180 of the principal Act is amended by adding, as subsection (2), the following subsection:
 - (2) If, at any time before 1 January 2004, an institution does not have a profile, the references in subsection (1) to a profile must be taken to refer instead to the statement of objectives required under section 41 of the Public Finance Act 1989.

14 New section 184A inserted

The principal Act is amended by inserting, after section 184, the following section:

184A Interim arrangements for charters

- (1) Sections 159L to 159V (which are about charters made under Part 13A) do not apply to institutions that have charters approved under this Part, or to charters prepared or approved under this Part.
- (2) Despite subsection (1), the Commission may exercise its power under section 159N(2) with respect to an institution by requiring the institution to prepare a charter under Part 13A and, in that case, the institution must prepare a charter under that Part as required by the Commission.
- (3) The charter of an institution that is approved under this Part is revoked on the earlier of—
 - (a) the date on which a charter for the institution approved under Part 13A comes into force; or
 - (b) 1 January 2004.
- (4) The Secretary may delegate to the Commission, and the Commission may exercise, any of the Secretary's functions and powers under this Part that relate to institutions' charters.

15 Heading and sections 184 to 191 repealed

The heading above section 184 and sections 184 to 191 of the principal Act are repealed.

16 New heading and section 191A inserted

The principal Act is amended by inserting, after section 191, the following heading and section:

Profiles

191A Each institution to have a profile

- (1) The Council of every institution must, before the start of an academic year, adopt a profile for that academic year.
- (2) Subsection (1) does not apply to the 2003 academic year.
- (3) When an institution adopts a profile, it must immediately forward a copy to the Commission.

17 Heading and section 199 repealed

- (1) The principal Act is amended by repealing section 199 and the heading before it.

- (2) Section 228(2A) of the principal Act is consequentially amended by omitting the words “section 199 of this Act”, and substituting the expression “section 159ZC”.

18 New section 201A inserted

The principal Act is amended by inserting, after section 201, the following section:

201A How institutions may use income and capital

- (1) An institution may, subject to the provisions of any enactment and the terms of any trust or endowment,—
- (a) apply its income and capital in doing whatever the Council of the institution thinks will accomplish the goals and purposes set out in the institution’s charter; and
 - (b) create, maintain, or add to, out of income, a fund or funds for any 1 or more of the purposes for which the income may be applied.
- (2) Subsection (1)(b) does not limit the generality of subsection (1)(a).

19 Application of Public Finance Act 1989

- (1) Section 203 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- (2) Section 41 of the Public Finance Act 1989 applies to every institution, but every reference in that section to a financial year must be read as a reference to an academic year.
- (3) Every institution must include in the financial statements required under section 41 of the Public Finance Act 1989 a statement of service performance reporting on the performance of the institution as compared with the institution’s objectives and performance measures and targets specified in the institution’s profile for that year.
- (2) Despite subsection (1), section 203(2) of the principal Act, as it read immediately before 1 January 2003, continues to apply after that date to every institution that does not have a profile.

Amendments to Part XVI (Courses and students) of principal Act

20 Fees for domestic students

Section 227 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- (1A) The Council of an institution that receives funding under section 159ZC must not fix, in relation to domestic students, a fee (or a fee of a particular kind) that exceeds any maximum specified in a condition imposed under section

159ZD(2) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.

Amendments to Part XVIII (Private training establishments) of principal Act

21 New section 232 substituted

The principal Act is amended by repealing section 232, and substituting the following section:

232 Courses for foreign students to be quality assured unless exempt

- (1) A person must not permit a foreign student to begin to undertake a course of study or training at a private training establishment unless—
 - (a) the course is an approved course and the establishment is accredited to provide it; or
 - (b) the course is of less than 3 months' duration and is an exempt course, as provided for in subsection (2).
- (2) The Qualifications Authority may, by notice in the *Gazette*, exempt courses of study or training for the purpose of subsection (1)(b).
- (3) A notice under subsection (2)—
 - (a) may exempt only courses of study or training that are, or are likely to be, of less than 3 months' duration; and
 - (b) may identify courses, or classes of courses, that are exempt; and
 - (c) may identify courses by reference to a provider, or a class of provider, that offers them; and
 - (d) may be in respect of courses that have been completed, are in progress, or have not yet started; and
 - (e) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but not a regulation for the purposes of the Acts and Regulations Publications Act 1989.
- (4) For the purposes of this section and section 236(1), a course of study or training is of less than 3 months' duration if the period starting on the day on which the course starts, and ending on the day on which it ends (or is likely to end) is less than 3 calendar months, irrespective of the number of days during that period on which study or training is, or is proposed to be, provided.

22 Grant or refusal of application

- (1) Section 236(1) of the principal Act is amended by omitting all the words before paragraph (a), and substituting the words “The Qualifications Authority must grant an application for registration of a private training establishment, and may only grant such an application, if it is satisfied that—”.

- (2) Section 236(1) of the principal Act is amended by—
 - (a) omitting from paragraph (e) the word “education,—”, and substituting the word “education.”; and
 - (b) omitting all the words after paragraph (e).
- (3) Section 236(1)(b) of the principal Act is amended by inserting, after the word “has”, the words “, or will at the relevant time have,”.
- (4) Section 236(1)(d)(ii) of the principal Act is amended by inserting, after the words “study or training”, the words “(other than a course of less than 3 months’ duration)”.
- (5) Section 236(1)(d) of the principal Act is amended by adding the following subparagraph:
 - (iv) allows, or will allow, every foreign student enrolled for a course of study or training that is of less than 3 months’ duration to withdraw from it within a period (being less than 7 days) specified by the Authority, and refunds, or will refund, to any student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the course; and
- (6) Section 236 of the principal Act is amended by adding the following subsection:
 - (4) The Authority must give written notice to a private training establishment when it grants or refuses to grant registration and, if it refuses registration, it must give reasons for the refusal.

23 New section 236AA inserted

The principal Act is amended by inserting, after section 236, the following section:

236AA Conditions on registration

- (1) It is a condition of registration that the establishment will at all times comply with the relevant policies and criteria established by the Qualifications Authority under section 253(1)(ca) that are currently in force, except to the extent that the Authority exempts the establishment, by a condition on its registration, from compliance.
- (2) When granting registration to an establishment, the Qualifications Authority may impose conditions on the registration that are specific to that establishment.
- (3) The Qualifications Authority may at any time, with the agreement of a registered establishment, impose new conditions on its registration, and may amend or revoke any existing conditions.

- (4) The Qualifications Authority may, without the agreement of a registered establishment, impose conditions on its registration, or amend or revoke any existing conditions, but only if the Authority has first—
 - (a) given written notice to the establishment of its intentions; and
 - (b) given the establishment a reasonable opportunity to respond to the notice; and
 - (c) considered any submissions made by the establishment in response to the notice.
- (5) When conditions are imposed, amended, or revoked, the Qualifications Authority must give notice in writing to the registered establishment of the new, amended, or revoked conditions.

24 New section 236C inserted

The principal Act is amended by inserting, after section 236B, the following section:

236C Fees for domestic students must not exceed maximums set in conditions of funding

A registered private training establishment that receives funding under section 159ZC must not fix, in relation to domestic students, a fee (or a fee of a particular kind) that exceeds any maximum specified in a condition imposed under section 159ZD(2) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.

25 New section 237 substituted

- (1) The principal Act is amended by repealing section 237, and substituting the following section:

237 Cancellation of registration

- (1) The Authority may cancel the registration of a registered establishment if it is satisfied on reasonable grounds that—
 - (a) the establishment no longer meets 1 or more of the requirements set out in section 236(1); or
 - (b) the establishment is not complying, or has not complied, with 1 or more of the conditions applying to it.
- (2) Before cancelling a registration, the Authority must—
 - (a) notify the establishment that it is considering cancelling registration, and give reasons; and
 - (b) give the establishment a reasonable opportunity to respond to the notice; and
 - (c) consider any submissions made by the establishment in response to the notice.

- (3) If the Authority cancels a registration, it must give notice of its decision to both the establishment and the Commission, with reasons.
- (4) Nothing in this section limits the Authority's powers under section 255A(7) to cancel an establishment's registration.
- (2) Section 238 of the principal Act is consequentially repealed.
- 26 Section 238A repealed**
Section 238A of the principal Act is repealed.

Amendments to Part 18A (Code of practice for providers who enrol international students) of principal Act

- 27 Heading to Part 18A amended**
The principal Act is amended by omitting from the heading to Part 18A the words "Code of practice for providers who enrol international", and substituting the word "International".
- 28 Interpretation**
Section 238D of the principal Act is amended by repealing paragraph (a) of the definition of **international student**.
- 29 Signatories to code may enrol persons as international students**
Section 238E of the principal Act is amended by adding the following subsection:
- (4) Until 1 July 2003, nothing in subsection (1) or subsection (2) applies to providers who enrol international students only on courses of less than 3 months' duration (as that term is defined in section 232(4)).
- 30 New sections 238H and 238I substituted**
The principal Act is amended by repealing section 238H, and substituting the following sections:
- 238H Export education levy**
- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations imposing an export education levy on providers who receive tuition fees from international students enrolled with them.
- (2) Without limiting subsection (1), regulations made under this section must—
- (a) prescribe the amount, a method or methods for calculating the amount, or both, of export education levy payable by individual providers, and may prescribe different amounts, or different methods of calculating the amounts, payable by different classes of provider; and

- (b) prescribe when the levy, or any part of the levy, is payable, and the period to which it, or any part of it, relates; and
 - (c) designate the agency that will administer the levy and, if that agency is the Ministry, the regulations may authorise the Ministry to delegate all or specified aspects of the levy's collection and use to another body; and
 - (d) require that a provider supplies, on request by the agency responsible for the administration of the levy, information on student numbers or any other matter that is necessary to determine or verify the amount of levy payable by the provider; and
 - (e) otherwise provide for the collection and use of the levy in accordance with this section and section 238I.
- (3) The Minister must consult with providers before recommending that regulations be made under subsection (1) that prescribe or amend an export education levy.
- (4) No regulations may be made under this section that impose a levy in respect of tuition fees received in respect of any period before 1 January 2003.

238I Purpose and administration of export education levy

- (1) The purposes to which the funds of the levy may be put are as follows:
- (a) the development, promotion, and quality assurance of the export education sector, which may include (without limitation)—
 - (i) professional and institutional development; and
 - (ii) marketing; and
 - (iii) implementation of scholarship schemes; and
 - (iv) research, and resource development; and
 - (v) support (financial or otherwise) of other bodies engaged in the development, promotion, or quality assurance of the export education sector:
 - (b) the administration and audit of the code:
 - (c) the general administration of the levy and associated purposes.
- (2) The funds of the levy must be kept in a separate bank account that is used only for the purposes of the levy.
- (3) As soon as practicable after 1 July in each year, the agency responsible for the administration of the levy must present to the Minister an annual report on the administration of the levy, which must include audited financial statements prepared in accordance with generally accepted accounting practice; and the Minister must present a copy of the report to the House of Representatives.
- (4) The amount of levy payable by a provider under regulations made under this section is a debt due to the Crown and may be recovered in any court of competent jurisdiction.

- (5) No later than 1 March 2006, the Minister must—
- (a) undertake, in consultation with providers, a review of the operation, administration, and effectiveness of the export education levy; and
 - (b) prepare a report on the findings of the review; and
 - (c) present a copy of the report to the House of Representatives.

31 Money for annual fee to transfer into export education levy account

The money held for the purpose of the annual fee for the administration of the code in the trust account established under section 238H of the principal Act (as it was immediately before the commencement of section 30 of this Act) must be transferred to the export education account referred to in section 238I(2) of the principal Act as soon as practicable after the establishment of that account.

Amendment to Part XIX (Vice-Chancellors Committee) of principal Act

32 Functions of Committee

Section 241(b) of the principal Act is amended by omitting the words “sections 258 and 259 of this Act”, and substituting the words “sections 255A, 258, 258A, 259, and 259A”.

Amendments to Part XX (New Zealand Qualifications Authority) of principal Act

33 Functions of Authority

- (1) Section 253(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
 - (ca) subject to subsection (2), to establish policies and criteria for the registration of private training establishments:.
- (2) Section 253(2) of the principal Act is amended by omitting the words “paragraph (d) or paragraph (e) of subsection (1) of this section”, and substituting the words “subsection (1)(ca), (d), or (e)”.
- (3) Section 253(3) of the principal Act is amended by omitting the words “paragraph (d) or paragraph (e) of subsection (1) of this section”, and substituting the words “subsection (1)(ca), (d), and (e)”.

34 New section 255A inserted

The principal Act is amended by inserting, after section 255, the following section:

255A Compliance notices

- (1) In this section, **institution** includes institutions, government training establishments, registered establishments, secondary schools, and other bodies.
- (2) The Authority may issue a compliance notice to an institution requiring the institution to do, or refrain from doing, a particular thing in relation to the institution's registration (in the case of an institution that is a registered establishment) or to the institution's course approvals or accreditations.
- (3) Every compliance notice must be in writing and must—
 - (a) give the date on which it is issued; and
 - (b) specify a time on or before which, or a period within which, the institution must comply with the notice; and
 - (c) state the consequences or possible consequences of non-compliance with the notice.
- (4) The Authority may publish any compliance notice, or a summary of a compliance notice, in a manner designed to give public notice of the compliance notice.
- (5) An institution that receives a compliance notice must comply with it within the time or during the period specified in the notice.
- (6) The Authority may, before the expiry of the time or period referred to in subsection (3)(b), extend that time or period, in which case the extended time or period is for all purposes the time or period within or during which the notice must be complied with.
- (7) If the institution does not comply with the compliance notice, the Authority may immediately,—
 - (a) if the notice was issued to a registered establishment and related to a registration matter, cancel the registration of the establishment, or impose new, or amend or revoke any existing, conditions on the establishment's registration; or
 - (b) if the notice related to a course approval, withdraw any course approvals held by the institution, or impose new, or amend or revoke any existing, conditions on any course approval held by the institution; or
 - (c) if the notice related to an accreditation, withdraw any accreditations held by the institution, or impose new, or amend or revoke any existing, conditions on any accreditation.
- (8) The Authority may not do any of the things specified in subsection (7) until the later of—
 - (a) 10 days from the date of issue of the notice; and
 - (b) the expiry of the time or period referred to in subsection (3)(b).

35 Approval of courses

- (1) Section 258 of the principal Act is amended by inserting, after subsection (9), the following subsections:
- (9A) If the Authority withdraws an approval under this section, it must give notice of the withdrawal, with reasons, to the institution concerned.
- (9B) Nothing in this section limits the Authority's power to withdraw an approval under section 255A(7).
- (2) Section 258(10) of the principal Act is amended by adding the words “, and may impose conditions on any such grant”.

36 New section 258A inserted

The principal Act is amended by inserting, after section 258, the following section:

258A Conditions on course approvals

- (1) Every course approval is subject to the condition that the institution will at all times comply with the relevant policies and criteria established by the Authority under section 253(1)(d) that are currently in force, except to the extent that the Authority exempts the institution, by a condition on the approval, from compliance.
- (2) When approving a course, the Authority may impose conditions on the approval that are specific to the approval for that particular course.
- (3) The Authority may at any time, with the agreement of the institution that holds the course approval, impose new conditions on the approval and may amend or revoke any existing conditions.
- (4) The Authority may, without the agreement of the institution, impose conditions on a course approval, or amend or revoke any existing conditions, but only if the Authority has first—
- (a) given written notice to the institution of its intentions; and
 - (b) given the institution a reasonable opportunity to respond to the notice; and
 - (c) considered any submissions made by the institution in response to the notice.
- (5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the institution that holds the approval of the new, amended, or revoked conditions.

37 Accreditation to provide approved courses

Section 259 of the principal Act is amended by adding the following subsections:

- (7) If the Authority withdraws an accreditation under this section, it must give notice of the withdrawal, with reasons, to the institution concerned.
- (8) Nothing in this section limits the Authority's power to withdraw an accreditation under section 255A(7).

38 New section 259A inserted

The principal Act is amended by inserting, after section 259, the following section:

259A Conditions on accreditation to provide approved courses

- (1) Every accreditation is subject to the condition that the institution will at all times comply with the relevant policies and criteria established by the Authority under section 253(1)(e) that are currently in force, except to the extent that the Authority exempts the institution, by a condition on the accreditation, from compliance.
- (2) When granting accreditation to an institution to provide an approved course of study or training, the Authority may impose conditions on the accreditation that are specific to the accreditation.
- (3) The Authority may at any time, with the agreement of the accredited institution, impose new conditions on the accreditation and may amend or revoke any existing conditions.
- (4) The Authority may, without the agreement of the institution, impose conditions on an accreditation, or amend or revoke any existing conditions, but only if the Authority has first—
 - (a) given written notice to the institution of its intentions; and
 - (b) given the institution a reasonable opportunity to respond to the notice; and
 - (c) considered any submissions made by the institution in response to the notice.
- (5) When conditions are imposed, amended, or revoked, the Authority must give notice in writing to the accredited institution of the new, amended, or revoked conditions.

39 Exercise of certain powers of Authority

Section 260 of the principal Act is amended by omitting from subsections (1) and (2) the words “sections 258 and 259 of this Act” wherever they appear, and substituting in each case the words “sections 255A, 258, 258A, 259, and 259A”.

40 Minister may consent to registered establishments using certain terms in their names

- (1) Section 264A(2) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:
 - (ba) be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and.
- (2) Section 264A of the principal Act is amended by adding the following subsections:
 - (4) The Minister may audit any registered establishment that has been given consent to use one of the terms in subsection (1) for continuous compliance with the requirements for consent to use the term.
 - (5) If the Minister is not satisfied that a registered establishment is continuing to comply with the requirements for consent to use the term for which consent has been given, the Minister may—
 - (a) withdraw the consent; or
 - (b) suspend the consent for a specified period, at the expiry of which the Minister must either lift the suspension or withdraw the consent.

Repeal of Part XXI (Skill New Zealand) and Sixteenth Schedule of principal Act**41 Part XXI and Sixteenth Schedule repealed**

Part XXI and the Sixteenth Schedule of the principal Act are repealed.

Amendments to Part XXVII (Recognition and funding of other services) of principal Act**42 Interpretation**

Section 320 of the principal Act is amended by inserting, before the definition of **financial year**, the following definition:

educational body, or **body**, means a body corporate that is recognised by the Minister as a body that provides any educational or developmental service or facility, including an organisation as defined in section 159B.

43 Grants to other education services

- (1) The heading to section 321 of the principal Act is amended by omitting the words “other education services”, and substituting the words “educational bodies”.
- (2) Section 321 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- (1) An educational body may be paid grants out of public money appropriated by Parliament for the purpose on such conditions as the Minister thinks fit.
- (2) However, a grant may not be paid under this section to a tertiary education provider or an industry training organisation (as those terms are defined in section 159) unless the Minister is satisfied that payment under this section is in the national interest.

44 Recognised bodies to keep accounts

- (1) The heading to section 322 of the principal Act is amended by omitting the word “Recognised”, and substituting the word “Educational”.
- (2) Section 322 of the principal Act is amended by repealing subsections (2) to (4), and substituting the following subsection:
 - (2) Every grant under section 321 to an educational body must be paid under a funding agreement that specifies—
 - (a) the purpose of the grant; and
 - (b) any conditions attaching to it; and
 - (c) the reporting obligations of the recipient.

Repeal of Part XXIII (Tertiary Research Board) of principal Act

45 Repeal of Part XXIII

- (1) The principal Act is amended by repealing Part XXIII (Tertiary Research Board).
- (2) The principal Act is consequentially amended by—
 - (a) repealing section 202(b);
 - (b) repealing section 297(11);
 - (c) repealing the Eighteenth Schedule.

Amendments to Part XXIV (Miscellaneous provisions) of principal Act

46 Offences

- (1) Section 292 of the principal Act is amended by repealing subsections (4) and (5), and substituting the following subsections:
 - (4) A person must not—
 - (a) use the term **university** to describe an educational establishment or facility unless the educational establishment and facility—
 - (i) is a university; or
 - (ii) is a registered establishment that has the Minister’s permission under section 264A to use the term; or

- (iii) was a university but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a university as set out in section 162(4)(a) and (b)(iii):
 - (b) use the term **college of education** to describe an educational establishment or facility unless the educational establishment or facility—
 - (i) is a college of education; or
 - (ii) is a registered establishment and the Minister has consented under section 264A to the establishment using the term; or
 - (iii) was a college of education but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a college of education as set out in section 162(4)(b)(i):
 - (c) use the term **polytechnic** to describe an educational establishment or facility unless the educational establishment or facility—
 - (i) is a polytechnic or institute of technology; or
 - (ii) is a registered establishment that has the Minister’s permission under section 264A to use the term; or
 - (iii) was a polytechnic or institute of technology but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a polytechnic as set out in section 162(4)(b)(ii):
 - (d) use the term **institute of technology** to describe an educational establishment or facility unless the educational establishment or facility—
 - (i) is an institute of technology or a polytechnic; or
 - (ii) is a registered establishment that has the Minister’s permission under section 264A to use the term; or
 - (iii) was an institute of technology or a polytechnic but, despite being incorporated under section 164(4) into another institution, retains the characteristics of a polytechnic as set out in section 162(4)(b)(ii).
- (5) A person (other than a university) must not grant or purport to grant an award that is described as a “degree”, or the description of which includes the word “bachelor”, “master”, or “doctor”, unless—
- (a) the person has the consent of the Qualifications Authority or body subject to a delegation under section 254(5); or
 - (b) as provided by section 192(11).
- (2) Section 292(8) of the principal Act is amended by omitting the words “subsection (4) or subsection (6) of this section”, and substituting the words “any of subsections (4), (5), or (6)”.

New Schedule 13A inserted in principal Act

47 New Schedule 13A inserted

The principal Act is amended by inserting, after Schedule 13, the Schedule 13A set out in Schedule 1 of this Act.

Transitional provisions

48 Interpretation

In sections 49 to 57, unless the context otherwise requires,—

assets has the same meaning as in section 216(1) of the Education Act 1989

Commission means the Tertiary Education Commission established under section 159C of the Education Act 1989 (as inserted by section 9 of this Act)

liabilities has the same meaning as in section 216(1) of the Education Act 1989

Ministry means the Ministry of Education

Skill New Zealand means the agency that was continued by section 270 of the Education Act 1989 as in force immediately before the commencement of this section

transferred employee means an employee of Skill New Zealand or of the Ministry who transfers to the Commission.

Absorption of Skill New Zealand into Commission

49 Skill New Zealand absorbed into Commission

- (1) On the date of commencement of this section, Skill New Zealand ceases to exist and—
 - (a) the term of office of every member of the Board of Skill New Zealand expires; and
 - (b) all assets and liabilities of Skill New Zealand vest in the Commission.
- (2) No member of the Board of Skill New Zealand is entitled to compensation as a result of the expiry under this section of his or her term of office.
- (3) On and from the date of commencement of this section, every reference to Skill New Zealand in any enactment (other than this Act), or in any instrument, register, agreement, deed, lease, application, notice, or other document in force at the effective date, must, unless the context otherwise requires, be read as a reference to the Commission.

50 Final report and accounts

- (1) As soon as reasonably practicable after the commencement of this section, the Commission must arrange for the final report of Skill New Zealand to be delivered to the Minister.

- (2) The report must—
 - (a) describe Skill New Zealand's operations for the period beginning on 1 July 2002 and ending immediately before the commencement of this section; and
 - (b) include—
 - (i) financial statements of Skill New Zealand prepared, in accordance with Part V of the Public Finance Act 1989, for that period; and
 - (ii) an audit report prepared by the Auditor-General.
- (3) The Minister must present a copy of the report to the House of Representatives under section 44A of the Public Finance Act 1989.

51 Transfers of contracts and leases do not give rise to claims

- (1) No person has any claim against the Crown for breach of any contract merely because the administration of the contract or the benefit of the contract is vested in the Commission by section 49.
- (2) Subsection (1) applies whether or not the vesting involves the Commission and its employees gaining access to any information, data, programme, intellectual property right, know-how, chattel, equipment, transmission device, or facility of the claimant or any other person.

52 Effect of absorption of Skill New Zealand into Commission

- (1) On and from the date of commencement of this Act, anything done or omitted to be done by, or in relation to, Skill New Zealand must be treated as having been done or omitted by, or in relation to, the Commission.
- (2) The disestablishment of Skill New Zealand and the transfer of its undertaking and functions to the Commission does not affect—
 - (a) the assets, liabilities, or rights of the Crown or Skill New Zealand (other than by transferring them); or
 - (b) the commencement or continuation of proceedings by or against Skill New Zealand; those proceedings may instead be commenced or continued by or against the Commission.
- (3) If the transfer of an asset or liability under section 49 is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
- (4) Subsection (2) does not limit section 49, section 51, or sections 53 to 57.

Transfer of employees to Commission

53 Transfer of employees of Skill New Zealand

- (1) Every person who is employed by Skill New Zealand immediately before the commencement of this Act transfers to the Commission on that date of commencement.
- (2) The transfer of an employee by this section is subject to any relevant transfer provisions in the employment agreement or contract applying to that employee.
- (3) Subsection (2) is subject to section 57.

54 Transfer of employees of Ministry

Employees of the Ministry may be transferred to the Commission under section 61A of the State Sector Act 1988 as if their duties were no longer to be carried out by the Ministry and the Commission were a Department.

55 Transfer does not break continuity of employment

For the purpose of any provisions of a transferred employee's employment agreement or contract relating to continuity of service, the employee's transfer to the Commission from Skill New Zealand or the Ministry is insufficient, by itself, to break his or her employment.

56 Protection of terms and conditions for transferred employees

- (1) The employment of a transferred employee must be on terms and conditions no less favourable than those applying to the employee immediately before the date of the person's transfer to the Commission.
- (2) Subsection (1)—
 - (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Commission; but
 - (b) does not apply to a transferred employee who, after the transfer, receives any subsequent appointment within the Commission.

57 No compensation for technical redundancy

- (1) An employee who has transferred, or will transfer, to the Commission under section 53 or section 54 is not entitled to receive any payment or other benefit solely on the ground that the person has ceased, or will cease, to be an employee of Skill New Zealand or the Ministry as a result of his or her transfer to the Commission.
- (2) An employee of the Ministry is not entitled to receive any payment or other benefit on the ground that his or her position in the Ministry has ceased to exist if—

- (a) the position ceases to exist as a result of a transfer of functions of the Ministry to the Commission; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is given the opportunity, under section 54, to transfer to the Commission, to employment that complies with section 56, but he or she declines to transfer; or
 - (ii) the employee is offered, and accepts, other employment in the Ministry.
- (3) This section overrides an employee's employment agreement to the extent that it is inconsistent with that agreement.

Miscellaneous

58 Chief executive may be called General Manager

For the first 3 years after the Tertiary Education Commission is established, the person appointed as its chief executive officer under clause 36 of Schedule 13A of the principal Act (as inserted by section 47 of this Act) may be called the General Manager.

Consequential amendments

59 Consequential amendments

The enactments specified in Schedule 2 are consequentially amended in the manner set out in that schedule.

Schedule 1
New Schedule 13A inserted in principal Act

s 47

Schedule 13A
**Administrative provisions applying to Tertiary Education
Commission**

s 159C(3)

1 Interpretation

In this schedule,—

Commission means the Tertiary Education Commission established under section 159C

member means a member of the Commission.

Appointment of members

2 Method of appointment

- (1) Every member is appointed by notice published in the *Gazette*.
- (2) The notice of appointment must specify the member's term of office.

3 When appointment takes effect

Every member takes office from the date stated in the notice of appointment.

4 Restrictions on appointments

- (1) When appointing members of the Commission, the Minister must have regard to the need for the members of the Commission to collectively have a breadth of experience and expertise, and depth of knowledge regarding areas of the tertiary education sector.
- (2) The Minister may appoint a person as a member only if, in the Minister's opinion, the person has the appropriate skills and experience to assist the Commission to perform its functions and to achieve its objectives.
- (3) A person must not be appointed as a member unless, before that appointment, he or she—
 - (a) consents in writing to be a member; and
 - (b) discloses to the Minister the details of any interest the person would or may have if he or she were a member.

5 Member may hold concurrent office

A person appointed as a member may hold that office concurrently with any other office.

Term of appointment**6 Term of office**

- (1) The term of office of a member is 3 years or any shorter term specified by the Minister in the member's notice of appointment.
- (2) A member may be reappointed.
- (3) Despite subclause (1), every member, unless ceasing to hold office under clause 8 or clause 9, continues in office until—
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the date specified in a letter from the Minister that informs the member that he or she is not to be reappointed and that no successor is to be appointed.

7 Remuneration and allowances

- (1) A member of the Commission is entitled to receive, from the Commission's funds, remuneration and other benefits not within subclause (2) for services as a member at a rate and of a kind determined by the Minister.
- (2) A member of the Commission is entitled to be paid, out of the Commission's funds, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her duties and responsibilities as a member.

Resignation and removal of members**8 Resignation**

- (1) A member may, at any time, resign from office by notice in writing to the Minister.
- (2) A member's resignation is effective from the date of receipt by the Minister of the notice or from any later time specified in the notice.

9 Removal from office

The Minister may, at any time, and for any reason that in the Minister's opinion justifies the removal, remove a member from office by written notice to the member.

10 No compensation for resignation or removal

- (1) A member who resigns from office under clause 8 or who is removed from office under clause 9 is not entitled to any compensation or other payment relating to that resignation or removal.
- (2) Subclause (1) does not apply to a chairperson or a deputy chairperson if the Minister expressly provides, at the time of appointment of the person to the

position, for that person to be entitled to compensation or another payment upon resignation or removal from the position.

Vacancies in membership

11 Position if vacancy in membership

- (1) If a member, for any reason, ceases to hold office as a member, the Minister may appoint another person as a member.
- (2) A member who is appointed under subclause (1) is appointed for the residue of the term for which the vacating member was appointed.

12 Proceedings not invalidated by vacancy

No act or proceeding of the Commission is invalid merely because there was a vacancy in the membership of the Commission or because of any defect in the appointment or election of any member.

Duties and liability of members

13 Duties of members

- (1) When exercising powers or performing duties as a member, every member must act—
 - (a) in good faith; and
 - (b) with reasonable care, diligence, and skill; and
 - (c) with honesty and integrity; and
 - (d) in accordance with any code of conduct issued by a Minister of the Crown that applies to Crown entities generally.
- (2) No member, when exercising powers or performing duties as a member, may act as a representative of, or promote the views of, any particular person or group of persons.

14 Collective duties of members

The members, acting collectively,—

- (a) must ensure that the Commission acts in a manner that is consistent with its functions, powers, statement of intent, and any directions given under section 159J; and
- (b) must ensure that the activities of the Commission are conducted efficiently and effectively, and in a manner consistent with the spirit of service to the public; and
- (c) must endeavour to ensure that the Commission operates in a financially responsible manner that maintains the financial viability of the organisation.

15 Members accountable to Minister

- (1) A member is accountable to the Minister for performing his or her duties and responsibilities as a member.
- (2) If there is a breach of any of the collective duties of members set out in clause 14,—
 - (a) each member is accountable to the Minister for the breach; and
 - (b) the breach justifies all or any of the members being removed from office.
- (3) Subclause (2) does not apply to a member if—
 - (a) he or she did not know, and could not reasonably be expected to know, that the duty was to be or was being breached; or
 - (b) he or she took all reasonable steps to prevent the duty being breached.
- (4) The duties of members under clause 13 are duties owed only to the Minister and the Commission, and the collective duties of members under clause 14 are owed only to the Minister; a failure to adequately perform those duties does not give grounds for a cause of action against that member by any other person.

16 Power of Minister to require information to be supplied

- (1) The Minister may, by written notice, require the Commission to supply, at a specified time or times, or at specified intervals, any information that the Minister requires that relates to any aspect of the Commission's activities.
- (2) The Commission must comply with requirements made under subclause (1) unless—
 - (a) the supply of the information would infringe the privacy of any natural person or deceased natural person; and
 - (b) there is good reason for withholding the information under the Official Information Act 1982.

17 Liability of members

- (1) A member is not personally liable, in any action taken against him or her by the Commission, for any liability of the Commission, or for any act done or omitted to be done by the Commission or by any person acting under a delegation of the Commission's functions, duties, and powers, provided the member acted in good faith in pursuance or intended pursuance of the functions, duties, and powers of the Commission.
- (2) Every member is indemnified by the Commission for costs and damages arising from civil proceedings, and costs arising from successfully defended criminal proceedings, if the proceedings relate to actions taken by the member while he or she was acting in good faith in pursuance or intended pursuance of the functions, duties, or powers of the Commission.

18 Members not in service of the Crown

A person is not employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 merely as a result of being a member of the Commission.

Disclosure of interests and confidentiality of information

19 Meaning of interested

A member is interested in a transaction of, or other matter relating to, the Commission if, and only if, the member—

- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
- (b) has a material financial interest in another party to the transaction or a person to whom the matter relates; or
- (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
- (e) is otherwise directly or indirectly materially interested in the transaction or matter.

20 Obligation to disclose interest

- (1) A member who (otherwise than as a member) has a direct or indirect interest in any of the transactions or other matters listed in subclause (2) must, as soon as practicable after the member knows about the relevant facts, disclose the nature of the interest in accordance with clause 21.
- (2) The transactions and other matters are—
 - (a) the Commission's performance of a function or exercise of a power;
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Commission.

21 Method of disclosure of interest

- (1) If clause 20 applies, the member must disclose the details listed in subclause (2) in an interests register and must also disclose them to—
 - (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
 - (b) if the member concerned is the chairperson, or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or

- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

22 Consequences of interest

A member who is interested in a transaction or other matter relating to the Commission—

- (a) must not vote or take part in any deliberation or decision of the Commission or any committee relating to the transaction or matter; and
- (b) must be disregarded for the purpose of forming a quorum for that part of a meeting of the Commission or the committee during which a deliberation or decision relating to the transaction or matter occurs or is made.

23 Effect of non-compliance

- (1) If a member fails to comply with the disclosure requirements in clause 20, the validity of the Commission's performance of the function, or exercise of the power, or of the arrangement, agreement, or contract made or entered into by the Commission, is not affected.
- (2) The chairperson must report, as soon as practicable, to the Minister any failure (including his or her own) to disclose an interest in a transaction or other matter and any failure to act in a manner that is consistent with the limitations placed on interested members.

24 Confidentiality of information

- (1) A member of the Commission who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose the information to any person, or make use of, or act on, the information, except—
 - (a) for the purposes of the Commission; or
 - (b) as required or permitted by law; or
 - (c) in accordance with subclause (2).
- (2) Subclause (1) does not apply if the member is required or authorised by this Act or by the Commission to disclose, use, or act on the information.

Chairperson and deputy chairperson

25 Appointment

The Minister must appoint 1 of the members as the chairperson and a different member as the deputy chairperson.

26 Term of office

- (1) The term of office of the chairperson and of the deputy chairperson is 3 years.
- (2) The chairperson and the deputy chairperson may be reappointed.

- (3) Despite subsection (1), a member appointed as the chairperson or as the deputy chairperson holds office until—
- (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the member is removed from that position by the Minister; or
 - (d) the member ceases to be a member.

27 Resignation

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from the office of chairperson or deputy chairperson by written notice to the Minister.
- (2) The resignation of the chairperson or deputy chairperson under subsection (1) is effective from the date of receipt by the Minister of the notice or from any later time specified in the notice.

28 Appointment of new chairperson or deputy chairperson

If the chairperson or deputy chairperson ceases to be the chairperson or deputy chairperson, the Minister may appoint an existing member or a new member as the chairperson or deputy chairperson.

29 Performance and exercise of chairperson's functions, duties, and powers during vacancy

- (1) During a vacancy in the office of chairperson, or while the chairperson is for any reason unable to perform and exercise the functions, duties, and powers of the chairperson, the deputy chairperson has and may perform and exercise the functions, duties, and powers of the chairperson.
- (2) No act done by the deputy chairperson acting as the chairperson may, in any proceedings, be questioned on the grounds that the occasion for the deputy chairperson to act had not arisen or had ceased.

Procedure of Commission

30 Procedure generally

Except as otherwise provided in this Act, the Commission may regulate its own procedure.

31 Times and places of meetings

- (1) The Commission or the chairperson must appoint the times and places for meetings of the Commission.
- (2) Members must be given no less than 5 working days' notice of any Commission meeting, but the chairperson may convene an extraordinary meeting to be held within a shorter period than 5 working days if all members agree.

- (3) The chairperson must convene a meeting on receipt of a written request signed by no fewer than 4 members.
- (4) The chairperson may permit a member to participate in a particular meeting by any means of communication that allows the member to reasonably engage in the proceedings of the meeting.

32 Quorum

- (1) A quorum for a meeting of the Commission is—
 - (a) 5 members if the Commission has 9 members; or
 - (b) 4 members if the Commission has fewer than 9 members.
- (2) No business may be transacted at a meeting of the Commission if a quorum is not present, either in person or as permitted under clause 31(4).

33 Who presides at meetings

- (1) The chairperson must preside at all meetings of the Commission at which he or she is present.
- (2) If the chairperson is not present, or if there is no chairperson, the deputy chairperson, if present, must preside.
- (3) The members present must elect 1 of their number to be chairperson for the meeting if—
 - (a) the chairperson or the deputy chairperson is not present; or
 - (b) there is no chairperson and no deputy chairperson.
- (4) The elected person has and may perform and exercise all the functions, duties, and powers of the chairperson for the purposes of the meeting.

34 Voting at meetings

- (1) All questions arising at a meeting of the Commission must be decided by a majority of the votes cast by the members present, either in person or as permitted under clause 31(4).
- (2) The member presiding at the meeting has a deliberative vote and, if the votes are equal, also has a casting vote.

35 Resolutions

- (1) A resolution in writing, signed or assented to by letter, fax, or electronic message by all members, is as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.
- (2) A resolution to which subclause (1) applies may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.

Chief executive of Commission

36 Chief executive

- (1) The Commission must appoint a chief executive.
- (2) The chief executive must not be a member of the Commission.
- (3) The Commission must act independently when appointing the chief executive.
- (4) The Commission must monitor and evaluate the performance of the chief executive.

37 Responsibilities of chief executive

The chief executive must—

- (a) ensure the efficient and effective administration of the affairs of the Commission; and
- (b) act in accordance with lawful policies and directions given to him or her by the Commission.

38 Terms and conditions of employment of chief executive

- (1) The chief executive must be appointed on terms and conditions determined by the Commission.
- (2) However, the Commission must not determine any terms and conditions of employment for the chief executive without—
 - (a) consulting with the State Services Commissioner; and
 - (b) considering every recommendation made, within a reasonable time of being consulted, by the State Services Commissioner about those terms and conditions; and
 - (c) consulting with the Minister, if necessary, in accordance with subsection (3).
- (3) The Commission must consult with the Minister if, after considering a recommendation made by the State Services Commissioner about the terms and conditions of employment of the chief executive, the Commission does not intend to adopt that recommendation.

39 Declaration of interests

- (1) A person who is proposed to be appointed as chief executive must declare any direct or indirect pecuniary interests to the Commission before accepting appointment to the position of chief executive.
- (2) If the chief executive has any direct or indirect interest in any transaction or other matter listed in clause 20(2), he or she must disclose that interest to the Commission.

Employees of Commission**40 Chief executive may appoint employees**

The chief executive may appoint any employees (including employees on secondment from other organisations) that the chief executive thinks necessary or desirable to enable the Commission to perform its functions and duties.

41 Certain State Sector Act 1988 provisions apply

- (1) Section 56(1) and (2) of the State Sector Act 1988 (which requires departments to be good employers) and section 58 of that Act (which relates to equal employment opportunities) apply to the Commission as if the Commission were a department referred to in those provisions.
- (2) To avoid doubt, no person employed by the Commission is employed in the service of the Crown for the purposes of the State Sector Act 1988.

42 Superannuation

- (1) The Commission may subsidise or contribute to any registered superannuation scheme for the purpose of providing benefits for its employees.
- (2) Any person who, immediately before becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service so long as he or she continues to be an employee of the Commission.
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Commission were Government service.
- (4) Nothing in subclause (2) entitles a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Commission is the "controlling authority".

Committees**43 Commission may appoint committees**

- (1) The Commission may, by resolution, appoint 1 or more committees to—
 - (a) advise the Commission on any matters relating to the Commission's functions, duties, or powers that are referred to the committee by the Commission; or
 - (b) perform or exercise any of the Commission's functions, duties, or powers that are delegated to the committee under clause 57; or
 - (c) develop specific strategies and recommendations, as determined by the Commission.

- (2) A committee must consist of at least 1 member of the Commission and may include any other persons that the Commission thinks fit.
- (3) A person must not be appointed as a member of a committee unless, before that appointment, he or she—
 - (a) consents in writing to be a member; and
 - (b) discloses to the chairperson the details of any interest the person would or may have if he or she were a member of that committee.
- (4) The Commission may, by resolution, alter, discharge, continue, or reconstitute a committee appointed under subclause (1).
- (5) A member or person who resigns from, or is removed from, a committee is not entitled to any compensation or other payment relating to that resignation or removal.

44 Procedure of committees

- (1) Subject to the Commission's direction, and except as otherwise provided in this Act, a committee may regulate its own procedure.
- (2) A Commission member must chair all committee meetings.

45 Obligations of committee members who are not Commission members

For the purposes of performing a function or exercising a power, a member of a committee who is not a member of the Commission must act in accordance with the duties of a member of the Commission.

46 Fees and allowances for committee members

- (1) A member of a committee appointed by the Commission may be paid, from the Commission's funds, remuneration and other benefits not within subclause (2) for services as a member of that committee at a rate and of a kind determined by the Minister.
- (2) A member of a committee appointed by the Commission is entitled to be paid, out of the Commission's funds, reasonable and actual allowances for travelling and other expenses relating to the performance of his or her duties and responsibilities as a committee member.

Commission's finances and method of contracting

47 Commission's finances

The funds of the Commission consist of—

- (a) any money appropriated by Parliament for the purposes of the Commission; and
- (b) all money lawfully received by the Commission for its purposes; and
- (c) any funds transferred to the Commission, or received by it, on establishment; and

(d) all accumulations of income derived from that money.

48 Bank accounts

- (1) The Commission must open at any registered bank or registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) any accounts that are necessary for the performance or exercise of its functions, duties, and powers.
- (2) All money received by the Commission, or by any member or employee of the Commission, for its purposes must, as soon as practicable after the money has been received, be paid into a Commission bank account.

49 Restrictions on investments

- (1) Surplus money that belongs to the Commission and that is not immediately required by it may only be invested in accordance with section 25 of the Public Finance Act 1989.
- (2) **Surplus money** includes money belonging to the Commission and other money that the Commission manages on any other person's behalf.

50 No controlling interests

- (1) The Commission must not control any other entity or hold a percentage of the voting rights in any other entity that would require it to seek control of that entity.
- (2) If a contravention of subsection (1) arises (through inadvertence or otherwise), the Commission must take all reasonable steps to remedy the default as soon as practicable.
- (3) For the purposes of this clause, an entity is **controlled** by the Commission if—
 - (a) the entity is a subsidiary of the Commission; or
 - (b) the Commission controls the entity within the meaning of any relevant approved financial reporting standard (within the meaning of section 2(1) of the Financial Reporting Act 1993); or
 - (c) the Commission can control directly or indirectly the composition of the board of the entity within the meaning of sections 7 and 8 of the Companies Act 1993 (which, for the purposes of this paragraph, are to be read with all necessary modifications).
- (4) For the purposes of this clause,—

entity means any person, whether corporate or unincorporate

subsidiary —

 - (a) means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993; and

- (b) includes an entity that is classified as a subsidiary in any relevant approved financial reporting standard (within the meaning of section 2(1) of the Financial Reporting Act 1993).

51 Restrictions on borrowing

The Commission may not borrow or contract to borrow money, or amend the terms of any loan made to it, without the prior written consent of the Minister of Finance.

52 Restrictions on derivatives

The Commission may not enter into a derivative instrument, or amend the terms of a derivative instrument, without the prior written consent of the Minister of Finance.

53 Commission is public authority

- (1) For the avoidance of doubt, the Commission is a public authority for the purposes of the Inland Revenue Acts.
- (2) In this section, Inland Revenue Acts has the same meaning as in section 3(1) of the Tax Administration Act 1994.

54 Method of contracting

The Commission may enter into a contract or other enforceable obligation as follows:

- (a) an obligation required to be in writing may be entered into on behalf of the Commission, in writing, by a person acting under the express or implied authority of the Commission:
- (b) an obligation that may be entered into otherwise than by writing may be entered into on behalf of the Commission, in writing or orally, by a person acting under the express or implied authority of the Commission:
- (c) an obligation that is required to be entered into by deed must be signed by 2 members of the Commission.

Accountability of Commission

55 Statement of intent

- (1) In fulfilling the requirements under section 41D(1) of the Public Finance Act 1989, the Commission must, instead of including in its statement of intent the information described in subsection (1)(a), (b), and (c) of that section (which is about objectives, activities, and performance targets), include the following information in its statement of intent:
 - (a) contextual information about the Commission, including its functions, its current organisational structure, any notable features of its operating environment, and the likely implications of those features; and

- (b) a general description of the things that the Commission proposes to do, achieve, or work towards during the period covered by the statement of intent, which—
 - (i) must be consistent with the statement of tertiary education priorities and the Commission's functions; and
 - (ii) must include a summary of the nature and scope of the Commission's proposed operations; and
 - (iii) may cover both financial and non-financial matters; and
- (c) a general description of the Commission's proposed strategies and activities for giving effect to, or achieving, the things referred to in paragraph (b), including a list of the intended principal activities of the Commission and how they relate to the things referred to in paragraph (b); and
- (d) a description of how the statement of output objectives (as required by section 41D(1)(h) of the Public Finance Act 1989) links to the things referred to in paragraph (b); and
- (e) a general description of the manner in which the Commission proposes to operate and, in particular,—
 - (i) which other persons or bodies engaged in similar or related work it proposes to liaise with, and how it proposes to liaise with those other persons or bodies; and
 - (ii) what capability it needs to do its work, and how it will develop that capability; and
 - (iii) how it proposes to manage its risks; and
- (f) for each of the financial years to which the statement of intent relates, performance measures and targets by which the Commission's performance, and progress towards delivering the things referred to in paragraph (b) may be judged; and
- (g) in relation to decision making, the following matters:
 - (i) the matters on which the Commission must have the Minister's approval before proceeding;
 - (ii) the matters on which the Commission will consult the Minister before making a decision;
 - (iii) the matters on which the Commission will report to the Minister, and the frequency of reporting; and
- (h) in relation to the financial affairs of the Commission, the following matters:
 - (i) for each of the financial years to which the statement of intent relates, the key financial measures by which the financial performance of the Commission will be judged:

- (ii) for each of the financial years to which the statement of intent relates, the expected revenue to be earned, and the proposed costs to be incurred, for each class of outputs as specified in the statement of output objectives:
 - (iii) forecast financial statements, including a forecast statement of financial performance, statement of financial position, forecast statement of movements in equity, and statement of cash flows, prepared in accordance with generally accepted accounting practice for each financial year to which the statement of intent relates:
 - (iv) an outline of the proposed strategy for managing any recently reported or anticipated material net deficit (as determined in accordance with generally accepted accounting practice); and
 - (i) any other information material to understanding and assessing the information provided in the statement of intent without which that information is false or misleading in a material particular.
- (2) The grouping of outputs in the statement of output objectives referred to in section 41D(1)(h) of the Public Finance Act 1989 must be done so that, in the case of outputs funded by appropriation, a group of outputs does not contain outputs funded from more than 1 appropriation in the Estimates.
- (3) The Minister may, in relation to the Commission, exercise his or her powers under section 41G(1) of the Public Finance Act 1989 as if that section included a reference to paragraphs (b), (f), and (g) of subsection (1); and that section applies accordingly.

56 Annual report

The Commission must include the following matters in its annual report, in addition to the matters specified in sections 41I(b) and 44 of the Public Finance Act 1989:

- (a) a comparison of what the Commission did and achieved, as compared with what its statement of intent indicated that it would do or achieve, to enable an informed assessment to be made of its performance, including its financial performance; and
- (b) a description of how the Commission is monitoring, and how it will report on, progress in implementing the tertiary education strategy; and
- (c) an assessment of the reasons for, and the implications of, any material reported net deficit (as determined in accordance with generally accepted accounting practice) incurred during the financial year; and
- (d) any matter on which the statement of intent for that financial year required the annual report to report; and

- (e) for each person who was at any time during the financial year a member or committee member of the Commission, the total value of the remuneration and other benefits payable by or received from the Commission during that financial year; and
- (f) the number of employees and former employees who, at any time during the financial year, received remuneration and any other benefits, or to whom remuneration and any other benefits became payable, in their capacity as employees, the total value of which exceeded \$100,000 per year, and the number of those employees, in upward brackets of \$10,000; and
- (g) any other information that is necessary to enable an informed assessment to be made of the Commission's overall performance for that financial year.

Delegations

57 Delegation by Commission of Commission's functions, duties, or powers

The Commission may, by writing, either generally or specifically, delegate any of its functions, duties, or powers to any of the following:

- (a) any of its members:
- (b) a committee appointed under clause 43:
- (c) the chief executive:
- (d) any employee or employees of the Commission.

58 Further delegation by member, chief executive, or committee

- (1) If the Commission has, under clause 57, delegated any function, duty, or power to a member, the chief executive, or a committee, that member, chief executive, or committee may delegate the function, duty, or power to 1 or more employees of the Commission.
- (2) No delegation under subclause (1) may be made without the prior written approval of the Commission.
- (3) A delegation under subclause (1) must be in writing, signed by the member, the chief executive, or at least 2 of the members of the committee, as the case may be.

59 Delegation by chief executive of chief executive's functions, duties, or powers

- (1) The chief executive of the Commission may, either generally or specifically, delegate any of his or her functions, duties, or powers under this Act or any other Act to 1 or more employees of the Commission.
- (2) For the avoidance of doubt, the chief executive must not delegate functions, duties, or powers delegated by the Commission to the chief executive except in accordance with clause 58.

- (3) If the chief executive has delegated any functions, duties, or powers to an employee of the Commission under subclause (1), the employee may delegate those functions, duties, or powers to any other employee of the Commission.
- (4) No delegation under subclause (3) may be made without the prior written approval of the chief executive.
- (5) A delegation under subclause (3) must be in writing and signed by the employee.

60 Delegations to employees and to classes of employees

- (1) A delegation to an employee or employees may be to—
 - (a) any named person or persons; or
 - (b) any holder or holders of a particular office specified in the delegation; or
 - (c) any member of a class of persons specified in the delegation.
- (2) If a delegation is to a class of persons, it applies, subject to any express terms of the delegation, to the members of the class for the time being, irrespective of any change in the membership of the class.

61 Effect of delegation

- (1) Subject to the Commission's direction, or the chief executive's direction, as the case may be, a person to whom any powers are delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (2) A delegation does not affect or prevent the performance of any function or duty, or the exercise of any power, by the delegator, or affect the responsibility of the delegator for the actions of any person acting under the delegation.
- (3) If a function, duty, or power of the Commission is delegated to a person, that person, for the purposes of performing or exercising the delegated function, duty, or power, must act in accordance with the Commission's duties as if he or she were a member of the Commission.

62 Presumption of acting in accordance with delegation

A person who appears to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

63 Certain powers must not be delegated

The Commission must not delegate any of the following powers:

- (a) the power to appoint a chief executive; or
- (b) its power to delegate, except in accordance with clause 58; or
- (c) any other power that the Minister specifies by notice in writing to the Commission.

64 Duration of delegation

- (1) Every delegation—
 - (a) is revocable at will, but the revocation does not take effect until it is communicated to the delegate; and
 - (b) continues in force according to its terms until it is revoked despite any change in the membership of the Commission or in the identity of the chief executive.
- (2) The revocation of a delegation must be made or confirmed in writing.

Schedule 2 Consequential amendments

s 37

Part 1 Acts amended

Education Amendment Act 1990 (1990 No 60)

Repeal section 43.

Repeal section 45.

Omit from Schedule 2 the item that inserts paragraph (cb) into the Government Superannuation Act 1975.

Omit from Schedule 2 the item that inserts the Education Training and Support Agency into Part 2 of Schedule 1 of the Ombudsmen Act 1975.

Education Amendment Act 1993 (1993 No 51)

Repeal section 19.

Government Superannuation Act 1956 (1956 No 47)

Omit paragraph (cb) from the definition of **controlling authority** in section 2, and substitute the following paragraphs:

- (cb) a contributor employed by Career Services established under Part XXII of the Education Act 1989 means the general manager of that Service:
- (cc) a contributor employed by the Tertiary Education Commission established under Part 13A of the Education Act 1989 means the chief executive of the Commission:

Modern Apprenticeship Training Act 2000 (2000 No 94)

Repeal the definition of **Agency** in section 4.

Omit from the definition of **apprenticeship co-ordinator** in section 4 the word “Agency” and substitute the word “Commission”.

Insert in section 4, in its appropriate alphabetical order, the following definition:

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

Omit from the definition of **funding agreement** in section 4 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading above section 9 the word “Agency’s” and substitute the word “Commission’s”.

Omit from the heading to section 9 and section 9 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 10(1) the word “Agency” and substitute the word “Commission”.

Omit from section 10(1)(a) the words “the existence of other funding agreements, or funding agreements under the Industry Training Act 1992” and substitute the words “the existence of other funding arrangements”.

Omit from section 11 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading to section 12 and section 12 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from the heading to section 13 and section 13 the word “Agency” wherever it appears and substitute in each case the word “Commission”.

Omit from the heading to section 14 and section 14 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 18(2) the word “Agency” and substitute the word “Commission”.

Omit from section 20(1) the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 23 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 24 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 25 the word “Agency” in both places where it appears and substitute in each case the word “Commission”.

Omit from section 27 the word “Agency” wherever it appears and substitute in each case the word “Commission”.

Ombudsmen Act 1975 (1975 No 9)

Insert in Part II of the First Schedule, in its appropriate alphabetical order, the item “Tertiary Education Commission.”

Omit from Part II of the First Schedule the items relating to Skill New Zealand and the Tertiary Research Board.

Public Finance Act 1989 (1989 No 44)

Insert in the Fourth, Fifth, Sixth, and Seventh Schedules, in its appropriate alphabetical order, the item “Tertiary Education Commission”.

Omit from the Fourth, Fifth, Sixth, and Seventh Schedules the items relating to “Skill New Zealand and the Tertiary Research Board”.

Part 2
Regulations amended

Education (Change of Name of Education Entities) Order 2000 (SR 2000/117)

Revoke clause 3(3) and so much of the Schedule as relates to Skill New Zealand.

New Zealand Council for Educational Research (Electoral College) Order 1998 (SR 1998/336)

Revoke clause 2(11) and substitute:

(11) the chief executive of the Tertiary Education Commission:

Reprint notes**1 *General***

This is a reprint of the Education (Tertiary Reform) Amendment Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this reprint*

This reprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this reprint*

Education and Training Act 2020 (2020 No 38): section 669(3)(b)