

House of Representatives

Supplementary Order Paper

Tuesday, 21 July 2020

Education and Training Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Education and Training Bill (the **Bill**). The amendments include minor and technical changes to correct errors, remove duplication, promote consistency, and improve clarity. The substantive amendments to the Bill are as follows:

Clause 2(2), which relates to the commencement of the Bill, is amended to delay the commencement of *clauses 69 to 71A, 122(1)(d), and Schedule 19* until 1 January 2021 to provide adequate time to transfer responsibility for school enrolment zones from school boards to the Ministry of Education.

Clause 10, which defines terms used in the Bill, is amended to—

- insert a new definition in *clause 10(1)* of chief executive of Oranga Tamariki; and
- insert *new clause 10(2AA)*, which clarifies that regulations made under *clause 10(2)* prescribing criteria for the purposes of the definition of domestic tertiary student are a confirmable instrument under section 47B of the Legislation Act 2012; and
- insert *new clause 10(4A)*, which contains definitions for the purposes of *new clauses 612C to 612I*; and
- refine other definitions.

New clause 69A is inserted. The new provision, which clarifies when enrolment schemes are required, reorganises *clause 71(3)* and *clause 4(1) of Schedule 19* into a single provision.

New clause 71A is inserted. The new provision enables the Secretary for Education (the **Secretary**) to allow certain students who live outside the home zone of a school to attend the school in certain circumstances.

Clauses 95 to 97, which set out a framework regarding the use of physical force by teachers and authorised staff members in relation to students attending registered schools, are replaced with *new clauses 95 to 97*. The new provisions provide a framework regarding the use of physical restraint in relation to students at registered schools, rather than physical force. In particular, the new provisions—

- define what constitutes physical restraint and specify when it may be used (*clause 95*); and
- require the Secretary to make rules relating to the use of physical restraint at registered schools and to undertake consultation when developing the rules (*clause 96*); and
- require the Secretary to issue guidelines relating to physical restraint and behaviour management at registered schools and to undertake consultation when developing the guidelines (*clause 97*).

Guidelines issued under *clause 97* must include—

- best practice examples of how to use physical restraint, of how to assess significant emotional distress, and of understanding, and to responding safely to, behaviour:
- a framework for decision making and problem solving to prevent, de-escalate, and safely respond to disruptive or assaultive behaviour:
- advice on assessing behaviour escalation levels that precede imminent harm to health, safety, or well-being.

Clause 203(g) is consequentially amended to replace the reference to physical force with physical restraint in that provision.

Clause 323 is replaced with a new provision that allows the Minister of Education (the **Minister**) to establish categories or subcategories of private training establishments by notice in the *Gazette*.

Clause 396D is amended to add *new subclause (8)*, which provides that if the Minister varies a determination in response to, or to support recovery from, an epidemic or an emergency declared or notified under an enactment, the variation takes effect on a date specified by the Minister.

Clause 612C is replaced with *new clauses 612C to 612I*. *New clause 612C* provides that *new clauses 612D to 612H* apply during certain emergencies. *New clause 612D* provides that the Secretary may direct education entities to comply with specified requirements. *New clause 612E* requires education entities to give effect to directions. *New clause 612F* provides for the publication of directions. *New clause 612G* provides for the expiry of directions. *New clause 612H* provides that nothing in *new clauses 612C to 612G* limits academic freedom. *New clause 612I* concerns the power of boards to close schools.

Clause 620, which consequentially amends the Bill after its enactment, is amended to add *new subclauses (3) to (9)* to account for the enactment of the Privacy Act 2020 that comes into force on 1 December 2020.

Clause 621, which relates to repeals and revocations, is amended to account for the repeal of *Schedule 23A* after its COVID-19 provisions cease to apply.

Schedule 1, which contains transitional, savings, and related provisions, is amended to—

- insert *new subpart 1B (new clauses 5C to 5E)*. *New clause 5C* sets out a savings provision for enrolment schemes. *New clause 5D* provides the Minister with a temporary power to approve the provision of education by a State school, for a limited period, to students outside New Zealand who, on or before 3 July 2020, were enrolled at the school for the 2020 year. *New clause 5E* provides that, if NZQA approves, registered schools may, for a limited period and in accordance with any temporary rules, provide assessment for NCEA qualifications to students outside New Zealand who, on or before 3 July 2020, were enrolled at the school for the 2020 calendar year; and
- delete *clause 25A*, which relates to the interim chief executive of NZIST, as the provision expired on 6 July 2020 and is no longer required; and

- amend *clause 44* to delay the expiry date of the Education (Pastoral Care of Domestic Tertiary Students) Interim code of Practice 2019, in response to the effects of COVID-19, to enable the interim code to remain in place until 1 January 2022; and
- insert *new clause 45A*, which provides that export education levies are not payable in respect of the period beginning on 1 January 2020 and ending with the close of 31 December 2021. An export education levy paid in respect of all or part of this period must be refunded; and
- omit *subpart 6 (clause 48)*, which authorises the making of transitional regulations, as the substance of the provision is covered by *clause 4 of Schedule 1*.

Clause 5(e)(i) and (ii) of Schedule 9 is amended to change the phrase “allowance or benefit” to “allowance, benefit, or social housing subsidy”.

Clause 7 of Schedule 19 is amended to allow the Secretary to appoint a commencement date for an enrolment scheme that is earlier than a commencement date determined under *clause 7(1) or (2)* if the Secretary considers that an early commencement is appropriate.

Schedule 20 is amended to delete *clause 6*, as its provisions are now included in *new clause 612I*.

Schedule 23A is amended to insert a definition of educational body in *clause 2* and update the heading to *clause 3*.

Departmental disclosure statement

The Ministry of Education considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 31 October 2019 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact statement can be found at—

- <https://education.govt.nz/assets/Documents/Ministry/Legislation/ETB/Improving-the-workability-of-the-physical-restraint-legislative-framework...pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

The Honourable Chris Hipkins, in Committee, to propose the amendments shown in the following document.

Hon Chris Hipkins

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education and Training Act **2019**.

2 Commencement

(1AA) **Sections 17 and 17A** come into force on the earlier of the following:

- (a) a date appointed by the Governor-General by Order in Council;
 - (b) the day that is two years after the date on which this Act receives the Royal assent.
- (1) **Sections 86, 129, 133 to 141, 151, 152, 161 and Part 2 of Schedule 24** come into force on **1 January 2023**.
 - (2) **~~Section 122(1)(d)~~ Sections 69 to 71A and 122(1)(d) and Schedule 19** comes into force on **1 January 2021**.
 - (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Outline of Act

- (1) This Act, which sets out New Zealand’s education and training system (the **system**), is divided into 6 Parts.
- (2) This Part (**Part 1**) covers the following preliminary matters:
 - (a) the purposes of this Act:
 - (b) the statement of national education and learning priorities:
 - (c) the statement of expectations for agencies serving the system:
 - (d) the strategies for tertiary education and international education:
 - (e) Te Tiriti o Waitangi:
 - (f) the defined terms used in this Act:
 - (g) the transitional and savings provisions needed for this Act:
 - (h) the extent to which this Act binds the Crown.
- (3) **Part 2** sets out provisions regarding early childhood education, which is the initial stage of the system.
- (4) **Part 3** sets out provisions regarding primary and secondary education, which are the stages of the system that follow early childhood education.
- (5) **Part 4** sets out provisions regarding tertiary education and vocational education and training, which are the stages of the system that follow secondary education.
- (6) **Part 5** sets out provisions relating to performance, funding, and support of the system.
- (7) **Part 6** sets out provisions relating to the administration of the system.

Compare: 2018 No 4 s 4

4 Purpose of Act

The purpose of this Act is to establish and regulate an education system that—

- (a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and
- (b) supports their health, safety, and well-being; and
- (c) assures the quality of the education provided and the institutions and educators that provide and support it; and
- (d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

Compare: 1992 No 55 s 1A; 1989 No 80 ss 145AAA, 160, 376, 377

- 5 Minister may issue statement of national education and learning priorities**
- (1) The Minister may, by notice in the *Gazette*, issue a statement of national education and learning priorities for early childhood education, primary education, and secondary education.
 - (2) The notice may contain the statement in full or describe the statement in general terms and indicate where the full text can be obtained.
 - (3) A statement issued under **subsection (1)**—
 - (a) must be consistent with the objectives set out in **subsection (4)**; and
 - (b) must specify the date on which it takes effect; and
 - (c) remains in effect for a period of 5 years unless earlier withdrawn or replaced by notice in the *Gazette*; and
 - (d) must be published on an Internet site maintained by or on behalf of the Ministry.
 - (4) The education and learning objectives for early childhood education, primary education, and secondary education are—
 - (a) to help each child and young person attain their educational potential; and
 - (b) to promote the development, in each child and young person, of the following abilities and attributes:
 - (i) resilience, determination, confidence, and creative and critical thinking;
 - (ii) good social skills and the ability to form good relationships;
 - (iii) participation in community life and fulfilment of civic and social responsibilities;
 - (iv) preparedness for work; and
 - (c) to instil, in each child and young person, an appreciation of the importance of—
 - (i) the inclusion of different groups and persons with different personal characteristics;
 - (ii) diversity, cultural knowledge, identity, and the different official languages;
 - (iii) Te Tiriti o Waitangi and te reo Māori.
 - (5) Before issuing a statement, the Minister must comply with **subsection (6)** and consult those involved in early childhood education, primary education, and secondary education that the Minister thinks fit to consult.
 - (6) The Minister must make reasonable efforts to consult—
 - (a) children and young people; and
 - (b) national bodies representing the interests of—

- (i) teachers:
 - (ii) principals:
 - (iii) governing bodies of schools:
 - (iv) early childhood services:
 - (v) parents:
 - (vi) the disability community:
 - (vii) support staff in schools and early childhood services:
 - (viii) Māori education organisations:
 - (ix) Pacific education organisations:
 - (x) proprietors of State integrated schools; and
 - (c) national bodies that have a particular role in respect of the character of designated character schools.
- (7) Minor changes to a statement issued under this section—
- (a) may be made without undertaking the consultation required by **subsections (5) and (6)**; and
 - (b) do not, for the purposes of **subsection (3)(c)**, constitute a withdrawal or replacement of the statement being changed.
- (8) A minor change under **subsection (7)** is limited to a technical, short, or uncontroversial amendment that does not change or extend the policy of the statement.
- (9) A statement issued under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.
- (10) Except as provided in **subsection (3)(a)**, the objectives set out in **subsection (4)** do not limit or affect the way in which any person is required to exercise a power or perform a function under **Part 2 or 3**.

Compare: 1989 No 80 s 1A

6 Statement of expectations

- (1) The Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purposes of providing equitable outcomes for all students, jointly issue a statement that sets out expectations for agencies—
- (a) serving the education system; and
 - (b) for which the Minister is responsible.
- (2) The statement must specify what those agencies must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi.
- (3) Before issuing the statement, the Ministers must consult Māori.

- (4) The statement must be issued to each agency specified in the statement and published in the *Gazette*.
- (5) A statement issued under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

7 Tertiary education strategy

- (1) The Minister must, by notice in the *Gazette*, issue a tertiary education strategy that sets out the Government's—
 - (a) long-term strategic direction for tertiary education, which must include—
 - (i) economic goals:
 - (ii) social goals:
 - (iii) environmental goals:
 - (iv) the development aspirations of Māori and other population groups; and
 - (b) current and medium-term priorities for tertiary education.
- (3) The Minister may, by notice in the *Gazette*, withdraw and replace, or amend, a tertiary education strategy.
- (4) Before issuing, withdrawing and replacing, or significantly amending the strategy, the Minister must consult—
 - (a) the persons or bodies that the Minister thinks fit to consult in the circumstances; and
 - (b) TEC.
- (5) An amendment forms part of the tertiary education strategy it amends.
- (6) A tertiary education strategy remains in place until it is withdrawn or replaced ~~or withdrawn~~.

Compare: 1989 No 80 ss 159AA, 159AC

8 International education strategy

- (1) The Minister may issue an international education strategy that sets out—
 - (a) the Government's long-term strategic direction for international education; and
 - (b) the Government's current and medium-term priorities for international education.
- (2) Before issuing the Government's international education strategy, the Minister must consult the organisations or people that, in the Minister's opinion, have a substantial interest in international education and ought to be consulted.

Compare: 1989 No 80 s 271

9 Te Tiriti o Waitangi

- (1) The main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi are—
- (a) **section 4**, which states that the purpose of this Act includes establishing and regulating an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships; and
 - (b) **section 5(4)(c)(iii)**, which provides that any statement of national education and learning priorities issued by the Minister must be consistent with objectives for early childhood, primary, and secondary education and learning that include instilling in each child and young person an appreciation of the importance of Te Tiriti o Waitangi and te reo Māori; and
 - (c) **section 6**, which provides that the Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purpose of providing equitable outcomes for all students, and after consulting with Māori, jointly issue and publish a statement that specifies what the agencies serving the education system, and for which the Minister is responsible, must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi; and
 - (d) **section 122(1)(d)**, which provides that one of a board's primary objectives in governing a school is to ensure that the school gives effect to Te Tiriti o Waitangi, including by—
 - (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
 - (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
 - (iii) achieving equitable outcomes for Māori students; and
 - (e) **subpart 6 of Part 3**, which provides for the establishment and operation of Kura Kaupapa Māori, Te Aho Matua, and te kaitiaki o Te Aho Matua; and
 - (f) **subpart 3 of Part 4**, which provides for the establishment and operation of wānanga; and
 - (g) **clause 4(b) and (d) of Schedule 13**, which provides that NZIST must operate in a way that allows it to develop meaningful partnerships with Māori employers and communities and to reflect Māori-Crown partnerships to ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi and to respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū, and iwi.
- (2) Other provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system include—

- (a) the definition of **school community** in **section 10(1)**, which includes a Māori community associated with a school; and
- (b) **section 17(2)(a)**, which provides that before the Minister may approve a licence for an early childhood education and care centre, the Minister must take into account the availability of services in the area with different offerings, for example, the provision of te reo Māori; and
- (c) **sections 258(2)(a), 307(1)(c), 312(1) and (3), 313(2), and 344(3)(b)**, which provide for Māori contribution to decision making in tertiary education and vocational education and training; and
- (d) **section 261(1)(b)**, which provides that councils of institutions have a duty, in the performance of their functions and the exercise of their powers, to acknowledge the principles of Te Tiriti o Waitangi; and
- (e) **section 302(e)**, which provides that one of the functions of NZIST is to improve outcomes for Māori learners and Māori communities in collaboration with Māori and iwi partners and interested persons or bodies; and
- (f) **section 380**, which provides that the Tertiary Education Commission TEC comprises members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004 after consultation with the Minister for Māori Development; and
- (g) **section 449(4)(b)(v)**, which provides that when considering whether to appoint a person as a member of the Teaching Council, the Minister must have regard to the collective skills, experience, and knowledge making up the overall composition of the Teaching Council, including understanding of the partnership principles of Te Tiriti o Waitangi; and
- (h) **section 564(2)(d)**, which provides that a good employer in the education service is an employer who operates ~~a personnel~~ an employment policy containing provisions requiring recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the education service.

10 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- academic year** means a period of 12 months commencing on **1 January**
- accreditation** means an accreditation granted under **section 412**
- adult student** means a student who is aged 20 years of age or over
- affected student** means a student who is required to attend school in accordance with a multiple timetable arrangement
- allowance** includes a bursary, a grant, and a scholarship
- applicable organisation** means an organisation that provides an applicable service

applicable person, in relation to an applicable organisation, means any body or person who administers, controls, governs, manages, operates, or owns the organisation

applicable service means an education service to which any of sections 434(1), 435, 435A, 436, 588A, and 588B 589 apply

apprentice means a person receiving apprenticeship training

apprenticeship training means a type of vocational education and training that—

- (a) is provided for a person who is working in an industry while undertaking training in that industry; and
- (b) is provided wholly or partly at the person's workplace, mainly by or on behalf of the person's employer; and
- (c) consists of a programme of study or training, or both, leading to a qualification in the skills of an industry that provides entry into an occupation in that industry; and
- (d) is facilitated by a person that receives funding from TEC

apprenticeship training agreement means an agreement between an employee and their employer that relates to the employee's receipt of, or that provides for the employee to receive, apprenticeship training

apprenticeship training code means the training code (if any) issued under **section 356**

approved programme means a programme approved under **section 410**

approved training scheme means a training scheme approved under **section 416**

award means—

- (a) a certificate, diploma, degree, or other qualification listed on the Qualifications Framework;
- (b) a certificate or other document granted in recognition of a student's achievement in and completion of a training scheme;
- (c) a certificate granted in recognition of a student's achievement in scholarship examinations as part of the student's secondary education

board member means a member of a board constituted under **subpart 5 of Part 3**

board of trustees or **board** means a board constituted under **subpart 5 of Part 3**; and,—

- (a) in relation to a State school, means the school's board; ~~and;~~
- (b) in relation to a principal, means the board of the relevant State school;
- (c) ~~includes any commissioner appointed under this Act to act in place of the board~~

(c) if a commissioner has been appointed to act in place of a board, means the commissioner

board staff, in relation to a board on any day, means the people who, on the day, are not students enrolled full-time at a school administered by the board and who,—

- (a) on the day, have taken up a permanent appointment to a position in the employment of the board, or a position (at a school administered by the board) in the employment of a body established under this Act or of the Secretary; or
- (b) during the period of 2 months ending with that day, have been continuously employed in that position

capstone assessment, in relation to a student or trainee enrolled in a programme that leads to a qualification, means a final assessment that requires the student or trainee to demonstrate their overall achievement of knowledge, skills, and attributes set out in the graduate profile for the qualification

chief executive of Oranga Tamariki means the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989

Chief Referee means the person appointed as Chief Referee under **section 205(1)**

Chief Review Officer means the chief executive of the Education Review Office

closing date, in relation to a levy, means the date, specified in the ballot paper under **clause 11(b) of Schedule 15**, by which ballot papers must be returned

code, in relation to pastoral care, means a code of practice issued under **section 504**

code administrator means a person or agency appointed under regulations made under **section 611**

cohort entry policy means a policy that provides for a child who proposes to enrol at a State school ~~or State integrated school~~ to be assigned to a group of children and for all of the children in that group to be enrolled in the school on the same date, being a date that is determined in accordance with **section 62**

combined board means a board that governs more than 1 school

community of learning means a community of learning approved by the Minister in accordance with **section 112**

Competence Authority means the Competence Authority established by rules made under **section 458**

Complaints Assessment Committee means the Complaints Assessment Committee established by rules made under **section 458**

composite school means a school that offers education to students in any of years 1 to 8 and in any of years 9 to 13

contract of enrolment, in relation to an international student, means a written contract entered into between the student (or a parent of the student if the student is under the age of 18 years) and the board of a State school that entitles the student to receive tuition at the school

contributing school means a school that offers education to students in years 1 to 6

council,—

- (a) in relation to an institution other than NZIST, means the body that governs the institution in accordance with **section 251**;
- (b) in relation to NZIST, means NZIST's council members appointed under **section 307**

Crown entity group has the meaning given by section 136(1) of the Crown Entities Act 2004

deputy chief referee means a person appointed as a deputy chief referee under **section 205(3)**

designated character school means a school designated in accordance with **sections 191 and 192**

Directory of Assessment Standards means the Directory of Assessment Standards described in **section 408**

disciplinary body means either or both of the Complaints Assessment Committee and the Disciplinary Tribunal

Disciplinary Tribunal means the Disciplinary Tribunal established by rules made under **section 458**

distance school means a school for the time being designated under **section 183** as a distance school

domestic student means an individual who is—

- (a) a New Zealand citizen; or
- (b) the holder of a residence class visa granted under the Immigration Act 2009; or
- (c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not international students

domestic tertiary student means an individual—

- (a) who is—
 - (i) a New Zealand citizen; or

- (ii) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under **subsection (2)**; or
 - (iii) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not international students; and
- (b) who is a tertiary student enrolled at an institution or a registered establishment

DRS means the student contract dispute resolution scheme established under **section 505**

DRS operator means a person or an agency appointed under **section 505(4)**
early childhood education and care centre—

- (a) means premises that are used regularly for the education or care of 3 or more children (not being children of the persons providing the education or care or children enrolled at a school who are being provided with education or care before or after school) under the age of 6 years by day (or part of a day) but not for any continuous period of more than 7 days; and
- (b) despite **paragraph (c)**, includes premises that—
 - (i) are situated within premises of the kinds described in **paragraph (c)(i) to (x)**; and
 - (ii) are used regularly or principally for the education or care of 3 or more children under the age of 6 years who are children of—
 - (A) staff who work within premises of the kinds described in **paragraph (c)(i) to (x)**; or
 - (B) persons attending those premises as residents or students; but
- (c) excludes premises of the following kinds:
 - (i) registered schools;
 - (ii) hostels;
 - (iii) residences (within the meaning of section 2(1) of the Oranga Tamariki Act 1989);
 - (iv) institutions under the control of the Ministry of Health or a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000;
 - (v) hospital care institutions (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001);
 - (vi) children’s health camps operated by an organisation funded by a State service to provide an education service to children attending health camps;

- (vii) premises where all the children present are members of the same family in the care of a member of the family, or members of the same family in the care of a caregiver who is not acting for gain or reward:
- (viii) any premises, during any period of use for the education or care of 3 or more children under the age of 6 years, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children's parents or caregivers are—
 - (A) in close proximity to the children and are able to be contacted; and
 - (B) able to resume responsibility for the children at short notice:
- (ix) any premises, during any period of use for the operation of a playgroup, licensed home-based education and care service, or licensed hospital-based education and care service:
- (x) any premises, during any period of use for the education or care of children for any period not exceeding 4 hours a week in circumstances where the children's parents or caregivers are—
 - (A) in close proximity to the children and are able to be contacted; and
 - (B) able to resume responsibility for the children at short notice

early childhood education and care service means—

- (a) a free kindergarten that is an early childhood service whose licence permits no child to attend for a period of more than 4 hours on any day; and
- (b) any other early childhood service that is declared to be an early childhood education and care service by regulations made under this Act

early childhood service means an early childhood education and care centre, a home-based education and care service, or a hospital-based education and care service

education with a special character means education within the framework of a particular or general religious or philosophical belief, and associated with observances or traditions relating to that belief

educational outcome means a credit, grade, mark, or other measure of student achievement that contributes towards the student gaining—

- (a) a qualification listed on the Qualifications Framework; or
- (b) an award that recognises the successful completion of a training scheme; or
- (c) recognition for successfully meeting the learning outcomes of a standard listed on the Directory of Assessment Standards

effective date, in relation to an integration agreement, means the date on which the integration of the school takes place

election year means a year divisible by 3

employer, in relation to a teacher or authorised person in a teaching position, means any one of the following who employs, or intends to employ, 1 or more teachers or authorised persons in a teaching position:

- (a) the board of a State school:
- (b) the managers of a private school:
- (c) the person or body that appoints staff at an early childhood education and care service:
- (d) the Secretary, in the Secretary's capacity as an employer under **section 581**

employment agreement has the same meaning as in the Employment Relations Act 2000

employment-based trainee teacher means a person who is undertaking an initial teacher education programme that includes a period of employment by a board

employment-based trainee teaching position means a position established by the Secretary under **section 582(1)**

enrol includes admit, and **enrolment** and **enrolled** have corresponding meanings

enrolment scheme means a scheme developed and implemented (and not since abandoned) under this Act or regulations made under this Act

equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality with respect to the employment of any persons or group of persons

financial product has the meaning given by section 7 of the Financial Markets Conduct Act 2013

financial year,—

- (a) in relation to a school, means a year ending with **31 December**:
- (b) in relation to any body, means a year ending,—
 - (i) if the Minister has specified a day for the purpose, with that day; and
 - (ii) with **30 June** in every other case

free kindergarten means an early childhood education and care centre controlled by a free kindergarten association founded for the purpose of establishing and maintaining a kindergarten or kindergartens

full primary school means a school that offers education to students in years 1 to 8

funding approval means a decision made by TEC under **section 397** to fund (in whole or in part) some or all of the tertiary education programmes and activities described in an organisation's proposed plan under **clause 10(d) of Schedule 17**

governing member, in relation to a private training establishment, means—

- (a) any director;
- (b) any member occupying a position equivalent to that of a director;
- (c) if the establishment is a trust, any trustee;
- (d) if the establishment is a partnership, any partner;
- (e) any senior manager;
- (f) any shareholder with a controlling interest in the establishment

government training establishment means—

- (a) a Crown entity (within the meaning of section 10(1) of the Crown Entities Act 2004) for the time being approved by the Minister for the purposes of this definition; or
- (b) a department (within the meaning of the Public Finance Act 1989) for the time being approved by the Minister for the purposes of this definition; or
- (c) the New Zealand Defence Force; or
- (d) the New Zealand Police

half-day, in relation to a school, means a period of 2 hours or more during which the school is open for instruction

home-based education and care service—

- (a) means the provision of education or care, for gain or reward, to children who are under the age of 5 years, or who are aged 5 years but not enrolled at school, in—
 - (i) the children's own home; or
 - (ii) the home of the person providing the education or care; or
 - (iii) any other home nominated by a parent of the children; and
- (b) includes the provision of education or care to any child of the person providing the service who is—
 - (i) under the age of 5 years; or
 - (ii) aged 5 years but not enrolled at school

hospital-based education and care service means the provision of education or care to 3 or more children under the age of 6 years who are receiving hos-

pital care within the meaning of section 4(1) of the Health and Disability Services (Safety) Act 2001

hostel means a boarding establishment used mainly or solely for the accommodation of students enrolled at a registered school

household does not include hostel

immediate caregiver,—

- (a) in relation to a student who usually lives in a household that includes the student's father or mother but not both, but also includes the spouse or partner of the father or mother, means the spouse or partner; and
- (b) in relation to a student who usually lives in a household that includes the student's father or mother and no spouse or partner of the father or mother, but also includes a person who has turned 20 years and has a day-to-day responsibility for the student clearly greater than that of any other person, means that person; and
- (c) in relation to a student who usually lives in a household that does not include the student's father or mother, means any member of the household who has turned 20 years and has a day-to-day responsibility for the student clearly greater than that of any other person

independent trustee, in relation to a private training establishment, means a trustee that does not provide any other service to the establishment other than that referred to in **section 337**

industry means 2 or more enterprises that use—

- (a) the same or similar inputs and methods of production to produce the same or similar products; or
- (b) the same or similar methods to provide the same or similar services

initial teacher education programme means a training programme recognised by the Teaching Council as suitable for people who want to teach

institution means—

- (a) NZIST (~~including~~ including, as the case requires, its subsidiaries that provide education or training, or both);
- (b) a university;
- (c) a wānanga

integration means the conditions and procedures on and by which a private school may become established as part of the State system of education, and may remain part of that system, on a basis that preserves and safeguards the special character of the education that the school provides, and **integrated** has a corresponding meaning

integration agreement means an agreement entered into under **clause 5 of Schedule 6**

intermediate school means a school that offers education to students in years 7 and 8 only

international student means an individual who is not a domestic student

land has the same meaning as in the Land Transfer Act 2017

lead provider means a provider of secondary–tertiary programmes that is recognised by the Minister by notice in the *Gazette* under **clause 5 of Schedule 8** as a lead provider of those programmes

levy group means the members of an industry described in a levy order, or proposed to be described in a levy order, who have to, or are to, pay a levy or proposed levy

licensed early childhood education and care centre means an early childhood education and care centre in respect of which the service provider holds a current licence issued under regulations made under **section 599**

licensed early childhood service means an early childhood service in respect of which the service provider holds a current licence issued under regulations made under **section 599**

licensed home-based education and care service means a home-based education and care service in respect of which the service provider holds a current licence issued under regulations made under **section 599**

licensed hospital-based education and care service means a hospital-based education and care service in respect of which the service provider holds a current licence issued under regulations made under **section 599**

listed skill standard means a skill standard that is listed on the Directory of Assessment Standards

lone board means a board that administers 1 school only

managers of a private school means all the people who control and manage the school, whether or not they have a proprietary interest in it

medical practitioner means a health practitioner who—

- (a) is, or is treated as being, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

member of an industry means a person who employs persons who work in that industry or a self-employed person in that industry

Minister means the Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or part of this Act

~~**minor change**, in relation to a statement of national education and learning priorities, means a technical, short, and uncontroversial amendment that does not change or extend the policy of the statement~~

MSD has the same meaning as in Schedule 2 of the Social Security Act 2018

multiple timetable arrangement means an arrangement under which more than 1 timetable is run on the same day (whether consecutively or concurrently)

NCEA means national certificate of educational achievement

New Zealand Institute of Skills and Technology or **NZIST** means the New Zealand Institute of Skills and Technology ~~established~~ continued by **section 301**

NZIST subsidiary means a Crown entity subsidiary of NZIST

NZQA means the New Zealand Qualifications Authority continued by **section 401**

overcrowding, in relation to a school, means the attendance at the school of more students than its site or facilities can reasonably be expected to take

parent, in relation to any individual, means,—

- (a) for the purposes of serving on a board of a State school (whether elected, appointed, or co-opted), the mother, father, guardian, or immediate caregiver of the individual:
- (b) for all other purposes, the mother, father, or guardian of the individual

participating board—

- (a) means the board of a State school; and
- (b) includes a commissioner appointed in place of a board; but
- (c) excludes a board of a State school or a commissioner if that party has been a participant but, with the Minister's approval, has withdrawn from, and is not for the time being a participant in, a school risk management scheme

participating student means a student undertaking a secondary–tertiary programme who is enrolled at any of the following:

- (a) a secondary school:
- (b) a composite school:
- (c) a private school, other than a school registered only as a primary school:
- (d) a specialist school that is a relevant school

partner, in the phrase “spouse or partner” and in related contexts, means civil union partner or de facto partner

payrolled school means a school to which **section 546** applies

permanent member, in relation to the teaching or general staff of an institution, means a member of the staff who—

- (a) is employed, on a full-time or part-time basis, for a period ending, unless sooner terminated, on the member’s resignation or retirement; or
- (b) has been employed, on a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for at least 3 months; or
- (c) has been employed, on a full-time or part-time basis, whether under an employment agreement for a fixed term or otherwise, for less than 3 months and whose employment is, in the opinion of the chief executive of the institution, likely to continue for at least 3 months from the date of commencement of that employment

person dealing—

- (a) means the other party to a transaction, if an act of a board is a transaction; and
- (b) includes a person who has acquired property, rights, or interests from a board

personal property includes money

playgroup means a group that meets on a regular basis to facilitate children’s play and in respect of which—

- (a) no child attends for more than 4 hours on any day; and
- (b) more than half of the children attending on any occasion have a parent or caregiver present in the same play area at the same time; and
- (c) the total number of children attending on any occasion is not greater than 4 times the number of parents and caregivers present in the same play area at the same time

practising certificate means a certificate issued under **clause 10(2) or (6) of Schedule 3**

prescribed means prescribed by this Act or by regulations made under this Act

prescribed quality assurance requirements means the quality assurance requirements prescribed by NZQA under **section 423(1)(i)**

primary education means education for students in a primary, an intermediate, a specialist, or a composite school at the relevant year levels

primary school means a contributing school or a full primary school

principal means the chief executive of a State school and, in relation to a school, a person enrolled at a school, or the enrolment of a person at a school,

means the principal of the school, and except in **section 115(1)(c)** includes an acting principal

private school means a school registered under **section 200**

private training establishment means an establishment, other than an institution, that provides post-school education or training, including vocational education and training

proceeding means any legal or administrative proceeding, and includes an arbitration

professional leader means—

- (a) the principal;
- (b) in the case of an early childhood service, the professional leader of the service;
- (c) in the case of any other educational institution, the chief executive or person occupying an equivalent position

programme, in relation to an institution within the meaning of **section 410(7)**, means a programme of study or training that leads to a qualification listed on the Qualifications Framework

property means real and personal property of every description

proprietor means the body corporate that—

- (a) has the primary responsibility for determining the special character of a private school or State integrated school and for supervising the maintenance of that special character; and
- (b) owns, holds in trust, or leases the land and buildings that constitute the premises of the private school or a State integrated school

provider—

- (a) means a person or body that is—
 - (i) a registered school; or
 - (ii) an institution; or
 - (iii) a registered establishment; or
 - (iv) an organisation that provides adult and community education that receives funding under **section 397 or 399**;
- (b) has, for the purposes of **Part 4**, the meaning specified in **paragraph (a)** and includes—
 - (ii) a government training establishment, a registered establishment, and a wānanga;
 - (iii) a relevant school;
- (c) means, in relation to pastoral care in **subpart 7 of Part 5**, a person or body that is,—

- (i) in respect of international students, a registered school, an institution, or a registered establishment; or
- (ii) in respect of domestic tertiary students, an institution or a registered establishment

provider group means a group of providers of secondary–tertiary programmes that is recognised by the Minister by notice in the *Gazette* under **clause 1 of Schedule 8** as a provider group

psychologist means a health practitioner who—

- (a) is, or is treated as being, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology; and
- (b) holds a current practising certificate

qualification means a qualification listed on the Qualifications Framework, which may include qualifications offered by universities

Qualifications Framework means the framework described in **section 407**

qualifying member, in relation to a levy group, means a member who does not have a certificate of exemption under **clause 15 of Schedule 15**

reasonably convenient school means a State school that a reasonable person living in the area in which the school is situated would judge to be reasonably convenient for a particular student, taking into account the age of the student, the distance to be travelled, the time likely to be spent in travel, the reasonably available modes of travel, common public transport routes, and relevant traffic hazards; and the meaning may vary as between different schools depending on—

- (a) whether the school is a single-sex or co-educational school;
- (b) whether the school is an ordinary State school, a Kura Kaupapa Māori, a designated character school, a State integrated school, or a specialist school;
- (c) whether the school is a primary, an intermediate, a secondary, or a composite school

record of achievement means a record of a student’s educational outcomes maintained by NZQA or a tertiary education provider

refund period means,—

- (a) in relation to a domestic student who, before **1 January 2015**, is enrolled in a programme or part of a programme, or enrolled in a training scheme, the 7 days after the first day of the programme or scheme for which the attendance of the student at the establishment is required;
- (b) in relation to a domestic student who, on or after **1 January 2015**, is enrolled in a programme or part of a programme, or enrolled in a train-

ing scheme, the period of time that begins when the student's fees are paid to the private training establishment (or paid directly to the independent trustee) and ends on the later of 7 days after—

- (i) the first day of the programme or scheme for which the attendance of the student at the establishment is required; or
- (ii) any other day that the establishment permits the student to begin attendance

registered establishment means a private training establishment that has been granted registration by NZQA under **subpart 5 of Part 4** and whose registration has not been cancelled

registered school means a State school, a State integrated school, or a private school

registration or **registered**, in relation to any person, means the entry of the person's name on the register kept under **clause 8 of Schedule 3**

regular teacher means a teacher who is not a relieving teacher or an employment-based trainee teacher

related entity, in relation to an institution, means a person or body that is a related party for the purpose of any financial reporting standard that applies to the institution under generally accepted accounting practice

relevant industry means the industry described in the levy order or proposed levy order

relevant school means—

- (a) a secondary school; or
- (b) a composite school; or
- (c) a private school, except a school registered as a primary school only; or
- (d) a specialist school

relieving teacher means a teacher employed by a board to undertake some or all of the duties of a regular teacher who, at that time, is absent from work but remains employed (on salary) by the board

review officer means a person designated under **section 436**, and includes the Chief Review Officer

school community, in relation to a school, means—

- (a) the parents, families, and whānau of the school's students; and
- (b) the Māori community associated with the school; and
- (c) any other person, or group of persons, who the board considers is part of the school community for the purposes of the relevant provision

school risk management scheme means the school risk management scheme established under **section 543**

seclude, in relation to a student or child, means placing the student or child involuntarily alone in a room from which they cannot, or believe they cannot, freely exit

secondary component, in relation to a secondary–tertiary programme, means the portion of the programme that consists of participation in secondary education, whether or not provided by the school at which the participating student is enrolled

secondary education means education for students in a secondary, specialist, or composite school at the relevant year levels

secondary school means a school that offers education to students in any of years 9 to 13

secondary–tertiary programme means a full-time programme for a participating student that—

- (a) consists of a secondary component and a tertiary component; and
- (b) is co-ordinated by a provider group or a lead provider in accordance with the provisions in **Schedule 8**

Secretary means the chief executive of the Ministry

senior manager, in relation to a private training establishment, means—

- (a) the chief executive officer or person occupying an equivalent position; or
- (b) any member of staff in charge of academic issues, marketing, administration, finance, student fee trust funds, or student services

serious criminal activity means any offence involving fraud, violence, or harm to children, any sexual offence, or any crime involving dishonesty

serious harm, in relation to a domestic tertiary student or an international student, means an event or circumstances that seriously and detrimentally affect the ongoing welfare of the student, including (without limitation) physical injury, physical illness, or mental illness

serious misconduct means conduct by a teacher—

- (a) that—
 - (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
 - (ii) reflects adversely on the teacher’s fitness to be a teacher; or
 - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct

service provider means each of the following:

- (a) in relation to an early childhood education and care centre, the body, agency, or person who operates the centre:

- (b) in relation to a home-based education and care service, the body, agency, or person who provides, or offers to provide, that education or care:
- (c) in relation to a hospital-based education and care service, the body, agency, or person who provides that education or care:
- (d) in relation to a playgroup, the person or persons who operate the playgroup

signatory provider means a provider that is a signatory to a code issued under **section 504(1)(b) or (c)**

skill standard—

- (a) means a specification of skills and levels of performance in those skills; and
- (b) in relation to any vocational education and training (or proposed vocational education and training), means a specification of some or all of the skills in which training is (or is proposed to be) received, and the levels of performance in those skills intended to be attained by people receiving the training

solicited voluntary payment from parents, ~~for~~ in relation to a board, means a payment that is—

- (a) to be made or made by or on behalf of a parent, or parents, of any student, or students, likely to be enrolled or enrolled at ~~any~~ school administered by the board; and
- (b) a payment that the parent has, or that those parents have, no legal obligation to make; and
- (c) sought in any way, ~~directly or indirectly, (whether directly or indirectly)~~ from the parent or those parents, by or on behalf of the board

special education means education for children who require educational services beyond that normally obtained in an ordinary class in a State school

special institution means a State school that is—

- (a) for the time being specified in **Schedule 2**; or
- (b) a distance school

special programme means a programme, or a programme of a type, that the Secretary has, by notice in the *Gazette*, approved as a special programme and—

- (a) that provides—
 - (i) special education; or
 - (ii) Māori language immersion classes; or
 - (iii) any other type of specialised education to overcome educational disadvantage; or
- (b) that is a programme—

- (i) that takes a significantly different approach in order to address particular student needs; and
- (ii) that would not be viable unless it could draw from a catchment area beyond the school's home zone; and
- (iii) to which entry is determined by an organisation or process that is independent of the school

special service means a service established under **section 184** as a special service

specialist school means a school that offers special education to students in any of years 1 to 13

specified industries, in relation to a workforce development council, means the 1 or more specified industries covered by the workforce development council

specified user means—

- (a) an education provider; and
- (b) the Ministry; and
- (c) NZQA; and
- (d) TEC; and
- (e) any other agency or body declared by regulations made under **section 611A** to be a specified user

State integrated school means a State school that—

- (a) offers education with a special character; and
- (b) has been established as a State integrated school under **clause 5 of Schedule 6**

State school means a school that is a primary school, an intermediate school, a composite school, a secondary school, or a specialist school

student accommodation means premises that are exempt under section 5B of the Residential Tenancies Act 1986

student claimant, in relation to a provider or signatory provider, means a person who—

- (a) is a domestic tertiary student or an international student enrolled by the provider or signatory provider; or
- (b) is a former tertiary domestic student or a former international student enrolled by the provider or signatory provider; or
- (c) intends to be, or is in the process of being, enrolled by the provider or signatory provider as a domestic tertiary student or an international student

Te Aho Matua means a statement that sets out an approach to teaching and learning that applies to schools designated under **section 188**

te kaitiaki o Te Aho Matua means the body commonly known as Te Rūnanga Nui o Nga Kura Kaupapa Māori o Aotearoa, being the most suitable to be responsible for determining the content of Te Aho Matua and for ensuring that it is not changed to the detriment of Māori

teacher includes—

- (a) a registered teacher; and
- (b) a former registered teacher; and
- (c) a person who holds a limited authority to teach; and
- (d) a person who formerly held a limited authority to teach

Teaching Council means the Teaching Council of Aotearoa New Zealand continued by **section 447(1)**

teaching position means a position in a registered school or licensed early childhood service that—

- (a) requires its holder to instruct students; or
- (b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or
- (c) is the professional leader of an early childhood service or other educational institution

TEC means the Tertiary Education Commission continued by **section 379(1)**

tertiary component, in relation to a secondary–tertiary programme, means the portion of the programme that consists of the participating student’s apprenticeship training or participation in tertiary education that—

- (a) is provided by any 1 or more of the following:
 - (i) a board of a secondary school, a composite school, or a specialist school that is a relevant school:
 - (ii) the managers of a private school, other than a school registered only as a primary school:
 - (iii) a government training establishment:
 - (iv) an institution:
 - (v) a registered establishment; and
- (b) may include work experience (other than work experience obtained by a student under **section 51**) as part of the programme that is approved by the provider of the secondary or tertiary component of the programme

tertiary education organisation means—

- (a) a tertiary education provider:
- (b) a workforce development council:

- (c) an individual or body that—
 - (i) provides tertiary education-related services; and
 - (ii) is identified as a tertiary education organisation by the Minister by notice in the *Gazette*

tertiary education provider means any of the following:

- (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

trainee—

- (a) means an employee who has a training agreement; and
- (b) includes an apprentice

training agreement means an agreement between an employer and an employee that relates to the employee's receipt of, or provides for the employee to receive, vocational education and training (whether provided by the employer or some other person)

training package, in relation to an industry qualification,—

- (a) means materials developed by a workforce development council that are designed to assist providers in developing and delivering programmes leading to the industry qualification and to enhance consistency of graduate outcomes in respect of the qualification; and
- (b) includes (without limitation) core content, delivery modes, and assessment methods in respect of those programmes

training scheme means study or training that—

- (a) leads to an award; but
- (b) does not, of itself, lead to an award of a qualification listed on the Qualifications Framework

university means an institution established as a university under **section 248(1)**

unsupervised access, in relation to children at a licensed early childhood service or students at a school, means access to any child that is not access by, or supervised by, or otherwise observed by, or able to be directed (if necessary) by, any 1 or more of the following:

- (a) a registered teacher or holder of a limited authority to teach;
- (b) an employee of the school or service on whom a satisfactory Police vet has been conducted within the last 3 years:

(c) a parent of the student

Vice-Chancellor, in relation to a university, means the chief executive of the university, by whatever name called

Vice-Chancellors Committee means the New Zealand Vice-Chancellors Committee continued by **section 298**

vocational education and training—

(a) means education and training that lead to the achievement of industry-developed skill standards, qualifications, or other awards; and

(b) includes work-based training

walking distance, in relation to travel between a person's residence and a school,—

(a) where there is no public transport that the person can conveniently use, means the distance (measured along the most direct route by public road, public footpath, or a combination of both) between the residence and the school; and

(b) where in both directions there is public transport that the person can conveniently use, means the sum of the following distances (each measured along the most direct route by public road, public footpath, or a combination of both) or, where the distance is greater in one direction than the other, the greater distance:

(i) the distance between the residence and the place where public transport must first be taken (or finally be left); and

(ii) the distance between the school and the place where public transport must finally be left (or first be taken); and

(iii) every intermediate distance between one element of public transport and another

wānanga means an institution established as a wānanga under **section 248(1)**

work-based training means systematic training and assessment (including apprenticeship training) in the skills characteristic of, or likely to be valuable to, persons engaged in an industry (or 2 or more industries) that is provided to persons engaged in that industry (or those industries)—

(a) by or on behalf of employers in that industry (or those industries); or

(b) for the benefit of employers and employees in that industry (or those industries)

workforce development council means a workforce development council established under **section 344**.

- (2) The Governor-General may, by Order in Council, make regulations prescribing criteria that the holder of a residence class visa granted under the Immigration Act 2009 must satisfy in order to fulfil the requirements of **paragraph (a)(ii)** of the definition of domestic tertiary student in **subsection (1)**.

- (2AA) The explanatory note of regulations made under **subsection (2)** must indicate that—
- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
 - (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
 - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of the Legislation Act 2012.
- (2A) Despite the definition of immediate caregiver in **subsection (1)**, a student does not have an immediate caregiver if the student—
- (a) usually lives in a household that includes the student’s father and mother; or
 - (b) usually spends approximately equal time in 2 or more households; or
 - (c) does not usually live in a household.
- (2B) For the purposes of—
- (a) **subpart 2 of Part 5** (apart from **sections 412 to 415, and 427**), the definition of institution in **subsection (1)** includes any government training establishment, registered establishment, relevant school, or other body:
 - (b) **sections 412 to 415**, the definition of institution in **subsection (1)** includes any government training establishment, registered establishment, or relevant school.
- (3) For the purposes of **sections 530 to 539**, unless the context otherwise requires,—
- agreement** includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written, express or implied, and whether or not enforceable at law
- assets** means any real or personal property of any kind, whether or not subject to rights, and includes (but is not limited to)—
- (a) any estate or interest in any land, including all rights of occupation of land or buildings:
 - (b) all buildings, vehicles, plant, equipment, and machinery, and any rights in them:
 - (c) all livestock, products from livestock, and crops:
 - (d) all financial products within the meaning of the Financial Markets Conduct Act 2013:
 - (e) all rights of any kind, including rights under Acts, deeds, agreements, or licences, planning rights, water rights, and clean air licences, and all applications for and objections against applications for those rights:

- (f) all patents, trade marks, designs, copyright, and other intellectual property rights whether enforceable by Act or rule of law:
- (g) goodwill, and any business undertaking:
- (h) all natural gas, petroleum, and other hydrocarbons

institution includes a subsidiary of an institution

liabilities includes—

- (a) liabilities and obligations under any Act or agreement; and
- (b) deposits and other debt securities within the meaning of the Financial Markets Conduct Act 2013; and
- (c) contingent liabilities

rights includes powers, privileges, interests, licences, approvals, consents, benefits, and equities of any kind, whether actual, contingent, or prospective

transfer includes—

- (a) to assign and convey; and
- (b) to vest by Order in Council; and
- (c) to confer estates in fee simple of land held by the Crown; and
- (d) to grant leases, rights, and interests in any real or personal property; and
- (e) in the case of liabilities, the assumption of the liabilities by an institution.

- (4) For the purposes of **subpart-subparts 3 and 4 of Part 6**, unless the context otherwise requires,—

education service means—

- (a) service in the employment of—
 - (i) a State school; or
 - ~~(ii) an integrated school; or~~
 - (iii) an institution; or
 - (iv) any other ~~educational institution~~ place of education for which a separate employer for the purposes of this Act is designated by any enactment or by the Minister:
- (b) service as a registered teacher in the employment of any free kindergarten association that controls a free kindergarten:
- (c) service as a teacher in the employment of the Secretary under **section 581**

employer,—

- (a) ~~in relation to any institution, means—~~
 - (i) ~~the board; or~~

- (ii) ~~if a Commissioner has been appointed to act in place of the board, that Commissioner:~~
- (a) in relation to a State school, means the board:
- (b) in relation to any free kindergarten, means the free kindergarten association by which that free kindergarten is controlled:
- (c) in relation to an institution, means the chief executive of ~~that~~ the institution:
- (d) in relation to any other ~~institution~~ place of education in the education service, means—
- (i) the person or body designated by an enactment as the employer for the purposes of this Act in respect of ~~that institution~~ the place of education; and
- (ii) in the absence of a person or body designated by an enactment, means a person or body designated for that purpose by the Minister:
- (e) in relation to ~~the employment of a person~~ employed as a teacher under **section 581**, means the Secretary.
- (4A) For the purposes of **sections 612C to 612I**, unless the context otherwise requires,—
- education entity** means—
- (a) a registered school:
- (b) a service provider:
- (c) a hostel:
- (d) a private training establishment:
- (e) an institution:
- (f) an educational body
- educational body** —
- (a) means a body corporate that is recognised by the Minister as a body that provides any educational or developmental service or facility; and
- (b) includes a tertiary education organisation
- governing body**, in relation to an education entity, means the body that is primarily responsible for the governance of the education entity
- instruction** includes the provision of education services through online or distance learning, or through any other means.
- (5) Unless the context otherwise requires,—
- (a) every reference in **Schedule 6** to a State school is to be treated as excluding a State integrated school:

- (b) every reference elsewhere in this Act and in any other enactment or document to—
- (i) a State primary school is to be treated as including a State integrated school that is a primary school:
 - (ii) a State secondary school is to be treated as including a State integrated school that is a secondary school:
 - (iii) a State school is to be treated as including a reference to a State integrated school.
- (6) The Governor-General may, by Order in Council, amend **Schedule 2** by—
- (a) adding the name of a State school to it; or
 - (b) omitting the name of a State school from it; or
 - (c) substituting for the name of a State school any different name.

Compare: 1964 No 135 s 2; 1989 No 80 ss 2, 11B, 60, 91A, 92, 139AC, 145, 159, 159B, 164A, 216, 232, 234C, 238D, 239, 246, 302, 309, 320, 323, 342, 348, 378, 414, 476B, Schedule 6 cls 1, 19; 1992 No 55 ss 2, 25

11 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

Compare: 1989 No 80 s 2A

12 Act binds the Crown

This Act binds the Crown.

Compare: 1989 No 80 s 415; 1992 No 55 s 4; 2018 No 32 s 12;

Part 2 Early childhood education

13 Outline of Part 2

- (1) This Part, which concerns the regulation of early childhood education, is divided into 3 subparts.
- (2) **Subpart 1** provides for the licensing and certification of early childhood services.
- (3) **Subpart 2** concerns the administration of licensed early childhood services.
- (4) **Subpart 3** sets out several offence provisions.

Compare: 1989 No 80 s 308

14 Purpose of Part 2

The purpose of this Part is to regulate an early childhood education system where all children are able to participate and receive a strong foundation for learning, positive well-being, and life outcomes by—

- (a) setting standards to support quality provision and learning; and
- (b) supporting the health, safety, and well-being of children; and
- (c) enabling parental choice by providing for licensing and funding of different types of provision.

Subpart 1—Licensing and certification

15 Service providers operating early childhood education and care centres must be licensed

- (1) A service provider who operates an early childhood education and care centre must be licensed in accordance with regulations made under **section 599**.
- (2) A licensed early childhood education and care centre may be operated within the premises of a registered school, and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises.

Compare: 1989 No 80 ss 310(4), 315(1)

16 Certain other service providers may be licensed

A service provider who provides a home-based education and care service or a hospital-based education and care service may, but need not, be licensed in accordance with regulations made under **section 599** in respect of the service.

Compare: 1989 No 80 s 316

17 Ministerial approval required for licensing application

- (1) Despite **sections 15 and 16**, a person must apply to the Minister for approval to apply for a licence to operate—
 - (a) a licensed early childhood education and care centre;
 - (b) a licensed home-based education and care service;
 - (c) a licensed hospital-based education and care service.
- (2) The Minister may grant approval, but, before doing so, must take into account—
 - (a) the relevant attributes of the area to be served, including (without limitation) the demography of the area, the needs of the communities in the area, the needs of the children in the area, and the availability of services in the area with different offerings (for example, the provision of te reo Māori); and
 - (b) the suitability of the applicant and of every person involved in the governance of the proposed service, which, as a minimum, requires the Minister to determine whether each person—
 - (i) is a fit and proper person; and

- (ii) has obtained a satisfactory Police vet for the purposes of the application; and
 - (c) the applicant's financial position; and
 - (d) the licensing history of—
 - (i) any other early childhood services previously or currently owned, operated, or managed by, or otherwise connected with, the applicant; and
 - (ii) every person involved in the governance of the proposed service.
- (3) If the Minister considers this information insufficient to decide whether to grant approval, the Minister may ask the applicant to supply more information.
- (4) The applicant may not apply for a licence without the Minister's approval.
- (5) Approval to apply for a licence is irrelevant to the granting of a licence (as a licence may only be granted in accordance with regulations made under **section 599**).
- (6) An approval expires 2 years after the date on which it is given; however, the Minister may, on application before the expiry, extend the expiry date if the Minister thinks fit to do so in the circumstances.

17A Persons approved to apply for licence must be fit and proper

- (1) In assessing whether a person is a fit and proper person to be granted approval to apply for a licence under **section 17**, the Minister must take into account whether the applicant—
 - (a) has been convicted of any offence involving harm to children, violence, or fraud;
 - (b) has any health conditions that may affect the applicant's ability to comply with this Act and the terms of the licence;
 - (c) is, or has been, subject to a property order or personal order under the Protection of Personal and Property Rights Act 1988;
 - (d) owes, or has owed, money to the Crown, including in respect of bodies that the applicant has been involved in managing;
 - (e) has been ~~adjudged~~ adjudicated bankrupt under the Insolvency Act 2006 or the Insolvency Act 1967;
 - (f) has been prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or
 - (ii) any other body corporate;
 - (g) has, or has had, any role as a governing member of an entity or organisation that became insolvent, including being placed in liquidation, receivership, or voluntary administration;

- (h) is, or has been, subject to any prohibition against acting as an employer or an officer of an employer under the Employment Relations Act 2000:
- (i) has had previous involvement in an early childhood service in respect of which—
 - (i) an application for a licence was refused; or
 - (ii) a licence was suspended or cancelled.
- (2) The Minister may take into account any other criteria that the Minister considers relevant.

18 Requirements for licensed home-based education and care service

- (1) A licensed home-based education and care service may be provided to no more than 4 children per home.
- (2) While children are participating in the service, the total number of children present in a home in which the service is provided (including those receiving the service) may not be more than 6.
- (3) In this section,—

children means children aged 13 years or younger (other than children of the educator who are enrolled at school)

educator means the person who—

- (a) provides education and care and comfort directly to children in the person's care; and
- (b) attends to the health and safety of those children.

Compare: 1989 No 80 s 317A

19 Playgroups may be certified

A service provider who operates a playgroup may, but need not, apply for a certificate issued under regulations made under **section 600** in respect of the playgroup.

Compare: 1989 No 80 s 318

20 Application of Legislation Act 2012 to certain material incorporated by reference

- (1) This section applies if section 49 of the Legislation Act 2012 is relied on to incorporate material by reference in criteria prescribed under **section 599(2)(b) or 600(2)(b)** of this Act.
- (2) If this section applies, subpart 2 of Part 3 of the Legislation Act 2012 (other than section 51) applies.

Compare: 1989 No 80 s 319AA

21 Records

The service provider of a licensed early childhood service must keep, and make available to the Secretary on request,—

- (a) a register of the children who attend or have attended the service, specifying the date of birth of each; and
- (b) a record of the attendance of children at the service; and
- (c) a record of all fees and other charges paid in respect of children's attendance at the service; and
- (d) evidence that parents of children attending the service have regularly examined the attendance record; and
- (e) any other records that are necessary to enable the service's performance to be monitored adequately.

Compare: 1989 No 80 s 313

Subpart 2—Administration

22 Curriculum frameworks

- (1) The Minister may prescribe or change a curriculum framework for—
 - (a) licensed early childhood services;
 - (b) certified playgroups.
- (2) The Minister may prescribe or change a curriculum framework only if the Minister has consulted with organisations that the Minister considers represent those likely to be substantially affected by the framework or change.
- (3) As soon as practicable after prescribing or changing a curriculum framework, the Minister must give notice in the *Gazette*—
 - (a) stating that the framework has been prescribed or changed; and
 - (b) setting out the framework or change, or stating where a copy of the framework or change can be obtained.
- (4) The notice may specify—
 - (a) different commencement dates for different provisions of the curriculum framework or for different purposes; and
 - (b) a transitional period during which service providers may elect to comply with another specified curriculum requirement.
- (5) A service provider must implement any applicable curriculum framework in accordance with any regulations made under **section 599 or 600**.

Compare: 1989 No 80 s 314

23 Prohibition on corporal punishment and seclusion in early childhood services

- (1) A person must not—

- (a) use force, by way of correction or punishment, toward a child enrolled at or attending an early childhood service; or
 - (b) seclude a child enrolled at or attending an early childhood service.
- (2) In this section, **person** means an individual who—
- (a) is employed or engaged by a service provider of an early childhood service; or
 - (b) is supervising or controlling a child on behalf of a service provider of an early childhood service; or
 - (c) owns, manages, or controls an early childhood service.

Compare: 1989 No 80 ss 139A, 139AB

24 Police vetting in respect of early childhood services

A service provider of a licensed early childhood service must obtain police vets of non-teaching and unregistered employees, contractors, and other adults in accordance with **Schedule 4**.

25 Kindergarten attendance fees

- (1) Fees may be charged in respect of the attendance of any child at any kindergarten (whether or not it is known or described as a free kindergarten).
- (2) **Subsection (1)** has effect despite anything to the contrary in—
 - (a) any enactment or rule of law; or
 - (b) anything in the constitution of any body corporate.

Compare: 1989 No 80 s 319I

26 Parent's right to entry

The parent of a child has a right to enter the premises of a licensed early childhood education and care centre or a licensed home-based education and care service when the child is there unless the parent—

- (a) is required to comply with—
 - (i) a court order that prohibits access to, or contact with, the child (either generally or when attending the centre or service); or
 - (ii) a warning under section 4 of the Trespass Act 1980 to stay off the premises; or
- (b) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them; or
- (c) is, in the opinion of a person responsible for the operation of the centre or service,—
 - (i) under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behaviour of the person; or

- (ii) exhibiting behaviour that is, or is likely to be, disruptive to the effective operation of the centre or service.

Compare: 1989 No 80 s 319A

Subpart 3—Offences

27 Service providers must be licensed

- (1) Every service provider who operates an early childhood education and care centre commits an offence if the service provider—
 - (a) operates the centre without holding a current licence to operate the centre; or
 - (b) ceases to operate a centre for which it holds a current licence to operate the centre, in circumstances other than an emergency, without first telling the Secretary that it intends to stop operating the centre; or
 - (c) ceases to operate the centre for which it holds a current licence to operate the centre, in circumstances involving an emergency, and fails to tell the Secretary as soon as practicable after the closure.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an offence against **subsection (1)(a)**, ~~by~~ to a fine not exceeding \$50,000; and
 - (b) in the case of an offence against **subsection (1)(b) or (c)**, ~~by~~ to a fine not exceeding \$200.

Compare: 1989 No 80 s 315(2), (3)

28 Offence relating to obstruction of ~~power~~ right of entry

A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a ~~power~~ right of entry conferred by **section 26**.

Compare: 1989 No 80 s 319H

29 Offence of insulting, abusing, or intimidating teacher or staff

A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, who intentionally insults, abuses, or intimidates a teacher or staff member of an early childhood education and care centre—

- (a) within the presence or hearing of any child at the centre; and
- (b) while on centre premises or in any other place where children are assembled for purposes associated with the centre.

Compare: 1989 No 80 s 319G

Part 3

Primary and secondary education

30 Outline of Part 3

- (1) This Part, which concerns primary and secondary education, is divided into 11 subparts.
- (2) **Subpart 1** concerns priorities, rights, and responsibilities.
- (3) **Subpart 2** concerns restrictions on the right to enrol and attend school.
- (4) **Subpart 3** concerns teaching, learning, and well-being.
- (5) **Subpart 4** concerns searches and the surrender of property.
- (6) **Subpart 5** concerns the administration of State schools.
- (7) **Subpart 6** concerns the establishment and designation of State schools.
- (8) **Subpart 7** concerns private schools.
- (9) **Subpart 8** concerns secondary–tertiary programmes.
- (10) **Subpart 9** concerns resolving serious disputes.
- (11) **Subpart 10** sets out various miscellaneous provisions.
- (12) **Subpart 11** sets out several offence provisions.

Compare: 1989 No 80 s 308

31 Purpose of Part 3

The purpose of this Part is to establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities by—

- (a) ensuring that all children and young people are present in the schooling system to be able to exercise their right to an education, including setting up fair and consistent processes when students are excluded from the system that aim to return them to education as soon as possible; and
- (b) supporting the health, safety, and well-being of students; and
- (c) providing for what is to be taught in schools; and
- (d) establishing governing bodies for State and State integrated schools, and providing for their elections, duties, powers, administration, and accountabilities; and
- (e) establishing and managing a network of State schools that allows every student to access quality schooling and provides choice about the types of education they receive; and
- (f) regulating the teaching profession to ensure the quality of teaching in the schooling system, including (without limitation) setting standards for the registration of teachers; and

- (g) providing for the efficient and effective administration of the schooling system; and
- (h) honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships that make a difference to learning; and
- (i) reflecting and integrating te reo Māori, tikanga Māori, mātauranga Māori, and te ao Māori in the schooling system.

Subpart 1—Priorities, rights, and responsibilities

32 Right to free enrolment and free education at State schools (including entitlement to attend full-time)

- (1) Except as provided in this Part, every domestic student is entitled to free enrolment and free education at any State school during the period beginning on the student's fifth birthday and ending on **1 January** after the student's 19th birthday.
- (2) This right includes the entitlement to attend the school at which the student is enrolled during all the hours that the school is open for instruction.

Compare: 1989 No 80 s 3

33 Students with special educational needs have same rights to education at State schools as others

- (1) Except as provided in this Part, students who have special educational needs (whether because of disability or otherwise) have the same rights to enrol, attend, and receive education at State schools as students who do not.
- (2) This section does not limit or affect **subpart 2** (which concerns restrictions on the right to enrol and attend school).

Compare: 1989 No 80 s 8

34 Domestic students aged between 6 and 16 years must be enrolled at registered school

- (1) Every domestic student must, during the period beginning on the student's sixth birthday and ending on the student's 16th birthday, be enrolled at a registered school.
- (2) Before a domestic student's seventh birthday, the student is not required to be enrolled at any school more than 3 kilometres walking distance from the student's residence.
- (3) **Subsections (1) and (2)** do not apply to international students.

Compare: 1989 No 80 s 20

35 Students of registered schools required to attend whenever schools are open

- (1) Except as provided in this Act, a student is required to attend a registered school whenever it is open if the student—

- (a) is required to be enrolled at a registered school:
- (b) is aged 5 years and is enrolled at a registered school.
- (2) A board must take all reasonable steps to ensure that the school's students attend the school when it is open.
- (3) For the purposes of this section, a student attends a school on any day if, on the day,—
 - (a) it has been open for instruction for 4 hours or more; and
 - (b) the student has been present for 4 hours or more when it was open for instruction.

Compare: 1989 No 80 s 25

36 Special education

- (1) If satisfied that a student under the age of 21 years should have special education, the Secretary must—
 - (a) agree with the student's parent that the student should be enrolled, or direct the parent to enrol the student, at a particular State school or specialist school; or
 - (b) agree with the student's parent that the student should have, or direct the parent to ensure that the student has, education or help from a special service.
- (2) If an agreement is reached or a direction is given under **subsection (1)**, the student concerned must be allowed to enrol at the State school or specialist school concerned or to have education or help from the special service concerned.
- (2A) **Subsection (1)** applies despite anything in this Act that relates to enrolment schemes, or anything in the enrolment scheme of any school, but is subject to **subpart 2**.
- (3) Subject to **section 45(4)**, if a direction has been given under **subsection (1)**, a parent who, more than 1 month after it was given, fails or refuses to comply with it commits an offence and is liable on conviction to the penalty ~~prescribed set out in section 224(1)~~ (which relates to a failure to enrol).
- (4) A student may not be or continue to be enrolled at a specialist school, or have or continue to have education or help from a special service, except under an agreement or direction given under **subsection (1)**.
- (5) Despite **sections 60 and 65**,—
 - (a) a student under the age of 5 years may be or continue to be enrolled at a primary school or below year 9 at a composite school; and
 - (b) a student under the age of 21 years who turned 14 years in any year may, in any later year, be or continue to be enrolled at a primary school or below year 9 at a composite school; and

- (c) a student under the age of 21 years may be or continue to be enrolled at a secondary school or above year 8 at a composite school if, in the Secretary's opinion, the student has made insufficient progress in terms of any curriculum statement for year 8 published under **section 86**; and
- (d) a student under the age of 21 years may be or continue to be enrolled at a secondary school or above year 8 at a composite school, on or after **1 January** after the student's 19th birthday, under an agreement or direction under **subsection (1)**.

Compare: 1989 No 80 s 9

37 Long-term exemptions from enrolment

- (1) An employee of the Ministry designated by the Secretary for the purpose (a **designated officer**) may, on application by a parent of the student, grant the parent a certificate that exempts the student from the requirements of **section 34** if the designated officer is satisfied that the student—
 - (a) is to be taught at least as regularly and well as in a registered school; or
 - (b) is to be taught at least as regularly and well as in a specialist school or a special service (if the student would otherwise be likely to need special education).
- (1A) If a designated officer refuses to grant a certificate under **subsection (1)**, the applicant may appeal to the Secretary, who, after considering a report on the matter from the Chief Review Officer, must confirm the refusal or grant a certificate.
- (1B) The Secretary's decision is final.
- (2) An exemption certificate granted under this section must state why it was granted.
- (4) The Secretary may revoke an exemption certificate, but only if the Secretary—
 - (a) has made reasonable efforts to get all of the relevant information; and
 - (b) has considered a report on the matter from the Chief Review Officer; and
 - (c) is not satisfied under **subsection (1)**.
- (5) If the Secretary thinks any student to whom an exemption certificate applies would be better off if receiving special education, the Secretary may revoke the certificate and issue a direction under **section 36**.
- (6) An exemption certificate expires when the person to whom it applies turns 16 years of age or enrolls at a registered school, whichever ~~happens~~ occurs first.
- (7) A certificate continues in force until it is revoked or expires.

Compare: 1989 No 80 s 21

38 Exemption from enrolment of student who has turned 15

- (1) The Secretary may, on application by a parent of a student who has turned 15 years of age, grant the parent a certificate that exempts the student from the requirements of **section 34** if the Secretary is satisfied that it is sensible to do so, on the basis of—
- (a) the student's educational problems; and
 - (b) the student's conduct; and
 - (c) the benefit (if any) the student is likely to get from attending another available school.
- (2) However, the Secretary may not exempt any student who—
- (a) has made insufficient progress in terms of any curriculum statement for year 8 published under **section 86**; or
 - (b) has not enrolled for a year level above year 8.
- (3) The Secretary must tell the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989 Oranga Tamariki the name and address and any other available contact details of every student exempted under **subsection (1)**.
- (4) If satisfied that it is in the best interests of any student to do so, the Secretary may revoke the student's certificate granted under **subsection (1)**.

Compare: 1989 No 80 s 22

39 Effect of exemption under section 37 or 38

While an exemption certificate granted under **section 37 or 38** is in force,—

- (a) the exempted student does not have to be enrolled at any school; and
- (b) no person has to have the exempted student enrolled at any school.

Compare: 1989 No 80 s 23

40 Exemption of person placed in residence or programme under Oranga Tamariki Act 1989

- (1) The Secretary may, on an application from the chief executive of Oranga Tamariki, grant a certificate to the chief executive of Oranga Tamariki that exempts a student from the requirements of **section 34** if satisfied that the requirements set out in **subsection (2)** have been met.
- (2) The requirements are that the student—
- (a) has been placed—
 - (i) in a residence established under section 364 of the Oranga Tamariki Act 1989; or
 - (ii) in a residential programme instituted by, and operated under contract with, the chief executive of Oranga Tamariki and the student

would otherwise be in a residence established under section 364 of that Act; and

- (b) is to receive education services that are appropriate to the student's needs.
- (3) The Secretary may revoke a certificate granted under **subsection (1)**—
 - (a) on notification by the chief executive that the student exempted has been released from a residence other than for a temporary period; or
 - (b) if the Secretary is no longer satisfied that the student exempted meets the requirements of **subsection (2)**; or
 - (c) at the request of the chief executive of Oranga Tamariki and if satisfied that an exemption from the requirements of **section 34** is no longer required.
- (4) A certificate granted under **subsection (1)** continues in force until it is revoked or it expires.
- (5) ~~In this section, **chief executive** means the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989.~~

Compare: 1989 No 80 s 22A

41 Exceptions to attendance because of well-being or transitional plan

- (1) Despite **section 35**, on the request of a parent of a student enrolled at a registered school, the parent, the principal, and the Secretary may, if they consider it is in the student's best interests, agree a plan that reduces the student's hours of attendance to help meet the student's well-being needs as identified, in writing, by a medical practitioner or a psychologist.
- (1A) A full-time caregiver of the student may act as a parent under **subsection (1)** if the Secretary considers it appropriate for the caregiver to do so.
- (2) Despite **section 35**, if a student is aged 5 years and is enrolled at a registered school, a parent of the student, the principal, and the Secretary may, if they consider it is in the student's best interests, agree a plan to help the transition of the student to school, depending on the particular needs of the student.
- (3) A student subject to a plan agreed under **subsection (1) or (2)** is required to attend school in accordance with the plan.
- (4) A plan agreed under **subsection (1)** may not be for a period that exceeds 6 months, but may be renewed or extended for 1 further period of 6 months if—
 - (a) the parent initiates the request for the renewal or extension; and
 - (b) the parent, the principal, and the Secretary agree that the renewal or extension is in the best interests of the student.
- (5) The medical practitioner or psychologist requirement specified under **subsection (1)** does not apply to a renewal or extension under **subsection (4)**.

- (6) A plan agreed under **subsection (2)** may not be for a period that exceeds 6 months and may not be renewed or extended.

Compare: 1989 No 80 s 25(1)–(3A)

41A Exceptions to attendance because of secondary–tertiary programmes and multiple timetable arrangements

- (1) **Section 35** does not apply to a participating student who is enrolled at a registered school for the purposes of the secondary component of the student’s secondary–tertiary programme, but a participating student must attend the school for any portion of the programme as notified by the provider group or lead provider under **clause 9 of Schedule 8**.
- (2) **Section 35** does not apply to an affected student, but the student must attend school for the whole of the time period (or periods) each day during which their timetable is running.
- (3) A board that is running a multiple timetable arrangement must take all reasonable steps to ensure that an affected student attends the school for the whole of the time period (or periods) each day during which the student’s timetable is running.

Compare: 1989 No 80 s 25(4)–(7)

42 Exemption from attendance because of walking distance to school or some other reason

- (1) Despite **section 35**, the Secretary may, on application by a parent of a student, grant a certificate to the parent of the student that exempts the student (entirely or partly) from attending a school if the Secretary is satisfied that—
- (a) the student is under the age of 10 years and the walking distance between the student’s residence and the school is more than 3 kilometres; or
 - (b) the walking distance between the student’s residence and the school is more than 5 kilometres; or
 - (c) it is sensible to exempt the student for some other reason.
- (2) The parent of a student exempted under **subsection (1)** is not subject to the requirements of **section 34** in respect of the student for the period to which the exemption relates.
- (3) A certificate granted under **subsection (1)** must state—
- (a) the grounds on which it was granted; and
 - (b) the day on which it expires.
- (4) A certificate granted under **subsection (1)(a) or (b)** may not specify an expiry day more than 1 year after the day it is granted.
- (5) A certificate granted under **subsection (1)(c)** may not specify an expiry day more than 7 school days after the day on which it is granted.

- (6) When a certificate granted under **subsection (1)** expires, the Secretary may issue another in its place.
- (7) The Secretary may cancel a certificate issued under **subsection (1)**.
Compare: 1989 No 80 s 26

43 Exemption of student from attendance for period of no more than 5 days

- (1) Despite **section 35**, if satisfied that a student's absence is justified, the principal of the school may exempt the student from attending the school for a period of no more than 5 school days.
- (2) In the absence of evidence to the contrary, a certificate from the principal stating that a student was absent from school for any period and that the principal is not satisfied that the absence was justified is sufficient proof that the student was absent for that period without being exempted under **subsection (1)**.
- (3) For the purposes of this section, judicial notice must be taken of the appointment and signature of the principal.
Compare: 1989 No 80 s 27

44 Secretary may require enrolment of certain children at distance school

- (1) The Secretary may, by notice in writing, require the parent of a student who holds an exemption certificate issued under **section 42** or who has been directed under **section 78(1)** to enrol the student at a distance school to—
 - (a) enrol the student at a distance school specified in the notice; and
 - (b) ensure that the student does the work of the course in which the student is enrolled.
- (2) Enrolment must,—
 - (a) for a student exempted under **section 42(1)(b)**, be for the period of exemption; and
 - (b) in any other case, be until the student turns 16 years of age or any shorter period specified in the notice.

Compare: 1989 No 80 s 28

45 Reconsideration of special education enrolment or services

- (1) A parent of a student may, by a request made in accordance with this section, require reconsideration of—
 - (a) a direction under **section 36(1)** relating to the student; or
 - (b) if the student is a domestic student, the Secretary's refusal to come to an agreement under that subsection relating to the student.
- (2) A request must be made to the Secretary in writing within 1 month after the direction or refusal concerned.
- (3) If a request is made in relation to a direction given by the Secretary,—

- (a) the direction does not take effect—
 - (i) until the Secretary has reconsidered and confirmed it; or
 - (ii) where a request is made under **subsection (4)(c)**, until that request has been considered by an arbitrator and the parent concerned has been told of the arbitrator’s decision; and
 - (b) an offence is not committed under **section 36(3)** if the direction has not taken effect.
- (4) If a request is made, the following provisions apply:
- (a) if the request relates to a direction, the Secretary must reconsider it and then—
 - (i) confirm it, or cancel it and issue another, or cancel it and refuse to issue another, as seems appropriate; and
 - (ii) notify the parent concerned in writing of the result of the reconsideration and the reasons for it:
 - (b) if the request relates to a refusal, the Secretary must reconsider whether or not the matter concerned should be agreed, and then—
 - (i) agree or refuse to agree to the matter with the parent concerned, as appropriate; and
 - (ii) notify the parent concerned in writing of the result of the request and the reasons for it:
 - (c) a parent who is dissatisfied with the result of the reconsideration may, by a request in writing to the Secretary, require the result to be sent to an arbitrator.
- (5) A direction takes effect immediately, and **section 36(2)** applies accordingly, if—
- (a) a request has been made under **subsection (4)(c)** in respect of the result of the reconsideration by the Secretary of a direction under **section 36(1)**; and
 - (b) 1 month after the Secretary notified the parent concerned of the name of a person who is to represent the Secretary in the appointment of an arbitrator, the Secretary’s representative and a nominee of the parent have not appointed an arbitrator.
- (6) If a parent makes a request under **subsection (4)(c)**, the following provisions apply:
- (a) the Secretary must as soon as practicable give the parent the names of 3 people (other than an employee of the Ministry or an employee or a member of a board) who, in the Secretary’s opinion, have experience in or expert knowledge of special education:
 - (b) within 14 days of being given the names, the parent must tell the Secretary—

- (i) which one of the people is acceptable; or
 - (ii) that none of them is acceptable, and the name of some other person who is:
- (c) if, within 14 days of being given the names, the parent tells the Secretary that one of the people is acceptable, the person concerned is to be the arbitrator:
- (d) if, within 14 days of being given the names, the parent tells the Secretary that none of the people is acceptable, and the name of some other person who is, the Secretary must as soon as practicable accept or reject the other person:
- (e) if the Secretary accepts the other person, the other person is to be the arbitrator:
- (f) if the Secretary rejects the other person, the Secretary must as soon as practicable tell the other person the name of a person to act as the Secretary's agent in choosing an arbitrator, and the other person and the Secretary's agent must, as soon as practicable, choose the arbitrator:
- (g) if within 14 days of being given the names, the parent does not comply with **paragraph (b)**, the Secretary must choose one of the 3 people to be the arbitrator:
- (h) once it is known who the arbitrator is, the Secretary must give the arbitrator a copy of all the relevant documents:
- (i) the arbitrator must give the parent notice in writing that—
- (i) the arbitrator has been appointed; and
 - (ii) the parent may make written submissions:
- (j) on receiving written submissions from the parent or 21 days after notifying the parent (whichever comes first), the arbitrator must tell the parent and the Secretary when and where the arbitrator is to hear the matter:
- (k) the parent (or a nominee), a representative of the parent, the Secretary (or a nominee), and a representative of the Secretary may take part in the hearing and may require the student concerned to be present:
- (l) except as provided in this subsection, the arbitrator is to decide how the hearing is to proceed:
- (m) if, at the hearing, the parent of the student concerned produces evidence about the student that was not available to the Secretary when the Secretary reconsidered the relevant direction or refusal to come to an agreement under **section 36(1)**,—
- (i) the arbitrator may not consider that evidence and must refer the case back to the Secretary:
 - (ii) the Secretary must reconsider the decision that was the subject of the arbitration, and **subsection (4)** applies to the Secretary's

decision under this subparagraph with any necessary modifications:

- (n) subject to **paragraph (m)**, after the hearing, the arbitrator must confirm the Secretary's decision or direct the Secretary to make a different decision:
- (o) the Secretary must comply with the arbitrator's direction:
- (p) despite **subsection (1)**, a parent does not have the right to request the reconsideration or reference to an arbitrator of a decision that the Secretary has made in accordance with an arbitrator's direction:
- (q) despite **subsection (1)**, if the arbitrator confirms a decision of the Secretary to refuse to come to an agreement under **section 36(1)**, no parent has a right to require the reconsideration or reference to an arbitrator of a further refusal made in respect of the same student within 12 months after the confirmation of the decision.

Compare: 1989 No 80 s 10

46 Board of State school may appoint attendance officer

- (1) A board of a State school must, by any means it thinks fit, take all reasonable steps to ensure the attendance of students enrolled at its school.
- (2) For the purposes of complying with **subsection (1)**, the board may appoint an attendance officer for the schools it administers.
- (3) A person may be appointed as an attendance officer by more than 1 board.

Compare: 1989 No 80 s 31(1)–(3)

47 Powers of attendance officers and constables

- (1) An attendance officer or a constable may detain any person who appears to have turned 5 years and not to have turned 16 years, and who appears to be absent from school, and question the person as to—
 - (a) the person's name and address; and
 - (b) the school (if any) at which the person is enrolled and its address; and
 - (c) the reason for the person's absence from school.
- (2) Before exercising the power under **subsection (1)**, an attendance officer must produce a distinctive badge or other evidence of appointment.
- (3) The attendance officer or constable may, if not satisfied that the person has a good reason for not being at school, take the person to the person's home, or to the school at which the attendance officer or constable thinks the person is enrolled.
- (4) An attendance officer, a principal, the Secretary, or any person appointed by a board or the Secretary for the purpose may file charging documents, conduct prosecutions, and take any other proceedings, under this Part.

- (5) A certificate sealed by a board showing that a person named in it is appointed for any purpose under this section is sufficient evidence of the matters specified in the certificate, and the authenticity of, and validity of the affixing of, a board's seal may not in any proceedings under this Part be inquired into or disputed.
- (6) This section applies—
- (a) to a participating student only in relation to any portion of the student's secondary–tertiary programme during which the student is required to attend school, as notified by the provider group or lead provider under **clause 9 of Schedule 8**;
 - (b) to an affected student only in relation to the time period (or periods) each day during which the student's timetable is running.

Compare: 1989 No 80 s 31(4)–(9)

Release from tuition

48 Release from tuition on religious or cultural grounds

- (1) This section applies to students enrolled at a State school that is not a State integrated school.
- (2) A student over the age of 16 years, or a parent of a student under the age of 16 years, may ask the principal to release the student from tuition in a particular class or subject.
- (3) A request under **subsection (2)** must be made in writing and at least 24 hours before the start of the tuition.
- (4) The principal may not release the student unless satisfied that—
- (a) the parent or student has asked because of sincerely held religious or cultural views; and
 - (b) the student is to be adequately supervised (whether within or outside the school) during the period of release from tuition.
- (5) On receiving a request from a parent under **subsection (2)**, the principal must, before agreeing to release the student, take all reasonable steps to find out the student's views on the matter.
- (6) Subject to **subsection (4)**, the principal must release the student from the tuition and (if the student is to be supervised outside the school) let the student leave the school during the tuition unless satisfied that it is inappropriate to do so, having regard to—
- (a) the student's age, maturity, and ability to formulate and express views; and
 - (b) any views the student has expressed.
- (7) Nothing in this section limits or affects **section 57**.

Compare: 1989 No 80 s 25A

49 Release from tuition for specified parts of health curriculum

- (1) A parent of a student enrolled at any State school may ask the principal in writing to ensure that the student is released from tuition in specified parts of the health curriculum related to sexuality education.
- (2) On receiving a request under **subsection (1)**, the principal must ensure that—
 - (a) the student is released from the relevant tuition; and
 - (b) the student is supervised during the period of release from that tuition.
- (3) **Subsection (1)** does not require a principal to ensure that a student who is to be excluded from tuition in specified parts of the health curriculum related to sexuality education is excluded at any other time while a teacher deals with a question raised by another student that relates to the specified part of the curriculum.

Compare: 1989 No 80 s 25AA

50 Release from tuition for outside tuition or if good reasons to leave early

The principal of a State school may,—

- (a) if satisfied that the student is to receive outside the school tuition acceptable to the principal, release a student from attendance at the school, for a period or periods agreed with a parent of the student, to receive the tuition (and, as appropriate, travel between the school and the place where the tuition is to be given):
- (b) let a student leave early on a particular day if satisfied that—
 - (i) the student has, on the day on which the school was open for instruction, been present at the school for 4 hours or more; and
 - (ii) there are good reasons for the student to leave before the school closes on the day.

Compare: 1989 No 80 s 25B

51 Courses, work experience, and visits outside school premises

- (1) A board may authorise any students to undertake courses of education, gain work experience, or make visits outside the school premises.
- (2) If authorisation is given, the student must be treated as attending the school while undertaking the course, gaining the experience, or making the visit.
- (3) A principal, a teacher, or an occupier of a workplace may not allow a student to go into, or remain in, a workplace to gain work experience except in accordance with any conditions prescribed by the Minister by notice in the *Gazette*.
- (4) A student who is in any workplace to gain work experience is to be treated as being employed by the workplace, and every enactment and collective agreement (to the extent that it relates to the health, safety, and welfare of workers) applies to the student and the occupier of the workplace accordingly.
- (5) However, **subsection (4)** does not—

- (a) entitle a student to be paid; or
- (b) require a student to join or belong to a union; or
- (c) entitle a student to enter or remain in a workplace; or
- (d) require any person to pay a levy, fee, or charge of any kind.

Compare: 1989 No 80 s 71

52 Restrictions on employing school-age children

- (1) An employer may not employ any person under the age of 16 years—
 - (a) within school hours; or
 - (b) if the person is a student participating in a secondary–tertiary programme and the employment would interfere with the person’s ability to undertake the secondary–tertiary programme; or
 - (c) if the person is enrolled at a distance school and the employment would interfere with the person’s ability to do the work of the course in which the student is enrolled; or
 - (d) if the person’s parent is granted an exemption certificate under **section 37** and the employment would interfere with the person’s ability to be taught as well and as regularly as in a registered school; or
 - (e) if the employment would—
 - (i) prevent or interfere with the person’s attendance at school; or
 - (ii) in the case of a person who is a participating student, interfere with the person’s ability to undertake their secondary–tertiary programme; or
 - (iii) if the person is enrolled at a distance school, interfere with the person’s ability to do the work of the course in which the person is enrolled.
- (2) **Subsection (1)** does not apply if the person provides the employer with a certificate of exemption or other satisfactory evidence that verifies that the person is exempted (otherwise than under **section 37(1)**) from enrolment at any school.

Compare: 1989 No 80 s 30(1), (2)

Religious instruction and observances at State primary and intermediate schools

53 Application

Sections 54 to 58 apply to religious instruction and observances in State primary and intermediate schools only.

Compare: 1964 No 135 s 81

54 Religious instruction and observances in State primary and intermediate schools

- (1) This section applies if a State school's board, after consultation with the principal, determines that school buildings may be used for the purposes of religious instruction or observances conducted in a manner approved by the board.
- (2) Despite **section 93** and any other provisions in this Act or regulations made under this Act relating to the closure of schools, any 1 or more classrooms at the school, or the school as a whole, may be closed during the school day for any period or periods not exceeding 60 minutes in aggregate in any week or 20 hours in a school year for the purposes of religious instruction or observances conducted by voluntary instructors approved by the school's board.

Compare: 1964 No 135 s 78

55 Additional religious instruction

- (1) This section applies if the Minister is satisfied that—
 - (a) the majority of the parents of students attending a State school wish their children to receive religious instruction additional to that provided under **section 54**; and
 - (b) the additional religious instruction is not to the detriment of the normal curriculum of the school.
- (2) Despite **sections 54 and 93**, the Minister may, after consulting the school's board, authorise the additional religious instruction to the extent and subject to any conditions that the Minister thinks fit.

Compare: 1964 No 135 s 78A

56 Student attendance at religious instruction must be confirmed

- (1) A student enrolled at a State school may only attend or take part in any religious instruction at the school if a parent of the student has confirmed in writing to the principal that they wish for the student to take part or attend.
- (2) A parent who has given an indication of wishes under **subsection (1)** may withdraw it.

Compare: 1964 No 135 s 79(2)

57 Student attendance at religious observances not compulsory

- (1) A student enrolled at a State school may not be required to attend or take part in any religious observances if a parent of the student does not wish the student to take part and makes this wish known in writing to the principal.
- (2) A parent who has given an indication of wishes under **subsection (1)** may withdraw it.

Compare: 1964 No 135 s 79

58 Teacher may be released from duties to take part in religious instruction or observances

- (1) A teacher at a State school must, if the school's board approves the teacher's request, be released from school duties for up to 30 minutes a week to allow them to take part in the school's religious instruction and observances.
- (2) However, a person must not directly or indirectly bring any pressure to bear on a teacher to induce the teacher to take part, and the position of any teacher and their opportunities for appointments or promotion must not be adversely affected because the person does not take part in the school's religious instruction and observances.

Compare: 1964 No 135 s 80

Miscellaneous provisions

59 Exemptions from taxation

- (1) Every board must be treated as the agent of the Crown in respect of its property and the performance of its functions and is entitled to all the privileges that the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.
- (2) Nothing in **subsection (1)** exempts the board from—
 - (a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or
 - (b) any obligation imposed by that Act.

Compare: 1964 No 135 s 187

Subpart 2—Restrictions on right to enrol at and attend school

Restrictions on enrolment at primary school

60 Restrictions on primary school enrolment

The following persons may not be enrolled at or continue to be enrolled at a primary school or below year 9 at a composite school:

- (a) a child under the age of 5 years:
- (b) a child who turned 14 years in a previous year:
- (c) a child who, in the Secretary's opinion ~~of the Secretary~~, has made sufficient progress, in terms of any curriculum statement for year 8 published under **section 86**.

Compare: 1989 No 80 s 5

61 Cohort entry policy

- (1) A State school ~~or State integrated school~~ may adopt or revoke a cohort entry policy after complying with the requirements of **section 63**.

- (2) A cohort entry policy must—
- (a) apply to all children aged 5 years who have not previously enrolled at a registered school; and
 - (b) provide that they may be enrolled only on a date determined in accordance with **section 62**.

Compare: 1989 No 80 s 5A

62 Dates for starting school under cohort entry policy

- (1) This section applies to a State school that has a cohort entry policy.
- (2) A child may be enrolled no earlier than the child's fifth birthday on a date that is—
 - (a) a term start date:
 - (b) a mid-term start date.
- (3) In this section,—

mid-term start date means a date that is published as a mid-term start date under **section 64**

term start date, in relation to a school, means a date that is the first day of a term on which the school is open for instruction.

Compare: 1989 No 80 s 5B

63 Adoption or revocation of cohort entry policy

- (1) When adopting a proposed cohort entry policy for a State school, a board must take all reasonable steps to discover and consider the views of the following persons about the policy and whether it is generally acceptable:
 - (a) parents of students at the school:
 - (b) employees of the board at the school:
 - (c) early childhood services in the local community:
 - (d) parents of prospective students of the school.
- (2) When considering whether to revoke a cohort entry policy, a board must take all reasonable steps to discover and consider the views of the persons described in **subsection (1)** as to whether the policy should be revoked.
- (3) A board must take all reasonable steps to give notice of at least 1 term to the Secretary and the persons described in **subsection (1)** before a cohort entry policy takes effect or ceases to have effect.

Compare: 1989 No 80 s 5C

64 Publication of mid-term start dates

- (1) The Minister must, before **1 July** in any year, publish in the *Gazette* the mid-term start dates for the following year.

- (2) A mid-term start date must be the Monday that is closest to the date that is half-way between the first and last dates of a term.

Compare: 1989 No 80 s 5D

Restrictions on enrolment at secondary school

65 Restrictions on secondary school enrolment

- (1) A person who, in the Secretary's opinion ~~of the Secretary~~, has made insufficient progress in terms of any curriculum statement for year 8 published under **section 86** may not be enrolled at or continue to be enrolled at a secondary school or above year 8 at a composite school.
- (2) **Subsection (1)** does not apply to a person who turned 13 years before **1 April** in the previous year.

Compare: 1989 No 80 s 6

66 Restrictions on enrolment at distance school

- (1) The Minister may, by notice in the *Gazette*, fix criteria for enrolment in early childhood, primary, and secondary education at a distance school.
- (2) A notice under **subsection (1)** may fix different criteria for—
- different distance schools:
 - distance schools of different classes or descriptions:
 - early childhood, primary, and secondary classes at distance schools.
- (3) A person may not be enrolled at a distance school unless—
- the school's board is satisfied that the person's enrolment meets the criteria fixed under **subsection (1)** (if any); or
 - the person is entitled under **section 32** to free education at a State school and the Secretary has directed the distance school's board to enrol the person.
- (4) The Secretary may not give a direction under **subsection (3)(b)** unless satisfied that the only State school that the person can conveniently attend is a distance school.
- (5) If the Secretary is satisfied that a person who is enrolled at a distance school in accordance with a direction under **subsection (3)(b)** can conveniently attend a State school that is not a distance school, the Secretary may notify the board of the distance school of that fact.
- (6) If the board of a distance school receives a notice under **subsection (5)**, it must cancel the person's enrolment unless the board is satisfied that the person's enrolment meets the criteria fixed under **subsection (1)** (if any).
- (7) The board of a distance school must cancel the enrolment if it is satisfied that—

- (a) a person's enrolment at a distance school does not meet the criteria fixed under **subsection (1)** (if any); and
 - (b) a direction under **subsection (3)(b)** has not been made in respect of the person relating to the school.
- (8) The board of a distance school may delegate the task of being satisfied that enrolments meet or do not meet the criteria fixed under **subsection (1)** (if any) to the principal.
- (9) For the purposes of **subsection (4)**, the distance school must offer education at the level, and in the subjects, required by the person or a parent of the person.

Compare: 1989 No 80 s 7

67 Some domestic students may have to pay fees for tuition from distance schools

- (1) The following students may not be enrolled or continue to be enrolled in a course, class, or programme at a distance school unless the appropriate fee (if any) prescribed by the board with the Minister's consent has been paid:
- (a) a domestic student who has turned 16 years and is not enrolled full-time at a registered school:
 - (b) a domestic student enrolled at a private school:
 - (c) a domestic student who is granted an exemption certificate under **section 37(1)**.
- (2) **Subsection (1)** does not give any person the right to enrol at or receive tuition from a distance school.

Compare: 1989 No 80 s 7A

68 Evening classes

- (1) The board of a State school may—
- (a) provide evening classes:
 - (b) prescribe and charge appropriate fees (if any) for the evening classes ~~that~~ it provides:
 - (c) refuse to allow a person to take part in evening classes it provides if the person fails to pay the relevant fees.
- (2) In this section, **evening classes** means classes at a school usually held outside normal school hours (for example, after school or during weekends) and open to people not enrolled full-time at the school.

Compare: 1989 No 80 s 7B

Enrolment schemes

69 Purpose and principles

- (1) The purpose of the enrolment scheme of a State school is—
 - (a) to avoid overcrowding, or the likelihood of overcrowding, at the school; and
 - (b) to ensure that the selection of applicants for enrolment at the school is carried out in a fair and transparent manner; and
 - (c) to enable the Secretary to make the best use of existing networks of State schools.
- (2) In achieving its purpose, the enrolment scheme of every State school must, as far as possible, ensure that—
 - (a) the scheme does not exclude local students; and
 - (b) no more students are excluded from the school than is necessary to avoid overcrowding at the school.

Compare: 1989 No 80 s 11A

69A When enrolment schemes required

- (1) If overcrowding occurs or is likely to occur at a State school, the Secretary must establish an enrolment scheme for the school.
- (2) An enrolment scheme must comply with **Schedule 19** and any regulations made under this Act regarding enrolment schemes.

70 Content of enrolment schemes

A State school's enrolment scheme must—

- (a) define a home zone for the school; and
- (b) identify any special programmes offered by the school and the criteria by which students are to be accepted into any special programme.

Compare: 1989 No 80 s 11C

71 How enrolment schemes work

- (1) A person who lives in the home zone of a State school that has an enrolment scheme is entitled to enrol at that school.
- (2) An applicant for enrolment at a school with an enrolment scheme who lives outside the school's home zone is entitled to enrol at the school only—
 - (a) if the applicant is offered a place at the school in accordance with the procedure set out in the enrolment scheme; or
 - (b) if the Secretary has agreed or directed under **section 36**, or directed under **section 72, 78, or 83 or clause 14 of Schedule 19**, or directed in accordance with regulations made under this Act, that the student be enrolled at the school; or

- (c) if all of the following apply:
- (i) the student has been excluded or expelled from another school (**school A**); and
 - (ii) the principal of the school at which the student wishes to enrol agrees, by arrangement with the principal of school A, to enrol the student; and
 - (iii) the Secretary endorses the proposal.
- (3) ~~An enrolment scheme that the Secretary establishes must comply with **Schedule 19** and any regulations made under this Act regarding enrolment schemes.~~
Compare: 1989 No 80 s 11D

71A Additional entitlement to enrol in certain circumstances

- (1) Despite **section 71**, the Secretary may authorise an enrolment scheme to permit a student to enrol at the school as if the student lived in the home zone of the school if,—
- (a) in the case of an existing enrolment scheme whose home zone is amended,—
 - (i) the student lives outside the amended home zone; and
 - (ii) the student has a sibling who is enrolled at the school at the time that the amendment is implemented; and
 - (iii) the sibling, at the time that the amendment is implemented, lives inside the home zone as it was before the amendment; and
 - (iv) the student, at the time of enrolment, lives inside the home zone as it was before the amendment;
 - (b) in the case of a new enrolment scheme, the student—
 - (i) lives outside of the home zone of the new enrolment scheme; and
 - (ii) has a sibling who is enrolled at the school at the time that the new enrolment scheme is implemented.
- (2) Before granting an authorisation under **subsection (1)**, the Secretary must be satisfied that doing so—
- (a) is in the best interests of the school and local community; and
 - (b) can be managed within the existing school network.
- (3) For the purposes of this section, child A is the **sibling** of child B if—
- (a) both children have the same parent; or
 - (b) a parent of child A is married to, or in a civil union with, a parent of child B; or
 - (c) a parent of child A was married to, or in a civil union with, a parent of child B at the time when child B's parent died; or
 - (d) a parent of child A is the de facto partner of a parent of child B; or

- (e) both children live in the same household and, in recognition of family obligations, are treated by the adults of that household as if they were siblings; or
- (f) the Secretary, by written notice to the school, advises that child A is to be treated as the sibling of child B.

Compare: 1989 No 80 s 11F(3)

Other restrictions on enrolment and attendance

72 Secretary may direct that students attend particular schools

- (1) The Secretary may, on the recommendation of the chief executive of Oranga Tamariki, direct the board of a State school to enrol a person at the school.
- (2) However, the Secretary may not give a direction under **subsection (1)** unless the Secretary has first taken all reasonable steps to consult—
 - (a) a parent of the person; and
 - (b) the board concerned; and
 - (c) the chief executive of Oranga Tamariki and any other person or organisation that, in the Secretary’s opinion, may be interested in, or able to advise on or help with, the person’s education or welfare.
- (3) The board must comply with a direction given under **subsection (1)**.
- (4) A direction given under **subsection (1)** overrides any enrolment scheme the school may have in place.
- (5) ~~In this section, **chief executive** means the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989.~~

Compare: 1989 No 80 s 18A

73 Principals may preclude students for health reasons

- (1) A principal of a State school may preclude a student from the school if they have reasonable grounds to believe that the student may have a communicable disease (within the meaning of the Health Act 1956).
- (2) As soon as practicable after precluding a student under **subsection (1)**, the principal must make all reasonable efforts to tell the following persons that the student has been precluded and why:
 - (a) the school’s board; and
 - (b) the student (if the student has turned 20 years) or a parent of the student (in any other case); and
 - (c) the Medical Officer of Health.
- (3) If a student has been precluded on suspicion of having a communicable disease, the board must, as soon as practicable, investigate the matter and—

- (a) cancel the preclusion; or
 - (b) confirm that the student should stay precluded until the board has received a certificate from a medical practitioner stating that the student is well enough to go back to school.
- (4) A principal or a board is not liable for any act done or omitted—
- (a) in good faith; and
 - (b) with reasonable care; and
 - (c) in exercising or performing, or in intending to exercise or perform, a power or duty under this section.
- (5) If a parent is charged with an offence against **section 225**—
- (a) it is a defence to the charge if it is proved that—
 - (i) the student did not attend because the student was precluded for having a communicable disease; and
 - (ii) the time for which the student did not attend was no longer than was necessary for the board to cancel the preclusion or the student to get well enough to go back to school; and
 - (b) except to the extent set out in **paragraph (a)**, it is not a defence to the charge that the student did not attend because the student was precluded under **subsection (1)**.

Compare: 1989 No 80 s 19

74 Purpose of sections 75 to 85

The purpose of **sections 75 to 85** relating to the standing-down, suspension, exclusion, or expulsion of a domestic student from a State school is to—

- (a) provide a range of responses for cases of varying degrees of seriousness; and
- (b) minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate; and
- (c) ensure that individual cases are dealt with in accordance with the principles of natural justice.

Compare: 1989 No 80 s 13

75 Application of sections 76 to 85

Sections 76 to 85 (and any rules made under **section 85**) apply only in relation to domestic students at a State school.

Compare: 1989 No 80 s 13A

76 Principals of State Schools may stand down or suspend students

- (1) The principal of a State school may stand down or suspend a student if satisfied on reasonable grounds that—

- (a) the student's gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or
 - (b) because of the student's behaviour, it is likely that the student, or other students at the school, would be seriously harmed if the student were not stood down or suspended.
- (2) A stand-down may be for 1 or more specified periods, and—
- (a) the period or periods may not exceed 5 school days in any one term:
 - (b) a student may be stood down more than once in the same year but for not more than 10 school days in total in that year:
 - (c) in calculating the period of a stand-down, the day on which the student was stood down, and any day on which the student would not have had to attend school in any event, may not be counted:
 - (d) the principal may lift the stand-down before it is due to expire.
- (3) If a student has been stood down or suspended, the following provisions apply in relation to the student's attendance at the school:
- (a) the principal may require the student to attend the school if the principal reasonably considers that the student's attendance is appropriate for the purposes of **section 80**:
 - (b) the principal must allow the student to attend the school if a parent of the student requests that the student be permitted to attend the school and the principal considers the request is reasonable:
 - (c) otherwise the student does not have to, and is not permitted to, attend the school while stood down or suspended.

Compare: 1989 No 80 s 14

77 Powers of State school board when suspended students aged under 16 years

- (1) If a student aged under 16 years has been suspended from a State school, the school's board may—
- (a) lift the suspension before it expires, either unconditionally or subject to any reasonable conditions the board wants to make:
 - (b) extend the suspension conditionally for a reasonable period determined by the board when extending the suspension, in which case **subsection (2)** applies:
 - (c) if the circumstances of the case justify the most serious response, exclude the student from the school by extending the suspension and requiring the student to be enrolled at another school.
- (2) If the board extends a suspension conditionally, the board must impose reasonable conditions aimed at facilitating the return of the student to school and must take appropriate steps to facilitate the return of the student to school.

- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of their suspension, the principal may request the board to reconsider the action it took under this section.
- (4) If **subsection (3)** applies, the board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in **subsection (1)**.
- (5) If the board has not sooner lifted or extended it or excluded the student under **subsection (1)(c)**, the suspension of the student ceases to have effect—
 - (a) at the close of the seventh school day after the day of the suspension; or
 - (b) if the suspension occurs within 7 school days before the end of a term, at the close of the tenth calendar day after the day of the suspension.
- (6) If the board excludes the student under **subsection (1)(c)**, the principal must try to arrange for the student to attend another school that is suitable and that the student can reasonably conveniently attend.
- (7) If the principal is unable, by the tenth school day after the day of the board's decision to exclude a student, to arrange for the student to attend another school, the principal must tell the Secretary what steps the principal took in trying to do so.

Compare: 1989 No 80 s 15

78 Secretary's powers when excluded students aged under 16 years

- (1) If the Secretary is satisfied that the board of a State school has excluded a student aged under 16 years from the school under **section 77(1)(c)**, and that the principal has not arranged for the student to attend another school, the Secretary must,—
 - (a) if satisfied that it is appropriate for the student to return to the school from which the student has been excluded, lift the exclusion; or
 - (b) arrange for and, if necessary, direct the board of any other State school (other than a State integrated school) to enrol the student at the other school; or
 - (c) direct a parent of the student to enrol the student at a distance school.
- (2) The Secretary may not lift an exclusion under **subsection (1)(a)** or give a direction under **subsection (1)(b)** unless the Secretary has made all reasonable attempts to consult—
 - (a) the student; and
 - (b) a parent of the student; and
 - (c) the board; and
 - (d) any other person or organisation that, in the Secretary's opinion ~~of the Secretary~~, may be interested in, or able to advise on or help with, the student's education or welfare.

- (3) If the board of a school from which the student has been excluded also controls another school, the Secretary (in exercising the power conferred by **subsection (1)(b)**) may direct the board to enrol the student at that other school.
- (4) A board must comply with a direction under **subsection (1)(b)**, and the direction overrides any enrolment scheme the school may have in place.

Compare: 1989 No 80 s 16

79 Powers of State school board when suspended students aged 16 years over

- (1) If a student aged 16 years or over has been suspended from a State school, the school's board may—
 - (a) lift the suspension before it expires, either unconditionally or subject to any reasonable conditions it wants to make; or
 - (b) extend the suspension conditionally for a reasonable period determined by the board when extending the suspension, in which case **subsection (2)** applies; or
 - (c) expel the student.
- (2) If the board extends a suspension conditionally, the board must impose reasonable conditions aimed at facilitating the return of the student to school, and must take steps to facilitate the return of the student to school.
- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of their suspension, the principal may request the board to reconsider the action it took under this section.
- (4) If **subsection (3)** applies, the board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in **subsection (1)**.
- (5) If the board has not sooner lifted or extended it or expelled the student under **subsection (1)(c)**, the suspension of the student ceases to have effect—
 - (a) at the close of the seventh school day after the day of the suspension; or
 - (b) if the suspension occurs within 7 school days before the end of a term, at the close of the tenth calendar day after the day of the suspension.

Compare: 1989 No 80 s 17

80 Duties of principals when students stood down or suspended from State schools

- (1) When a student is stood down or suspended from a State school, the principal must take all reasonable steps to ensure that the student has the guidance and counselling that are reasonable and practicable in all the circumstances of the stand-down or suspension.
- (2) If a student's suspension is subject to conditions, the principal must take all reasonable steps to ensure that an appropriate educational programme is provided to the student.

- (3) The purpose of the programme referred to in **subsection (2)** is to facilitate the return of a student to school and to minimise the educational disadvantages that occur from absence from school.

Compare: 1989 No 80 s 17A

81 Who may attend State school board meeting concerning suspensions

- (1) If a student has been suspended from a State school, the student, a parent of the student, and their representatives are entitled to attend at least 1 meeting of the board and speak at that meeting, and to have their views considered by the board before it decides whether to lift or extend the suspension or exclude or expel the student.
- (2) Instead of attending and speaking at a meeting of the board in person, the student, a parent of the student, and their representatives may attend and speak by way of telephone conference or video link.
- (3) ~~A-However, a telephone conference or video link may be used only if the student and a parent of the student have requested the use of a telephone conference or video link it to be used.~~

Compare: 1989 No 80 s 17B

82 Effect of suspension on school register

- (1) The name of a student aged under 16 years who has been suspended from a State school under **section 76** or excluded from a State school under **section 77(1)(c)** must stay on the school's register until the earlier of the following days:
- (a) the day the student is enrolled at another registered school:
 - (b) the day the student is given an exemption under **section 37 or 38**.
- (2) The name of a student who has turned 16 years and is suspended from a State school under **section 76** must stay on the register of the school until the earliest of the following days:
- (a) the day on which the student is enrolled at another registered school:
 - (b) the day on which the student is expelled from the school:
 - (c) the day on which the student leaves school:
 - (d) **1 January** after the student's 19th birthday.
- (3) **Subsection (2)** applies to a student who is aged under 16 years when suspended from a State school under **section 76**, or who is excluded from a State school under **section 77(1)(c)**, and turns 16 years of age while subject to the suspension or exclusion.

Compare: 1989 No 80 s 17C

83 Re-enrolment of excluded or expelled student

- (1) The board of a State school from which a student has ever been excluded or expelled may refuse to enrol the student at the school (unless, in the case of an exclusion, the Secretary has lifted the exclusion under **section 78(1)(a)**).
- (2) Subject to **section 78(1)(b)**, the board of a State school may refuse to enrol a student who is for the time being excluded or expelled (whether under **section 77 or 79**) from another State school.
- (3) The Secretary may, in the case of a student who has turned 16 years, direct the board of another State school (other than a State integrated school) to enrol a student at the school if—
 - (a) the student has been expelled from a State school under **section 79**; and
 - (b) the Secretary has made all reasonable attempts to consult—
 - (i) the student; and
 - (ii) a parent of the student; and
 - (iii) the board; and
 - (iv) any other person or organisation that, in the Secretary's opinion ~~of the Secretary~~, may be interested in, or able to advise on or help with, the student's education or welfare.
- (4) A board must comply with a direction under **subsection (3)** and the direction overrides any enrolment scheme the school may have in place.

Compare: 1989 No 80 s 17D

84 Notice requirements for stand-downs, suspensions, exclusions, and expulsions

- (1) Immediately after a student is stood down under **section 76**, the principal must tell the Secretary and a parent of the student—
 - (a) that the student has been stood down; and
 - (b) the reasons for the principal's decision; and
 - (c) the period for which the student has been stood down.
- (2) Immediately after a student is suspended under **section 76**, the principal must tell the board, the Secretary, and a parent of the student—
 - (a) that the student has been suspended; and
 - (b) the reasons for the principal's decision.
- (3) Immediately after the principal or the board lifts a suspension, extends a suspension, excludes a student, or expels a student, the principal or the board must tell the Secretary and a parent of the student—
 - (a) that the suspension has been lifted or extended, and the period of the extension (if any), or that the student has been excluded or expelled; and

- (b) the reasons for the principal's or the board's decision.
- (4) Nothing in this section requires the board to tell a parent of a student about an action taken under this section if the student has turned 20 years.

Compare: 1989 No 80 s 18

85 Secretary may make rules

- (1) The Secretary may, by notice in the *Gazette*, make rules (which must be consistent with this Act) regulating the practice and procedure to be followed by boards, principals, students, parents of students, and other persons under **sections 76 to 84**, including (without limitation) rules—
- (a) setting out procedural requirements to be followed when a proposed stand-down, suspension, exclusion, or expulsion is to be considered or decided:
 - (b) specifying who should be consulted about the circumstances of a stand-down, suspension, exclusion, or expulsion:
 - (c) setting out the steps to be taken by the principal and board, respectively, when a student has been stood down, suspended, excluded, or expelled:
 - (d) specifying the notices to be given when a decision not to lift a suspension, or a decision to extend a suspension or expel a student, is made and the particulars to be set out in each notice:
 - (e) specifying time limits within which specified things are to be done and the reports that are to be produced and the persons who are to produce them:
 - (f) providing reasonable measures (which must not be inconsistent with the Privacy Act 1993) to protect the privacy of individuals:
 - (g) providing for any other matters that the Secretary considers desirable in the interests of natural justice.
- (2) Before making any rules under this section, the Secretary must—
- (a) publish in the *Gazette*, and on an Internet site maintained by or on behalf of the Ministry, a notice of the Secretary's intention to make the rules; and
 - (b) give interested persons reasonable time (as specified in the notice) to make submissions on the proposed rules; and
 - (c) consult the persons and groups that the Secretary thinks fit.
- (3) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 18AA

Subpart 3—Teaching, learning, and well-being

Curriculum and performance measures of schools

86 Curriculum statements and national performance measures

- (1) The Minister may, by notice in the *Gazette*, publish (in their entirety, or by way of a general description and an indication of where the full text can be obtained) the following:
 - (a) **foundation curriculum policy statements**, which are statements of policy concerning teaching, learning, and assessment that are made for the purposes of underpinning and giving direction to—
 - (i) the way in which curriculum and assessment responsibilities are to be managed in schools;
 - (ii) national curriculum statements and locally developed curricula;
 - (b) **national curriculum statements**, which are statements of—
 - (i) the areas of knowledge and understanding to be covered by students during the years of schooling; and
 - (ii) the skills to be developed by students during the years of schooling; and
 - (iii) desirable levels of knowledge, understanding, and skill to be achieved by students during the years of schooling;
 - (c) **national performance measures**, which are targets against which the performance of boards can be measured.
- (2) Without limiting **subsection (1)**, a national curriculum statement may—
 - (a) specify different commencement dates for different provisions or different purposes, which dates may differ according to the classification or designation of a school, the group or year level of students attending a school, or any combination of those classifications, designations, groups, and levels;
 - (b) specify a transitional period during which a board may elect to comply with an existing curriculum statement or the new curriculum statement, and specify a date on which a board must begin complying with the new curriculum statement.

Compare: 1989 No 80 s 60A; 2017 No 20 s 41(2), (5)

87 Board of State school must consult about delivery of health curriculum

- (1) The board of a State school must, at least once every 2 years, after consulting the school community, adopt a statement on the delivery of the health curriculum.
- (2) The purpose of the consultation is to—

- (a) inform the school community about the content of the health curriculum; and
 - (b) ascertain the wishes of the school community regarding the way in which the health curriculum should be implemented given the views, beliefs, and customs of the members of that community; and
 - (c) determine, in broad terms, the health education needs of the students at the school.
- (3) The board may adopt any method of consultation that it thinks fit to best achieve the purpose, but it may not adopt a statement on the delivery of the health curriculum until it has—
- (a) prepared the statement in draft; and
 - (b) given members of the school community an adequate opportunity to comment on the draft statement; and
 - (c) considered any comments received.
- (4) In this section,—

school community means,—

- (a) for a State integrated school, the parents of students enrolled at the school, and the school's proprietors:
- (b) for any other State school, the parents of students enrolled at the school:
- (c) in every case, any other person who the board considers is part of the school community for the purpose of this section

statement on the delivery of the health curriculum means a written statement of how the school intends to implement the health education components of the relevant national curriculum statements.

Compare: 1989 No 80 s 60B

Restrictions on appointment and continued employment of teaching staff

88 Restrictions on appointment of teachers

- (1) An employer may not appoint the following persons to a teaching position:
- (a) a person—
 - (i) whose registration has been cancelled; and
 - (ii) who has not since been registered again:
 - (b) a person whose practising certificate is suspended under **section 470 or 472(1)(d)** or cancelled under **section 472(1)(g)**:
 - (c) a person whose authorisation has been cancelled and who has not since—
 - (i) been authorised again; or
 - (ii) been registered as a teacher:

- (d) a person whose limited authority to teach is suspended under **section 470 or 472(1)(d)**.
- (2) An employer may not permanently appoint a person to any teaching position if the person does not hold a practising certificate.

Compare: 1989 No 80 s 349

89 Restrictions on continued employment of teachers

- (1) An employer may not continue to employ the following persons in a teaching position:
 - (a) a person—
 - (i) whose registration has been cancelled; and
 - (ii) who has not since been registered again:
 - (b) a person whose practising certificate is suspended under **section 472(1)(d)**:
 - (c) a person whose authorisation has been cancelled and who has not since—
 - (i) been authorised again; or
 - (ii) been registered as a teacher:
 - (d) a person whose limited authority to teach is suspended under **section 472(1)(d)**.
- (2) An employer may not continue to employ in a teaching position a person who holds neither a practising certificate nor an authorisation if the person is not under the general supervision of a person who holds a practising certificate.
- (3) An employer may not, in any calendar year, continue to employ in a teaching position a person who holds neither a practising certificate nor an authorisation if the sum of the following periods is not less than the period specified in **subsection (4)**:
 - (a) the period or periods for which that person has already during that year been employed by the employer in a teaching position or positions:
 - (b) any period or periods (of which the employer is aware) for which that person has already during that year been employed by any other employer in a teaching position or positions:
 - (c) any period or periods (of which the employer is aware) for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service.
- (4) The period is 20 half-days or any greater number of half-days the Teaching Council has allowed in any particular case, each being a half-day on which the school or early childhood education and care service at which the person was then employed was open for instruction.

Compare: 1989 No 80 s 350

90 Chief executive of distance school not required to be registered

- (1) The chief executive of a distance school is not required to be registered.
- (2) This section overrides **sections 88 and 89**.

Compare: 1989 No 80 s 350A

91 Restrictions on teachers subject to interim suspension

- (1) This section applies to a person employed in a teaching position if the person—
 - (a) holds a practising certificate that is suspended under **section 470**; or
 - (b) has a limited authority to teach that is suspended under **section 470**.
- (2) The employer of the person—
 - (a) must ensure that the person does not carry out any of the duties of the teaching position concerned; and
 - (b) if the person is employed at a registered school or an early childhood education and care service, must take all reasonably practicable steps to ensure that the person does not undertake any activities that might bring them into contact with students enrolled at the school or children who attend the service.
- (3) The person may not carry out any of the duties of the teaching position concerned.

Compare: 1989 No 80 s 351

92 Further provisions relating to registration of teachers, practising certificates, and authorities to teach

The registration of teachers, the issue of practising certificates, and the grant of authorities to teach must be done in accordance with **Schedule 3**.

*Other restrictions and requirements***93 Teaching in State primary and intermediate schools must be secular**

- (1) Teaching in every State primary and intermediate school must, while the school is open, be entirely of a secular character.
- (2) However, religious instruction and observances at State schools may be held in accordance with **subpart 1 of this Part**.

Compare: 1964 No 135 s 77

94 Prohibition on corporal punishment and seclusion in registered schools

The following persons must not use force, by way of correction or punishment, towards any student enrolled at or attending a registered school or seclude any student enrolled at or attending the school:

- (a) a person who is employed or engaged by the school's board or the managers of a private school:

- (b) a person who is supervising or controlling a student on behalf of the school's board or the managers of a private school.

Compare: 1989 No 80 s 139A

95 Limits on use of physical force at registered schools

- (1) ~~A teacher or an authorised staff member at a registered school may use physical force on a student only if the conditions set out in **subsection (2)** are met.~~
- (2) ~~The conditions are that—~~
- (a) ~~the physical force is necessary to prevent imminent harm to the student or another person; and~~
- (b) ~~the teacher or authorised staff member reasonably believes that there is no other option available in the circumstances to prevent the harm; and~~
- (c) ~~the physical force used is reasonable and proportionate in the circumstances.~~
- (3) ~~In **subsection (2)**, **harm** means harm to the health, safety, or well-being of the student or another person, including any significant emotional distress suffered by the student or the other person.~~
- (3A) ~~For the purposes of this section and **sections 96 and 97**, **physical force**, in relation to a student, means force directed towards the body of the student so as to move, or prevent, restrict, or subdue the movement of, the student's body or any part of the student's body against their will.~~
- (4) ~~Nothing in this section limits or affects **section 94**.~~

Compare: 1989 No 80 s 139AC

96 Rules on use of physical force at registered schools

- (1) ~~The Secretary must make rules prescribing the practice and procedure to be followed by employers, principals, teachers, and authorised staff members relating to the use of physical force at registered schools.~~
- (2) ~~The rules must include—~~
- (b) ~~requirements to keep written records on the use of physical force, including requirements to notify, monitor, and report on the use of physical force; and~~
- (c) ~~a procedure for authorising staff members to use physical force in accordance with **section 95**.~~
- (2A) ~~When developing rules under this section, the Secretary must make reasonable efforts to consult—~~
- (a) ~~children and young people, in particular those with learning support needs;~~
- (b) ~~national bodies representing the interests of—~~
- (i) ~~teachers;~~

- (ii) principals:
 - (iii) governing bodies of schools:
 - (iv) parents:
 - (v) the disability community.
- (3) ~~Rules made under this section are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~

Compare: 1989 No 80 s 139AD

97 Guidelines on use of physical force at registered schools

- (1) ~~The Secretary must, by notice in the *Gazette*, issue guidelines on the use of physical force at registered schools.~~
- (2) ~~The guidelines must include—~~
- (a) ~~best practice examples of the use of physical force; and~~
 - (b) ~~other examples of best practice in behaviour management.~~
- (2A) ~~When developing guidelines under this section, the Secretary must make reasonable efforts to consult—~~
- (a) ~~children and young people, in particular those with learning support needs;~~
 - (b) ~~national bodies representing the interests of—~~
 - (i) ~~teachers;~~
 - (ii) ~~principals;~~
 - (iii) ~~governing bodies of schools;~~
 - (iv) ~~parents;~~
 - (v) ~~the disability community.~~
- (3) ~~Employers, principals, teachers, and authorised staff members must have regard to the guidelines.~~

Compare: 1989 No 80 s 139AE

95 Limits on use of physical restraint at registered schools

- (1) A teacher or authorised staff member at a registered school must not physically restrain a student unless the conditions set out in **subsection (2)** are met.
- (2) The conditions are that—
- (a) the physical restraint is necessary to prevent imminent harm to the student or another person; and
 - (b) the teacher or authorised staff member reasonably believes that there is no other option available in the circumstances to prevent the harm; and
 - (c) the physical restraint is reasonable and proportionate in the circumstances.

- (3) In **subsection (2)**, **harm** means harm to the health, safety, or well-being of the student or another person, including any significant emotional distress suffered by the student or the other person.
- (4) For the purposes of this section and **sections 96 and 97**,—
authorised staff member means an employee of a registered school who is trained and authorised by the employer to use physical restraint in accordance with this section
physically restrain, in relation to a student, means to use physical force to prevent, restrict, or subdue the movement of the student’s body or part of the student’s body against the student’s will.
- (5) Nothing in this section limits or affects **section 94**.
Compare: 1989 No 80 s 139AC

96 Rules on use of physical restraint at registered schools

- (1) The Secretary must make rules prescribing the practice and procedure to be followed by employers, principals, teachers, and authorised staff members relating to the use of physical restraint at registered schools.
- (2) The rules must include—
(a) requirements to keep written records on the use of physical restraint, including requirements to notify, monitor, and report on the use of physical restraint; and
(b) a procedure for authorising staff members to use physical restraint in accordance with **section 95**.
- (3) When developing rules under this section, the Secretary must make reasonable efforts to consult—
(a) children and young people, in particular those who are Māori and those with disabilities or learning support needs;
(b) parents, whānau, and caregivers;
(c) national bodies representing the interests of—
(i) teachers;
(ii) principals;
(iii) governing bodies of schools;
(iv) parents;
(v) the disability community.
- (4) Rules made under this section are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 139AD

97 Guidelines on use of physical restraint and behaviour management at registered schools

- (1) The Secretary must, by notice in the *Gazette*, issue guidelines on the use of physical restraint and behaviour management at registered schools.
- (2) The guidelines must include—
 - (a) best practice examples of—
 - (i) how to use physical restraint safely; and
 - (ii) how to assess significant emotional distress; and
 - (iii) understanding, and responding safely to, behaviour; and
 - (b) a framework for decision making and problem solving to prevent, de-escalate, and safely respond to disruptive or assaultive behaviour; and
 - (c) advice on assessing behaviour escalation levels that precede imminent harm to health, safety, or well-being.
- (3) When developing guidelines under this section, the Secretary must make reasonable efforts to consult—
 - (a) children and young people, in particular those who are Māori and those with disabilities or learning support needs;
 - (b) parents, whānau, and caregivers;
 - (c) national bodies representing the interests of—
 - (i) teachers;
 - (ii) principals;
 - (iii) governing bodies of schools;
 - (iv) parents;
 - (v) the disability community.
- (4) Employers, principals, teachers, and authorised staff members must have regard to the guidelines.

Compare: 1989 No 80 s 139AE

98 Students at State schools may be released from tuition or for outside tuition

- (1) A student enrolled at a State school may be released from a particular class or subject on religious or cultural grounds in accordance with **section 48**.
- (2) A student enrolled at a State school may be released from tuition of specified parts of the health curriculum related to sexuality education in accordance with **section 49**.
- (3) A student enrolled at a State school may be released from tuition at a State school or be allowed to leave early in accordance with **section 50**.

99 Students at State schools must receive guidance and counselling and their parents must be told about certain things

The principal of a State school must take all reasonable steps to ensure that—

- (a) students get good guidance and counselling; and
- (b) students in year 7 and above are provided with appropriate career education and guidance that is designed to prepare them to join the workforce or undertake further education or training when they leave school; and
- (c) a parent of the student is told of matters that, in the principal's opinion,—
 - (i) are preventing or slowing the student's progress through the school; or
 - (ii) are harming the student's relationships with teachers or other students.

Compare: 1989 No 80 s 77

100 Required police vetting

The board of a State school ~~or the management and the managers~~ of a private school must obtain police vets of non-teaching and unregistered employees and contractors in accordance with the requirements of **Schedule 4**.

Subpart 4—Searches and surrender of property

101 Interpretation

- (1) In this subpart, unless the context otherwise requires,—

authorised staff member means a board employee who is authorised by the board to exercise powers under **section 102 or 103**

harmful item means an item that a teacher or an authorised staff member has reasonable grounds to believe poses an immediate threat to the physical or emotional safety of any person

item includes information stored in electronic form

outer clothing includes (without limitation) any coat, jacket, jumper, or cardigan

rub-down search means a search in which the person conducting the search—

- (a) runs or pats their hand over the body of the person being searched, whether outside or inside the clothing of the person being searched;
- (b) inserts their hand inside any pocket or pouch in the clothing of the person being searched

search, in relation to a student, includes—

- (a) a strip search; and
- (b) a rub-down search

socks does not include tights or stockings

strip search means a search where the person conducting the search requires the person being searched to—

- (a) remove any of the latter person's clothing other than outer clothing, head covering, gloves, footwear, or socks; or
- (b) raise, lower, or open all or any part of the latter person's clothing

student includes a person under the supervision of a teacher, whether or not the person is enrolled at the school at which the teacher is employed

teacher means a person employed at a State school in a teaching position.

- (2) An authorisation referred to in the definition of authorised staff member must be in writing and may be subject to conditions.

102 Surrender and retention of property

- (1) This section applies if a teacher or an authorised staff member has reasonable grounds to believe that a student has hidden or in clear view on or about the student's person, or in any bag or other container under the student's control, an item that is likely to—
 - (a) endanger the safety of any person; or
 - (b) detrimentally affect the learning environment.
- (2) The teacher or authorised staff member may require the student to produce and surrender the item.
- (3) If the item is stored on a computer or other electronic device, the teacher or authorised staff member may require the student—
 - (a) to reveal the item;
 - (b) to surrender the computer or other electronic device on which the item is stored.
- (4) A teacher or an authorised staff member may do either or both of the following in relation to an item surrendered under this section:
 - (a) retain the item for a reasonable period;
 - (b) dispose of the item (if appropriate).
- (5) A teacher or an authorised staff member may retain a computer or other electronic device surrendered under **subsection (3)(b)** for a reasonable period.
- (6) If an item or a computer or other electronic device is retained under this section, it must be stored in an appropriate manner.
- (7) At the end of any period of retention, any computer or other electronic device, or any item that is not disposed of under **subsection (4)(b)**, must be—
 - (a) returned to the student; or
 - (b) passed to another person or agency, as appropriate.

- (8) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under **section 109**.

Compare: 1989 No 80 s 139AAA

103 Searches of clothing and bags or other containers

- (1) This section applies if a teacher or an authorised staff member—
- (a) has reasonable grounds to believe that a student has a harmful item on or about the student's person, or in any bag or other container under the student's control; and
 - (b) has required the student to produce and surrender the harmful item under **section 102** and the student has refused to produce and surrender it.
- (2) The teacher or authorised staff member may do any of the following:
- (a) require the student to remove any outer clothing, except where the student has no other clothing, or only underclothing, under that outer clothing;
 - (b) require the student to remove any head covering, gloves, footwear, or socks;
 - (c) require the student to surrender the bag or other container.
- (3) The teacher or authorised staff member may search any clothing or footwear removed, and any bag or other container surrendered, under **subsection (2)**.
- (4) If, during a search under this section, the teacher or authorised staff member finds a harmful item or an item that is likely to detrimentally affect the learning environment, the item may be seized by the teacher or authorised staff member.
- (5) **Section 102(4) to (7)** applies, with any necessary modifications, to an item seized under **subsection (4)**.
- (6) A teacher or an authorised staff member who exercises a power under this section must comply with any rules made under **section 109**.

Compare: 1989 No 80 s 139AAB

104 Restrictions on searches under section 103

- (1) A teacher or an authorised staff member who carries out a search under **section 103** must carry out the search with decency and sensitivity and in a manner that affords the student the greatest degree of privacy and dignity consistent with the purpose of the search.
- (2) Unless impracticable, a search under **section 103** must be carried out—
- (a) by a teacher or an authorised staff member who is of the same sex as the student; and
 - (b) in the presence of the student and another teacher or authorised staff member who is of the same sex as the student.

- (3) Unless impracticable, a search under **section 103** may not be carried out in the view of any person other than the person carrying out the search, the student, and another teacher or authorised staff member.
- (4) A teacher or an authorised staff member who carries out a search under **section 103** must—
 - (a) return any clothing or footwear removed and any bag or other container surrendered as soon as the search is completed; and
 - (b) keep a written record of any items seized under **section 103(4)**.

Compare: 1989 No 80 s 139AAC

105 Limits on sections 102 and 103

- (1) Nothing in **section 102 or 103** permits a teacher or authorised staff member to—
 - (a) search any student; or
 - (b) use physical force against a student; or
 - (c) require a student to provide a bodily sample (but a teacher or authorised staff member may encourage a student to participate in a voluntary drug treatment programme that involves testing of bodily samples).
- (2) Nothing in **section 102 or 103** permits a teacher or an authorised staff member to have a dog with them for the purpose of exercising a power under that ~~clause~~ section.
- (3) The powers set out in **sections 102 and 103** may not be exercised in relation to 2 or more students together unless the teacher or authorised staff member has reasonable grounds to believe that each student has an item specified in **section 102(1)** or a harmful item on or about their person, or in any bag or other container under their control.
- (4) **Subsection (1)** does not limit or affect **section 77 or 79** or sections 41, 48, and 59 of the Crimes Act 1961.

Compare: 1989 No 80 s 139AAD

106 Prohibitions on searches by contractors

- (1) A contractor may not—
 - (a) exercise any power in **section 102 or 103**; or
 - (b) search a student.
- (2) However, a contractor may bring a dog that is trained for the purpose of searching to a school and use the dog for the purpose of searching school property (including lockers, desks, or other receptacles provided to students for storage purposes).

- (3) In this section, **contractor** means a person who works at a school under a contract for services.

Compare: 1989 No 80 s 139AAE

107 Refusal to produce, reveal, or surrender item

- (1) If a student refuses to produce, reveal, or surrender an item or computer or other electronic device under **section 102(2) or (3)**, a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour, that the teacher or authorised staff member considers reasonable.
- (2) If a student refuses to remove any outer clothing, head covering, gloves, footwear, or socks or to surrender a bag or other container under **section 103(2)**, a teacher or an authorised staff member may take any disciplinary steps, or steps to manage the student's behaviour, that the teacher or authorised staff member considers reasonable.

Compare: 1989 No 80 s 139AAF

108 Power to search storage containers not affected

Sections 102 and 103 do not limit or affect any power to search any locker, desk, or other receptacle provided to students for storage purposes.

Compare: 1989 No 80 s 139AAG

109 Rules about surrender and retention of property and searches

- (1) The Secretary must make rules (which must be consistent with this Act) regulating the practice and procedure to be followed by boards, principals, teachers, and authorised staff members under **sections 102 to 107**, including (without limitation) rules—
- (a) providing for the keeping of written records relating to the use of the powers under **section 102**; and
 - (b) prescribing requirements relating to the keeping of written records under **section 103**; and
 - (c) prescribing the procedure for authorising staff members to exercise powers or carry out functions under **sections 102 to 110**; and
 - (d) specifying the circumstances in which items may be disposed of under **section 102(4)(b)**; and
 - (e) setting out requirements for the storage of items and computers and other electronic devices under **section 102(6)**; and
 - (f) providing for the return of items and computers and other electronic devices under **section 102(7)(a)**.

- (2) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 139AAH

110 Guidelines about surrender and retention of property and searches

- (1) The Secretary must issue guidelines for the exercise of powers and carrying out of functions under **sections 102 to 109**.
- (2) Boards, principals, teachers, and authorised staff members must have regard to guidelines issued under **subsection (1)**.

Compare: 1989 No 80 s 139AAI

Subpart 5—Administration of State schools

General provisions

111 When State schools must be open

State schools must be open and closed for instruction in accordance with **Schedule 20** and any regulations made under this Act.

112 Communities of learning for State schools

The Minister may approve, and the Secretary may enter into an agreement with, a community of learning in accordance with **Schedule 5**.

Compare: 1989 No 80 s 71C

113 State schools may use off-site locations approved by Minister

- (1) This section applies to the use of off-site locations by schools to provide education to 1 or more students on a long-term or full-time basis.
- (2) The Minister may, by written notice to the board of a State school, approve the use of an off-site location by the school.
- (3) The Minister may issue a notice under **subsection (2)** only if satisfied that the school's board and the owner or occupier of the off-site location have both agreed to that use and the terms of that use.
- (4) Except as provided under this Act, a school may not—
- (a) use an off-site location; or
 - (b) host an off-site location for another school.
- (5) If approval is given under **subsection (2)**, the board must, before any use is made of the off-site location, enter into a written agreement with the Secretary that sets out—
- (a) who is responsible for the education provided at the off-site location;
 - (b) who is responsible for the welfare and safety of the students at that location;

- (c) the terms agreed on any other matter the Secretary considers relevant in the particular case.
- (6) **Off-site location** means any premises outside the premises of the school that is to use the off-site location for the purpose described in **subsection (1)**.
- Compare: 1989 No 80 s 71A

Functions and powers of boards

114 State schools and special institutions must have boards

- (1) Except as provided in this Act, every State school and every special institution must have a board.
- (2) However, neither is required to have a board while a commissioner holds office to act in place of its board.
- Compare: 1989 No 80 s 93

115 Constitution of boards of State schools

- (1) The board of a State school must comprise—
- (a) no more than 7 and no fewer than 3 parent representatives; and
 - (b) the principal of the school or, for a combined board, the principal or principals of the schools administered by the board; and
 - (c) except where the principal is the only member of the school staff, 1 staff representative; and
 - (d) a number (determined by the board) of board members either—
 - (i) co-opted by the board; or
 - (ii) appointed by bodies corporate approved by the board for the purpose; and
 - (e) for a board that administers any State integrated school, not more than 4 board members appointed by the school's proprietors; and
 - (f) for a board that administers a school where students are enrolled full-time in year levels above year 9, 1 student representative.
- (2) Despite **subsection (1)**, except to the extent that a board has decided otherwise, it must have—
- (a) 6 parent representatives, for a board that administers more than 2 schools; and
 - (b) 5 parent representatives, in any other case.
- (3) **Subsection (1)** is subject to **sections 116, 117, and 118(1)**.
- (4) **Subsection (2)** is subject to **section 118(1)**.

Compare: 1989 No 80 s 94

116 Proprietors of State integrated schools may vary number of board members they appoint

- (1) Despite **section 115(1)**, except as provided in this section, a board that administers ~~any~~ State integrated school must have 4 board members appointed by the school's proprietors.
- (2) The proprietors of a State integrated school may, by written notice to the board, consent to a reduction in the number of board members the proprietors are entitled to appoint to the board.
- (3) A notice under **subsection (2)** must—
 - (a) specify that it is to take effect on the occurrence of the earlier of the following events:
 - (i) the going out of office of board members:
 - (ii) the appointment under **section 168** of a commissioner to act in the board's place; or
 - (b) specify a day on which it is to take effect, and contain the dismissal (with effect on that day) of enough board members appointed by the proprietors to give effect to the reduction consented to.
- (4) The proprietors of a State integrated school may, by written notice to the board, require an increase (to no more than 4) in the number of board members the proprietors are entitled to appoint to the board.
- (5) A notice under **subsection (4)** takes effect on the occurrence of the earlier of the following events:
 - (a) the going out of office of board members:
 - (b) the appointment under **section 168** of a commissioner to act in the board's place.

Compare: 1989 No 80 s 94A

117 Boards may alter their constitutions

- (1) A board may, in accordance with this section, decide—
 - (a) to increase to no more than 7 the number of board members who are parent representatives:
 - (b) to decrease to no fewer than 3 the number of board members who are parent representatives:
 - (c) to approve a body corporate for the purpose of appointing a specified number of board members to the board:
 - (d) to modify an approval under **paragraph (c)** by increasing the number of board members a body corporate may appoint to the board:
 - (e) in its absolute discretion, and without giving reasons, to modify an approval under **paragraph (c)** by reducing the number of board members a body corporate may appoint to the board:

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- (f) in its absolute discretion, and without giving reasons, to withdraw an approval under **paragraph (c)**.
- (2) A decision under **subsection (1)** must be made by resolution of the board passed at a meeting of the board open to all parents of students enrolled at the school or schools administered by the board.
- (3) Before making a decision under **subsection (1)**, the board must take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the board have reasonable notice of—
- (a) the time, day, and place of the meeting of the board at which the decision is to be made; and
 - (b) the nature of the decision; and
 - (c) the fact that they have a right to attend the meeting.
- (4) If a board decides to decrease the number of board members who are parent representatives,—
- (a) no parent representative is to go out of office; and
 - (b) no casual vacancy for a parent representative may be filled unless the vacancy has reduced the number of parent representatives on the board to fewer than the decreased number decided by the board.
- (5) All co-opted board members go out of office as if they had resigned, if a board decides to decrease the number of board members who are parent representatives to a number that is not more than the total number of—
- (a) co-opted board members for the time being holding office; and
 - (b) board members capable of being appointed in accordance with approvals under **subsection (1)(c)**.
- (6) If, when any co-opted board members have gone out of office under **subsection (5)**, the number of board members on the board concerned who are parent representatives is not more than the number of board members capable of being appointed in accordance with approvals under **subsection (1)(c)**,—
- (a) the approvals under **subsection (1)(c)** of the organisations by whom they may be appointed must, starting with the most recent and continuing successively to the least recent, be treated as having been withdrawn; and
 - (b) all board members appointed by an organisation whose approval has been treated as having been withdrawn go out of office as if they had resigned,—
- until the number of board members who are parent representatives is more than the number of board members capable of being appointed in accordance with approvals under **subsection (1)(c)**.

- (7) A vacancy on a board caused by a decision to increase the number of members who are parent representatives must be filled by election as if it were a casual vacancy, but is not capable of being filled by selection.
- (8) A board that makes a decision under **subsection (1)** must ensure that, as soon as practicable after making it, the Secretary is given written notice of the nature of the decision and the day on which it was made.

Compare: 1989 No 80 s 94B

118 Composition of boards of special institutions

- (1) The Minister must, by notice in the *Gazette*, determine the composition of the board of a special institution.
- (2) A notice under **subsection (1)**—
- (a) may apply to a specified institution or specified institutions, or to institutions of a specified class or description;
 - (b) may revoke or amend any other notice.
- (3) However, no board member is to go out of office by reason only of the amendment or revocation of a notice under **subsection (1)**.
- (4) If a notice under **subsection (1)** relates to a special institution that is a distance school, the notice must specify—
- (a) that the board is required to have a staff representative as a member; and
 - (b) whether the staff representative is to be elected, co-opted by the board, or appointed by the Minister.
- (5) One board may administer a number of special institutions.

Compare: 1989 No 80 s 95

119 Other provisions relating to boards

Other provisions relating to boards are set out in the following schedules:

- (a) **Schedule 21**, which contains provisions relating to the constitution and operation of boards and combining and splitting boards;
- (b) **Schedule 22**, which contains provisions relating to the election, appointment, and co-opting of board members.

119A Status of board

- (1) A board (and not the school) is a body corporate.
- (2) A board—
- (a) is accordingly a legal entity separate from its members, office holders, employees, and the Crown; and
 - (b) continues in existence until it is dissolved in accordance with this Act.

Compare: 1989 No 80 Schedule 6 cl 2

120 Board is governing body

- (1) A board is the governing body of its school.
- (2) A board is responsible for the governance of the school, including setting the policies by which the school is to be controlled and managed.
- (3) Under **section 125**, the school's principal is the board's chief executive in relation to the school's control and management.

Compare: 1989 No 80 Schedule 6 cl 4

121 Bylaws

- (1) A board may make bylaws that the board thinks necessary or desirable for the control and management of the school.
- (2) Before making a bylaw, the board must consult its staff, its students (to the extent that the board considers appropriate), and the school community regarding the proposed bylaw.

Compare: 1989 No 80 Schedule 6 cl 18

122 Objectives of boards in governing schools

- (1) A board's primary objectives in governing a school are to ensure that—
 - (a) every student at the school is able to attain their highest possible standard in educational achievement; and
 - (b) the school—
 - (i) is a physically and emotionally safe place for all students and staff; and
 - (ii) gives effect to relevant student rights set out in this Act, the Bill of Rights Act 1990, and the Human Rights Act 1993; and
 - (iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and
 - (c) the school is inclusive of, and caters for, students with differing needs; and
 - (d) the school gives effect to Te Tiriti o Waitangi including by—
 - (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
 - (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
 - (iii) achieving equitable outcomes for Māori students.
- (2) To meet the primary objectives, the board must—
 - (a) have particular regard to the statement of national education and learning priorities issued under **section 5**; and

- (b) give effect to its obligations in relation to—
 - (i) any foundation curriculum statements, national curriculum statements, and national performance measures; and
 - (ii) teaching and learning programmes; and
 - (iii) monitoring and reporting students' progress; and
- (c) perform its functions and exercise its powers in a way that is financially responsible; and
- (d) if the school is a member of a community of learning that has a community of learning agreement under **clause 2 of Schedule 5**, comply with its obligations under the agreement; and
- (e) comply with all of its other obligations under this or any other Act.

Compare: 1989 No 80 Schedule 6 cl 5

123 Staff

A board may, in accordance with the **State Sector Act 1988**, appoint, suspend, and dismiss school staff.

Compare: 1989 No 80 Schedule 6 cl 6

124 Boards may appoint, suspend, and dismiss principal

- (1) The powers conferred on a board by **section 123** include the powers to appoint, suspend, and dismiss a principal.
- (2) Two or more boards may appoint 1 person to be the principal of 2 or more schools administered by the boards.
- (3) A combined board may appoint 1 person to be the principal of 2 or more schools administered by the board.

Compare: 1989 No 80 s 75A

125 Principal is chief executive of board in relation to school's control and management

- (1) A school's principal is the board's chief executive in relation to the school's control and management.
- (2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal—
 - (a) must comply with the board's general policy directions; and
 - (b) subject to **paragraph (a)**, has complete discretion to manage the school's day-to-day administration as they think fit.

Compare: 1989 No 80 s 76

126 Board has complete discretion

- (1) A board has complete discretion to perform its functions and exercise its powers as it thinks fit.

- (2) **Subsection (1)** is subject to this Act, any other enactment, and the general law of New Zealand.

Compare: 1989 No 80 Schedule 6 cl 13

127 Things boards may do

- (1) A board may do anything that it is authorised to do by this Act.
- (2) A board may do anything that a natural person of full age and capacity may do.
- (3) **Subsection (2)** applies except as provided in this Act or another enactment or rule of law.
- (4) A board may do an act under this section only for the purpose of performing its functions.

Compare: 1989 No 80 Schedule 6 cl 14

128 Board's policies and practices must reflect cultural diversity

A board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity.

Compare: 1989 No 80 Schedule 6 cl 16

129 Statements of variance and annual reports

- (1) A board must give the Secretary—
- (a) a statement of variance by a date fixed by the Secretary each year; and
 - (b) an annual report as soon as practicable after the end of each financial year, and no later than a date fixed by the Secretary.
- (2) The annual report must contain the following:
- (a) the information required by the regulations made under **section 602**; and
 - (b) the board's annual financial statements; and
 - (c) the auditor's report provided under **section 130**; and
 - (d) in respect of the board or, in the case of a Crown entity group, each Crown entity in the group,—
 - (i) the total value of the remuneration (other than compensation and other benefits referred to in **subparagraph (v)**) paid or payable to the board members in their capacity as board members by the board (or entities in the group) during the financial year; and
 - (ii) the total value of the remuneration (other than compensation and other benefits referred to in **subparagraph (v)**) paid or payable to the committee members in their capacity as committee members by the board (or entities in the group) during the financial year (except that this subparagraph does not apply to board members whose remuneration is disclosed under **subparagraph (i)**); and

- (iii) the number of employees (other than principals of the school) to whom, during the financial year, remuneration (other than compensation and other benefits referred to in **subparagraph (v)**) was paid or payable in their capacity as employees, the total value of which is or exceeds \$100,000 per annum, and the number of those employees in brackets of \$10,000; and
- (iv) a report, presented in the manner required by the Minister by notice in the *Gazette*, on the total remuneration (including benefits, any compensation, ex gratia payments, any other payments, and any other consideration paid or payable in the school principal's capacity as an employee) paid to a principal of the school; and
- (v) the total value of any compensation or other benefits paid or payable to persons who ceased to be board members, committee members, or employees during the financial year in relation to that cessation and the number of persons to whom all or part of that total was payable; and
- (e) the statement of variance.
- (3) In addition, a board that is a parent in a Crown entity group must, to the extent required to do so by generally accepted accounting practice, prepare consolidated financial statements in relation to the group for that financial year.
- (4) The annual financial statements must be in the form (if any) determined by the Secretary after consultation with the Auditor-General.
- (5) The annual financial statements must be accompanied by a statement of responsibility that complies with section 155 of the Crown Entities Act 2004 but that is signed by the chair of the board and the principal instead of 2 members.
- (6) The requirements of this section and **section 130** as to annual financial statements also apply to a Crown entity subsidiary of a board as if the subsidiary were a board and with all necessary modifications.
- (7) The rest of the amendments made to this section by Schedule 6 of the Crown Entities Act 2004 apply as provided in section 198 of that Act.
- (8) In this section,—
 - board member** and **employee** include a person who was a board member or an employee at any time during the applicable financial year but who is no longer a board member or an employee
 - statement of variance** means a statement that details—
 - (a) any variance between the school's performance and the achievement of the school's objectives set out in its strategic plan and annual implementation plan; and
 - (b) any matters required by regulations made under **section 602**.

- (9) However, in relation to a 2023 school charter, **statement of variance** means the statement referred to in **subsection (2)(e)** as it read, or would have read, immediately before the commencement of **subsection (8)**.

Compare: 2017 No 20 s 68

130 Audit

- (1) A board must submit its annual financial statements to the Auditor-General within 90 days after the end of each financial year.
- (2) The Auditor-General must audit the financial statements and provide an audit report on them to the board.

Compare: 1989 No 80 s 87A

131 Annual report to be made available

A board must ensure that its annual report is available to the public on an Internet site maintained by or on behalf of the board.

Compare: 1989 No 80 s 87AB

132 Annual financial statements of boards

- (1) A board must provide its audited annual financial statements to the Secretary no later than **31 May** in the year after the previous financial year.
- (2) The Minister must make available (including, without limitation, by electronic means) to a member of Parliament on request from that member of Parliament any statement provided to the Secretary under **subsection (1)**.
- (3) The statement must be made available not later than 1 month after the request was received by the Minister.

Compare: 1989 No 80 s 87C

Strategic planning and reporting

133 School strategic plan and annual implementation plan

- (1) A board must have the following strategic planning documents for its school:
- (a) a **strategic plan**, for each 3-year period or for a shorter period determined by the Secretary, that sets out the board's strategy for achieving (or making progress towards achieving) its objectives during that period; and
- (b) an **annual implementation plan** for each year that sets out how the board intends to implement that strategy during the year.
- (2) A board must prepare its first strategic plan and annual implementation plan when required by regulations made under **section 602** to do so.
- (3) If, at the commencement of this section, a board has a charter in effect for the 2022 year, the charter is to be treated as the board's first strategic plan.

- (4) If a board's strategic plan is its 2022 school charter, the statement of variance is not required to include a comparison with an annual implementation plan.
- (5) However, a board with a 2022 school charter as its strategic plan must continue to update the annually updated sections of its charter until its first annual implementation plan is required under regulations made under **section 602**.
- (6) The annually updated sections of a 2022 school charter must be updated no later than a date fixed by the Secretary.

Compare: 2017 No 20 s 158

134 Preparing draft strategic plan

- (1) A board must prepare a draft strategic plan for every 3-year period, or for a shorter period determined by the Secretary, and submit it to the Secretary in accordance with regulations made under **section 602**.
- (2) The draft strategic plan must comply with any regulations made under **section 602** relating to the form and content of strategic plans.
- (3) In preparing a draft strategic plan, the board must—
 - (a) consult—
 - (i) the school community; and
 - (ii) the school's staff; and
 - (iii) where appropriate, the school's students; and
 - (iv) any other persons required by the regulations; and
 - (b) comply with any other regulations relating to the development of strategic plans; and
 - (c) in the case of a State integrated school, ensure that the draft reflects the school's special character; and
 - (d) in the case of a designated character school, ensure that the draft reflects the school's different character or, in the case of a Kura Kaupapa Māori, its special characteristics.
- (4) In preparing a draft strategic plan, the board may consult any person, group, or organisation that it thinks fit to consult.
- (5) This section is subject to **section 133(3)**.

Compare: 2017 No 20 s 158

135 Secretary to review and approve draft strategic plan

- (1) On receiving a draft strategic plan, the Secretary must review it in accordance with regulations made under **section 602**.
- (2) After reviewing the draft strategic plan, the Secretary must—
 - (a) confirm that it meets the requirements of this Act and the regulations by giving written notice to the board; or

- (b) return it to the board with directions that the board—
 - (i) consider, or further consider, any matter and revise the plan in the light of that consideration; or
 - (ii) revise the plan as directed by the Secretary.
- (3) If the draft strategic plan is returned to the board, the board must comply with the Secretary’s directions and then resubmit a revised plan.
- (4) The Secretary must, by giving written notice to the board, confirm a draft strategic plan unless satisfied that it does not meet the requirements of the Act and the regulations.
- (5) If a board fails to comply with the Secretary’s directions, or resubmits a revised draft strategic plan that still does not meet the requirements of the Act or the regulations, the Secretary may revise the plan and confirm it by giving written notice to the board.

Compare: 2017 No 20 s 158

136 Amending strategic plan

- (1) A board may amend its strategic plan, but if a proposed amendment is significant the board must obtain the Secretary’s approval of the amendment before amending the plan.
- (2) Before approving an amendment, the Secretary may require the board to consult the school community, staff, students, or any other person or body the Secretary thinks fit to consult.
- (3) The Secretary may require a board to amend its strategic plan.

Compare: 2017 No 20 s 158

137 Expiry of strategic plan

- (1) A strategic plan expires 3 years after the plan takes effect.
- (2) However, a 2022 school charter (which is a document that is to be treated as a board’s first strategic plan) expires when replaced by a strategic plan adopted in accordance with regulations made under **section 602**.
- (3) If there is no new plan to replace the expired plan, the expired plan continues to apply for a period approved by the Secretary.

Compare: 2017 No 20 s 158

138 Preparing annual implementation plan

- (1) A board must prepare an annual implementation plan.
- (2) The plan must—
 - (a) contain the information required by ~~the regulations~~ made under **section 602**; and

- (b) be prepared in accordance with those regulations ~~made under **section 602**~~.

Compare: 2017 No 20 s 158

139 Amending annual implementation plan

A board may amend its annual implementation plan.

Compare: 2017 No 20 s 158

140 Board to monitor performance against strategic planning documents

- (1) A board must monitor and evaluate its performance—
- (a) in achieving (or making progress towards achieving) its objectives in accordance with its strategic plan; and
 - (b) in implementing its strategy in accordance with its annual implementation plan.
- (2) The monitoring and evaluation must be carried out in accordance with regulations made under **section 602**.
- (3) The board must report on its performance in the annual report, in accordance with regulations made under **section 602**.

Compare: 2017 No 20 s 158

141 Strategic planning documents to be on Internet site

A board must ensure that its strategic plan and annual implementation plan are available to the public on an Internet site maintained by or on behalf of the board.

Compare: 2017 No 20 s 158

Validity of acts and liability

141A Acts in breach of statute are invalid

- (1) An act of a board is invalid (unless **section 141B** applies) if it is an act that—
- (a) the act is contrary to, or outside the authority of, an Act; or
 - (b) the act is done otherwise than for the purpose of performing its functions.
- (2) **Subsection (1)** does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Compare: 1989 No 80 Schedule 6 cl 20

141B Some natural person acts protected

- (1) **Section 141A**, or any rule of law to similar effect, does not prevent a person dealing with a board from enforcing a transaction that is a natural person act unless the person dealing with the board knew, or ought reasonably to have known, that—

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- (a) an express restriction in an Act makes the act contrary to, or outside the authority of, the Act; or
 - (b) the act was done otherwise than for the purpose of performing the board's functions.
- (2) A person who relies on **subsection (1)** has the onus of proving that ~~that~~ the person did not have, and could not reasonably be expected to have had, the knowledge referred to in that subsection.
- (3) A board must report, in its annual report, each transaction that the board has performed in the year to which the report relates that was invalid under **section 141A** but enforced in reliance on **subsection (1)**.
- (4) To avoid doubt, this section does not affect any person's remedies under the general law (for example, remedies in contract).
- (5) In this section, **natural person act**—
- (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act); and
 - (b) includes entry into a contract for, or relating to,—
 - (i) the acquisition of financial products (within the meaning of section 7 of the Financial Markets Conduct Act 2013) or the borrowing of money; or
 - (ii) the purchase, leasing, or sale of, or other dealings with, property; or
 - (iii) the employment, or engagement of the services, of a person.

Compare: 1989 No 80 Schedule 6 cl 21

141C Acts that are not in best interests of board

It is irrelevant to the validity of an act that the act is not, or may not be, in the best interests of a board.

Compare: 1989 No 80 Schedule 6 cl 22

141D Dealings between boards and other persons

- (1) A board may not assert against a person dealing with the board that—
- (a) a person held out by the board to be a member, office holder, chief executive, employee, or agent of the board—
 - (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
 - (ii) does not have the authority to exercise a power that, given the nature of the board, a person appointed to that capacity customarily has the authority to exercise; or

- (iii) does not have the authority to exercise a power that the board holds the person out as having; or
- (b) a document issued on behalf of the board by a member, office holder, chief executive, employee, or agent of the board who has actual or usual authority to issue the document is not valid or genuine.
- (2) However, a board may assert any of those matters if the person dealing with the board has, or could reasonably be expected to have had, knowledge of the matter.
- (3) Nothing in this section affects a person's right to apply, in accordance with the law, for judicial review.

Compare: 1989 No 80 Schedule 6 cl 23

141E Personal liability of board members

- (1) A board member is not personally liable for—
 - (a) any act done or omitted by the board; or
 - (b) any loss to the board arising out of any act done or omitted by the board member.
- (2) However, **subsection (1)** applies only if the act or omission was (as far as the board member's involvement is concerned) in good faith in ~~carrying out or intending to carry out~~ the performance or intended performance of the functions of the board.

Compare: 1989 No 80 Schedule 6 cl 24

Financial and property matters and application of Crown Entities Act 2004

142 Board to be financially responsible

A board must perform its functions and exercise its powers in a way that is financially responsible.

Compare: 1989 No 80 Schedule 6 cl 25

143 Application of Crown Entities Act 2004

- (1) A board is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) However, that Act applies to boards only to the extent that **subsection (3)** provides.
- (3) ~~The provisions of the Crown Entities Act 2004 set out in Schedule 3 of that Act~~ the Crown Entities Act 2004 apply to boards and their Crown entity subsidiaries (within the meaning of that Act).
- (4) A board must comply with any direction given under section 107 of the Crown Entities Act 2004.

- (5) If the board does not comply with a direction, it may be dismissed under **section 158(1)(i)**.

Compare: 1989 No 80 Schedule 6 cls 26, 27

144 Restrictions on acquisition of securities

- (1) Sections 160 and 161 of the Crown Entities Act 2004 apply.
- (2) Under section 161 of the Crown Entities Act 2004, a board may not acquire securities—
- (a) other than—
 - (i) a debt security denominated in New Zealand dollars that is issued by a registered bank, or by any other entity, that satisfies a credit-rating test that is specified in regulations made under Part 4 of the Crown Entities Act 2004 or a notice in the *Gazette* published by the Minister of Finance; or
 - (ii) a public security; or
 - (b) otherwise than as provided in—
 - (i) any regulations made under Part 4 of that Act; or
 - (ii) any approval given jointly by the Minister of Education and the Minister of Finance; or
 - (iii) this Act.

Compare: 1989 No 80 Schedule 6 cl 28

145 Restrictions on borrowing

- (1) Sections 160 and 162 of the Crown Entities Act 2004 apply.
- (2) Under sections 160 and 162 of that Act, a board may not borrow from any person, or amend the terms of any borrowing, otherwise than as provided in—
- (a) any regulations made under Part 4 of that Act; or
 - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
 - (c) this Act.

Compare: 1989 No 80 Schedule 6 cl 29

146 No delegation of power to borrow

A board may not delegate any power to borrow money that it may have under section 160 or 162 of the Crown Entities Act 2004.

Compare: 1989 No 80 Schedule 6 cl 30

147 Restrictions on giving of guarantees and indemnities

- (1) Sections 160 and 163 of the Crown Entities Act 2004 apply.

- (2) Under sections 160 and 163 of that Act, a board may not, with or without security, give a guarantee to, or indemnify, another person otherwise than as provided in—
- (a) any regulations made under Part 4 of that Act; or
 - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
 - (c) this Act.

Compare: 1989 No 80 Schedule 6 cl 31

148 Restrictions on use of derivatives

- (1) Sections 160 and 164 of the Crown Entities Act 2004 apply.
- (2) Under sections 160 and 164 of that Act, a board may not enter into an agreement constituting a derivative, or amend the terms of that agreement, otherwise than as provided in—
- (a) any regulations made under Part 4 of that Act; or
 - (b) any approval given jointly by the Minister of Education and the Minister of Finance; or
 - (c) this Act.

Compare: 1989 No 80 Schedule 6 cl 32

149 Gifts

- (1) Any money or property that is gifted to a school may be accepted or disclaimed by the board in accordance with section 167 of the Crown Entities Act 2004.
- (2) A limitation that is provided in this Act or that applies under the Crown Entities Act 2004 (for example, a limitation on the form in which property may be held) does not apply during a period that is reasonable in the circumstances.
- (3) **Subsections (1) and (2)** apply to any gift that is received by the board for funding scholarships or bursaries, or for other educational purposes in connection with a school.
- (4) A board must hold the gift for the specific purpose declared by the giver.
- (5) Unless the giver has created a special trust, scholarships and bursaries from a gift must be open to every student at the school.
- (6) If the school for which a gift was given closes, the Minister must direct that the gift should apply to another school.

Compare: 1989 No 80 Schedule 6 cl 33

150 Real property

Except as provided in **section 149**, a board may not acquire an interest in land, or any licence to occupy any land or premises, without the consent of the Minister.

Compare: 1989 No 80 Schedule 6 cl 34

150A Occupancy of property and buildings

- (1) The Secretary may, by notice in the *Gazette*, specify terms and conditions applying generally to land and buildings occupied by boards, and may, by written notice to a particular board, specify terms and conditions applying to land and buildings occupied by that board.
- (2) A notice under **subsection (1)**—
 - (a) may apply to any land and buildings occupied by a board (regardless of who owns the property); but
 - (b) to the extent that it applies to the board of a State integrated school, is subject to **Schedule 6** and to the integration agreement for the time being in force between the Minister and the proprietor of the school.
- (3) Terms and conditions under **subsection (1)** may include standards of maintenance, standards of capital works, and minimum safety and health requirements.
- (4) **Subsection (3)** does not limit the generality of **subsection (1)**.
- (5) Terms and conditions may be specified under **subsection (1)** for—
 - (a) a particular school or institution or particular schools or institutions; or
 - (b) schools or institutions of particular classes or descriptions; or
 - (c) all schools and institutions.
- (6) A notice published in the *Gazette* under **subsection (1)** may contain the terms and conditions in their entirety or provide a general description of those terms and conditions and indicate where the full text can be obtained.
- (7) Terms and conditions specified under **subsection (1)** apply to boards or a board as if—
 - (a) the land and buildings were owned by the Crown and the Crown has leased them to the board; and
 - (b) the terms and conditions were part of the lease; and
 - (c) the Crown had empowered the Secretary to exercise the Crown's powers concerning the lease.

Compare: 1989 No 80 Schedule 6 cl 35

150B Leases and licences granted by boards

- (1) A board may, with the written consent of the Secretary, grant a lease or a licence to occupy to any person in respect of any land, buildings, or facilities occupied by the board.
- (2) The Secretary may agree to the grant of a lease or a licence by the board only if satisfied that—
 - (a) the land, building, or facilities are not needed or used for the purposes of the school during the time covered by the lease or licence; and

- (b) the lease or licence is in the public interest; and
- (c) the lease or licence—
 - (i) is for a purpose associated with educational outcomes and is to bring educational benefit to the school or its community, or to any other school; or
 - (ii) is for a community purpose, and has no educational disadvantage for the school.
- (3) The Secretary must determine the terms and conditions of any lease or licence granted by a board by doing either or both of the following:
 - (a) publishing a notice in the *Gazette* that specifies the general terms and conditions that apply to all, or specified classes of, leases or licences:
 - (b) giving written notice to the board.
- (4) **Section 150A(6)** applies to a *Gazette* notice under **subsection (3)(a)**.
- (5) In relation to a State integrated school, this section applies subject to **Schedule 6** and to any integration agreement in force between the Minister and the proprietor of the school.

Compare: 1989 No 80 Schedule 6 cl 36

150C Other agreements to occupy school land or buildings

- (1) A board may not enter into an agreement unless the agreement—
 - (a) is of a type permitted by *Gazette* notice under **subsection (5)**; and
 - (b) is consistent with ~~this clause~~ section and any conditions specified by *Gazette* notice under **subsection (5)**.
- (2) It is a condition of every agreement that the board has the right to enter, at any time, the land, buildings, or facilities that are the subject of the agreement.
- (3) No person has the right under an agreement to use or occupy any land, buildings, or facilities in such a way as to unduly interfere with the use, by the board for school purposes, of that land or those buildings or facilities, or any other land, buildings, or facilities of the school.
- (4) The Secretary may, by notice in the *Gazette*,—
 - (a) identify the kinds of agreements (for example, agreements for the use of playing fields) that boards may enter into; and
 - (b) specify conditions to which agreements, or specified types of agreements, are subject.
- (5) **Section 150A(6)** applies to a *Gazette* notice under **subsection (4)(b)**.
- (6) In relation to a State integrated school, this section applies subject to **Schedule 6** and to any integration agreement in force between the Minister and the proprietor of the school.

- (7) In this section, **agreement** means an agreement, other than a lease or a licence to occupy under **section 150B**, between a board and any other person for the use of land, buildings, or facilities occupied by the board.

Compare: 1989 No 80 Schedule 6 cl 37

Programmes and monitoring

151 Teaching and learning programmes

The board of a school must ensure that the school's principal and staff develop and implement teaching and learning programmes that—

- (a) give effect to any foundation curriculum policy statements and national curriculum statements published under **section 86**; and
- (b) give the school's students access to a nationally and internationally recognised qualifications system.

Compare: 2017 No 20 s 43

152 Monitoring of and reporting on student performance

- (1) The board of a school must ensure that the school's principal and staff monitor and evaluate the performance of the school's students.
- (2) Monitoring and evaluating must include, but is not limited to, monitoring and evaluating the performance of the students in relation to—
 - (a) any foundation curriculum policy statements and national curriculum statements published under **section 86**; and
 - (b) any qualifications system referred to in **section 151(b)** that is offered at the school.
- (3) The board must ensure that information about a student's performance is given to a parent of the student in a timely manner and in a form that is readily understandable.
- (4) The board must report to the Secretary, to its school community, and to parents on the performance of the school's students in accordance with any regulations made under **section 602**.

Compare: 2017 No 20 s 43

Code of conduct

153 Code of conduct for board members

- (1) The Minister may, by notice in the *Gazette*, issue a code of conduct for the members of State school boards that—
 - (a) sets out the minimum standards of conduct that each member is required to meet; and
 - (b) is consistent with any code issued under **section 565**.

- (2) Before issuing a code of conduct for the members of State school boards, the Minister—
 - (a) must consult the national bodies representing the interests of boards; and
 - (b) may consult any other persons or bodies that the Minister thinks fit.
- (3) The notice under **subsection (1)** must—
 - (a) specify the date on which the code of conduct for the members of State school boards comes into force (which must be at least 28 days after the date on which the notice is published); and
 - (b) either—
 - (i) set out the code in full; or
 - (ii) give enough information to identify the code and state where copies of the code may be obtained.
- (4) A code of conduct for the members of State school boards is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

154 Boards may augment code of conduct for board members

A board, by resolution, may specify additional standards of conduct for its members provided they are consistent with any code issued under **section 153** and the requirements under this Act and any other enactment.

155 Board members must comply with code of conduct

- (1) Every board member must comply with any code issued under **section 153**.
- (2) However, if a conflict between a standard in a code issued under **section 153** (or in a code augmented under **section 154**) and a standard in a code issued under **section 457** arises, the standard in the code issued under **section 457** prevails.

156 Sanctions for failures to comply with code of conduct

- (1) A board may, by resolution, censure a board member (other than a principal) for any significant or persistent breach of a code issued under **section 153** (or a code augmented under **section 154**).
- (2) The Minister may remove a board member (other than a principal) if—
 - (a) the board member has significantly or persistently breached a code issued under **section 153** (or a code augmented under **section 154**); and
 - (b) the board—
 - (i) considers the board member's failure to comply with the code warrants the removal of the board member; and

- (ii) has presented the Minister with a written report about the board member's failure that recommends the removal of the board member; and
 - (c) the Minister is satisfied that there is just cause to remove the board member.
- (3) The removal must be made by written notice to the board member (with a copy to the board).
- (4) The notice must state—
 - (a) the day on which the removal takes effect, which must be no earlier than the day on which the notice is received; and
 - (b) the reasons for the removal.
- (5) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice.
- (6) The Minister may remove a board member with as little formality and technicality, and as much expedition, as is permitted by—
 - (a) the principles of natural justice; and
 - (b) a proper consideration of the matter; and
 - (c) the requirements of this section.
- (7) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the council or the individual duties of members (depending on the seriousness of the breach).

Compare: 1989 No 80 ss 176C, 176D

Validation

157 Validation and invalidation of board elections

- (1) **Subsection (2)** applies if—
 - (a) anything required to be done in connection with an election under this Act—
 - (i) has been done after the time it is required to be done; or
 - (ii) has not been done at all; or
 - (iii) has been done irregularly; and
 - (b) the Minister thinks the lateness, omission, or irregularity could not materially have affected the result of the election.
- (2) If this subsection applies, the Minister may, by notice in the *Gazette*, validate the lateness, omission, or irregularity.

- (3) Where anything required to be done in connection with an election under this Act cannot be done at or by the time at or by which it is required to be done, the Minister may, by notice in the *Gazette*, extend the time for doing it.
- (4) **Subsection (5)** applies if ~~there~~ the following occurs in connection with an election under this Act—:
- (a) any lateness, omission, or irregularity that is capable of being validated under this section, but that the Minister thinks it would be improper or undesirable to validate; or
 - (b) any other irregularity that the Minister thinks could materially have affected the result of the election.
- (5) If this subsection applies, the Minister may within 60 days of the election, by notice in the *Gazette*,—
- (a) declare the election invalid; and
 - (b) require a new election to be held on a day specified in the notice; and
 - (c) either—
 - (i) declare that the board members holding office on the date of the invalid election remain in office until the close of the day before the day on which the new board members take office; or
 - (ii) direct the Secretary to appoint a commissioner to act in place of the board until the close of the day before the day on which the new board members take office.

Compare: 1989 No 80 s 101D

Interventions in State schools

158 Interventions in State schools by Secretary or Minister

- (1) The following interventions may be used in relation to a State school:
- (a) a requirement by the Secretary for information:
 - (b) a requirement by the Secretary for a board to engage specialist help:
 - (c) a requirement by the Secretary for a board to prepare and carry out an action plan:
 - (d) a requirement by the Secretary that the board attend a case conference to enable a particular issue or particular issues to be discussed and actions to be agreed:
 - (e) a requirement by the Secretary that the board engage an appropriately qualified person to undertake a specialist audit of any aspect of the school's affairs:
 - (f) the issuing by the Secretary to the board of a performance notice requiring the board to carry out a specified action by a specified date:

- (g) the appointment by the Minister of a board member (who may be the presiding board member) to the board for a specified period of time;
 - (h) the appointment by the Secretary, at the direction of the Minister, of a limited statutory manager;
 - (i) the dismissal of a board by the Minister and the appointment of a commissioner;
 - (j) the dismissal of a board by the Secretary and the appointment of a commissioner.
- (2) The Secretary or the Minister may use an intervention only if the Secretary has reasonable grounds for concern about the operation of the school or the welfare or educational performance of its students.
- (3) The Secretary or the Minister may use an intervention described in **subsection (1)(d) to (j)** in relation to a school only if the Secretary or the Minister has reasonable grounds to believe that there is a risk to the operation of the school or to the welfare or educational performance of its students.
- (4) The Secretary or the Minister may use an intervention described in **subsection (1)** in relation to a school if either of the following requests the intervention:
- (a) the board;
 - (b) for a State integrated school, the school's proprietors.
- (5) When applying an intervention, the Secretary or the Minister must apply whichever intervention they consider is reasonable to deal with the risk without intervening more than necessary in the affairs of the school.
- (6) The application of any one intervention does not preclude applying any other intervention, either concurrently or at any other time.

Compare: 1989 No 80 s 78I

159 Requirement to provide information

- (1) The Secretary may, by written notice to a board, require the board to provide specified information—
- (a) as at a given time or times; or
 - (b) at specified intervals; or
 - (c) both.
- (2) The Secretary may also require, in the notice, that an analysis of the specified information be provided.
- (3) A board that receives a notice under **subsection (1)** must provide the Secretary with the information required and an analysis of the information (if that has been sought)—
- (a) by the time or times, or at the intervals, or both, as specified in the notice; and

(b) in the form (if any) required by the Secretary.

Compare: 1989 No 80 s 78J

160 Specialist help

- (1) The Secretary may, by written notice to a board, require the board to engage specified specialist help.
- (2) A notice given under **subsection (1)** must identify particular persons or organisations, or types of persons or organisations, whom the board must engage.
- (3) The Secretary may also require, in the notice, that the board provide to the Secretary a report or reports (for example, a progress report and a final report) on the specialist help—
 - (a) by the specified time or times; or
 - (b) at the specified intervals; or
 - (c) both.
- (4) A board that receives a notice under **subsection (1)** must—
 - (a) engage the specialist help as soon as practicable; and
 - (b) pay the fees and reasonable expenses of any person or organisation engaged to provide specialist help, unless the Secretary determines otherwise; and
 - (c) provide a report or reports to the Secretary at the time or times, or intervals, specified in the notice.

Compare: 1989 No 80 s 78K

161 Action plans

- (1) The Secretary may, by written notice to a board, require the board to prepare and carry out an action plan, and any notice must specify—
 - (a) the matters that the action plan must address; and
 - (b) the outcomes sought; and
 - (c) the time within which a draft action plan must be prepared.
- (2) A board that receives a notice under **subsection (1)** must comply with it by preparing a draft action plan within the time specified in the notice and presenting it to the Secretary for approval.
- (3) The Secretary may negotiate with the board over the draft action plan in order to reach an agreed plan, but, if, after a reasonable period, the board and the Secretary have not reached agreement over the content of the action plan, the Secretary may give notice to the board that the Secretary is to approve a particular version of the plan.
- (4) When the Secretary has approved an action plan, the board must—

- (a) ~~must~~ implement it in accordance with its terms, unless or until the Secretary directs otherwise; and
- (b) ~~must~~ make the plan available as if it were part of the strategic plan required under **section 133**.

Compare: 1989 No 80 s 78L

162 Case conference

- (1) The Secretary may, by written notice to a board, require the board to attend a case conference on a specified date.
- (2) The notice must specify the issue or issues to be discussed.
- (3) A board that receives a notice under **subsection (1)** must attend the case conference.
- (4) The Secretary may invite any person to attend the case conference if the Secretary considers that the person's presence at the conference is desirable.
- (5) If the case conference results in the parties reaching agreement on any action or actions to address any issue or issues, the agreement—
 - (a) must be recorded in writing; and
 - (b) is binding on the parties.
- (6) If the Secretary and the board are not able to agree on an action or actions to address any issue or issues, the Secretary may, by written notice to the board, require it—
 - (a) ~~require it~~ to take a particular action or particular actions; and
 - (b) ~~require it~~ to provide the Secretary with a report or reports (for example, a progress report and a final report) on the action or actions taken—
 - (i) as at a given time or given times; or
 - (ii) at specified intervals; or
 - (iii) both.
- (7) A board that receives a notice under **subsection (6)** must,—
 - (a) in relation to a requirement to take a particular action or particular actions, take the action or actions as soon as practicable; and
 - (b) if the notice includes a requirement to report to the Secretary, provide a report or reports at the time or times, or intervals, specified in the notice.

Compare: 1989 No 80 s 78LA

163 Specialist audit

- (1) The Secretary may, by written notice to the board, require a board to engage an appropriately qualified person to undertake a specialist audit of any aspect of the school's affairs.

- (2) A notice given under **subsection (1)** must identify particular persons or organisations, or types of persons or organisations, whom the board must engage.
- (3) The Secretary may also require, in the notice, that the board provide the Secretary with a report or reports (for example, a progress report and a final report) on the audit—
 - (a) as at a given time or times; or
 - (b) at specified intervals; or
 - (c) both.
- (4) A board that receives a notice under **subsection (1)** must—
 - (a) undertake the audit as soon as practicable; and
 - (b) pay the fees and reasonable expenses of any person or organisation engaged to undertake the audit, unless the Secretary determines otherwise; and
 - (c) provide a report or reports to the Secretary at the time or times, or intervals, specified in the notice.

Compare: 1989 No 80 s 78LB

164 Performance notice

- (1) The Secretary may, by written notice to a board, issue a performance notice requiring the board to carry out a specified action by a specified date.
- (2) The Secretary may also require, in the notice, that the board provide the Secretary with a report or reports (for example, a progress report and a final report) on the action taken—
 - (a) as at a given time or given times; or
 - (b) at specified intervals; or
 - (c) both.
- (3) A board that receives a notice under **subsection (1)** must—
 - (a) take the action by the date specified in the notice; and
 - (b) provide a report or reports to the Secretary at the time or times, or intervals, specified in the notice.

Compare: 1989 No 80 s 78LC

165 Appointment of additional board member by Minister

- (1) The Minister may, by written notice to a board, appoint an additional board member, and the Minister may also appoint that board member as the presiding board member.
- (2) The notice must specify a period of time for which the appointment is made.

- (3) A person who is ineligible to be a board member under this Act or any regulations made under this Act may not be appointed under this section.

Compare: 1989 No 80 s 78LD

166 Amendment and revocation of notices

- (1) The Secretary may, by giving written notice to a board, amend or revoke a notice given by the Secretary under any of **sections 159 to 164, 167, and 168**.

- (2) The amendment or revocation takes effect on the date specified in the notice.

Compare: 1989 No 80 s 78LE

167 Limited statutory manager

- (1) The Minister may, by notice in the *Gazette*, direct the Secretary to appoint a limited statutory manager for a board.

- (2) A notice under **subsection (1)** must specify—

- (a) any functions, powers, and duties of the board (whether statutory or otherwise) that are to be vested in the limited statutory manager; and
- (b) any matters on which the limited statutory manager may or must advise the board; and
- (c) any conditions attaching to the exercise of the powers by the board or by the limited statutory manager.

- (3) On publication of the *Gazette* notice, the Secretary must, by notice to the board,—

- (a) appoint a person to be the limited statutory manager for the board; and
- (b) state the date on which the appointment takes effect.

- (4) A notice under **subsection (3)** appointing a person to be the limited statutory manager for the board may refer to the person appointed—

- (a) by the limited statutory manager's own name; and
- (b) as being of a named body corporate.

- (5) On and from the date on which the limited statutory manager's appointment takes effect,—

- (a) any functions, powers, or duties of the board specified in a notice under **subsection (1)** vest in the limited statutory manager; and
- (b) the board must take into consideration advice given by the limited statutory manager on any matter on which the manager is obliged to give advice; and
- (c) any conditions specified in the notice apply.

- (6) The board must pay the fees and expenses of a limited statutory manager appointed for it, unless the Secretary determines otherwise.

- (7) The Minister may, by notice in the *Gazette*, amend a notice under **subsection (1)**, and the amendment takes effect on and from the date given in the notice.
- (8) If the Minister is satisfied that the appointment of the limited statutory manager is no longer required, the Minister must revoke the notice under **subsection (1)**, in which case the appointment terminates from the date of the revocation.

Compare: 1989 No 80 s 78M

168 Dissolution of board and appointment of commissioner

- (1) The Minister may, by notice in the *Gazette*, dissolve a board and direct the Secretary to appoint a commissioner to replace that board.
- (2) On publication of a notice under **subsection (1)**, the Secretary must, by notice in the *Gazette*, appoint a commissioner for the school and state the date on which the appointment takes effect.
- (3) The Secretary may, by notice in the *Gazette*, dissolve the board and appoint a commissioner in its place, as from a specified date, if any of the following applies:
 - (a) the board has not held a meeting during the previous 3 months;
 - (b) so many casual vacancies have arisen that there is no longer any board member who is eligible to preside at meetings of the board;
 - (c) the result of an election of board members is that the board has fewer than 3 board members elected by parents;
 - (d) an election of board members has not been held as required by this Act;
 - (e) it is impossible or impracticable to discover the results of an election of board members;
 - (f) the Minister has directed the Secretary to appoint a commissioner under **subsection (1)**.
- (4) A notice under **subsection (2) or (3)** appointing a commissioner for a school may refer to the person appointed—
 - (a) by the Commissioner's own name; and
 - (b) as being of a named body corporate.

Compare: 1989 No 80 s 78N

169 No compensation for loss of office

- (1) A board member is not entitled to any compensation or other payment or benefit relating to the board member ceasing for any reason to hold office as a board member.
- (2) A board must ensure, to the extent that it is reasonably able to do so, that each of its Crown entity subsidiaries does not pay directors of the subsidiary any compensation or other payment or benefit, on any basis, for ceasing for any reason to hold office.

- (3) However, **subsections (4) and (5)** apply to a person who is entitled, at the commencement of this section under any contract or arrangement, to any compensation or other payment or benefit relating to their ceasing for any reason to hold office.
- (4) The entitlement is not affected by the enactment of this section.
- (5) The entitlement is cancelled on the date of reappointment of the board member or director or of the member to the committee (if any).

Compare: 1989 No 80 s 78NA

170 Commissioners

- (1) A commissioner appointed under **section 157(5)(c)(ii) or 168** has all the functions, ~~powers, and duties~~ duties, and powers of the board that the commissioner is appointed to replace.
- (2) Anything that, if done by or on behalf of the board, must be done by affixing the board's seal, or by the signature of 2 or more board members, or both, may be done by the signature of the commissioner.
- (3) The remuneration of the commissioner must be determined by the Secretary and paid for out of funds of the board, unless the Secretary determines otherwise.

Compare: 1989 No 80 s 78O

171 Commissioner sets date for election of board members

- (1) In the case of a commissioner appointed under **section 168(2)**, when the Secretary is satisfied that a commissioner is no longer required for the school, the commissioner must appoint a date for the election of board members.
- (2) In the case of a commissioner appointed under **section 168(3)**, when the Secretary is satisfied that an election of board members is likely to produce a functioning board, the commissioner must appoint a date for the election of board members.
- (3) A commissioner's appointment ends 7 days after the date that the commissioner has set for the election of board members.

Compare: 1989 No 80 s 78P

172 Personal liability of limited statutory managers and commissioners

A limited statutory manager or commissioner is not personally liable for any act done or omitted by the manager or commissioner, or for any loss arising out of any act done or omitted by them, if the act or omission was in good faith and occurred in the course of ~~carrying out~~ performing their functions.

Compare: 1989 No 80 s 78Q

173 Annual review of interventions

Within 1 year of the date of a notice under any of **sections 159 to 165, 167, and 168**, the Secretary must review the operation of the intervention commenced by each notice, and after that must review the operation of the intervention annually.

Compare: 1989 No 80 s 78R

174 Application of interventions to State integrated schools

- (1) The Secretary must, if practicable, consult with the proprietors of a State integrated school before appointing a limited statutory manager or commissioner for the school, and must have regard to any recommendations made by the proprietors.
- (2) If the Secretary considers that it is not practicable to consult with the proprietors before making an appointment, the Secretary must consult with the proprietors after making the appointment and must consider whether, in light of any recommendations made by the proprietors, a different person should be appointed in place of the original appointee.

Compare: 1989 No 80 s 78S

175 Application of interventions to Kura Kaupapa Māori

- (1) Before applying any of the interventions in this subpart to a Kura Kaupapa Māori, the Secretary must consult with te kaitiaki o Te Aho Matua.
- (2) **Subsection (1)** applies only to Kura Kaupapa Māori that are required by their school charters to operate in accordance with Te Aho Matua.

Compare: 1989 No 80 s 78T

Subpart 6—Establishment and designation of State schools

176 Overview: classifications and types of State schools

This subpart concerns—

- (a) the following classifications of State schools:
 - (i) primary school:
 - (ii) intermediate school:
 - (iii) secondary school:
 - (iv) composite school:
- (b) the following types of State schools:
 - (i) ordinary State school:
 - (ii) designated character school, including Kura Kaupapa Māori:
 - (iii) State integrated school:
 - (iv) specialist school:

- (v) distance school.

177 Minister may establish State schools

- (1) The Minister may, by notice in the *Gazette*, establish a ~~new~~ State school by—
- (a) describing the place where the school is to be located; and
 - (b) for a secondary school, specifying whether it is a boys' school, a girls' school, or a co-educational school; and
 - (c) specifying a name for the school.
- (2) A decision to establish a school under **subsection (1)** is in the Minister's absolute discretion.
- (3) A ~~new~~-school established under this section must be established as a primary, an intermediate, a secondary, or a composite school, and the notice establishing it must specify what classification of school it is.
- (4) A notice under **subsection (1)** establishing a ~~new~~-school may specify the year levels for which education may be given at the school and may provide for different year levels to be phased in over a specified period or periods.
- (5) A notice under **subsection (1)** establishing a ~~new~~-primary school may designate the school as a contributing school.
- (6) Despite **clauses 3 and 4 of Schedule 21**, the Minister may approve an alternative constitution when establishing a school.
- (7) This section is subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 146

178 Single-sex schools

- (1) The Minister may, by notice in the *Gazette*, declare ~~any~~ State school to be a single-sex school or a co-educational school.
- (2) A declaration under **subsection (1)** takes effect on the day that is 5 months after the first day of **August** after the notice is published.
- (3) The Minister may, by notice in the *Gazette*, limit, in relation to a specified single-sex school,—
- (a) in the case of a boys' school, the number of girls who may enrol at it, or the proportion of the total roll of the school that may be girls;
 - (b) in the case of a girls' school, the number of boys who may enrol at it, or the proportion of the total roll of the school that may be boys.
- (4) In setting limits under **subsection (3)**, the Minister must have regard to the necessity of maintaining the single-sex nature of the school.
- (5) **Subsection (1)** is subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 146A

179 Names of State schools

- (1) The name of a State school established after **31 December 1989** must be the name specified in the notice establishing it.
- (2) The name of a State school whose classification has been changed under **section 185** must be the name specified in the last notice changing its classification.
- (3) The name of a State school established before **1 January 1990** must be the name it had on **1 December 1989**.
- (4) However, the board of the State school may, by resolution and with the Secretary's written consent, change the school's name.
- (5) The Secretary may not withhold consent under **subsection (4)** unless satisfied that the proposed new or amended name is inappropriate.

Compare: 1989 No 80 s 147

180 Normal schools, etc

- (1) The Minister may, by notice in the *Gazette*,—
 - (a) designate 1 or more specified primary schools as normal or model schools for providers of pre-service teacher education:
 - (b) designate within a specified primary school a normal or model school, or model class, for providers of pre-service teacher education:
 - (c) revoke any designation under this section.
- (2) **Subsection (1)** does not apply to a State integrated school.
- (3) Every school that was on **31 December 1989** designated a normal or model school under section 72 of the Education Act 1964 must be treated as having been designated a normal school under this section.
- (4) Every normal or model school, or model class, that was on **31 December 1989** designated within a primary school under section 72 of the Education Act 1964 must be treated as having been designated under this Act.
- (5) **Subsection (1)** is subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 148

181 Contributing schools

- (1) The Minister must determine which primary schools are to be or cease to be contributing schools.
- (2) If the Minister determines that a primary school is to be or cease to be a contributing school, the Minister must give the school's board written notice of the determination.
- (3) While a primary school is a contributing school, its board must limit the education given at the school to students enrolled in year levels—

- (a) not higher than year 6; and
 - (b) if the Minister allows in a notice given under subsection (2), not higher than year 7.
- (4) However, if satisfied that there are enrolled at a contributing school students whose education at the school is wholly or in part bilingual, the Minister may, by written notice to the board specifying the languages concerned, permit the board to give education to those students in accordance with conditions specified in the notice.
- (5) Every school that was on **31 December 1989** a contributing school of any other school under section 74 of the Education Act 1964 must be treated as having been designated under **subsection (1)**.
- (6) This section applies to a school designated as a contributing school under **section 177(5)** as if the school had become a contributing school under **subsection (1)** and the Minister had given the school's board the appropriate notice under **subsection (2)**.
- (7) In determining that a school should be or should cease to be a contributing school, the Minister may provide for education at specified year levels to be phased in or phased out over a specified period or specified periods.
- (8) **Subsection (1)** is subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 150

182 Provision of education at composite schools

- (1) The Minister may, by written notice to the board of a composite school, require the board to provide education for the year levels specified in the notice, and if the Minister does so, the board must provide the education at the school accordingly.
- (2) **Subsection (1)** is subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 151

183 Distance schools

- (1) The Minister may, by notice in the *Gazette*,—
- (a) when establishing the school, or at any other time, designate a State school that is not a State integrated school as a distance school; or
 - (b) at any time, remove a designation under **paragraph (a)**.
- (2) However, the Minister may not designate a school as a distance school, or cancel a designation as a distance school, without having regard to the education of people unable conveniently to ~~get~~ receive tuition from a suitable State school that is not a distance school.

- (3) Subject to **clauses 8(7) and 12 of Schedule 22** and any regulations made under this Act specifying when a board member's office becomes vacant, if an existing State school is designated as a distance school, its board must continue in office as constituted until a day specified by the Minister in the notice in the *Gazette* under **section 118(1)** determining the composition of its board, but must go out of office on that day.
- (4) With the consent of the Minister, a distance school may provide early childhood education.
- (5) A distance school may deliver education through any medium, including digital technology.
- (6) The school that was, immediately before the commencement of the Education Amendment Act 1989, a correspondence school is to be treated as having been—
 - (a) established under **section 177** as a composite school; and
 - (b) designated under **subsection (1)** as a distance school.

Compare: 1989 No 80 s 152

184 Specialist schools and special services

- (1) The Minister may, having regard to the provision of special education in any locality or localities,—
 - (a) establish a specialist school;
 - (b) establish, or authorise the establishment of, any special service.
- (2) The Minister may disestablish a specialist school or special service established under **subsection (1)** if the Minister—
 - (a) is dissatisfied with the manner in which the school or service is being conducted; or
 - (b) considers that sufficient provision is made by another similarly established school or service, or by any other school or class in or reasonably near to the same locality.

Compare: 1964 No 135 s 98

185 Minister may change classification of school

- (1) The Minister may, by notice in the *Gazette*, do any of the following:
 - (a) declare a composite school to be a primary, an intermediate, or a secondary school;
 - (b) declare a primary, an intermediate, or a secondary school to be a composite school;
 - (c) declare an intermediate school to be a primary or secondary school;
 - (d) declare a primary or secondary school to be an intermediate school.
- (2) **Subsection (1)** does not apply to a State integrated school.

- (3) The Minister may, by notice in the *Gazette*, specify the year levels for which education must be given at a school (whether it is an existing school or a school whose classification has been changed under **subsection (1)**) and provide for year levels to be phased in over a specified period or periods.
- (4) A decision to change the classification of a school under **subsection (1)** or to specify year levels (and, if relevant, to provide for the phasing in of these) under **subsection (3)** is in the Minister's absolute discretion.
- (5) A notice under **subsection (1)**, must specify a day (no earlier than the end of the term after the term during which the notice is published) on which it is to take effect, and the school becomes a school of the classification concerned, and ceases to be a school of the classification it was, on the day specified.
- (6) Subject to **clauses 8(7) and 12 of Schedule 22** and any regulations made under this Act specifying when a board member's office ends or becomes vacant, if an existing State school becomes a school of a different classification, its board continues in office as constituted until the close of the seventh day after the first election following its change of classification.
- (7) **Subsections (1) and (3)** are subject to **section 195** (which sets out consultation requirements).

Compare: 1989 No 80 s 153

186 Minister may close State school

- (1) This section applies if, after consulting the board of a State school, the Minister is satisfied that the school should be closed.
- (2) Before making a decision under **subsection (1)**, the Minister may, by written notice to the board, ask the board if it has any arguments in favour of the school staying open.
- (3) The Minister may, after considering all arguments (if any) received from the board within 28 days after it received notice under **subsection (2)**, by notice in the *Gazette* specifying a day on which the school is to close, close the school, and the school ceases to be established on the day specified.
- (4) If the board of a State school advises or indicates to the Minister in writing that it agrees to or does not oppose the proposed closure of the school, the Minister may (despite anything in **subsection (2) or (3)** and regardless of whether the Minister has formally begun or completed the necessary consultation under **subsection (1)**) close the school by notice under **subsection (3)** on or after receiving the board's written advice.
- (5) A decision to close a school under **subsection (3)** is in the Minister's absolute discretion.
- (6) If a school is closed under this section,—
 - (a) its board must be treated as having been dissolved; and

- (b) all assets, liabilities, and debts that the board had immediately before dissolution must be treated as assets, liabilities, and debts of the Minister.
- (7) Without limiting **subsection (3)(b)**, the following provisions apply to property that was, immediately before dissolution, held by the board in trust for the benefit of the school:
 - (a) the Minister may apply to Public Trust to devise a scheme to modify the trust for the benefit of another school:
 - (b) if the Minister applies under **paragraph (a), section 194A(2) to (8)** applies with any necessary modifications (as if the property were property to which that section applies).
- (8) A school that has been closed may not be reopened, except by being established again under this Act.
- (9) This section is subject to **section 195** (which sets out consultation requirements) and **clause 24 of Schedule 6**.

Compare: 1989 No 80 s 154

187 Minister may designate and redesignate schools

- (1) The Minister may, by notice in the *Gazette*, after consultation with the board of the affected school, do any of the following:
 - (a) designate a State school that is not a Kura Kaupapa Māori or a designated character school as a Kura Kaupapa Māori or a designated character school:
 - (b) remove the designation of a Kura Kaupapa Māori and redesignate it as a designated character school:
 - (c) remove the designation of a designated character school and redesignate it as a Kura Kaupapa Māori:
 - (d) remove the designation of a Kura Kaupapa Māori or a designated character school while keeping the school established as a State school.
- (2) The designation or removal of a designation of a school takes effect on the date specified in the notice under **subsection (1)** and, on and from that date, **section 191**—
 - (a) applies to a school that is designated as a Kura Kaupapa Māori or as a designated character school; and
 - (b) ceases to apply to a school that has had its designation as a Kura Kaupapa Māori or a designated character school removed.
- (3) A notice under **subsection (1)** may prescribe a new name for the redesignated school.

- (4) **Section 191** applies in respect of a school that is, or is to be, redesignated as a Kura Kaupapa Māori in the same way as it would apply if the school were being established as a Kura Kaupapa Māori.
- (5) No school may have its designation as a Kura Kaupapa Māori removed unless the Minister has first consulted with te kaitiaki o Te Aho Matua.
- (6) No State school may be designated as a Kura Kaupapa Māori unless the Minister has first consulted with te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua.
- (7) **Section 191** applies in respect of a school that is, or is to be, redesignated as a designated character school in the same way as it would apply if the school were being established as a designated character school.

Compare: 1989 No 80 s 154A

188 Kura Kaupapa Māori

- (1) When establishing a State school as a designated character school under **sections 191 and 192**, the Minister may also designate that designated character school as a Kura Kaupapa Māori.
- (2) The Minister may establish a school as a Kura Kaupapa Māori in accordance with this section only.

Compare: 1989 No 80 ss 155, 155C

189 Te Aho Matua

- (1) The official version of Te Aho Matua is the statement (including any gazetted amendments) in te reo Māori that is—
 - (a) prepared by te kaitiaki o Te Aho Matua; and
 - (b) published in the *Gazette* under the authority of the Minister.
- (2) The Minister may authorise the reprinting of all, or the amendment of any part, of Te Aho Matua in the *Gazette*, but only if asked to do so by te kaitiaki o Te Aho Matua.
- (3) When all, or an amendment to any part, of Te Aho Matua is published in the *Gazette*, the Minister must ensure that an explanation in English of Te Aho Matua or of the amendment is published in the same *Gazette*.
- (4) The explanation must be one that te kaitiaki o Te Aho Matua has approved as being an accurate interpretation of the meaning of the Māori text.

Compare: 1989 No 80 s 155A

190 Protection of term Kura Kaupapa Māori

- (1) A registered school may not use the term Kura Kaupapa Māori in its name unless the school is established under **section 191**.

- (2) **Subsection (1)** does not apply to a registered school that, immediately before the commencement of this section, is not established under **section 188** but uses the term Kura Kaupapa Māori in its name.

Compare: 1989 No 80 s 155F

191 Designated character schools

- (1) When establishing a State school, the Minister may designate the school as a designated character school in accordance with this section and **section 192**.
- (2) The Minister may, in the Minister's absolute discretion, refuse to establish a designated character school.
- (3) The Minister may not establish a school as a designated character school unless satisfied that, if the school is established,—
- (a) for a school that is also to be designated as a Kura Kaupapa Māori under **section 188**,—
 - (i) te reo Māori is to be the main language of instruction at the school; and
 - (ii) the school is to operate in accordance with Te Aho Matua:
 - (b) for any other type of designated character school, the school is to have a character that is in some specific way or ways different from the character of ordinary State schools (its **different character**):
 - (c) for any designated character school, it is desirable for students whose parents want them to do so to get such an education:
 - (d) for any designated character school, students at the school are to receive an education of a kind that differs significantly from the education they would get at an ordinary State school.
- (4) The Minister may not also designate a designated character school as a Kura Kaupapa Māori unless the Minister has first consulted te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua.
- (5) The board of a designated character school must ensure,—
- (a) for a Kura Kaupapa Māori, that—
 - (i) te reo Māori is the principal language of instruction at the school; and
 - (ii) the school operates in accordance with Te Aho Matua:
 - (b) for any other type of designated character school, that—
 - (i) the aims, purposes, and objectives of the school's different character are set out in the school's strategic plan; and
 - (ii) the school operates consistently with its different character.

- (6) A designated character school that is a Kura Kaupapa Māori may have other special characteristics that give it a particular character (its **special characteristics**).
- (7) The Secretary must, by written notice to a designated character school, fix a maximum roll of the school, and the board must ensure that the number of students enrolled at the school is not more than the maximum roll.
- (8) A board of a designated character school may refuse to enrol students whose parents do not accept,—
 - (a) for a Kura Kaupapa Māori, that the school operates in accordance with Te Aho Matua;
 - (b) for any other type of designated character school, that the school operates consistently with its different character.
- (9) Except as provided in this section, **clause 16 of Schedule 19**, and any regulations made under this Act regarding enrolment schemes for designated character schools, this Act applies to every designated character school as if it were not a designated character school.

192 Process for establishing designated character schools

- (1) The Minister may, by notice in the *Gazette* when establishing a State school, designate the school as a designated character school and (if applicable) also designate a school as a Kura Kaupapa Māori.
- (2) Before doing so, the Minister must be satisfied of the matters in **section 191(3)** and have undertaken consultation under **section 191(4)**.
- (3) The notice establishing a designated character school must,—
 - (a) for a Kura Kaupapa Māori,—
 - (i) specify the name of the school, which must at all times begin with the words “Te Kura Kaupapa Māori o”; and
 - (ii) state that the school will operate in accordance with Te Aho Matua; and
 - (iii) summarise any other special characteristics of the school:
 - (b) for any other type of designated character school, describe the different character of the school (as defined in **section 191(3)(b)**):
 - (c) for any designated character school, state the constitution of the school’s board.
- (4) The notice establishing a designated character school that is not a Kura Kaupapa Māori may also name a body that has a special affiliation with the school or has responsibility for the different character of the school.
- (5) The Minister may ~~from time to time~~, after consultation with the board of a designated character school, by notice in the *Gazette*,—
 - (a) for a Kura Kaupapa Māori,—

- (i) amend the name of the school (but not so as to omit the words “Te Kura Kaupapa Māori o”):
 - (ii) amend the summary of special characteristics of the school:
 - (b) for any other type of designated character school,—
 - (i) amend the description of the different character of the school:
 - (ii) name a body that has a special affiliation with the school or has responsibility for the different character of the school:
 - (c) for any designated character school, amend the statement of the constitution of the board.
- (6) The Minister must consult any body named under **subsection (4) or (5)(b)(ii)** before amending the description of the school’s different character.

193 Minister may merge schools

- (1) The Minister may, by notice in the *Gazette*, merge 1 or more State schools that are not State integrated schools with another State school that is not a State integrated school, if the Minister is satisfied that—
 - (a) each board of a school concerned has made reasonable efforts to consult the parents of students (other than adult students) enrolled full-time at the school about the proposed merger; and
 - (b) the consultation that has taken place has been adequate in all the circumstances; and
 - (c) the creation of a single school by the merger is appropriate in the circumstances.
- (2) A decision to merge a school under **subsection (1)** is in the Minister’s absolute discretion.
- (3) A notice under **subsection (1)** takes effect on a day (no earlier than the end of the term after the term during which the notice is published) specified in the notice and has effect as follows:
 - (a) the merging schools are part of the continuing school:
 - (b) if the continuing school and each merging school are not already administered by a single board,—
 - (i) the board of each merging school is dissolved; and
 - (ii) all rights, assets, liabilities, and debts of each merging school are vested in the board of the continuing school:
 - (c) the continuing school is a school of the classification specified in the notice and provides education for the student year levels specified in the notice.
- (4) A notice under **subsection (1)** does not affect the name of the continuing school.

- (5) Before a notice under **subsection (1)** takes effect, the Minister must give notice in the *Gazette* of whether,—
- (a) during the period between a date specified in the notice and the date on which new board members take office following an election, the board of the continuing school is to be—
 - (i) the board of the continuing school plus co-opted board members representing each merging school; or
 - (ii) a board appointed by the Minister; or
 - (b) the board of the continuing school is to have an alternative constitution approved under **clause 4 of Schedule 21**.
- (6) This section is subject to **sections 194 and 195**.
Compare: 1989 No 80 s 156A

194 Restrictions on mergers in certain cases

- (1) A Kura Kaupapa Māori established after the commencement of the Education (Te Aho Matua) Amendment Act 1999 may not merge or be merged with another Kura Kaupapa Māori or other school unless the schools involved in the merger—
- (a) operate in accordance with Te Aho Matua; and
 - (b) use te reo Māori as the principal language of instruction.
- (2) Any other Kura Kaupapa Māori may merge with another school only if both schools use te reo Māori as the principal language of instruction and have the same aims, purposes, and objectives.
- (3) A designated character school may not merge or be merged with another designated character or other school unless the schools involved in the merger have the same aims, purposes, and objectives, being the aims, purposes, and objectives that constitute the way in which the character of each school is different from the character of ordinary State schools.

Compare: 1989 No 80 s 156B

194A Property held in trust

- (1) This section applies to any property that, immediately before 2 or more schools merged under **section 193**, was held in trust—
- (a) by the board of 1 (or more) of those schools; or
 - (b) by any other person or body for the benefit of—
 - (i) 1 (or more) of those schools; or
 - (ii) the students or former students of 1 (or more) of those schools.
- (2) The property continues to be subject to the trust concerned, but the person or body in whom it is vested may apply to Public Trust to devise a scheme to modify the trust in light of the merger of the schools concerned.

- (3) If satisfied that adequate arrangements have been made to meet the costs of doing so, Public Trust must, in consultation with the board concerned, devise a scheme to modify any trust in respect of which Public Trust has received an application under this section and notify the Solicitor-General of the scheme.
- (4) If Public Trust notifies the Solicitor-General of a scheme, the Solicitor-General may, by written notice to Public Trust,—
 - (a) approve the scheme (as originally notified or with any amendments agreed by Public Trust after consultation with the board concerned); or
 - (b) suggest amendments to it; or
 - (c) direct that it should not proceed.
- (5) If the Solicitor-General directs that it should not proceed, the matter may be dealt with under the Charitable Trusts Act 1957.
- (6) If, within 90 days of being notified of a scheme, the Solicitor-General does not suggest amendments to it or direct that it should not proceed, the Solicitor-General is to be treated as having approved the scheme.
- (7) If the Solicitor-General approves a scheme notified under this section, the trust concerned has effect accordingly.
- (8) The Solicitor-General may not approve a scheme under this section unless satisfied that—
 - (a) it modifies the trust concerned so as best to give effect to the intentions of the testator, settlor, or other person or body by whom or which the trust was established; and
 - (b) subject to **paragraph (a)**, it effects the minimum change necessary to enable the trust to operate successfully in light of the merger of the schools concerned.

Compare: 1989 No 80 s 156C

195 Consultation

- (1) The Minister must consult the board of the State school concerned before—
 - (a) declaring a school to be a single-sex school or a co-educational school under **section 178(1)**;
 - (b) setting limits by notice under **section 178(3)** on the number of girls who may attend a boys' school or boys who may attend a girls' school;
 - (c) designating a primary school as a normal or model school under **section 180(1)(a)**;
 - (d) designating a normal or model school or a model class within a primary school under **section 180(1)(b)**;
 - (e) revoking a designation under **section 180(1)(c)**;
 - (f) determining under **section 181(1)** that a particular school is to be a contributing school:

- (g) limiting the education given at a composite school under **section 182**;
 - (h) changing the classification of a school under **section 185(1)**.
- (2) The Minister must consult the boards of all the State schools whose rolls might, in the Minister's opinion, be affected before—
- (a) establishing a school under **section 177(1)**;
 - (b) declaring a school to be a single-sex school or a co-educational school under **section 178(1)**;
 - (c) determining under **section 181(1)** that a primary school is to be or cease to be a contributing school;
 - (d) limiting the education given at a composite school under **section 182**;
 - (e) changing the classification of a school under **section 185(1)**;
 - (f) closing a school under **section 186**;
 - (g) redesignating, or removing a designation from, a school under **section 187**;
 - (h) merging any school or schools with another under **section 193**.
- (3) **Subsection (2)(g) and (h)** does not apply if the relevant boards have already been consulted on a closure or merger option as part of a review of the provision of schooling in a particular area.

Compare: 1989 No 80 s 157

196 Community education forums

- (1) The Minister may appoint a person to—
- (a) convene within a specified area public meetings relating to any action the Minister is considering in respect of State schools; and
 - (b) advise the Minister on the views expressed at the meetings.
- (2) The Minister may take, or refuse to take, the action without—
- (a) giving the person reasonable time to convene the meetings and advise the Minister; and
 - (b) considering any advice the person gives the Minister in that time.

Compare: 1989 No 80 s 157A

197 State integrated schools part of State system

- (1) Subject to **subsection (2)**,—
- (a) on integration, a State integrated school becomes part of the State system of education in New Zealand; and
 - (b) this Act and regulations made under this Act apply to a State integrated school; ~~and~~.

- (e) ~~the **State Sector Act 1988** applies to a State integrated school as if service in the employment of the school's board were education service within the meaning of that Act.~~
- (2) The enactments applied to State integrated schools by **subsection (1)(b)** are subject to **Schedule 6**.
- Compare: 1989 No 80 s 417

198 Application to negotiate integration

The proprietor of a private school, and any person who proposes to establish a school with the intention that it become a State integrated school, may apply to the Minister to enter into negotiations for integration under **Schedule 6**.

Compare: 1989 No 80 s 418

Subpart 7—Private schools

199 Secretary may require application for registration of school

The Secretary may require the managers of a private entity that is not registered under **section 200** to apply for its registration as a private school under that section if the Secretary considers that the entity is operating as a school, whether or not any exemption certificates issued under **section 37** are held in respect of any or all of the students being taught there.

Compare: 1989 No 80 s 35B

200 Registration of private schools

- (1) This section applies if the managers of an existing school or proposed school wish the school to be registered as a private school under this section.
- (2) The managers must apply to the Secretary, on a form provided by the Secretary for the purpose, for its provisional registration as a primary, secondary, or special private school, or as a school of 2 or all of those descriptions.
- (3) The provisional and full registration of private schools, and the operation of private schools, must be done in accordance with **Schedule 7**.

Compare: 1989 No 80 s 35A(1)

Subpart 8—Secondary–tertiary programmes

201 Recognition of secondary–tertiary programmes

The Minister may recognise, and the Secretary may enter into an agreement with, a provider group of secondary–tertiary programmes in accordance with **Schedule 8**.

Subpart 9—Resolving serious disputes

202 Purpose

The purpose of this subpart is to establish a dispute resolution scheme to facilitate and promote the resolution of serious disputes between students and State schools in an effective, flexible, and timely manner.

203 Meaning of serious dispute

In this subpart, **serious dispute** means a dispute between a student and the board of the student's school about—

- (a) the student's right to enrol at or attend the school:
- (b) the student's rights to education under this Act generally:
- (c) the learning support the student receives at the school:
- (d) the standing-down, suspension, exclusion, or expulsion of the student by the school:
- (e) any racism or other form of discrimination that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993 experienced by the student while at the school:
- (f) the student's physical or emotional safety while at the school:
- (g) any physical ~~force~~ restraint used on the student by a teacher or an authorised staff member employed or engaged by the school.

204 Dispute resolution panels

- (1) One or more dispute resolution panels may be established by regulations made under **section 607** to resolve serious disputes under this subpart.
- (2) Each dispute resolution panel must consist of the combination of local community members and expert members specified in the regulations.

205 Chief Referee and deputy chief referees

- (1) The Minister may appoint a Chief Referee and, if required, may appoint 1 or more deputy chief referees for the purposes of this subpart and in accordance with any regulations made under **section 607**.
- (2) No person may be appointed as Chief Referee unless the person—
 - (a) holds a Bachelor of Laws from a university in New Zealand or a qualification that the Minister considers is equivalent to that qualification; and
 - (b) is capable, because of the person's personal attributes, knowledge, and experience, of performing the functions of the Chief Referee set out in **section 206**.
- (3) A deputy chief referee must be appointed in the same manner, and must meet the same criteria, as the Chief Referee.

- (4) Subject to the control of the Chief Referee, a deputy chief referee may perform all the functions of the Chief Referee.

206 Functions of Chief Referee

- (1) The functions of the Chief Referee are—
- (a) to receive and consider applications for resolution of serious disputes; and
 - (b) to appoint the members and chairperson of dispute resolution panels; and
 - (c) to maintain a list of persons suitable to serve as expert members and local community members of dispute resolution panels; and
 - (d) to carry out any other functions as necessary to support the conduct and administration of dispute resolution panels established for the purposes of this subpart.
- (2) The Chief Referee may delegate in writing any of the Chief Referee's functions or powers to any person or office holder, or class of person or office holder, specified in regulations made under **section 607**.
- (3) The Chief Referee and a deputy chief referee may be an expert member of a dispute resolution panel.

Application for dispute resolution

207 Application for dispute resolution

- (1) The following persons may apply to the Chief Referee for a serious dispute to be resolved by a dispute resolution panel:
- (a) a student aged 16 years or over;
 - (b) in the case of a student aged under 16 years, the student and a parent, guardian, or full-time caregiver of the student;
 - (c) in the case of a student aged under 16 years and who is in care—
 - (i) the student and a guardian of the student; or
 - (ii) the student and the chief executive, person, body, or organisation referred to in section 7(4) of the Oranga Tamariki Act 1989 (or their nominated representative) who has the custody or care of the student.
- (2) However, an application may be made only if, before making the application, the applicant has given the board an opportunity to resolve the dispute by agreement and—
- (a) the applicant is dissatisfied with that process or the outcome (or both); or
 - (b) the board has refused to do so.
- (3) For the purposes of **subsection (1)(c)**, **in care** has the same meaning as in section 7(4) of the Oranga Tamariki Act 1989.

207A Form of application

- (1) An application may be made orally or in writing.
- (2) However, an application made orally must be put in writing as soon as practicable.
- (3) An application must include a statement setting out—
 - (a) the nature of the serious dispute; and
 - (b) what steps the applicant has taken to resolve the serious dispute with the board before seeking to refer the matter to a dispute resolution panel.

207B Procedure on receipt of application

- (1) As soon as practicable after receiving an application, the Chief Referee must consider the application and—
 - (a) decide to accept the application and refer the matter to a dispute resolution panel; or
 - (b) decide, in accordance with **section 207C**, to decline the application.
- (2) As soon as practicable after making a decision, the Chief Referee must give written notice to the applicant of that decision.

207C Grounds for declining application

The Chief Referee may decline an application if satisfied that—

- (a) the applicant has not made reasonable efforts to resolve the serious dispute with the board before making the application; or
- (b) the subject matter of the application is trivial; or
- (c) the application is frivolous or vexatious; or
- (d) the application involves a dispute or complaint that would be more appropriately dealt with by another body.

Dispute resolution process

208 Appointment of mediator

- (1) If a serious dispute is referred to a dispute resolution panel under **section 207B(1)(a)**, the panel must appoint a mediator to assist the parties to resolve the serious dispute by agreement unless, in the particular circumstances, the panel considers it is inappropriate to do so.
- (2) The mediator may be a panel member.
- (3) However, if the mediator is a panel member, the person must not continue to serve on the panel if the panel decides to make a recommendation under **section 209** or a determination under **section 210**.

208A Panel may make recommendation or determination

- (1) This section applies if a dispute resolution panel considers that it is inappropriate to appoint a mediator under **section 208** or not all of the issues between the parties are resolved through mediation provided under that section.
- (2) The dispute resolution panel may do either or both of the following:
 - (a) make 1 or more of the recommendations set out in **section 209**; or
 - (b) make a determination in relation to the serious dispute and take 1 or more of the actions set out in **section 210**.
- (3) A recommendation under **subsection (2)(a)** is not binding on the parties.
- (4) A determination under **subsection (2)(b)** is not binding on the parties unless, before the determination is made, the parties have agreed to be bound by the determination.

209 Recommendations

For the purposes of **section 208A(2)(a)**, the dispute resolution panel may make the following recommendations:

- (a) that the board reverse or modify its original decision in relation to the student:
- (b) that the board apologise to the student:
- (c) that the board refrain from continuing or repeating the conduct that gave rise to the serious dispute:
- (d) that the board—
 - (i) review any of its rules, bylaws, or policies relating to the conduct that gave rise to the serious dispute:
 - (ii) establish any rule, bylaw, or policy relating to the conduct that gave rise to the serious dispute:
- (e) that the board take any other relevant action—~~recommended by the panel~~ to resolve the serious dispute.

210 Determinations

- (1) If the panel decides to determine the serious dispute under **section 208A(2)(b)**, the panel may—
 - (a) confirm, reverse, or modify the board's original decision in relation to the student:
 - (b) make a declaration that the board has committed a breach of the student's rights:
 - (ba) make a recommendation that the board—
 - (i) review any of its rules, bylaws, or policies relating to the conduct that gave rise to the serious dispute:

- (ii) establish any rule, bylaw, or policy relating to the conduct that gave rise to the serious dispute:
- (iii) take any other relevant action to resolve the serious dispute:
- (c) make 1 or more of the following orders:
 - (i) an order that the board apologise to the student:
 - (ii) an order that the board refrain from continuing or repeating the breach, or from engaging in conduct of any similar kind specified in the order in relation to the student:
 - (iii) an order setting out the detail of what the parties must do to comply with a determination confirming, reversing, or modifying the board's original decision in relation to the student:
 - (iv) an order setting out the particulars of any other relevant action that the panel directs the board to take.
- (2) If the parties have agreed to be bound by an order made under **subsection (1)(c)**, either party may enforce 1 or more of the orders through the courts by means specified in regulations made under **section 607**.

211 Participation in dispute resolution process

- (1) If a serious dispute is referred to a dispute resolution panel under this subpart, the board must participate in the dispute resolution process undertaken by the panel, including any meetings convened by a mediator or by the panel.
- (2) Either party may have 1 or more persons present to provide support at any meeting referred to in **subsection (1)** by notifying the panel in advance of the meeting.
- (3) However, if the Chief Referee considers it impracticable or inappropriate for the person providing support to be present at any meeting, that person may not be present.
- (4) A party may not be represented by a lawyer during any meeting, and a support person may not provide any legal advice or representation to the party during the meeting.

Settlements

212 Settlements

- (1) If a serious dispute is resolved through mediation under **section 208(1)**, the mediator may, at the request of the parties, prepare a record of the agreed terms of settlement to be signed by the parties and the mediator.
- (2) Before signing the agreed terms of settlement, the mediator must—
 - (a) explain to the parties the effect of **subsection (3)**; and
 - (b) be satisfied that, knowing the effect of that subsection, the parties affirm their request.

- (3) If, following the affirmation referred to in **subsection (2)(b)**, the agreed terms of settlement to which the request relates are signed by the parties and the mediator,—
 - (a) those terms are final and binding on, and enforceable by, the parties; and
 - (b) except for enforcement purposes, no party may seek to bring those terms before the court, whether by action, appeal, application for review, or otherwise.
- (4) For the purposes of this section, a minor aged 16 years or over may be a party to agreed terms of settlement, and be bound by that settlement, as if the minor were a person of full age and capacity.

General provisions

212A Duty to comply with prescribed processes or procedures

A dispute resolution panel must comply with the processes or procedures (if any) prescribed in regulations made under **section 607** when ~~carrying out~~ performing its functions.

213 Duty to act independently

- (1) The Chief Referee and every deputy chief referee must act independently in performing their functions.
- (2) Each member of a dispute resolution panel must act independently in performing the functions of a dispute resolution panel.

213A Conflicts of interest

- (1) If the Chief Referee, a deputy chief referee, or a member of a dispute resolution panel has a conflict of interest relating to a serious dispute referred to a dispute resolution panel, the person must—
 - (a) disclose the nature of the interest to the panel and the parties concerned as soon as practicable after the person knows about the relevant facts; and
 - (b) if the conflict is material, withdraw from the panel, unless both parties to the serious dispute agree otherwise.
- (2) In this section, **interest** includes (without limitation) that the person is a parent, child, spouse, civil union partner, or de facto partner of any person who is a party to the dispute.

214 Personal liability of Chief Referee and deputy chief referees

The Chief Referee appointed under **section 205** and any deputy chief referee appointed under that section are not personally liable for any act done or omitted if the act or omission was—

- (a) in good faith; and

- (b) in performance or intended performance of the Chief Referee's or deputy chief referee's functions.

214A Personal liability of panel members and mediators

A member of a dispute resolution panel and any mediator appointed by the panel is not personally liable for any act done or omitted by the dispute resolution panel or mediator if the act or omission was (as far as the panel member's or mediator's involvement is concerned)—

- (a) in good faith; and
- (b) in performance or intended performance of the dispute resolution panel's functions.

215 Confidentiality

- (1) This section applies to the following persons:
 - (a) the Chief Referee and any deputy chief referee;
 - (b) a person who is a party to a serious dispute referred to a dispute resolution panel under **section 207B(1)(a)** or is a support person of that party;
 - (c) a person who is a member of a dispute resolution panel;
 - (d) a mediator appointed under **section 208(1)**.
- (2) The person must, unless authorised by the parties or by or under any enactment, keep confidential—
 - (a) any statement, admission, or document created or made for the purposes of resolving the serious dispute under this subpart (including any agreed terms of settlement under **section 212**); and
 - (b) any information that, for the purposes of resolving the serious dispute, is disclosed orally in the course of the dispute resolution process.
- (3) Despite **subsection (2)**, the Chief Referee may publish anonymised reports relating to serious disputes referred to dispute resolution panels under this subpart.

Subpart 10—Miscellaneous provisions

218 Enrolment records

- (1) The principal of a registered school must ensure that an enrolment record in the form and containing the information that may be specified in rules made under **subsection (3)** is kept for each student who is enrolled at the school.
- (2) When a student moves from one registered school to another registered school, the principal of the first school must take reasonable steps to send the student's enrolment record to the principal of the second school.

- (3) The Secretary may, by notice in the *Gazette*, make rules setting out administrative and procedural requirements relating to enrolment records, including (without limitation) rules—
- (a) setting out the duties of principals concerning enrolment records and the information contained in enrolment records:
 - (b) requiring principals to inform students and parents about enrolment records and the use and distribution of enrolment records, and specifying the particulars about which students and parents are to be informed:
 - (c) specifying the form and content of enrolment records:
 - (d) specifying exceptions to particular requirements of the rules.
- (4) A principal of a registered school must comply with rules made under **subsection (3)**.

Compare: 1989 No 80 s 77A

219 Building Act 2004

- (1) A person inspecting sitework or a building under this Act must provide written notice of any non-compliance with the Building Act 2004 to the relevant territorial authority.
- (2) In this section, **building**, **sitework**, and **territorial authority** have the same meanings as in section 7 of the Building Act 2004.

Compare: 1989 No 80 s 139B

Subpart 11—Offences

220 Offence relating to failure to comply with notice given under **section 44**

A parent who fails to comply with a notice given under **section 44(1)** commits an offence and is liable on conviction to a fine not exceeding \$3,000.

Compare: 1989 No 80 s 28

221 Offence relating to employing school-age children

A person commits an offence and is liable on conviction to a fine not exceeding \$1,000 if the person,—

- (a) being a parent of any other person, permits the other person to be employed in contravention of **section 52(1)**; or
- (b) employs any other person in contravention of **section 52(1)**.

Compare: 1989 No 80 s 30

222 Offence relating to insulting, abusing, or intimidating teachers or staff members of registered schools

- (1) A person commits an offence and is liable on conviction to a fine not exceeding \$1,000 if the person intentionally insults, abuses, or intimidates a teacher or staff member of a registered school—

- (a) within the presence or hearing of any student of the school; and
 - (b) while on school premises, or in any other place where students of the school are assembled for school purposes.
- (2) **Subsection (1)** does not apply to a student of the school.

Compare: 1989 No 80 s 139C

223 Offence relating to interference with attendance officers

A person who intentionally obstructs or interferes with an attendance officer exercising their powers under **section 47** commits an offence and is liable on conviction to a fine not exceeding \$1,000.

Compare: 1989 No 80 s 31(6)

224 Offence relating to failure to enrol

- (1) If a parent of a person required to be enrolled at a registered school fails or refuses to ensure that the person is enrolled at the school, the parent commits an offence and is liable on conviction to a fine not exceeding \$3,000.
- (2) The payment of a fine in respect of a conviction for an offence against this section is not a bar to proceedings for any further offence.

Compare: 1989 No 80 s 24

225 Offence relating to irregular attendance

- (1) A parent of a student commits an offence if the student,—
- (a) while enrolled at a registered school, does not attend the school as required by **sections 35 and 41**; or
 - (b) while enrolled at a distance school, does not do the work of the course in which the student is enrolled.
- (2) A ~~parent~~ person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$30 for every school day on which the offence occurs.
- (3) However, a fine imposed for an offence against **subsection (1)** may not exceed \$300 for a first offence or \$3,000 for a second or subsequent offence.
- (4) The imposition of a penalty under this section does not limit or affect any provision of the Oranga Tamariki Act 1989.

Compare: 1989 No 80 s 29

226 Hearings of proceedings may be private

If a District Court Judge orders, proceedings for an offence against **section 224 or 225** must be held in private.

Compare: 1989 No 80 s 32

227 Evidence of school roll, etc

- (1) In any proceedings for an offence against **section 224 or 225**, a certificate from a school's principal regarding any of the following matters is, in the absence of proof to the contrary, sufficient evidence of the matter stated:
- (a) the enrolment of the student at a school:
 - (b) the days on which the school was open during any period:
 - (c) the student's attendance at the school during any period:
 - (d) the student's age:
 - (e) the name and address of a parent of the student.
- (2) Judicial notice must be taken of the principal's appointment and signature on a certificate given under **subsection (1)**.

Compare: 1989 No 80 s 33

228 Burden of proof on parents

In proceedings under **section 224 or 225**, the burden of proving any of the following matters in relation to a student is on a parent of the student:

- (a) the enrolment of the student at a school:
- (b) the student's attendance at a school:
- (c) the student's exemption from enrolment or attendance at a school.

Compare: 1989 No 80 s 34; 1964 No 135 s 126

229 Fines to be paid to board

A fine recovered under **section 224 or 225** must be paid to the board on whose behalf the proceedings concerned were commenced.

Compare: 1989 No 80 s 35

230 Offences relating to operation of private schools

- (1) A manager of a private entity that is not registered as private school under **section 200** commits an offence if the entity operates as a school.
- (2) A manager of a private school that is registered as a school of a particular description or particular descriptions commits an offence if the school operates as a school of another description or of other descriptions.
- (3) A manager of a private school commits an offence if the school ceases to operate before the managers tell the Secretary that it is to cease to operate.
- (4) A person who commits an offence against any of **subclauses-subsections (1) to (3)** is liable on conviction to a fine not exceeding \$200 for every day or part of a day on which the offence took place.

Compare: 1989 No 80 s 35R

Part 4

Tertiary education and vocational education and training

231 Outline of Part 4

- (1) This Part, which concerns tertiary education and vocational education and training, is divided into 7 subparts.
- (2) **Subpart 1** deals with various preliminary matters.
- (3) **Subpart 2** concerns teaching, learning, and well-being.
- (4) **Subpart 3** concerns the administration of tertiary institutions.
- (5) **Subpart 4** concerns the New Zealand Institute of Skills and Technology.
- (6) **Subpart 5** concerns private training establishments.
- (7) **Subpart 6** concerns work-based training.
- (8) **Subpart 7** sets out several offence provisions.

Compare: 1989 No 80 s 308

232 Purpose of Part 4

The purpose of this Part is to establish and support a tertiary education and vocational education and training system that meets the objectives set out in **section 233** by—

- (a) providing the framework for the Government to set out its strategic direction for tertiary education; and
- (b) establishing tertiary education organisations, and providing for their operation, duties, powers, compliance, and disestablishment; and
- (c) providing for the admission of domestic and international students and setting out student rights, responsibilities, and protections; and
- (d) supporting the health, safety, and well-being of students; and
- (e) regulating learning and providing quality assurance for learning, including qualifications, credentials, programmes, assessment standards, training schemes, and apprenticeship training arrangements; and
- (f) providing for funding of tertiary education; and
- (g) providing for the roles and functions of other regulators and education agencies.

Subpart 1—Preliminary matters

233 Objectives of Part 4

- (1) The objectives of this Part are to foster and develop a tertiary education and vocational education and training 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, interested persons or bodies, 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) The Minister, TEC, and NZQA must take these objectives into account when making decisions under this Part or any decisions under **Part 5** relating to tertiary education or vocational education and training.

Compare: 1989 No 80 s 159AAA

234 Roles within tertiary education and vocational education and training sectors

To avoid doubt,—

- (a) the Ministry is the Minister's principal policy adviser on matters relating to tertiary education and vocational education and training;
- (b) NZQA is the body primarily responsible for quality assurance matters in the tertiary education and vocational education and training sectors, apart from universities;
- (c) the Vice-Chancellors Committee is the body primarily responsible for quality assurance matters in respect of universities.

Compare: 1989 No 80 s 159AD

235 Ministry may hold and disseminate information

Any information collected by TEC or NZQA—

- (a) may be held by the Ministry on behalf of TEC or NZQA; and
- (b) may be disclosed by the Ministry to TEC or NZQA or to any other person or agency that is entitled to receive it.

Compare: 1989 No 80 s 159AE

236 Enrolment of students

- (1) A person is eligible to be enrolled as a student in a programme or training scheme provided by an institution if—
 - (a) the person is a domestic student or the institution’s council complies with **section 495** and consents; and
 - (b) the person holds the minimum entry requirements for the programme or training scheme as determined by the institution’s council; and
 - (c) the person has attained,—
 - (i) if the institution has fixed a minimum age for enrolment at the institution, the fixed age; and
 - (ii) if the institution has fixed a minimum age for enrolment in the programme or training scheme, the fixed age.
- (2) **Subsection (1)(b) and (c)** does not apply to a person if—
 - (a) the person has ~~attained the age of~~ turned 20 years; or
 - (b) the council of the institution is satisfied that the person is capable of undertaking the programme or scheme concerned.
- (3) An eligible student who applies for enrolment in a programme or training scheme at an institution is entitled to be enrolled in that programme or training scheme.
- (4) However, the council of the institution—
 - (a) may determine the maximum number of students that may be enrolled in a particular programme or training scheme at the institution in a particular year if the council is satisfied that it is necessary to do so because of insufficiency of staff, accommodation, or equipment;
 - (b) may, in the selection of the students to be enrolled, give preference to eligible persons who are included in a class of persons that is under-represented among the students undertaking the programme or training scheme if—
 - (i) the maximum number of students who may be enrolled at an institution in a particular programme or training scheme in a particular year is determined by the council under **paragraph (a)**; and
 - (ii) the number of eligible students who apply for enrolment in that programme or training scheme in that year exceeds the maximum number so determined.
- (5) Nothing in this section prevents an institution’s council from refusing to permit, or from cancelling, the enrolment of a person as a student at the institution, or in a particular programme or scheme at the institution, on the ground that—
 - (a) the person is not of good character; or
 - (b) the person has been guilty of misconduct or a breach of discipline; or

- (c) the person is enrolled for full-time instruction at another institution or at a school; or
 - (d) the person has made insufficient progress in the person's study or training after a reasonable trial at the institution or at another institution.
- (6) The chief executive of an institution that provides approved programmes of pre-service teacher training must ensure that the appropriate authorities of the institution liaise with the appropriate authorities of other institutions that provide the programmes to establish common requirements to govern the selection and enrolment of people in those programmes.
- (7) In this section,—
- eligible student**, in relation to a programme or training scheme at an institution, means a person who is eligible to be enrolled as a student in that programme or scheme
- year** means a period of 12 months commencing on **1 January**.

Compare: 1989 No 80 s 224

Fees

237 Fees for domestic students

- (1) An institution's council may fix, or specify a means to determine,—
 - (a) a tuition fee for any programme of study or training at the institution;
 - (b) a fee for the provision of student services that are provided by the institution or by another person or body on behalf of the institution.
- (2) An institution's council that receives funding under **section 397 or 399** may 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 398 or 400(2)** (whichever is applicable) as being the maximum fee (or fee of that kind) that can be charged to a domestic student.
- (3) If the Minister gives an institution a direction under **section 238(1)(a)**, the council of the institution must ensure that any fees fixed under **subsection (1)(b)** for the provision of student services relate only to the types of student services that fall within those categories.
- (4) If an institution is given a direction under **section 238(4)**, the council of the institution may not fix, in relation to the amount that students may be charged for student services, a fee that exceeds the maximum amount specified in the direction.
- (5) A domestic student may not be or continue to be enrolled in a programme of study or training at an institution unless the following fees have been paid to the institution's council in respect of the student:
 - (a) the tuition fee (if any) fixed, or determined, under **subsection (1)(a)**; and

- (b) the fee for the provision of student services (if any) determined under **subsection (1)(b)**; and
 - (c) all other fees (if any) prescribed by the council.
- (6) **Subsection (5)** does not prevent a council from accepting any fee required to be paid by instalments.
- (7) An institution's council must take all reasonable steps to ensure that, before the procedures for enrolling a student at the institution for the first time in any year are complete, the student is given written notice of any circumstances in which the student is or may be entitled to a refund of all or any part of fees paid or to be paid to the council.
- (8) The power of an institution's council to refund to a student all or any part of any fees paid to it is not limited or affected by—
- (a) any failure to comply with **subsection (7)**; or
 - (b) the fact that the circumstances fall outside those notified; or
 - (c) the fact that the refund is larger than specified in the notice.

Compare: 1989 No 80 s 227

238 Ministerial direction to institutions relating to compulsory student services fees

- (1) For the purpose of ensuring accountability in the use of compulsory student services fees determined under **section 237(1)(b)**, the Minister may give an institution a written direction that—
- (a) lists the categories of student services that the institution may make available to students:
 - (b) requires the institution to hold the fees in a specified manner (for example, in a separate bank account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited:
 - (c) requires the institution to establish adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the institution, or their representatives, on 1 or more of the following matters:
 - (i) the types of student services that are to be made available to students:
 - (ii) the categories of student services that are to be made available to students:
 - (iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**):
 - (iv) the procurement of student services:
 - (v) the method of authorising expenditure on student services:

- (d) requires the institution to include the following information in the institution's annual report under **section 293**:
 - (i) a description of the services funded out of the student services fee;
 - (ii) a statement of the fee income and expenditure for each type of student service;
 - (iii) the student services fee expressed as an amount payable per student;
 - (iv) a statement describing how the institution has complied with any requirement to hold fees in a manner specified in a direction given under **paragraph (b)**;
- (e) requires the institution to publish information about the following matters on an Internet site maintained by or on behalf of the institution:
 - (i) the student services fee expressed as an amount payable per student;
 - (ii) the arrangements that the institution has established for decisions to be made jointly or in consultation with students or their representatives in accordance with **paragraph (c)**;
 - (iii) how students can participate in the process of joint decision making or consultation mentioned in **paragraph (c)**.
- (2) If the Minister lists under **subsection (1)(a)** categories of student services that may be made available to students (**listed categories**),—
 - (a) the types of student services described in **subsection (1)(c)(i)** must fall within the listed categories; and
 - (b) the categories of student services described in **subsection (1)(c)(ii)** must be listed categories.
- (3) A direction given under **subsection (1)**—
 - (a) may include any of the things specified in **subsection (1)(a) to (e)**;
 - (b) must specify when the direction must be complied with.
- (4) If an institution does not comply with a direction given under **subsection (1)**, the Minister may give a written direction to that institution specifying—
 - (a) the types of student services that the institution may make available to students; and
 - (b) the maximum amount that students may be charged for those services; and
 - (c) when the direction must be complied with.
- (5) Before giving a direction under **subsection (1) or (4)**, the Minister must,—
 - (a) by notice in the *Gazette*,—
 - (i) set out the proposed direction; and

- (ii) invite submissions on it; and
- (iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and
- (b) consider any submissions on the proposed direction.
- (6) An institution's council that is given a direction under **subsection (1) or (4)** may make statutes under **section 264(1)** for the purpose of giving effect to the direction.

Compare: 1989 No 80 s 227A

239 Institutions to give prospective students information about fees

An institution must ensure that prospective students receive, before enrolment is completed, full written details of—

- (a) all fees associated with their programmes; and
- (b) the class or lecture materials, books, special clothing, safety equipment, tools, and other items that are or may be required by the institution to be bought or provided by students enrolled in each programme of study or training; and
- (c) any fee fixed under **section 237(1)(b)** that must be paid to the institution for the provision of student services.

Compare: 1989 No 80 s 228A

Student loans and allowances

240 Provisions about student loans and allowances and Student Allowance Appeal Authorities

- (1) **Schedule 9** contains provisions relating to student allowances and the administration of student loans.
- (1A) **Sections 363, 364, and 374** are offence provisions relating to **Schedule 9**.
- (1B) **Section 608** ~~allows~~ authorises the making of regulations relating to student allowances.
- (2) **Schedule 10** contains provisions relating to the composition and operation of Student Allowance Appeal Authorities.
- (2A) **Section 619** ~~is~~ sets out an offence provision relating to **Schedule 10**.
- (2B) **Section 609** ~~allows~~ authorises the making of regulations relating to Student Allowance Appeal Authorities.

Subpart 2—Teaching, learning, and well-being

241 Programmes

- (1) Subject to **subpart 2 of Part 5**, an institution's council may determine the programmes of study and training to be provided at the institution.

- (2) However, the Minister may direct the institution's council not to provide or continue to provide a particular programme of study or training if the Minister believes on reasonable grounds, after consulting the council and any other persons that the Minister thinks fit, that the provision or continued provision of the programme of study or training—
- (a) would have significant implications for the allocation of the national resources available for tertiary education or vocational training; and
 - (b) would be contrary to the efficient use of those resources.
- (3) A direction under **subsection (2)**—
- (a) must be in writing and set out the reasons for giving the direction;
 - (b) may be exercised only in relation to a programme of study or training as a whole and may not be exercised in relation to any particular subjects or other constituent elements of a programme of study or training.
- (4) An institution's council must comply with a direction given to it.
- (5) This section applies to NZIST's council subject to **section 305(6)**.
Compare: 1989 No 80 s 223

Students association

242 Membership of students association voluntary

A student or prospective student at an institution is not required to be a member of a students association.

Compare: 1989 No 80 s 229A

243 Prohibition on undue influence

A person may not exert undue influence on any student or prospective student with the intention of making that student or prospective student—

- (a) become or remain a member of a students association; or
- (b) cease to be a member of a students association; or
- (c) not become a member of a students association.

Compare: 1989 No 80 s 229B

244 Complaints regarding undue influence

- (1) A student or prospective student who believes on reasonable grounds that a person has exerted undue influence in breach of **section 243** may lodge a complaint with the relevant institution's council.
- (2) A complaint must be in writing and specify the grounds on which the person believes that undue influence has been exerted.
- (3) A student or prospective student who lodges a complaint—
- (a) is entitled to be heard on the matter by the council; and

- (b) may be self-represented, or be represented by an advocate.
- (4) A students association in respect of which a complaint has been lodged—
 - (a) is entitled to be heard on the matter by the council; and
 - (b) may be represented by a member of the association or by an advocate.
- (5) The council may refuse to hear a complaint if it believes that no reasonable grounds exist for it to be made.
- (6) If the council hears a complaint, it must deal with that complaint in accordance with the principles of natural justice and the procedures (if any) prescribed by the council in statutes made under **section 264**.
- (7) The council may uphold, reject, or otherwise decide on the complaint as it thinks fit in the circumstances, and its decision is final.

Compare: 1989 No 80 s 229C

245 Students association membership fees

- (1) A person may not be required to pay a membership fee to a students association, or to pay money to another person as an alternative to paying a membership fee to a students association, unless the person chooses to become or remain a member of the association.
- (2) A person who is not a member of a students association may not be required to pay a representation fee to the association for any services that the association provides generally to the institution's student body.
- (3) **Subsections (1) and (2)** do not prevent a students association from—
 - (a) charging a person who is not a member of the association for the provision of a specific service to the person, at the person's request; or
 - (b) being contracted by an institution or any other person to provide services to students of an institution.
- (4) An institution's council must, if asked by a students association of the institution, collect the membership fees of that association, but only if the association provides the council with—
 - (a) a copy of its current constitution; and
 - (b) an independently audited set of financial accounts of the association for the last financial year.
- (5) The council must pay all membership fees collected on behalf of the students association to the association in a timely manner.
- (6) Despite **subsections (4) and (5)**, the council may decline a request to collect membership fees on behalf of a students association, or may withhold all or part of any membership fees collected, if the council believes that—
 - (a) the terms of the constitution of the students association are being breached; or

- (b) the accounts disclose financial irregularities.
- (7) The council may retain any membership fees that have been withheld under **subsection (6)** until the council is satisfied that all breaches of the terms of the students association's constitution, and all financial irregularities, have been appropriately addressed by the association.
- (8) The council may charge a students association for the actual and reasonable costs incurred by the council in collecting membership fees on behalf of the association.

Compare: 1989 No 80 s 229CA

246 Application of sections 242 to 245 to private training establishments

Sections 242 to 245 apply to private training establishments as if—

- (a) every reference to an institution includes a reference to a private training establishment; and
- (b) every reference to a council includes a reference to the governing body of the private training establishment.

Compare: 1989 No 80 s 229D

Subpart 3—Administration of ~~tertiary~~ institutions

246A Object

The object of the provisions of this Act relating to ~~tertiary~~ institutions is to give them as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability.

Compare: 1989 No 80 s 160

247 Academic freedom and institutional autonomy of institutions (other than NZIST)

- (1) It is the intention of Parliament in enacting the provisions of this Act relating to universities and wānanga that academic freedom and the autonomy of those institutions are preserved and enhanced.
- (2) In exercising their academic freedom and autonomy, institutions must act in a manner that is consistent with—
 - (a) the need for institutions to maintain the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
 - (b) the need for institutions to be accountable and make proper use of resources allocated to them.

- (3) In performing their functions, the councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown must act in all respects so as to give effect to the intention of Parliament as expressed in this section.
- (4) In this section, **academic freedom**, in relation to an institution, means—
 - (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions:
 - (b) the freedom of academic staff and students to engage in research:
 - (c) the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:
 - (d) the freedom of the institution and its staff to teach and assess students in the manner that they consider best promotes learning:
 - (e) the freedom of the institution through its chief executive to appoint its own staff.
- (5) This section does not apply to NZIST (for which **section 305** provides).
Compare: 1989 No 80 s 161

248 Establishment of institutions

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, establish an institution.
- (2) Before making a recommendation, the Minister must—
 - (a) give NZQA a reasonable period to give advice to the Minister on the matter and consider any advice given; and
 - (b) be satisfied that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole; and
 - (c) consult the institutions, organisations representing institutions, and other relevant bodies that the Minister thinks fit; and
 - (d) take into account—
 - (i) that universities have all the following characteristics and other ~~tertiary~~ institutions have 1 or more of them:
 - (A) they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence:
 - (B) their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge:
 - (C) they meet international standards of research and teaching:
 - (D) they are a repository of knowledge and expertise:
 - (E) they accept a role as critic and conscience of society; and

- (ii) that—
 - (A) a university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning;
 - (B) a wānanga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom).
- (3) In the case of a wānanga, the Minister may, on the recommendation of its council, change the name of the wānanga by notice published in the *Gazette*.
- (4) In the case of a university, its name may be changed if the procedure set out in **subsections (5) to (7)** is followed.
- (5) The university must give written notice to the Minister of the proposed name change.
- (6) If notice is given, the Minister must present the proposal to the House of Representatives.
- (7) If the House of Representatives, by resolution, accepts the proposed name change, the Minister must change the name of the university by notice published in the *Gazette*.

Compare: 1989 No 80 s 162

249 Constitution of institutions

An Order in Council establishing an institution must make provision for determining the people who are to constitute the institution.

Compare: 1989 No 80 s 163(2)

250 Disestablishment of institutions

- (1) The Governor-General may, by Order in Council made on recommendation of the Minister, disestablish an institution.
- (2) However, the Governor-General may not disestablish a university unless the House of Representatives has passed a resolution approving the disestablishment of the university.
- (3) The Minister may not recommend the disestablishment of an institution unless the Minister—
 - (a) is satisfied on reasonable grounds that there are good reasons to do so; and
 - (b) is satisfied that the disestablishment is in the interests of the tertiary education system and the nation as a whole; and

- (c) specifies the reasons in the recommendation.
- (4) When an institution is, or 2 or more institutions are, disestablished, the Governor-General may, by Order in Council made on the recommendation of the Minister, incorporate the disestablished institution or any 1 or more of the disestablished institutions in another institution, whether the other institution is—
 - (a) an existing institution or a new institution established for the purpose:
 - (b) an institution of the same class as the disestablished institution or institutions or an institution of a different class from it or them.
- (5) Before making a recommendation under this section, the Minister must—
 - (a) give to the institution’s council or the councils of the institutions concerned, and to every other council of an institution that the Minister considers is likely to be directly affected, written notice—
 - (i) setting out the action that the Minister is considering whether to take and the reasons for that action; and
 - (ii) inviting each council to make a written submission to the Minister in relation to the matter; and
 - (b) publish, in the *Gazette*, the notices that the Minister thinks fit inviting members of the public to make written submissions in relation to the matter; and
 - (c) consider any submissions made within a reasonable period in response to the notices.
- (6) If an order is made under this section, the Minister must present to the House of Representatives a copy of the order and a statement of the reasons for the making of the order.
- (7) To avoid doubt, nothing in this section applies to NZIST.

Compare: 1989 No 80 s 164

Councils

251 Institutions to be governed by councils

- (1) The governing body of NZIST is its council, the members of which are appointed under **section 307**.
- (2) The governing body of every other institution is its council constituted in accordance with this Part.
- (3) A reference in any enactment to the council or other governing body of an institution referred to in **subsection (2)** must be construed as a reference to the council of the institution.
- (4) Subject to **section 263(2)**, all acts or things done in the name of, or on behalf of, an institution with the authority of, or of a delegate of, the council or the chief executive are to be treated as being done by the institution.

- (5) **Schedule 11** provides for the constitution, appointment and operation of councils of institutions, and related matters.

Compare: 1989 No 80 s 165

252 Incorporation

- (1) Each university or wānanga established under **section 248**, and NZIST as ~~established~~ continued by **section 301**, is a body corporate with perpetual succession and is capable of—

- (a) holding real and personal property; and
- (b) suing and being sued; and
- (c) otherwise doing and suffering all that bodies corporate may do and suffer.

- (2) This section does not limit **section 262(1)**.

Compare: 1989 No 80 s 166

253 Common seal

- (1) An institution may have a common seal if its council adopts one by statute.
- (2) A council may, by statute,—
 - (a) specify the type or class of documents that may be executed by affixing the common seal to them; and
 - (b) specify the type or class of documents that may be executed only by affixing the common seal to them; and
 - (c) specify any member or members of the council, and any member or members of the staff of the institution, who may countersign documents (or a specified type or class of documents) to which the common seal is affixed.
- (3) All courts and persons acting judicially must take judicial notice of an institution's common seal.
- (4) This section does not apply to NZIST or its subsidiaries.

Compare: 1989 No 80 s 167

254 Method of contracting

- (1) An institution may enter into a contract or other enforceable obligation as provided in this section.
- (2) An obligation that, if entered into by an individual, is required to be entered into by deed may be entered into by the institution's council in writing, signed under the name of the institution by 2 or more council members.
- (3) An obligation that, if entered into by an individual, is required to be entered into in writing may be entered into by the institution's council in writing, signed by 1 person or more than 1 person acting under the institution's express or implied authority.

- (4) An obligation that, if entered into by an individual, is not required to be entered into in writing may be entered into by the institution's council in writing or orally by a person acting under the institution's express or implied authority.
- (5) This section applies to a contract or other enforceable obligation,—
 - (a) whether or not that obligation was entered into in New Zealand; and
 - (b) whether or not the law governing that obligation is the law of New Zealand.
- (6) This section does not apply to NZIST or its subsidiaries.
Compare: 1989 No 80 s 167A

255 Constitution to provide for membership of council

- (1) The constitution of a council must provide that it has 8, 9, 10, 11, or 12 members.
- (2) **Subsection (1)** does not apply to the membership of NZIST's council (for which **section 307** provides).
Compare: 1989 No 80 s 170A

256 Membership of council

- (1) An institution's council must have a total of 8, 9, 10, 11, or 12 council members, as provided in its constitution, comprising—
 - (a) the following number of members appointed by the Minister by written notice to the council:
 - (i) 4 members (for a council comprising 10, 11, or 12 members);
 - (ii) 3 members (for a council comprising 8 or 9 members); and
 - (b) enough members appointed by the council by resolution, in accordance with its statutes, to bring the membership up to that total number.
- (2) **Subsection (1)** does not apply to the membership of NZIST's council (for which **section 307** provides).
Compare: 1989 No 80 s 171

257 Certain people disqualified from appointment

- (1) A person may not be appointed as a council member if the person—
 - (a) has been removed as a council member of an institution of any kind; or
 - (b) is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
 - (c) is a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on their —
 - (i) competence to manage their own affairs in relation to their property; or

- (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or
- (d) is a bankrupt—
 - (i) who has not obtained an order of discharge; or
 - (ii) whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled.
- (2) **Subsection (1)** does not apply to the membership of NZIST’s council (for which **section 307(2)** provides).

Compare: 1989 No 80 s 171A

258 Matters to be considered when appointing council members

- (1) An institution’s council should, as far as is reasonably practicable, reflect—
 - (a) the ethnic and socio-economic diversity of the communities served by the institution; and
 - (b) the fact that approximately half the population of New Zealand is male and half the population is female.
- (2) When appointing council members, the Minister or council must have regard to **subsection (1)**, but—
 - (a) must ensure that at least 1 council member is Māori; and
 - (b) must appoint people who (in the Minister’s or council’s opinion)—
 - (i) have relevant knowledge, skills, or experience; and
 - (ii) are likely to be able to fulfil their individual duties to the council; and
 - (iii) together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.
- (3) When appointing council members, the council must ensure that—
 - (a) at least—
 - (i) 1 member is a permanent member of the teaching or general staff of the institution that the permanent members of the teaching and general staff of the institution have elected to represent them; or
 - (ii) 1 member is a permanent member of the teaching staff of the institution that the permanent members of the teaching staff of the institution have elected to represent them and 1 member is a permanent member of the general staff of the institution that the permanent members of the general staff of the institution have elected to represent them; and
 - (b) at least 1 member is a student—
 - (i) who is enrolled at the institution; and

- (ii) whom the students of the institution have elected to represent them.
- (4) **Subsection (3)** does not apply to the membership of the council of a wānanga.
- (5) An elected person specified in **subsection (3)**—
 - (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
 - (b) must be appointed unless the person is ineligible for appointment under **section 257(1)**.
- (6) An institution or its council may not specify who is eligible to stand for election as a representative of—
 - (a) the permanent members of the teaching or general staff of the institution; or
 - (b) the students of the institution.
- (7) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.
- (8) This section does not apply to the membership of NZIST's council (for which **section 308** provides).

Compare: 1989 No 80 s 171B

259 Statutes relating to appointment of members by councils of institutions

- (1) An institution's council may make statutes relating to the appointment of members under **section 256(1)(b)**.
- (2) The statutes may—
 - (a) provide for direct appointment by the council of a member chosen by the council; or
 - (b) require the council to appoint a member—
 - (i) of a stated description; or
 - (ii) holding a stated office; or
 - (iii) nominated by a stated institution or institutions, or an institution or institutions of a stated description; or
 - (iv) elected by people of a stated description.
- (3) To the extent that the statutes require the council to appoint—
 - (a) a member elected by people of a stated description, they must also provide for the processes by which elections must be held and their results must be determined;
 - (b) a member nominated by a stated institution or institutions, or an institution or institutions of a stated description, they must also provide for the process by which nominations may be called for and must be considered.

- (4) For an appointment under a statute providing for any of the matters stated in **subsection (2)(b), section 258(2)(b)** is complied with if, when making the statute concerned, the council—
- (a) has regard to **section 258(1)**; and
 - (b) is satisfied that compliance with the statute is likely to result in the appointment of a person who—
 - (i) has relevant knowledge, skills, or experience; and
 - (ii) is likely to be able to fulfil the person’s individual duties to the council; and
 - (iii) together with the other members of the council, is capable of undertaking its responsibilities, ~~duties, and functions~~ functions, and duties.
- (5) **Subsections (2) to (4)** do not limit **section 264**.
- (6) This section does not apply to the membership of NZIST’s council.
Compare: 1989 No 80 s 171C

Functions and duties of councils

260 Functions of councils

The functions of an institution’s council are—

- (a) to appoint a chief executive in accordance with the **State Sector Act 1988**, and to monitor and evaluate the chief executive’s performance:
- (b) to prepare and submit a proposed plan if the institution is seeking funding under a funding mechanism that provides for funding via plans:
- (c) if the institution has a plan,—
 - (i) to ensure that the institution is managed in accordance with that plan; and
 - (ii) to determine policies to implement that plan:
- (d) to determine, subject to the **State Sector Act 1988**, the policies of the institution in relation to the management of its affairs:
- (e) to undertake planning relating to the institution’s long-term strategic direction.

Compare: 1989 No 80 s 180

261 Duties of councils

- (1) It is the duty of an institution’s council, in performing its functions and exercising its powers,—
 - (a) to strive to ensure that the institution attains the highest standards of excellence in education, training, and research:
 - (b) to acknowledge the principles of Te Tiriti o Waitangi:

- (c) to encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities, with particular emphasis on groups in those communities that are under-represented among the students of the institution:
 - (d) to ensure that the institution does not discriminate unfairly against any person:
 - (e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:
 - (f) to ensure that proper standards of integrity, conduct, and concern for the public interest and the well-being of students attending the institution are maintained.
- (2) In addition, NZIST's council must comply with section 97 of the Crown Entities Act 2004 in respect of its subsidiaries.

Compare: 1989 No 80 s 181

Powers of institutions and councils

262 Powers of institutions

- (1) An institution has—
- (a) the rights, powers, and privileges of a natural person; and
 - (b) the power to issue debentures; and
 - (c) the power to grant floating charges on the institution's undertaking or property, or any of it; and
 - (d) the power to invest in the financial products of a related entity; and
 - (e) the power to do any other thing it is authorised to do by this Act, by any other enactment, or by any rule of law.
- (2) However, none of the rights, powers, or privileges of an institution may be exercised except for the purpose of performing—
- (a) functions characteristic of institutions of the class to which the institution belongs; or
 - (b) in the case of an institution that incorporates another institution or other institutions under **section 250(4)**, functions characteristic of institutions of the class to which the incorporating institution belongs and functions characteristic of institutions of the class or classes to which the incorporated institution or institutions belong; or
 - (c) functions of a kind that, in the opinion of the institution's council,—
 - (i) may conveniently, and without disadvantage to the performance of those characteristic functions, be performed in association with those functions; and

- (ii) are appropriate for institutions of the class to which the institution belongs or, in the case of an institution that incorporates another institution or other institutions under **section 250(4)**, are appropriate for institutions of the classes represented in the institution.
- (3) **Subsection (1)(b) to (e)** does not limit **subsection (1)(a)**.
 - (4) An institution may not exercise any of the following powers without the written consent of the Secretary:
 - (a) the power to sell or otherwise dispose of assets or interests in assets:
 - (b) the power to mortgage or otherwise charge assets or interests in assets:
 - (c) the power to grant leases of land or buildings or parts of buildings:
 - (d) the power to borrow, issue debentures, or otherwise raise money.
 - (5) Despite **subsection (4)**, an institution may, without the consent of the Secretary,—
 - (a) sell or otherwise dispose of, or mortgage or otherwise charge, an asset or an interest in an asset, where the value of the asset or interest does not exceed an amount determined by the Minister or an amount ascertained in accordance with a formula determined by the Minister:
 - (b) grant a lease for a term that does not exceed, and when added to any term for which the lease may be renewed does not exceed, 15 years:
 - (c) borrow, issue debentures, or otherwise raise money, where the amount to be borrowed, the amount of the debentures, or the amount to be raised, does not exceed an amount determined by the Minister or ascertained in accordance with a formula determined by the Minister.
 - (6) A determination by the Minister under this section may relate to all institutions, institutions of a specified class or description, or a specified institution or institutions, and must be made after the Minister has consulted the institution or institutions concerned.
 - (7) If the Secretary consents under **subsection (4)** to the exercise of a power by an institution, the council must—
 - (a) comply with any conditions imposed by the Secretary; and
 - (b) advise the Secretary when the transaction has been completed and how the proceeds, if any, of the transaction have been dealt with.
 - (8) The powers to grant awards conferred on an institution by this Act or any other enactment,—
 - (a) in the case of nationally recognised awards, are subject to any reasonable requirements made by NZQA in the performance of its functions under this Act; and
 - (b) in any case, do not extend, without the consent of NZQA, to granting an award that is described as a degree or the description of which includes the words bachelor, master, or doctor.

- (9) **Subsection (8)(b)** does not apply in relation to the granting of an award by a university.
- (10) Any consent by NZQA under **subsection (8)(b)** may be withdrawn, after consultation with the council of the institution concerned, with effect from a date no earlier than **1 January** next following the giving of notice of the withdrawal to that institution.

Compare: 1989 No 80 s 192

263 Powers of councils

- (1) An institution's council has all powers reasonably necessary to enable it to perform its functions efficiently and effectively.
- (2) Except where they are exercised by delegation under this Act, the following powers of an institution may be exercised only by its council:
- (a) to provide courses of study or training, admit students (including by discretion and *ad eundem statum*) and grant awards:
 - (b) to grant fellowships, scholarships, bursaries, or prizes:
 - (c) to authorise the making of grants or loans out of the money of the institution to the chief executive, to members of the staff or students of the institution, or to any association of staff or students, on the terms and conditions that the council thinks fit and guarantee loans made by other persons to the chief executive or members of the staff of the institution for housing purposes:
 - (d) to accept gifts, devises, and bequests made to the institution, whether on trust or otherwise:
 - (e) to agree to the disestablishment of the institution and its incorporation in another institution of the same class or a different class:
 - (f) to agree to the incorporation in the institution of another institution or other institutions, whether of the same class as itself or a different class from itself:
 - (g) to arrange for the manufacture of, and distribution of (whether by way of sale or otherwise), any article or thing bearing a mark, symbol or writing that is associated with the institution:
 - (h) to arrange for the provision of (whether by sale or otherwise) goods and services to staff or students of the institution or other persons using, or otherwise attending at, facilities of the institution:
 - (i) to prescribe fees payable by students of the institution or any of them:
 - (j) to establish bodies within the institution to give advice to the council:
 - (k) to do anything incidental to the exercise of any of the preceding powers.
- (3) **Subsection (2)(e) and (f)** does not apply to NZIST's council.

- (4) An institution's council has the power to appoint committees consisting of the persons, whether or not members of the council, that the council determines to exercise the powers that are delegated to them under **section 265** and the powers that are conferred on them by statutes made by the council, and to alter, discharge, and reconstitute committees so appointed.

Compare: 1989 No 80 s 193

264 Statutes

- (1) An institution's council may make statutes, not inconsistent with this Act or the **State Sector Act 1988**, in relation to any of the following matters:
- (a) the good government and discipline of the institution and the board of an NZIST subsidiary:
 - (b) the imposition, by or on behalf of the council, of penalties upon staff or students of the institution for a contravention of or a failure to comply with a statute with respect to a matter referred to in **paragraph (a)**:
 - (c) subject to **sections 236, 237, 238, 239, 241, 296, 297, 363, 495, and 496, and clause 8 of Schedule 9**, the enrolment of persons in courses of study or training of the institution or the admission of persons to examinations of the institution:
 - (d) subject to **sections 236, 237, 238, 239, 241, 296, 297, 363, 495, and 496, and clause 8 of Schedule 9**, the courses of study and training of the institution:
 - (e) subject to **section 262(8)**, the awards that may be granted by the council and the requirements for those awards:
 - (f) the granting by the council of fellowships, scholarships, bursaries, and prizes:
 - (g) the provision of superannuation or retirement benefits for, or in respect of, the chief executive or members of the staff of the institution:
 - (h) any of the matters stated in **section 259**:
 - (i) any other matter required or permitted by this Act to be provided for by statutes.
- (2) **Subsection (1)(h)** does not apply to NZIST's council or the board of an NZIST subsidiary.
- (3) If an institution's council makes a statute under **subsection (1)(b)** providing for the imposition of penalties upon staff or students of the institution, the statute must provide for the council, if so requested by a member of the staff or a student upon whom a penalty is imposed, to review, or arrange for the review of, the amount of the penalty, the imposition of the penalty, or both.

Compare: 1989 No 80 s 194

265 Delegation of council's functions and powers

- (1) An institution's council may, either generally or specifically, delegate any of its functions or powers under this Act (except the power to appoint a chief executive) or under any other Act to—
 - (a) the chief executive of the institution; or
 - (b) a committee appointed under **section 263(4)**.
- (2) The power of the council to delegate—
 - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the council's functions or powers; but
 - (b) does not limit any power of delegation conferred on the council by any other Act.
- (3) The person to whom any functions or powers are delegated under this section may perform those functions or 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 (subject to any general or special directions given or conditions imposed by the council).
- (4) A delegation to a committee under **subsection (1)(b)** must be treated as a delegation to the persons constituting the committee.
- (5) This section applies to the academic committee of an institution (established under **clause 18(2) of Schedule 11**) as if—
 - (a) it were a committee of the institution's council; and
 - (b) all its powers were powers of the council, conferred on the committee by the council by delegation.
- (6) This section does not apply to NZIST's council.

Compare: 1989 No 80 s 222

266 Further provisions relating to delegation

- (1) A delegation under **section 265**—
 - (a) must be in writing signed by at least 2 members of the council;
 - (b) is revocable at will in writing signed by at least 2 members of the council.
- (2) A person purporting 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.
- (3) A delegation does not prevent the council from performing any function or exercising any power, or affect the council's responsibility for the actions of any person acting under the delegation.

- (4) If the chief executive to whom a delegation is made ceases to hold office, the delegation continues to have effect as if it were made to the chief executive's successor in office.

Subdelegation

- (5) If the council has delegated any functions or powers to the chief executive or an academic committee, the chief executive or that committee may, with the written approval of the council, subdelegate those functions or powers (or any of them) to a member of the staff of the institution.
- (6) A subdelegation under **subsection (5)**—
- (a) must be in writing signed by the chief executive or by at least 2 of the members of the committee; and
 - (b) is revocable at will in writing signed by the chief executive or by at least 2 of the members of the committee; and
 - (c) may be made to—
 - (i) a specified person or persons of a specified class; or
 - (ii) the holder or holders of a specified office or specified class of offices.

Compare: 1989 No 80 s 222(2), (5), (6), (9)

Institutions at risk

267 Criteria for risk assessment of institutions (other than NZIST)

- (1) The Secretary must, after consulting institution councils, determine criteria for assessing the level of risk to the operation and long-term viability of institutions.
- (2) The Secretary must publish criteria determined under **subsection (1)** in the *Gazette*.
- (3) Criteria determined under this section must be reviewed at least once in every 2 years following the date of their publication.
- (4) This section does not apply to NZIST's council (for which **section 316** provides).

Compare: 1989 No 80 s 195A

268 Institutions to provide information to TEC if required

- (1) The chief executive of TEC may, if the chief executive has reasonable grounds to believe that an institution may be at risk, by written notice to the institution's council, require the council to provide either or both of the following:
 - (a) specified information about the operation, management, or financial position of the institution at a given time;
 - (b) reports at specified intervals on specific aspects of the operation, management, or financial position of the institution.

- (2) If the chief executive of TEC requires information under **subsection (1)**, the information required must relate to the risks to the institution that the chief executive is concerned about.
- (3) A council that receives a notice under **subsection (1)** must provide the chief executive of TEC with the required information within or at the time or times specified in the notice.
- (4) The chief executive of TEC may revoke or amend any notice given under **subsection (1)**.
- (5) This section does not apply to NZIST's council (for which **section 317** provides).

Compare: 1989 No 80 s 195B

Interventions

269 Minister may appoint Crown observers for institutions

- (1) If the Minister believes on reasonable grounds that the operation or long-term viability of an institution is at risk, the Minister may appoint a Crown observer to the council of the institution.
- (2) A Crown observer may not be appointed to an institution's council unless the Minister has first—
 - (a) consulted the council; and
 - (b) advised the council that the Minister is considering appointing a Crown observer; and
 - (c) given the council an opportunity to comment on the proposal.
- (3) An appointment under this section must be in writing and state the date on which it takes effect.
- (4) A Crown observer may—
 - (a) attend any meeting of the council to which the Crown observer is appointed or any committee of that council; and
 - (b) offer advice to that council or to any member or committee of that council; and
 - (c) report to the Minister on any matter raised or discussed at any meeting that the Crown observer attends as a Crown observer.
- (5) A Crown observer must at all times maintain confidentiality with respect to council affairs, except as authorised by **subsection (4)(c)**.
- (6) A Crown observer is not a member of the council or any council committee and may not—
 - (a) vote on any matter; or
 - (b) exercise any of the powers, or perform any of the functions or duties, of a council member.

- (7) This section does not apply to NZIST or its subsidiaries (for which **section 317A** provides).

Compare: 1989 No 80 s 195C

270 Minister may dissolve council and appoint commissioner

- (1) The Minister may, by notice in the *Gazette*, dissolve an institution's council and appoint a commissioner to act in place of the council if the Minister believes on reasonable grounds that—
- (a) there is a serious risk to the operation or long-term viability of the institution; and
 - (b) other methods of reducing the risk either have failed or appear likely to fail.
- (2) For the purpose of **subsection (1)**, there is a **serious risk to the operation or long-term viability of an institution** if—
- (a) the institution is, or is at risk of being, unable to pay its debts as they become due in the normal course of business; and
 - (b) according to the criteria published under **section 267(2)**, there is a serious level of risk to the operation or long-term viability of the institution.
- (3) A notice under **subsection (1)** must specify—
- (a) the date on which the dissolution and appointment take effect; and
 - (b) the name of the person appointed as commissioner.
- (4) The Minister may not exercise the power under **subsection (1)** in relation to an institution unless the Minister has first—
- (a) consulted the council of the institution and any other interested parties over the possible need to dissolve the council and appoint a commissioner; and
 - (b) following that consultation, given the council written notice of the Minister's preliminary decision that the council should be dissolved and a commissioner appointed in its place; and
 - (c) allowed the council at least 21 days in which to respond to the preliminary decision; and
 - (d) considered any submissions made by the council about why the preliminary decision should not be confirmed.
- (4A) As soon as practicable after giving a notice under **subsection (1)**, the Minister must present a copy of it to the House of Representatives.
- (5) When a commissioner is appointed under this section, the Minister must review the appointment at least once in every 12 months following the appointment.
- (6) As soon as the Minister is satisfied (following an annual review or at any other time) that the risk that gave rise to the appointment of the commissioner has reduced enough so that it is appropriate that the institution be administered by a

council, a new council must be appointed in accordance with the constitution of the council most recently notified in the *Gazette*.

- (7) A commissioner's appointment ends on the close of the day before a new council takes office.
- (8) This section does not apply to NZIST or its subsidiaries (for which **section 317G** provides).

Compare: 1989 No 80 s 195D

271 Personal liability of commissioners

A commissioner appointed under **section 270** is not personally liable for an act the commissioner has done or omitted to do, or for any loss arising from that act or omission, if the commissioner was acting—

- (a) in good faith; and
- (b) in the course of ~~carrying out their powers, functions, or duties~~ performing or exercising their functions, duties, or powers.

Compare: 1989 No 80 s 195DA

272 Functions, duties, and powers of commissioner

- (1) A commissioner appointed under **section 270** has all the functions, duties, and powers of the council that the commissioner is appointed to replace, and must perform or exercise those functions, duties, and powers in accordance with this Act (having particular regard to **sections 246A and 247**) and, in the case of an institution that has a plan, that plan.
- (2) A commissioner replaces all council members who serve on any council committee that the commissioner is appointed to replace.
- (3) Anything that, if done by or on behalf of a council, is required to be signed by 2 or more council members, may be done by the commissioner's signature alone.

Compare: 1989 No 80 s 195E

273 Minister to appoint advisory committee

- (1) If the Minister appoints a commissioner under **section 270**, the Minister must also appoint an advisory committee for the purpose of advising and supporting the commissioner in the performance or exercise of the commissioner's functions, duties, and powers.
- (2) The Minister may appoint up to 5 persons to be members of an advisory committee and must ensure that the composition of the committee reasonably reflects the community of the institution as represented by its council at the time of the council's dissolution.
- (3) Members of an advisory committee may be paid fees at the same rates as were paid to members of the council at the time of its dissolution.

- (4) The commissioner must have regard to any advice given by an advisory committee.
- (5) For the purposes of **section 265(1)** (which relates to delegations by the council to committees), an advisory committee is to be treated as a committee appointed under **section 263(4)**.

Compare: 1989 No 80 s 195F

Chief executives of institutions

281 Duties of chief executive

- (1) The academic and administrative affairs of an institution must be managed by its chief executive.
- (2) The chief executive of—
 - (a) a university may be referred to as the Vice-Chancellor or by any other title that the council of the university determines:
 - (b) an institution other than a university may be referred to by any title (except Vice-Chancellor or another title that includes the word “Chancellor”) that the council of the institution determines.

Compare: 1989 No 80 s 196

282 Delegation of chief executive’s functions and powers

- (1) The chief executive of an institution may, either generally or specifically, delegate any of the chief executive’s functions or powers under this Act or any other Act (including any functions or powers delegated to the chief executive under another Act) to—
 - (a) the academic committee; or
 - (b) any member of the staff of the institution.
- (2) The power of a chief executive to delegate—
 - (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the chief executive’s functions or powers; but
 - (b) does not limit any power of delegation conferred on the chief executive by any other Act.
- (3) A person to whom any functions or powers are delegated may perform those functions or 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 (subject to any general or special directions given or conditions imposed by the chief executive).
- (4) A delegation under **subsection (1)(a)** must be treated as being a delegation to the persons constituting the academic committee.

- (5) **Section 283** applies to a delegation made under this section.

Compare: 1989 No 80 s 197(1), (3), (4)

283 Further provisions applying to delegation

- (1) A delegation under **section 282**—
- (a) must be in writing signed by the chief executive; and
 - (b) is revocable at will in writing signed by the chief executive.
- (2) A person purporting 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.
- (3) A delegation does not prevent the chief executive from performing any function or exercising any power or affect the chief executive's responsibility for the actions of any person acting under the delegation.
- (4) If the chief executive ceases to hold office, the delegation continues to have effect as if it were made by the chief executive's successor in office.

Subdelegation

- (5) If the chief executive has delegated any functions or powers to an academic committee or a member of the staff of the institution, that committee or member may, with the written approval of the chief executive, subdelegate those functions or powers (or any of them) to another member of the staff of the institution.
- (6) A subdelegation under **subsection (5)**—
- (a) must be in writing signed by at least 2 members of that committee or by the member; and
 - (b) is revocable at will in writing; and
 - (c) may be made to—
 - (i) a specified person or persons of a specified class; or
 - (ii) the holder or holders of a specified office or specified class of offices.

Compare: 1989 No 80 s 197(2), (5), (6), (7), (8), (9)

Financial matters and application of Crown Entities Act 2004

284 Bank accounts

- (1) An institution's council may establish, maintain, and operate bank accounts in the name of the institution at any registered bank or any registered building society with which a Crown entity may establish, maintain, or operate a bank account under section 158 of the Crown Entities Act 2004.
- (2) As soon as practicable after receiving any money, the council must pay it into one of the institution's bank accounts.

- (3) The council must properly authorise every withdrawal and payment of money from any of the institution's bank accounts.
- (4) This section does not apply to NZIST's council.
Compare: 1989 No 80 s 200

285 Proper accounts to be kept

Section 168(1) and (2) of the Crown Entities Act 2004 applies to an institution's council.

Compare: 1989 No 80 s 201

286 How institutions may use income and capital

- (1) An institution may, subject to any enactment and the terms of any trust or endowment,—
 - (a) apply its income and capital in doing whatever the council thinks likely to enable the institution—
 - (i) to carry out the functions characteristic of an institution of the class to which the institution belongs; and
 - (ii) to achieve, in the case of an institution that has a plan, the outcomes set out in that plan; 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 **subsection (1)(a)**.

Compare: 1989 No 80 s 201A

287 Gifts

- (1) Any money or property that is gifted to an institution may be accepted or disclaimed by the council of the institution in accordance with section 167 of the Crown Entities Act 2004.
- (2) A limitation in this Act or the Crown Entities Act 2004 does not apply during a period that is reasonable in the circumstances (including, without limitation, a limitation on the form in which property may be held).

Compare: 1989 No 80 s 201B

288 Council may establish common fund

- (1) An institution's council may—
 - (a) establish a common fund; and
 - (b) invest any trust funds in its possession, in whole or in part, in the common fund.
- (2) However, the council—

- (a) may, if in possession of trust funds of a trust of which the council is a co-trustee, only invest those trust funds in the common fund with the consent of all the other co-trustees:
- (b) may not invest trust funds in the common fund if that would be inconsistent with the terms of any trust instrument governing the investment of the trust funds.

Compare: 1989 No 80 s 201C

289 Investment of funds held in common fund

- (1) The council may invest funds that are held in a common fund only in accordance with the Trusts Act 2019.
- (2) Investments of funds held in a common fund may not be made on account of, and do not belong to, any particular trust, but the council must, at all times, maintain an account showing the entitlement of each trust in the common fund.
- (3) If trust funds are invested in a type or class of investment in which the common fund may be invested, the council may transfer that investment to the common fund and, if it does so,—
 - (a) the investment ceases, at the time of transfer, to belong to the trust that held the investment; and
 - (b) the council must give credit in the common fund to the trust for the fair market value of the investment at the time of transfer.
- (4) Any profit or loss upon the realisation of any investment in a common fund is to be credited or debited to the common fund.

Compare: 1989 No 80 s 201D

290 Income and capital of common fund

- (1) Each financial year, the council must—
 - (a) pay or allocate the income from the common fund to the trusts entitled to the amounts invested in the common fund—
 - (i) in proportion to the value of their respective interests in the common fund; and
 - (ii) at a uniform rate determined by the council; and
 - (b) hold the capital of the common fund on behalf of the trusts entitled to the amounts invested in proportion to the value of their respective interests; and
 - (c) hold any income that is not paid or allocated to trusts, and any capital that is not held on behalf of trusts, in a reserve fund separate from other trust funds.
- (2) The council may apply funds held in the reserve fund, including any income derived from investments of the reserve fund, for any of the following purposes:

- (a) augmenting the capital of the common fund:
 - (b) reinstating any losses of capital in the common fund:
 - (c) increasing or supplementing the income paid or allocated to trusts that have interests in the common fund.
- (3) The council may withdraw any amount from the common fund to the credit of a trust that has an interest in the common fund—
- (a) for the purpose of investing the amount in a separate account for the trust; or
 - (b) for any other purpose relating to the exercise and performance of its duties, powers, authorities, and functions.
- (4) If any amount is withdrawn from the common fund to the credit of a trust that has an interest in the common fund,—
- (a) that amount may, at the discretion of the council, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments; and
 - (b) as from the date of its withdrawal, the trust has no claim on the fund in respect of the amount, whether for interest or otherwise.
- (5) The council—
- (a) may charge a reasonable fee, payable out of the income received by the common fund, for services provided by the council in relation to the administration or management of the common fund; and
 - (b) must publish the amount of the fee, and the method by which the fee is calculated or applied (and any change to that method), in the annual report.

Compare: 1989 No 80 s 201E

291 Application of money

The money of an institution may be applied only—

- (a) in payment or discharge of the expenses, charges, obligations or liabilities incurred or undertaken by or on behalf of the institution; or
- (b) in payment of any remuneration or allowances payable to council members or council committees or to the chief executive or members of the staff of the institution; or
- (c) in making any other payments that are required or permitted by this Act or any other enactment to be made out of the money of the institution.

Compare: 1989 No 80 s 202

292 Institutions are Crown entities

- (1) Every institution is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

- (2) However, that Act applies to institutions and their Crown entity subsidiaries (within the meaning of that Act) only to the extent that this section provides.
- (3) Part 1 of Schedule 4 of that Act applies to all institutions and their Crown entity subsidiaries (within the meaning of that Act).
- (5) Section 65I(1) and (2) of the Public Finance Act 1989—
 - (a) applies, with all necessary modifications, to institutions and, accordingly, every institution must invest in the same manner as the Treasury invests money under that section; but
 - (b) does not apply in respect of any investment made by an institution in the financial products of a related entity.
- (6) An instruction issued by the Minister of Finance under section 80A of the Public Finance Act 1989 does not apply to an institution.
- (7) The financial year of an institution is an academic year.
- (8) The council members of an institution are the board for the purposes of the Crown Entities Act 2004.

Compare: 1989 No 80 s 203

293 Annual report

- (1) As soon as practicable after the end of each academic year, the council of the institution must give to the Minister a report (an **annual report**) on the operations of the institution during that year.
- (2) A council must comply with sections 154 to 156B and 157A of the Crown Entities Act 2004 in respect of the report.
- (3) However,—
 - (a) the statement of responsibility referred to in section 155 of the Crown Entities Act 2004 is not required to be signed in accordance with that section, but must instead be signed by—
 - (i) the chairperson of the council and the chief executive of the institution; or
 - (ii) if there is no chairperson, the chief executive of the institution and the chief financial officer:
 - (b) an institution's council that is a parent Crown entity must comply with section 154 of the Crown Entities Act 2004 (even though the institution is a member of a Crown entity group to which section 156A(1) of that Act would otherwise apply).
- (4) A council must include in its annual report—
 - (a) a summary of its equal employment opportunities programme for the year to which the report relates; and

- (b) an account of the extent to which the council was able, during the year to which the report relates, to meet the equal employment opportunities programme for that year; and
 - (c) an account of the extent to which the council has eliminated unnecessary barriers to the progress of students; and
 - (d) an account of the extent to which the council has avoided the creation of unnecessary barriers to the progress of students; and
 - (e) an account of the extent to which the council has developed programmes to attract students from groups in the community that are—
 - (i) under-represented in the institution’s student body; or
 - (ii) disadvantaged in terms of their ability to attend the institution; and
 - (f) in the case of an institution that has a plan, a statement of service performance for that financial year reporting on the performance of the institution as compared with the proposed outcomes described in that plan.
- (5) Section 156 of the Crown Entities Act 2004 applies to institutions and, for that purpose, is to be read as referring to a statement of service performance under **subsection (4)(f)**.
- (6) A statement of service performance under **subsection (4)(f)** must be prepared in accordance with generally accepted accounting practice, within the meaning of section 8 of the Financial Reporting Act 2013.
- (7) The Minister must present the report to the House of Representatives within 5 working days after receiving the report or, if Parliament is not in session, as soon as practicable after the commencement of the next session of Parliament.
- (8) The first report by an institution’s council must extend to operations during the part of the academic year before the council became the governing body of the institution.
- (9) In this section, **parent Crown entity** has the same meaning as in section 8 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 220

294 Minister may require related entities to prepare statements or reports

- (1) If the Minister has reasonable grounds to believe that an institution may be at risk due to the institution’s investment in a related entity, the Minister may, by notice in writing, require the entity to prepare 1 or more statements or reports.
- (2) In considering whether an institution may be at risk, the Minister must apply the criteria (determined by the Secretary under **section 267**) for assessing the level of risk to the operation and long-term viability of institutions.
- (3) Before issuing a notice, the Minister must consult the institution, or institutions, to which the entity is related.

- (4) The notice must specify—
- (a) which statements and reports are required; and
 - (b) the financial years or other period (which may be until further notice) for which each statement or report is required.
- (5) In this section, **statement or report** has the meaning given by section 156A(4) of the Crown Entities Act 2004.
- Compare: 1989 No 80 s 220A

295 Annual report to be available for inspection

An institution's council must ensure that copies of its annual report are available at the office of the council for inspection during ordinary office hours by any person without charge.

Compare: 1989 No 80 s 221

Miscellaneous provisions

296 Records relating to students

- (1) Each institution must keep records that show—
- (a) the progress of each student at the institution (including the main results achieved by the student) in the student's programme of study or training; and
 - (b) particulars of any allowances, grants, or other payments received by each student at the institution in respect of the student's programme of study or training out of money appropriated by Parliament.
- (2) The records to be kept by an institution include (without limitation) records that enable the institution to comply with any requirement that may be made by the Secretary under **section 297**.

Compare: 1989 No 80 s 225

297 Secretary may require information

The Registrar or other appropriate officer of an institution must, if required by the Secretary, provide to the Secretary, in the form that the Secretary specifies, any statistical information in the possession of the institution that the Secretary specifies in relation to students generally or a particular class of students.

Compare: 1989 No 80 s 226

Vice-Chancellors committee

298 Vice-Chancellors Committee continued

- (1) The committee known as the New Zealand Vice-Chancellors Committee established under section 240 of the Education Act 1989 is continued.

- (2) The Vice-Chancellors Committee consists of the Vice-Chancellors of the institutions that are universities.
- (3) If an office of Vice-Chancellor of a university is vacant, the person for the time being acting in that office must be treated as the Vice-Chancellor of that university for the purposes of this Act.
- (4) The Vice-Chancellors Committee is a body corporate with perpetual succession and a common seal and is capable of—
 - (a) holding real and personal property; and
 - (b) suing and being sued; and
 - (c) otherwise doing and suffering all that bodies corporate may lawfully do and suffer.
- (5) Sections 153 to 156 of the Crown Entities Act 2004 apply to the Vice-Chancellors Committee as if it were a Crown entity within the meaning of that Act.
- (6) **Schedule 12** provides for the administration of the Vice-Chancellors Committee.

Compare: 1989 No 80 s 240

299 Functions of Vice-Chancellors Committee

The functions of the Vice-Chancellors Committee are—

- (a) to set up inter-university course approval and moderation procedures:
- (b) to exercise, in accordance with **section 424**, the powers of NZQA under this Act in relation to universities:
- (c) to list qualifications offered by universities on the Qualifications Framework:
- (d) to grant scholarships to students enrolled or proposing to enrol at universities out of money under its control on the terms that the Committee thinks fit:
- (e) where another body has power to grant those scholarships,—
 - (i) to make recommendations to the person or authority having power to make appointments to that body as to the persons who should be appointed:
 - (ii) if authorised to do so, to make appointments to that body:
 - (iii) if requested by that body to do so, to advise that body on the grant of those scholarships:
- (f) to make recommendations to NZQA on criteria for entrance to universities for the purposes of the performance by NZQA of its functions under **section 405**:
- (g) if requested by the councils of the universities to do so, to consider applications by international students for enrolment at any of those uni-

versities and make recommendations to the councils in respect of those applications:

- (h) to liaise with the councils of institutions other than universities in respect of procedures for enrolling international students:
- (i) to issue certificates relating to degrees and other academic qualifications and courses of, or examinations conducted by, the University of New Zealand as if that university had continued in existence and to charge the reasonable fees for the certificates that the Committee determines:
- (j) to perform any other functions conferred on it by this Act or any other enactment.

Compare: 1989 No 80 s 241

300 Powers of Vice-Chancellors Committee

The Vice-Chancellors Committee has—

- (a) the powers given to it under this Act or any other enactment; and
- (b) all other powers reasonably necessary to enable it to perform its functions efficiently and effectively.

Compare: 1989 No 80 s 242

Subpart 4—New Zealand Institute of Skills and Technology

301 NZIST continued

- (1) This section continues the New Zealand Institute of Skills and Technology (NZIST) as an institution.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister given after receiving a recommendation from NZIST's council, do either or both of the following:
 - (a) change the name of NZIST:
 - (b) amend this Act or any other enactment by omitting from it the name of NZIST and substituting some other name.
- (3) To avoid doubt, NZIST does not cease to be an institution merely because its name is changed under **subsection (2)**.

Compare: 1989 No 80 s 222A

302 Functions of NZIST

NZIST has the following functions:

- (a) to provide or arrange, and support, a variety of education and training, including vocational, foundation, and degree-level or higher education and training:
- (ab) to conduct research, with a focus on applied and technological research:

- (b) to be responsive to and to meet the needs of the regions of New Zealand and their learners, industries, employers, and communities by utilising NZIST's national network of tertiary education programmes and activities:
- (c) to improve the consistency of vocational education and training by using skill standards and working in collaboration with workforce development councils:
- (d) to improve outcomes in the tertiary education system as a whole, including (without limitation) by making connections with schools and other organisations involved in tertiary education and by promoting and supporting life-long learning:
- (e) to improve outcomes for Māori learners and Māori communities in collaboration with Māori and iwi partners, hapū, and interested persons or bodies:
- (f) to carry out any other functions consistent with its role as a tertiary education institution.

Compare: 1989 No 80 s 222B

303 NZIST's charter

- (1) NZIST must give effect to its charter as set out in **Schedule 13**.
- (2) NZIST must report in its annual report on how it has given effect to the charter.
- (3) The duty in **subsection (1)** is owed to the Minister.

Compare: 1989 No 80 s 222C

304 Minister may specify administrative regions for NZIST

The Minister may, by notice in the *Gazette*, specify administrative regions of government with which NZIST must make arrangements to operate effectively.

Compare: 1989 No 80 s 222D

305 Academic freedom of NZIST

- (1) It is the intention of Parliament in enacting the provisions of this Act relating to NZIST that NZIST's academic freedom is preserved and enhanced.
- (1A) NZIST's academic freedom also applies in relation to every NZIST subsidiary that provides education or training, or both.
- (2) In this section, **academic freedom**, in relation to NZIST, means—
 - (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions:
 - (b) the freedom of academic staff and students to engage in research:
 - (c) the freedom of NZIST and its staff to regulate the subject matter of its courses:

- (d) the freedom of NZIST and its staff to teach and assess students in the manner that they consider best promotes learning;
 - (e) the freedom of NZIST through its chief executive to appoint its own staff.
- (4) In exercising academic freedom, NZIST must act in a manner that is consistent with—
- (a) the need for institutions to maintain the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
 - (b) the need for institutions to be accountable and to properly use resources allocated to them.
- (5) In performing their functions, NZIST’s council and its chief executive, Ministers, departments of State, authorities, and agencies of the Crown must act in all respects to give effect to the intention of Parliament as expressed in this section.
- (6) To avoid doubt,—
- (a) nothing in **subsection (2)** limits or affects a workforce development council performing its functions under **section 347(1)(b) to (ea)**; and
 - (b) the performance of those functions by the workforce development council does not limit or affect the academic freedom of NZIST as set out in **subsection (2)(a), (b), or (e)**.

Compare: 1989 No 80 s 222E

306 NZIST must establish regional divisions

- (1) NZIST must establish regional divisions for the purposes of—
- (a) appointing members to a staff committee or a students’ committee established under **section 312**;
 - (b) appointing directors to an NZIST subsidiary.
- (2) NZIST may make statutes for the purposes of **subsection (1)**.

Compare: 1989 No 80 s 222F

NZIST’s council

307 Membership of NZIST’s council

- (1) NZIST’s council must have at least 8, but not more than 12, members, as follows:
- (a) 1 member who is a member of, and elected by, its staff committee; and
 - (b) 1 member who is a member of, and elected by, its students’ committee; and

- (c) 1 member who is a member of, and elected by, its Māori advisory committee; and
 - (d) the rest of the members must be appointed by the Minister.
- (2) A person is not eligible for appointment under **subsection (1)** if—
- (a) the person is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
 - (b) a personal order has been made under that Act in respect of the person that reflects adversely on their—
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or
 - (c) ~~the person is a bankrupt who~~ has been adjudicated bankrupt and has not obtained an order of discharge, or whose order of discharge has been suspended for a term that has not yet expired or is subject to any conditions that have not yet been fulfilled; or
 - (d) the person has been removed from office as a member of the council.
- (3) An act or a proceeding of NZIST’s council, or of any member or any committee of NZIST’s council, is not invalid because of—
- (a) a defect in the appointment or election of a member of the council or committee; or
 - (b) a disqualification of a member of the council or committee; or
 - (c) a defect in the convening of a meeting; or
 - (d) a vacancy in the membership of the council or committee.
- (4) For the purposes of this section,—
- (a) a person referred to in **subsection (1)(a)** is a member of the council only while the person is a permanent member of the staff of NZIST or an NZIST subsidiary;
 - (b) a person referred to in **subsection (1)(b)** is a member of the council only if the person is a student enrolled at NZIST or an NZIST subsidiary, but may continue to be a member of the council for a period of up to 12 months after the date on which their enrolment ends.
- (5) To avoid doubt,—
- (a) all permanent members of NZIST’s or an NZIST subsidiary’s staff are eligible for appointment under **subsection (1)(a)**;
 - (b) all students enrolled at NZIST or an NZIST subsidiary are eligible for appointment under **subsection (1)(b)**, regardless of the delivery mode

by which the student receives education or training (for example, on-campus learning, distance learning, or work-based training).

Compare: 1989 No 80 s 222G

308 Matters to be considered when Minister appoints members to NZIST's council

- (1) The Minister must, as far as possible, ensure that NZIST's council reflects—
 - (a) the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of New Zealand's population; and
 - (b) the fact that New Zealand is made up of a number of regions.
- (2) When appointing members of NZIST's council, the Minister must have regard to **subsection (1)** and must appoint people who (in the Minister's opinion)—
 - (a) have relevant knowledge, skills, and experience in relation to governance, cultural competency, and the importance of diversity; and
 - (b) are likely to be able to fulfil their individual duties to the council; and
 - (c) together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.
- (3) A person specified in **section 307(1)(a) and (b)** is appointed by the council in accordance with the council's statute unless the person is ineligible for appointment under **section 307(2)**.

Compare: 1989 No 80 s 222H

309 Chairperson and deputy chairperson

- (1) The Minister may appoint a chairperson and deputy chairperson of NZIST's council from among its members by giving written notice to the member concerned stating the term for which the member is appointed as chairperson or deputy chairperson.
- (2) The Minister may, by written notice to the member concerned, dismiss the chairperson or deputy chairperson of NZIST's council from office as chairperson or deputy chairperson.
- (3) However, the Minister may not dismiss the chairperson or deputy chairperson without first consulting them about the proposed dismissal.
- (4) The chairperson or deputy chairperson of NZIST's council—
 - (a) may resign as chairperson or deputy chairperson by giving written notice to the Minister; and
 - (b) ceases to hold office if they—
 - (i) cease to be a member of NZIST's council; or
 - (ii) become the chief executive of NZIST or a member of the staff of NZIST or an NZIST subsidiary; or
 - (iii) become a student enrolled at NZIST or an NZIST subsidiary.

- (5) A chairperson or deputy chairperson who resigns must give a copy of the notice of resignation to NZIST's council.
- (6) The chairperson or deputy chairperson of NZIST's council holds office as chairperson or deputy chairperson for the term for which they were appointed (but may be reappointed), unless the person earlier dies, is dismissed, resigns, or ceases to hold office under **subsection (4)(b)**.
- (7) If the term of office of the chairperson or deputy chairperson expires before a successor is appointed, the chairperson or deputy chairperson continues in office until their successor is appointed.

Compare: 1989 No 80 s 222I

310 Term of office

- (1) A member of NZIST's council is appointed for a period not exceeding 4 years.
- (2) When appointing members of NZIST's council under **section 307(1)(d)**, the Minister must state in the notice appointing the member—
 - (a) the day on which the member's appointment takes effect; and
 - (b) the term for which the member is appointed.

Compare: 1989 No 80 s 222J

Additional provisions applying to NZIST's council and subsidiaries

311 Determination of policy

- (1) In determining the policy of NZIST with respect to any matter, NZIST's council must consult any board, committee, or other body established within NZIST that has responsibility for giving advice in relation to, or for giving effect to, the policy of NZIST with respect to the matter.
- (2) For the purposes of **subsection (1)**, NZIST's council must establish an academic board consisting of its chief executive and members of the staff and students of NZIST or an NZIST subsidiary to—
 - (a) advise it on matters relating to work-based learning, courses of study or training, awards, and other academic matters; and
 - (b) exercise powers delegated to it by the council.
- (3) Without limiting **subsection (1)**, NZIST's council may not make any decision or statute in respect of any academic matter referred to in **subsection (2)** unless it has requested the advice of the academic board and considered any advice given by the academic board.
- (4) However, a decision or statute made by NZIST's council is not invalid merely because of a failure of the council to comply with either of **subsections (1) and (3)**.

Compare: 1989 No 80 s 222K

312 NZIST's council must establish advisory committees

- (1) NZIST's council must establish a staff committee, a students' committee, and a Māori advisory committee.
- (2) Each committee established under **subsection (1)** must be treated as a board established by the council under **section 263(2)(j)**.
- (3) Without limiting **section 311(1)**, NZIST's council must—
 - (a) consult each committee established under **subsection (1)** about significant matters relating to the council's strategic direction that are relevant to the class of people represented by that committee; and
 - (b) consider any advice given on those matters or any other matters by the committee.
- (4) However, a decision or statute made by NZIST's council is not invalid merely because of a failure of the council to comply with **subsection (3)**.

Compare: 1989 No 80 s 222L

313 Membership of advisory committees

- (1) When appointing members of its staff committee or its students' committee, NZIST's council must ensure that—
 - (a) each committee consists of persons representing a minimum of each regional division of NZIST established under **section 306**; and
 - (b) each member of the staff committee is a permanent member of the teaching or general staff of NZIST or an NZIST subsidiary whom the permanent members of the teaching and general staff of NZIST or an NZIST subsidiary have elected to represent them; and
 - (c) each member of the students' committee is a student enrolled at NZIST or an NZIST subsidiary whom the students have elected to represent them.
- (2) When appointing members of its Māori advisory committee, NZIST's council must determine, in consultation with its Māori and iwi partners and interested persons or bodies, the size and composition of the committee, but must ensure that the composition includes—
 - (a) representation from NZIST or any of its subsidiaries; and
 - (b) external people.

Compare: 1989 No 80 s 222M

314 NZIST must obtain consent for certain capital projects of NZIST or NZIST subsidiary

- (1) A capital project may be undertaken by NZIST or an NZIST subsidiary only if—
 - (a) the cost of, or level of risk of, the project to NZIST is below thresholds set by the Secretary under **subsection (2)**; or

- (b) the project is within a capital plan of NZIST approved in writing by the Secretary; or
 - (c) NZIST has obtained the written consent of the Secretary for the project.
- (2) The Secretary must, after consulting NZIST, set thresholds for the purposes of **subsection (1)(a)** and publish those thresholds on an Internet site maintained by or on behalf of the Ministry.
- (3) This section applies despite **section 286** (which relates to how institutions may use income and capital).

Compare: 1989 No 80 s 222N

315 NZIST subsidiary must obtain consent before exercising certain powers

Unless **section 262(5)** applies, an NZIST subsidiary may not exercise any of the powers in **section 262(4)** unless—

- (a) it has notified NZIST in writing of the proposed exercise of the power; and
- (b) NZIST has obtained the consent of the Secretary to the proposed exercise of the power by the NZIST subsidiary.

Compare: 1989 No 80 s 222O

Interventions relating to NZIST

316 Criteria for risk assessment of NZIST and related entities

- (1) For the purpose of exercising a power under any of **sections 317A to 317G**, the Secretary must, after consulting NZIST's council, determine criteria for assessing the levels of risks to—
- (a) NZIST and any related entity of NZIST; or
 - (b) the education and training performance of students enrolled at NZIST and any related entity of NZIST.
- (2) The Secretary must publish the criteria in the *Gazette*.
- (3) The criteria must be reviewed at least once in every 2 years following the date of their publication in the *Gazette*.

Compare: 1989 No 80 s 222P

317 NZIST or related entity must provide information if required

- (1) If the chief executive of TEC has reasonable grounds to believe that NZIST or a related entity of NZIST may be at risk, the chief executive may, by written notice to NZIST's council, require the council to provide either or both of the following:
- (a) specified information about the operation, management, or financial position of NZIST or a related entity of NZIST at a given time:

- (b) reports at specified intervals on specific aspects of the operation, management, or financial position of NZIST or a related entity of NZIST.
- (2) If the chief executive of TEC requires information under **subsection (1)**, the information required must relate to the risks to NZIST or the related entity that the chief executive is concerned about.
- (3) If NZIST's council receives a notice under **subsection (1)** it must provide the chief executive of TEC with the required information within the period specified in the notice.
- (4) The chief executive of TEC may revoke or amend a notice given under **subsection (1)**.

Compare: 1989 No 80 s 222Q

317A Minister may appoint Crown observer for NZIST

- (1) This section applies if the Minister believes on reasonable grounds that—
 - (a) NZIST or a related entity of NZIST may be at risk; or
 - (b) the education and training performance of the students enrolled at NZIST or a related entity of NZIST may be at risk.
- (2) The Minister may appoint a Crown observer to NZIST's council.
- (3) However, a Crown observer may not be appointed unless the Minister has first—
 - (a) consulted NZIST's council; and
 - (b) advised NZIST's council that the Minister is considering appointing a Crown observer; and
 - (c) given NZIST's council an opportunity to comment on the proposal.
- (4) An appointment under this section must be in writing and must state the date on which it takes effect.
- (5) A Crown observer may—
 - (a) attend any meeting of NZIST's council (or a committee or board of NZIST's council) to which the Crown observer is appointed; and
 - (b) offer advice to NZIST's council (or a committee or board of NZIST's council); and
 - (c) report to the Minister on any matter raised or discussed at any meeting that the person attends as a Crown observer.
- (6) Except as authorised by **subsection (5)(c)**, a Crown observer must, at all times, maintain confidentiality with respect to the affairs of NZIST's council.
- (7) A Crown observer is not a member of NZIST's council (or a committee or board of NZIST's council), and may not—
 - (a) vote on any matter; or

- (b) exercise any of the powers, or perform any of the functions or duties, of a member of NZIST's council.

Compare: 1989 No 80 s 222R

317B Specialist help

- (1) This section applies if the chief executive of TEC believes on reasonable grounds that—
 - (a) NZIST or a related entity of NZIST may be at risk; or
 - (b) the education and training performance of the students enrolled at NZIST or a related entity of NZIST may be at risk.
- (2) The chief executive may, by written notice to NZIST's council, require it—
 - (a) to obtain specialist help; or
 - (b) to obtain specialist help for a related entity of NZIST.
- (3) The notice must state—
 - (a) the help or kind of help to be obtained; and
 - (b) the person or organisation, or kind of person or organisation, from whom or from which it is to be obtained.
- (4) As soon as practicable after receiving the notice, NZIST's council must comply with it.
- (5) NZIST's council must—
 - (a) provide the information and access, and do all other things, reasonably necessary to enable the person or organisation engaged to provide the help; and
 - (b) to the extent that the help provided is advice, take the advice into account in performing its functions and duties; and
 - (c) pay the person's or organisation's reasonable fees and expenses.

Compare: 1989 No 80 s 222S

317C Performance improvement plan

- (1) This section applies if the chief executive of TEC believes on reasonable grounds that—
 - (a) NZIST or a related entity of NZIST may be at risk; or
 - (b) the education and training performance of the students enrolled at NZIST or a related entity of NZIST may be at risk.
- (2) The chief executive may, by written notice to NZIST's council, require it to prepare and give to the chief executive a draft performance improvement plan for NZIST or a related entity of NZIST.
- (3) The notice must state—
 - (a) the matters to be addressed by the draft plan; and

- (b) the outcomes that implementation of the draft plan is intended to achieve; and
 - (c) the times by which those outcomes should be achieved; and
 - (d) the performance measures that are to be used to determine whether those outcomes have been achieved; and
 - (e) the date by which the draft plan must be given to the chief executive.
- (4) NZIST's council must prepare, and give to the chief executive by the stated date, a draft plan that complies with **subsection (3)**.
- (5) The chief executive may—
- (a) approve the draft plan; or
 - (b) after considering the draft plan, approve for NZIST or the related entity some other plan that complies with **subsection (3)** (whether a modified version of the draft plan or a different plan).
- (6) If the council does not comply with **subsection (4)**, the chief executive may approve for NZIST or the related entity any plan that complies with **subsection (3)** that the chief executive thinks fit.
- (7) The chief executive may not approve any plan other than a draft plan given to the chief executive before discussing it with NZIST's council.
- (8) NZIST's council must take all reasonably practicable steps to implement a plan approved under this section.

Compare: 1989 No 80 s 222T

317D Minister may appoint Crown manager for NZIST

- (1) This section applies if the Minister believes on reasonable grounds—
- (a) that there is a risk to the operation or long-term viability of NZIST or a related entity of NZIST; or
 - (b) that the education and training performance of the students enrolled at NZIST or a related entity of NZIST is at risk.
- (2) The Minister may, by written notice to NZIST's council, appoint a Crown manager for NZIST.
- (3) The Minister may not appoint a Crown manager under **subsection (2)** without—
- (a) giving NZIST's council written notice of the Minister's intention to do so and the Minister's reasons for intending to do so; and
 - (b) allowing NZIST's council reasonable time (as specified in the notice) to respond to the notice; and
 - (c) considering any written submissions received from NZIST's council within that time.

- (4) Whether a time is reasonable in any particular case may depend (among other things) on the urgency of the matters the Crown manager must deal with.
- (5) The notice must state—
 - (a) the name of the Crown manager and the day on which their appointment takes effect; and
 - (b) the functions of NZIST's council to be performed by the Crown manager; and
 - (c) any conditions subject to which the Crown manager may perform those functions; and
 - (d) any matters about which the Crown manager may advise NZIST's council.
- (6) As soon as practicable after appointing a Crown manager, the Minister must notify the appointment in the *Gazette*.
- (7) While there is a Crown manager appointed for NZIST,—
 - (a) the Crown manager may perform any of the functions stated in the notice appointing them, and,—
 - (i) for that purpose, the Crown manager has all the powers of NZIST's council; but
 - (ii) in performing any of those functions (and exercising any of those powers in order to do so) the Crown manager must comply with all relevant duties of NZIST's council; and
 - (b) NZIST's council—
 - (i) may not perform any of those functions; but
 - (ii) must provide the information and access, and do all other things, reasonably necessary to enable the Crown manager to perform those functions and exercise those powers.
- (8) The Crown manager must perform any function under **subsection (7)(a)** (and exercise any power in order to do so) in accordance with this Act and, in particular, must have regard to **section 305**.
- (9) NZIST's council must pay the Crown manager's reasonable fees and expenses.
- (10) If the Crown manager's appointment has not been revoked earlier, the Minister must consider whether the reasons for the appointment still apply—
 - (a) no later than 12 months after it was made; and
 - (b) no later than 12 months after the Minister last considered whether they still apply.

Compare: 1989 No 80 s 222U

317E Personal liability of Crown manager

A Crown manager appointed under **section 317D** is not personally liable for any act done or omitted to be done by the Crown manager, or for any loss arising from that act or omission, if the Crown manager was acting—

- (a) in good faith; and
- (b) in the course of ~~carrying out~~ performing their functions.

Compare: 1989 No 80 s 222V

317F Powers may be used concurrently

To the extent that it is possible in practice, the powers specified in **sections 317 to 317D** may be exercised concurrently.

Compare: 1989 No 80 s 222W

317G Minister may dissolve NZIST's council and appoint commissioner

- (1) The Minister may, by written notice, dissolve NZIST's council and appoint a commissioner to act in place of the council if the Minister believes on reasonable grounds that—
 - (a) there is a serious risk to the operation or long-term viability of NZIST; and
 - (b) other methods of reducing the risk have failed or appear likely to fail.
- (2) A notice under **subsection (1)** must specify—
 - (a) the date on which the dissolution and appointment take effect; and
 - (b) the name of the person appointed as commissioner.
- (3) The Minister may not exercise the power under **subsection (1)** unless the Minister has first—
 - (a) consulted NZIST's council and any other interested parties about the possible need to dissolve the council and appoint a commissioner; and
 - (b) following that consultation, given the council written notice of the Minister's preliminary decision that NZIST's council should be dissolved and a commissioner appointed in its place; and
 - (c) allowed NZIST's council at least 21 days in which to respond to the preliminary decision; and
 - (d) considered any submissions made by NZIST's council about why the preliminary decision should not be confirmed.
- (4) As soon as practicable after giving a notice under **subsection (1)**, the Minister must—
 - (a) publish a copy of it in the *Gazette*; and
 - (b) present a copy of it to the House of Representatives.

- (5) When a commissioner is appointed under this section, the Minister must review the appointment at least once in every 12 months following the appointment.
- (6) As soon as the Minister is satisfied (following an annual review or at any other time) that the risk that gave rise to the appointment of the commissioner has been reduced enough so that it is appropriate that NZIST be administered by a council, a new council must be appointed in accordance with **sections 307 to 310**.
- (7) A commissioner's appointment ends on the close of the day before a new council takes office.
- (8) **Sections 271, 272, and 273** apply, with any necessary modifications, as if a commissioner appointed under **subsection (1)** were appointed under **section 270**.

Compare: 1989 No 80 s 222X

317H NZIST's council may request intervention

If NZIST's council requests the Minister or the chief executive of TEC to act under any of **sections 317A to 317G**, the Minister or the chief executive—

- (a) must consider any submission or evidence supplied by NZIST's council; and
- (b) must consider whether to act under that section; but
- (c) may then (if any necessary conditions are satisfied) act under another of those sections giving them power to act.

Compare: 1989 No 80 s 222Y

Application of Crown Entities Act 2004 to NZIST's council

318 Additional provisions of Crown Entities Act 2004 that apply to NZIST's council

- (1) ~~The provisions of the Crown Entities Act 2004 specified in set out in Part 2 of Schedule 4 of that Act~~ the Crown Entities Act 2004 apply to NZIST and NZIST's council.
- (2) NZIST must be treated as a statutory entity for the purpose of applying those provisions.

Compare: 1989 No 80 s 222Z

Further provisions relating to NZIST subsidiaries

319 Formation of NZIST subsidiaries and provisions that apply

- (1) NZIST may form 1 or more NZIST subsidiaries.
- (1A) **Schedule 14A** specifies other provisions of this Act that apply and do not apply to an NZIST subsidiary formed under **subsection (1)** that provides education or training, or both.

- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify provisions of this Act that do not apply to an NZIST subsidiary formed under **subsection (1)** that does not provide education or training, or both.

Compare: 1989 No 80 s 222ZA

322 Application of **Schedule 14**

Schedule 14 applies to an NZIST subsidiary on its dissolution date (as defined in **clause 1** of that schedule).

Compare: 1989 No 80 s 222ZB

Subpart 5—Private training establishments

~~323 Minister may recognise community tertiary education provider~~

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

Compare: 1989 No 80 s 232AA

323 Minister may recognise categories of private training establishments

- (1) The Minister may, by notice in the *Gazette*, recognise categories and subcategories of registered private training establishments.
- (2) The Minister must, by notice in the *Gazette*, specify the criteria for including a registered private training establishment in a particular category or subcategory.

Compare: 1989 No 80 s 232AA

324 Requirement to be registered before providing approved programmes or training schemes

A private training establishment must be registered before it can provide an approved programme or training scheme to a student.

Compare: 1989 No 80 s 232C

Applications for registration

325 Application for registration as registered establishment

- (1) A private training establishment that is a body corporate may apply to NZQA for registration as a registered establishment for the purposes of this Act.
- (2) The application must—
- (a) include a written statement setting out—
 - (i) the kinds of education the establishment proposes to provide; and

- (ii) the outcomes it seeks to achieve through the provision of those kinds of education; and
 - (b) demonstrate how the establishment intends to meet the requirements of **sections 327(1), 328(1), and 329(1) and (2)**; and
 - (c) contain a statutory declaration from each governing member of the establishment in respect of—
 - (i) any material conflicts of interest arising from the person’s role as a governing member of the establishment; and
 - (ii) any interests that the person has in organisations in the education or immigration sector that provide goods or services to tertiary students; and
 - (d) contain a statutory declaration from each governing member of the establishment in respect of the matters described in **section 328(1)(a) to (g)**; and
 - (e) describe the arrangements that the establishment has in place to manage any conflicts of interest that may arise; and
 - (f) be in a form and contain any other information that NZQA requires; and
 - (g) be accompanied by an amount that NZQA requires as a deposit on the fee charged under **section 428(1)(a)(vii)**.
- (3) NZQA may not consider an application for registration if the applicant does not provide all the information required under **subsection (2)**.

Compare: 1989 No 80 s 232D

326 NZQA may verify identity of governing members of private training establishment

- (1) NZQA may require a private training establishment to provide evidence of the identities of its governing members—
 - (a) before considering its application for registration; or
 - (b) at any time there is a change in the membership of the governing members of the establishment.
- (2) NZQA may interview any governing member of the establishment for the purpose of verifying the member’s identity.

Compare: 1989 No 80 s 232E

Determination of application

327 Grant or refusal of application

- (1) NZQA must grant an application for registration of a private training establishment if satisfied that—
 - (a) every governing member of the establishment is a fit and proper person (after considering the criteria set out in **section 328**); and

-
- (b) the establishment has in place effective arrangements for managing any conflicts of interest that exist or may arise; and
 - (c) no governing member of the establishment has a material conflict of interest that NZQA considers is or is likely to be unmanageable; and
 - (d) no governing member of the establishment has an interest of a kind described in **section 325(2)(c)(ii)** that NZQA considers is or is likely to be unmanageable; and
 - (e) the establishment has, or is to have at the relevant time, adequate staff, equipment, and premises to provide its programmes or training schemes; and
 - (f) the establishment,—
 - (i) if it is already operational, has acceptable financial management practices and performance (for example, is able to pay its staff, taxes, and creditors); or
 - (ii) if it is not yet operational, is likely to have acceptable financial management practices and performance (for example, is likely to be able to pay its staff, taxes, and creditors); and
 - (g) the establishment complies, or is capable of complying and likely to comply, with the conditions of registration under **section 329**; and
 - (h) before accepting the enrolment of any prospective student, the establishment provides or is to provide that student with a written statement of—
 - (i) the total costs and other financial commitments associated with the programme or training scheme for which the student seeks enrolment; and
 - (ii) any material conflicts of interest of any of the governing members of the establishment; and
 - (iii) any interests of a kind described in **section 325(2)(c)(ii)**; and
 - (i) if the establishment intends to enrol international students, it is to become a signatory to the applicable code issued under **section 504** before enrolling any international students.
- (2) Registration may be granted for a specified period or indefinitely.
 - (3) The grant of registration does not entitle the establishment or any of its students to receive financial assistance out of money appropriated by Parliament.
 - (4) NZQA may refuse to grant registration to a private training establishment or cancel the establishment's registration (if already granted) if satisfied that a governing member of the establishment has provided a false or misleading declaration under **section 325(2)(c)**.
 - (5) NZQA must give written notice to a private training establishment if it grants, refuses to grant, or cancels registration.

- (6) If NZQA refuses or cancels registration, it must give reasons for doing so.

Compare: 1989 No 80 s 233

328 Criteria for determining whether governing member is fit and proper person

- (1) For the purpose of determining whether a governing member of a private training establishment is a fit and proper person for that position, NZQA must give any weight that it thinks fit to all of the following matters:
- (a) the person's experience in the provision of education services (for example, any previous involvement in a registered establishment); and
 - (b) whether the person was a governing member of a registered establishment that was closed, sold due to insolvency, or taken over; and
 - (c) whether the person has been convicted of any offence involving fraud, violence, or dishonesty, or any offence against this Act or section 352 of the Immigration Act 2009; and
 - (d) whether the person is a defendant in proceedings in respect of an offence described in **paragraph (c)**; and
 - (e) whether the person was ~~adjudged~~ adjudicated bankrupt under the Insolvency Act 2006; and
 - (f) whether the person has been prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or
 - (ii) any other body corporate; and
 - (g) whether the person has failed to disclose any material conflict of interest as required under **section 325(2)(c)(i)**; and
 - (h) any other matter that NZQA considers relevant.
- (2) If the applicant has had direct involvement in the provision of education services that have failed, NZQA must give the applicant an opportunity to explain why this is unlikely to occur again.

Compare: 1989 No 80 s 233A

Conditions and other requirements of registration

329 Conditions of registration

- (1) A private training establishment must, as a condition of registration,—
- (a) comply at all times with the requirements in the rules made under **section 423**, except to the extent that NZQA exempts the establishment, by a condition on its registration, from compliance; and
 - (b) keep up to date the written statement required under **section 325(2)(a)**; and

- (c) ensure that—
 - (i) existing governing members keep up to date the declarations required under **section 325(2)(c) and (d)**; and
 - (ii) any new governing member submits the declarations required under **section 325(2)(c) and (d)** before commencing as a governing member of the establishment.
- (2) NZQA may impose conditions on the registration of an establishment that are specific to the establishment or a group or class of establishments.
- (3) NZQA may, with the agreement of the establishment,—
 - (a) impose new conditions on the establishment’s registration; or
 - (b) amend or revoke any existing conditions.
- (4) NZQA may, without the agreement of an establishment, impose conditions on the establishment’s registration, or amend or revoke any existing conditions, but only if NZQA has first—
 - (a) given written notice to the establishment of its intention to do so; 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, NZQA must give written notice to the establishment of the new, amended, or revoked conditions.

Compare: 1989 No 80 s 233B

330 Annual registration fee

Every registered establishment must pay NZQA an annual registration fee of an amount prescribed by or determined under rules made under **section 423**.

Compare: 1989 No 80 s 233C

Cancellation and lapse of registration

331 Cancellation of registration

- (1) NZQA may cancel the registration of a registered establishment—
 - (a) if it is satisfied on reasonable grounds that—
 - (i) the establishment no longer meets 1 or more of the criteria set out in **section 327(1)**; or
 - (ii) the establishment is not complying, or has not complied, with 1 or more of its conditions of registration; or
 - (b) if the establishment has provided false or misleading information in its application for registration; or

- (c) if it is satisfied on reasonable grounds that the establishment has failed or refused to comply with any relevant duties or obligations under this Act, including (without limitation) the obligations relating to student fee protection; or
 - (d) at the written request of the establishment.
- (2) NZQA must cancel the registration of a registered establishment if—
- (a) the establishment has been convicted of an offence against—
 - (i) this Act; or
 - (ii) section 352 of the Immigration Act 2009; or
 - (b) a governing member of the establishment is convicted of any serious criminal activity or any offence referred to in **paragraph (a)**, and the establishment fails to comply with a written notice issued by NZQA on reasonable grounds requiring that the person be removed, within 2 months of receipt of the notice, from the person’s position as a governing member and from every other position in the establishment.
- (3) Before cancelling a registration under **subsection (1)(a), (b), or (c)**, NZQA must—
- (a) notify the establishment that it is considering cancelling its 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.
- (4) If NZQA cancels a registration under this section, it must give notice of its decision to both the establishment and TEC, with reasons.
- (5) Nothing in this section limits NZQA’s powers under **section 430(6)(a)** to cancel an establishment’s registration.

Compare: No 1980 No 80 s 233D

332 Effect of cancellation

- (1) Cancellation of registration under **section 331 or 430(6)(a)** takes effect on the date specified by NZQA in the notice given under **section 331(4)** (the **cancellation date**).
- (2) If the registration of a registered establishment is cancelled under **section 331 or 430(6)(a)**, the following apply from the cancellation date:
 - (a) all approved programmes or training schemes granted to the establishment are withdrawn; and
 - (b) all accreditations granted to the establishment are withdrawn; and
 - (c) all consents to assess against standards granted to the establishment are withdrawn.

- (3) No notice is required to be given to a registered establishment for a withdrawal under **subsection (2)**.

Compare: 1989 No 80 s 233E

333 Lapse of registration

- (1) The registration of a registered establishment lapses—
- (a) on the date that is 1 year after registration is granted if,—
 - (i) within that period, the establishment does not provide an approved programme that it is accredited to provide to enrolled students; and
 - (ii) within that period, the establishment does not provide an approved training scheme to enrolled students:
 - (b) on the date that is 1 year after the establishment has ceased to provide to enrolled students—
 - (i) any approved programme it is accredited to provide; and
 - (ii) any approved training scheme.
- (2) **Subsection (1)** does not affect the registration of a private training establishment if—
- (a) the time for the lapse of the establishment's accreditation is extended under **section 414(2)** beyond either of the dates specified in **subsection (1)**, in which case the establishment's registration lapses when the accreditation lapses; or
 - (b) the time for the lapse of the establishment's training scheme approval is extended under **section 418(2)** beyond either of the dates specified in **subsection (1)**, in which case the establishment's registration lapses when the training scheme approval lapses.
- (3) Despite anything in **subsections (1) and (2)**, the registration of a registered establishment lapses on the date on which the establishment ceases to be a body corporate.
- (4) If a registered establishment is required under this Act to pay any fees to NZQA, and fails to pay those fees after receiving 2 reminder notices within 3 months, the registration of the establishment lapses on the date that is 1 calendar month after the date of the second reminder notice from NZQA.
- (5) NZQA must give written notice of the lapse of a registration to the establishment.
- (6) If the registration of a registered private training establishment lapses under **subsection (1), (3), or (4)**, any accreditation, approval, or consent associated with the registration is withdrawn on the date on which the registration lapses.

- (7) No notice is required to be given to a registered establishment for a withdrawal under **subsection (6)**.

Compare: 1989 No 80 s 234

Fees for domestic students

334 Fees for domestic students and employers may not exceed maximums set in conditions of funding

- (1) A registered establishment that receives funding from TEC under **section 397 or 399** may not exceed the maximum amount when fixing a tuition fee or a fee of a particular kind for any programme or training scheme at the establishment.
- (2) If a registered establishment is given a direction under **section 341(4)**, the establishment may not fix, in relation to the amount that students or employers may be charged for student services, a fee that exceeds the maximum amount specified in the direction.
- (3) In **subsection (1)**, **maximum amount** means the maximum specified in a condition imposed under **section 398 or 400(2)** (whichever is applicable) as being the maximum fee (or fee of that kind) that can be charged to a domestic student or an employer.

Compare: 1989 No 80 s 234A

Information that must be given to prospective students

335 Information that private training establishments must give prospective students

A private training establishment must—

- (a) ensure that all information made available to prospective students contains full details of—
- (i) the total fees for each programme or training scheme, including fees for class or lecture materials, books, special clothing, safety equipment, tools, and any other items that are or may be provided to students enrolled in that programme or training scheme, and including any students association membership fees; and
 - (ii) the class or lecture materials, books, special clothing, safety equipment, tools, and other items that are or may be required by the establishment to be bought or provided by students enrolled in each programme or scheme; and
- (b) before accepting the enrolment of any prospective student, give the student a written statement of—
- (i) the total costs of the programme or training scheme and all other financial commitments associated with the programme or training scheme; and

- (ii) the cost of fees charged for student services provided by the establishment; and
 - (iii) any material conflicts of interest of any of the governing members of the establishment; and
 - (iv) any interests of a kind described in any statement required under **section 325(2)(c)(ii)**; and
- (c) give every prospective student a written statement of the student's entitlements under **sections 338 and 499**, in the event that the student withdraws from a programme or training scheme.

Compare: 1989 No 80 s 234B

Protection of student fees

336 Application of rules relating to student fee protection

- (1) This section applies to a person who receives money from a student for the purpose of enrolling, or helping the student to enrol, in a programme or training scheme at a private training establishment.
- (2) The person must comply with the requirements of any rules made under **section 423** that relate to student fee protection.

Compare: 1989 No 80 s 234D

337 Student fees must be deposited with independent trustee

- (1) If a private training establishment receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the establishment must—
 - (a) deposit those funds, as soon as practicable, with an independent trustee approved by NZQA; and
 - (b) hold those funds on trust for the student until they are deposited with the independent trustee.
- (2) If a person to whom **section 336** applies receives any funds paid by or on behalf of a student in respect of a programme or training scheme provided by the establishment, the person must—
 - (a) deposit those funds, as soon as practicable, with an independent trustee approved by NZQA unless the establishment has made alternative arrangements that are acceptable to NZQA; and
 - (b) hold those funds on trust for the student until they are deposited with the independent trustee or in accordance with the alternative arrangements referred to in **paragraph (a)**.
- (3) An independent trustee approved by NZQA must comply with the requirements of any rules made under **section 423** relating to student fee protection.
- (4) NZQA—

- (a) may withdraw its approval of a particular trustee if satisfied that the trustee is not managing the trust funds in accordance with the rules; and
 - (b) must, if approval for a trustee is withdrawn, appoint a new trustee in accordance with the rules.
- (5) The requirements specified in **subsection (1)** do not apply—
- (a) in respect of any programme or training scheme that is exempt from those requirements by any rules made under **section 423(1)(t)**; or
 - (b) in the case of a student or group of students for whom the private training establishment has deposited, with an independent trustee approved by NZQA, an amount of money that is sufficient to make the necessary refunds to that student or those students under **section 338 or 499**.

Compare: 1989 No 80 ss 234E, 292G

338 Refund entitlements of domestic students

- (1) This section applies to a domestic student who—
- (a) is enrolled at a private training establishment for all or part of a programme or training scheme of more than 3 months' duration; and
 - (b) withdraws from that programme or training scheme within the refund period.
- (2) The student is entitled to a refund of the payment (or the sum of any payments) made by the student in respect of the programme or training scheme that exceeds \$500 or 10% of the amount of that payment or the sum of those payments, whichever is the lesser.
- (3) Despite **subsection (2)**, a private training establishment must—
- (a) allow every domestic student enrolled in a programme or training scheme that is of less than 3 months' duration to withdraw from it within a period (being less than 7 days) specified by NZQA; and
 - (b) refund to every domestic student who so withdraws a minimum amount or proportion, specified by NZQA, of any payments made by the student to the establishment in respect of the programme or training scheme.
- (4) If the student withdraws from a programme or training scheme within the refund period, the independent trustee must refund all payments made to it by the private training establishment in respect of the programme or scheme—
- (a) to the trustee of the student's new education provider; or
 - (b) if the fee has been paid for by student loan, to MSD; or
 - (c) to the student, if neither **paragraph (a) nor (b)** applies.
- (5) When the refund period, in relation to any fees paid by or behalf of a student, has expired,—

- (a) the fees paid must continue to be held in trust by the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under **section 423**; or
- (b) the private training establishment may, if NZQA approves, make alternative arrangements in relation to the fees paid.

Compare: 1989 No 80 s 235

339 Rules apply if students withdraw because of programme or training scheme closure

Any fees paid by or on behalf of a student who withdraws from a programme or training scheme because of the closure of the programme or scheme are subject to the protections set out in the rules made under **section 423**.

Compare: 1989 No 80 s 235C

340 Requirement that funds be paid applies to all components of fee payable

The requirement that funds paid by or on behalf of a student be deposited with an independent trustee applies to all components of any fee payable by the student (for example, it includes any component of the fee payable by the student in respect of accommodation costs or agent commissions).

Compare: 1989 No 80 s 234C

341 Ministerial direction to registered establishments relating to compulsory student services fees

- (1) For the purpose of ensuring accountability in the use of compulsory student services fees, the Minister may give 1 or more registered establishments a written direction that—
 - (a) lists the categories of student services that the establishment or establishments may make available to students:
 - (b) requires the establishment or establishments to hold the fees in a specified manner (for example, in a separate account to be used solely for the purpose of expenditure on student services) and, if the fees are to be held in an account, ensure that the account is audited:
 - (c) requires the establishment or establishments to make adequate arrangements for decisions to be made jointly or in consultation with the students enrolled at the establishment, or their representatives, on the following matters:
 - (i) the types of student services that, subject to **subsection (2)(a)**, are to be made available to students:
 - (ii) the categories of student services that, subject to **subsection (2)(b)**, are to be made available to students:
 - (iii) the maximum amount that students may be charged for the student services that are to be made available (the **student services fee**):

- (iv) the procurement of student services:
- (v) the method of authorising expenditure on student services:
- (d) requires the establishment or establishments to provide each year to students a written report including the following information:
 - (i) a description of the services funded out of the student services fee:
 - (ii) a statement of the fee income and expenditure for each type of student service:
 - (iii) the student services fee expressed as an amount payable per student:
 - (iv) a statement describing how the establishment has complied with any requirement to hold fees in a manner specified in a direction given under **paragraph (b)**:
- (e) requires the establishment or establishments to publish information about the following matters on an Internet site maintained by or on behalf of the establishment:
 - (i) the student services fee expressed as an amount payable per student:
 - (ii) the arrangements that the establishment has made for decisions to be made jointly or in consultation with students or their representatives in accordance with **paragraph (c)**:
 - (iii) how students can participate in the process of joint decision making or consultation mentioned in **paragraph (c)**.
- (2) If the Minister lists under **subsection (1)(a)** categories of student services that may be made available to students (**listed categories**),—
 - (a) the types of student services described in **subsection (1)(c)(i)** must fall within the listed categories; and
 - (b) the categories of student services described in **subsection (1)(c)(ii)** must be listed categories.
- (3) A direction given under **subsection (1)**—
 - (a) may include 1 or more of the things specified in **subsection (1)(a) to (e)**:
 - (b) must specify when it must be complied with.
- (4) If a registered establishment does not comply with a direction given under **subsection (1)**, the Minister may give a written direction to that establishment specifying—
 - (a) the types of student services that the establishment may make available to students; and
 - (b) the maximum amount that students may be charged for those services; and

- (c) when the direction must be complied with.
- (5) Before giving a direction under **subsection (1) or (4)**, the Minister must,—
 - (a) by notice in the *Gazette*,—
 - (i) set out the proposed direction; and
 - (ii) invite submissions on it; and
 - (iii) state a final date for receipt of submissions (being a date no later than 21 days after the date of the *Gazette* notice); and
 - (b) consider the submissions (if any) on the proposed direction.
- (6) In **subsection (1)**, **compulsory student services fees** are fees for the provision of student services that a student must pay to a registered establishment as a condition of enrolment in a programme or training scheme at the establishment.

Compare: 1989 No 80 s 235D

Student records

342 Duties of private training establishments to maintain student records

- (1) A private training establishment must—
 - (a) keep accurate enrolment and academic records for each student enrolled in—
 - (i) a programme or training scheme provided by the establishment; or
 - (ii) standards-based study or training provided by the establishment through a consent to assess against standards granted under **section 420**; and
 - (b) comply with rules made under **section 423(1)(p)** in respect of those records; and
 - (c) ensure that the enrolment records required to be kept under this section are up to date; and
 - (d) ensure that the enrolment records are readily available, upon request, to—
 - (i) NZQA;
 - (ii) Immigration New Zealand;
 - (iii) a code administrator;
 - (iv) the department for the time being responsible for the administration of the Social Security Act 2018;
 - (v) Public Trust, if it is approved as an independent trustee for the private training establishment.
- (2) If a private training establishment closes, the establishment must forward each student's records to—

- (a) the student's new education provider; or
- (b) the student, if there is no new education provider.

Compare: 1989 No 80 s 236A

Subpart 6—Vocational education and training

343 Training agreements and apprenticeship training agreements part of employment agreement

Training agreements and apprenticeship training agreements are part of the employment agreement between the employee and employer concerned.

Compare: 1989 No 80 s 478; 1992 No 55 s 3

Workforce development councils

344 Establishment of workforce development councils

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, establish a workforce development council for 1 or more specified industries.
- (2) An order made under **subsection (1)**—
 - (a) must—
 - (i) state the name of the workforce development council; and
 - (ii) state the 1 or more specified industries that the workforce development council covers; and
 - (iii) set out the governance arrangements for the workforce development council, including arrangements relating to the appointment, composition, suspension, or removal of members of the council; and
 - (iv) state the additional functions (if any) conferred on the workforce development council by the Minister in accordance with **section 347(1)(m)**; and
 - (b) may—
 - (i) outline the means by which the 1 or more specified industries covered by the workforce development council may engage with the council in relation to the performance or exercise of its functions, duties, or powers; and
 - (ii) prescribe matters relating to the workforce development council's use of its assets, including any assets allocated to the council from a transitional ITO under **clause 40 of Schedule 1** or to any other industry body; and
 - (iii) impose conditions on the performance or exercise of the workforce development council's functions, duties, or powers; and

- (iv) provide for any other matters that are necessary or desirable to clarify the governance arrangements of the workforce development council.
- (3) In making a recommendation relating to the governance arrangements for a workforce development council, the Minister must, as far as is reasonably practicable, ensure that those arrangements provide for—
 - (a) the collective representation of employers and employees in the 1 or more specified industries covered by the workforce development council in the governance of the council; and
 - (b) the representation on the council of Māori employers from any or all of the 1 or more specified industries.
- (4) The Minister must not recommend the making of an order under **subsection (1)** or a significant amendment to an order made under that subsection unless the Minister has—
 - (a) consulted the representatives of the 1 or more specified industries covered or proposed to be covered by the workforce development council; and
 - (b) taken into account any views expressed by those representatives regarding—
 - (i) the proposed name and governance arrangements of the workforce development council; and
 - (ii) the desirability of avoiding duplication of resources in the coverage of workforce development councils in relation to the specified industries; and
 - (iii) the capability required by the proposed workforce development council to perform and exercise its functions, duties, and powers efficiently and effectively.

Compare: 1989 No 80 s 479

345 Disestablishment of workforce development councils

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, disestablish a workforce development council and provide for the distribution of its assets and liabilities.
- (2) The Minister may not recommend the disestablishment of a workforce development council under **subsection (1)** unless—
 - (a) the Minister has received a request from the workforce development council or 1 or more of the specified industries covered by the workforce development council for it to be disestablished and is satisfied on reasonable grounds that there are good reasons to do so; or
 - (b) the Minister is satisfied that it is necessary to do so because—

- (i) the workforce development council has persistently engaged in unlawful activity; or
- (ii) the workforce development council has persistently failed to perform its functions or duties; or
- (iii) there has been a persistent pattern of complaints to the Commission or the Minister from the 1 or more specified industries covered by the workforce development council regarding the council's performance or exercise of its functions, duties, or powers.

Compare: 1989 No 80 s 480

346 Incorporation

Each workforce development council established under **section 344** is a body corporate with perpetual succession and a common seal, and is capable of—

- (a) holding real and personal property; and
- (b) suing and being sued; and
- (c) otherwise doing and suffering all that bodies corporate may do and suffer.

Compare: 1989 No 80 s 481

347 Functions of workforce development councils

- (1) The functions of a workforce development council, in relation to the specified industries covered by it, are—

Leadership

- (a) to provide skills and workforce leadership for the specified industries, including by identifying their current and future needs and advocating for those needs to be met through its work with the industries and with schools, providers, regional bodies, and the Government:

Developing and setting standards, capstone assessments, and qualifications

- (b) to develop, set, and maintain skill standards:
- (c) to develop and maintain industry qualifications for listing on the Qualifications Framework and to maintain qualifications for which it has become the qualifications developer:
- (d) to develop and maintain training schemes:
- (e) to develop and maintain training packages:
- (ea) to develop, set, and maintain capstone assessments based on the needs of the specified industries:

Endorsing programmes and moderating assessments

- (f) to decide whether to endorse programmes developed by providers:

- (h) to carry out moderation activities in relation to any standards and capstone assessments it sets:
Advisory and representative role
 - (i) to provide employers with brokerage and advisory services approved by TEC:
 - (ia) to advise TEC, as provided for in **section 387**,—
 - (i) about its overall investment in vocational education and training:
 - (ii) about the mix of vocational education and training needed for the 1 or more specified industries covered by the workforce development council in the manner required by TEC:
 - (l) to represent the interests of the specified industries:
Other functions
 - (m) to perform any other functions conferred on it by the Minister in relation to the specified industries.
- (2) For the purposes of **subsection (1)(f)**, the Minister may, by notice in the *Gazette*, specify criteria relating to when a workforce development council must endorse a programme before it may be approved by NZQA under **section 410**.
- (3) The Minister must not confer any additional function on a workforce development council under **subsection (1)(m)** without first consulting the workforce development council.

Compare: 1989 No 80 s 482

348 Workforce development council's functions in relation to wānanga

- (1) Subject to **subsection (2)**,—
- (a) a workforce development council may endorse a programme developed by a wānanga only if requested by the wānanga:
 - (b) a capstone assessment developed by a workforce development council applies to a wānanga only if requested by the wānanga.
- (2) If a programme includes a component of work-based training, a workforce development council may perform its functions under **section 347** in relation to the programme.

Compare: 1989 No 80 s 483

349 Workforce development council may not operate registered establishment

- (1) A workforce development council may not operate or hold any interest (whether financial or otherwise) in a registered establishment.
- (2) A workforce development council must not, whether directly or through an agent,—
- (a) provide any education and training approved by NZQA; or

- (b) operate, or hold an interest in, an organisation that provides education and training approved by NZQA.

Compare: 1989 No 80 s 484

350 Duties of workforce development councils

- (1) A workforce development council must comply with any prescribed quality assurance requirements set by NZQA relating to the performance of its functions.
- (2) In performing its functions, a workforce development council—
 - (a) must take into account the needs of employers and employees in the 1 or more specified industries covered by the workforce development council but, in doing so, must also consider national and regional interests:
 - (b) must have regard to the needs of Māori and other population groups identified in the tertiary education strategy issued under **section 7**:
 - (c) must, to the extent that is necessary or desirable in the circumstances, work collaboratively with—
 - (i) providers in relation to the functions set out in **section 347(1)(b) and (c)** and, in the case of wānanga, while respecting their special character under **section 248(2)(d)(ii)(B)**:
 - (ii) other workforce development councils, particularly on matters of common interest:
 - (iii) NZQA, in relation to qualifications development, programme endorsement, or developing, setting, or maintaining skill standards:
 - (iv) any relevant regulatory body that performs or exercises any functions, duties, or powers under an enactment in relation to entry to an occupation in any of the specified industries covered by the workforce development council:
 - (d) must, when performing its functions under **section 347(1)(i) to (l)**, take all reasonable steps to avoid any adverse impact on its relationship with a provider or providers.

Compare: 1989 No 80 s 485

351 Annual fee payable by workforce development council

- (1) A workforce development council must pay to NZQA an annual fee prescribed by or determined under rules made under **section 423(1)(h)**.
- (2) The annual fee may recover no more than the reasonable costs, excluding those costs that are recoverable through fees charged under **section 428**, incurred by NZQA for—
 - (a) prescribing quality assurance requirements under **section 423(1)(i)**; and

- (b) monitoring compliance, and addressing non-compliance, with those requirements in accordance with its functions under **section 404(1)(e)**; and
 - (c) issuing quality assurance improvement notices under **section 352**.
- (3) The fee is—
- (a) payable by the due date prescribed in the rules; and
 - (b) recoverable as a debt due to NZQA.

Compare: 1989 No 80 s 486

352 NZQA may issue quality assurance improvement notice

- (1) NZQA may, if satisfied that action is reasonably necessary to maintain the quality and effectiveness of a workforce development council's performance of its functions, issue a quality assurance improvement notice to a workforce development council.
- (2) A quality assurance improvement notice must—
- (a) set out any concerns NZQA has about the workforce development council's systems, practices, or procedures; and
 - (b) specify the time within which the workforce development council is expected to address NZQA's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - (c) state that, if NZQA's concerns are not addressed within the specified time, NZQA may issue a compliance notice under **section 353**; and
 - (d) state the consequence of a failure to comply with a compliance notice.

Compare: 1989 No 80 s 487

353 NZQA may issue compliance notice

- (1) NZQA may issue a compliance notice to a workforce development council requiring it to do either or both of the following:
- (a) do, or refrain from doing, a particular thing in relation to a prescribed quality assurance requirement;
 - (b) address any concerns set out in a quality assurance improvement notice issued under **section 352** that were not addressed within the time specified in that notice.
- (2) **Section 430(2) to (5)** applies to a compliance notice issued under this section.
- (3) If a workforce development council fails to comply with a compliance notice issued under this section, NZQA may notify the Minister in writing.
- (4) A compliance notice may be issued to a workforce development council whether or not a quality assurance improvement notice has been issued under **section 352**.

- (5) Nothing in this section limits the power of NZQA to issue a compliance notice to a workforce development council in accordance with **section 430**.

Compare: 1989 No 80 s 488

Audit

353A Application of Public Audit Act 2001

Each workforce development council established under **section 344** is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Compare: 1989 No 80 s 489

Validity of acts

353B Acts in breach of statute invalid

- (1) An act of a workforce development council is invalid ~~(unless **section 353C** applies,)~~ if—
- (a) the act is contrary to, or outside the authority of, an Act; or
 - (b) the act is done otherwise than for the purpose of performing its functions.
- (2) **Subsection (1)** does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Compare: 1989 No 80 s 490; 2004 No 115 s 19

353C Some natural person acts protected

- (1) **Section 353B**, or any rule of law to similar effect, does not prevent a person dealing with a workforce development council from enforcing a transaction that is a natural person act unless the person dealing with the entity knew, or ought reasonably to have known, ~~that—~~
- (a) ~~that~~ an express restriction in an Act makes the act contrary to, or outside the authority of, the Act; or
 - (b) ~~that~~ the act was done otherwise than for the purpose of performing the workforce development council's functions.
- (2) A person who relies on **subsection (1)** has the onus of proving that the person did not have, and ~~ought could~~ not reasonably be expected to have had, the knowledge referred to in that subsection.
- (3) A workforce development council must report, in its financial report required by **clause 21 of Schedule 17**, each transaction that the council has performed in the year to which the report relates that was invalid under **section 353B** but enforced in reliance on **subsection (1)**.
- (4) To avoid doubt, this section does not affect any person's other remedies under the general law (for example, remedies in contract) ~~under the general law~~.

- (5) In this section, **natural person act** has the same meaning as in **section 141B(5)**.

Compare: 1989 No 80 s 491; 2004 No 115 s 20

Apprenticeships

354 Apprenticeship training activities must be included in proposed plan

- (1) A provider that seeks funding for an apprenticeship training activity (as described in **subsection (2)**) via a plan must specify in its proposed plan how it intends to carry out that activity.
- (2) The **apprenticeship training activities** are—
- (a) to promote apprenticeship training generally through providing information, guidance, and advice to employers and prospective apprentices about the benefits of an apprenticeship:
 - (b) to identify—
 - (i) prospective apprentices; and
 - (ii) employers able to offer apprenticeship training that satisfies all of the work-based requirements of the approved programme of the provider:
 - (c) to provide or arrange training or employment that may lead to apprenticeship training for prospective apprentices:
 - (d) to help prospective apprentices enter into apprenticeship training agreements:
 - (e) to produce, and facilitate (in consultation with the apprentice and the apprentice's employer) the implementation of, individual training plans consistent with an apprentice's apprenticeship training agreement:
 - (f) to monitor individual apprentices to ensure that their apprenticeship training leads them to attain, within a reasonable time, the level of skills necessary to complete a qualification in the skills of the specified industry:
 - (g) to ensure, as far as is reasonably practicable, that apprenticeship training, and every apprenticeship training agreement, within the specified industry is consistent with any apprenticeship training code:
 - (h) to provide or procure appropriate pastoral care and support for apprentices, having regard to the age and experience of the apprentice and the contents of any apprenticeship training code.

Compare: 1989 No 80 s 493; 1992 No 55 s 13D

355 Duties of persons carrying out apprenticeship training activities

- (1) Persons carrying out apprenticeship training activities (whether or not via a plan) must,—

- (a) in performing any apprenticeship training activity described in **section 354(2)**, comply with every part of the apprenticeship training code that affects that activity;
 - (b) before helping a person to enter into an apprenticeship training agreement, advise that person to seek advice about the agreement from an independent person.
- (2) A provider must give written notice to an apprentice under the provider's care if the provider becomes aware that it is impracticable for the apprentice to continue their apprenticeship training with their current employer.
- (3) A notice under **subsection (2)** must advise the apprentice—
- (a) that the provider is able to assist the apprentice with finding a new employer with whom the apprentice can complete their apprenticeship training; and
 - (b) if the apprentice so requests, the provider will make reasonable endeavours to find a new employer with whom the apprentice can complete their training.

Compare: 1989 No 80 s 494; 1992 No 55 s 13E

356 Minister may issue apprenticeship training code

- (1) The Minister may, by notice in the *Gazette*, issue an apprenticeship training code that—
- (a) is consistent with this subpart; and
 - (b) sets out the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training activities under this subpart.
- (2) The apprenticeship training code may, but need not, be a code recommended by TEC.
- (3) Before issuing an apprenticeship training code, the Minister may consult any persons or organisations that the Minister thinks fit.
- (4) The notice under **subsection (1)** must—
- (a) specify the date on which the apprenticeship training code comes into force (which must be at least 28 days after the date on which the notice is published); and
 - (b) either—
 - (i) set out the code in full; or
 - (ii) give enough information to identify the code and state where copies of the code may be obtained.
- (4A) Before issuing an apprenticeship training code under **subsection (1)**, the Minister must consult relevant workforce development councils that cover the 1 or more specified industries to which the code relates.

- (5) An apprenticeship training code is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 ss 495, 498; 1992 No 55 ss 13F, 13I

357 Availability of apprenticeship training code

An apprenticeship training code issued by the Minister must be published on an Internet site maintained by or on behalf of TEC.

Compare: 1989 No 80 s 496; 1992 No 55 s 13G

358 Apprenticeship training code to be taken into account by mediator, Employment Relations Authority, and Employment Court

In exercising or performing, in relation to a matter concerning an apprentice, any power or function under the Employment Relations Act 2000, the following must take into account every applicable element of any apprenticeship training code:

- (a) a person providing mediation services under that Act;
- (b) the Employment Relations Authority;
- (c) the Employment Court.

Compare: 1989 No 80 s 497; 1992 No 55 s 13H

Training levy

359 Purpose of levy

The purpose of **sections 360 to 362 and Schedules 15 and 16** is to enable the imposition of a training levy on the members of an industry, payable to a workforce development council, if a ballot of those members shows sufficient support for the imposition of the levy.

Compare: 1989 No 80 s 500; 1992 No 55 s 24

360 Levy may be imposed by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, impose a levy on qualifying members of a levy group that is payable to a workforce development council.
- (2) The Minister may not recommend the making of an Order in Council unless the Minister is satisfied on reasonable grounds of the matters in **section 361**.
- (3) A levy may be payable to—
 - (a) 1 workforce development council by all qualifying members of the industry that is covered by that council; or
 - (b) 1 workforce development council by all qualifying members of a specific industry that is within the range of industries covered by that council; or

- (c) more than 1 workforce development council, jointly, by all qualifying members of an industry that is covered by those councils.
- (4) A levy order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 501; 1992 No 55 s 26

360A Orders are confirmable instruments

- (1) The explanatory note of a levy order made under **section 360** must indicate that—
 - (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
 - (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
 - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.
- (2) The Minister on whose recommendation a levy order was made must, by notice published in the *Gazette* at least 6 months before the time at which the order may be revoked under section 47C(1)(a) or (b) of the Legislation Act 2012, indicate the Minister's intentions with regard to its continuing in force unless the levy order is sooner—
 - (a) revoked; or
 - (b) disallowed under Part 3 of the Legislation Act 2012; or
 - (c) confirmed by an Act of Parliament.

Compare: 1989 No 80 s 506; 1992 No 55 s 51

361 Restrictions on making of levy orders

- (1) The Minister may not recommend the making of a levy order under **section 360** unless satisfied on reasonable grounds that—
 - (a) the workforce development council to which the levy is payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with **clauses 6 to 13 of Schedule 15**, in relation to a proposal that the levy should be imposed on those members; and
 - (b) at least 60% of the ballot papers distributed were validly completed and returned before the closing date to the independent returning officer conducting the ballot; and
 - (c) of the ballot papers validly completed and returned,—
 - (i) more than 60% of the total supported the imposition of the levy; and

- (ii) more than 60%, weighted according to the size of the industry member that returned the ballot paper (calculated at the date on which the ballot closed and on the same basis as the levy is proposed to be charged, as set out in the ballot paper), supported the imposition of the levy; and
 - (d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and
 - (e) the details specified in the order are acceptable to the Minister; and
 - (f) the workforce development council has or is to have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
 - (g) all other relevant matters known to the Minister have been properly considered.
- (2) When considering the matters in **subsection (1)**, the Minister must consult TEC and may consult any other persons that the Minister thinks fit.

Compare: 1989 No 80 s 502; 1992 No 55 s 27

362 Further provisions relating to training levy

Schedules 15 and 16 contain further provisions relating to the imposition of training levy and the matters that must be specified in a levy order.

Subpart 7—Offences

363 Offences relating to information requests from MSD

- (1) Any institution that intentionally fails or refuses to comply with **clause 8(6) of Schedule 9** commits an offence and is liable on conviction to the penalty specified in **subsection (3)**.
- (2) An institution commits an offence and is liable on conviction to a penalty specified in **subsection (3)** if, in response to any requirement to supply information under **clause 8(6) of Schedule 9**, the institution intentionally—
 - (a) makes a false or misleading statement; or
 - (b) makes a statement from which any material matter has been omitted; or
 - (c) provides any false or misleading paper, document, or record; or
 - (d) provides a paper, document, or record from which any material matter has been omitted.
- (3) The maximum penalty for an offence against **subsection (1) or (2)** is a fine not exceeding \$5,000, and, if the offence is a continuing one, a fine not exceeding \$500 for each day the offence continues.

- (4) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution under this section must be commenced within 12 months of the date on which MSD becomes aware of the offence.

Compare: 1989 No 80 s 226B; 1993 No 87 s 226

364 Other offences relating to information requests from MSD

- (1) A private training establishment that intentionally fails or refuses to comply with **clause 9(6) of Schedule 9** commits an offence and is liable on conviction to the penalty specified in **subsection (3)**.
- (2) A private training establishment commits an offence and is liable on conviction to the penalty specified in **subsection (3)** if, in response to any requirement to supply information under **section 9(6) of Schedule 9**, the establishment intentionally—
- (a) makes a false or misleading statement; or
 - (b) makes a statement from which any material matter has been omitted; or
 - (c) provides any false or misleading paper, document, or record; or
 - (d) provides a paper, document, or record from which any material matter has been omitted.
- (3) The maximum penalty for an offence against **subsection (1) or (2)** is a fine not exceeding \$5,000, and, if the offence is a continuing one, a fine not exceeding \$500 for each day the offence continues.
- (4) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution under this section must be commenced within 12 months of the date on which MSD becomes aware of the offence.

Compare: 1989 No 80 s 236

365 Offences relating to handling student fees

A private training establishment that contravenes **section 337(1)** or a person who contravenes **section 337(2)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292G

366 Offences relating to duties to maintain student records

A private training establishment that fails, without reasonable excuse, to comply with the requirements of **section 342** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292D

368 Offences relating to use of certain terms

- (1) A person commits an offence if the person—
- (a) uses the term university to describe an educational establishment or facility unless it—

- (i) is a university; or
 - (ii) is a registered establishment or wānanga that has the Minister's consent under **section 427** to use the term; or
 - (iii) was a university but, despite being incorporated under **section 250(4)** into another institution, retains the characteristics of a university as set out in **section 248(2)(d)(i) and (ii)(A)**:
- (b) uses the term polytechnic to describe an educational establishment or facility unless the educational establishment or facility is NZIST or an NZIST subsidiary:
 - (c) uses the term institute of technology to describe an educational establishment or facility unless the educational establishment or facility is NZIST or an NZIST subsidiary.
- (2) A person, other than a university, commits an offence if the person grants or purports to grant an award that is described as a degree, or the description of which includes the word bachelor, master, doctor, or postgraduate, unless the person has the consent of NZQA.
- (3) A person commits an offence if the person, without the consent of NZQA, grants or purports to grant an award that (or the name or description of which) includes the word national or the words New Zealand.
- (4) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292

369 Offences relating to false representations

- (1) A person commits an offence if the person falsely represents, expressly or by implication, that—
- (b) a qualification is listed on the Qualifications Framework; or
 - (c) a programme or training scheme—
 - (i) is an approved programme or training scheme; or
 - (ii) leads to a qualification listed on the Qualifications Framework; or
 - (d) a body—
 - (i) is a registered establishment; or
 - (ii) has accreditation to provide an approved programme or training scheme; or
 - (iii) is providing or purports to provide an approved programme or training scheme; or
 - (iv) has consent to assess against standards; or
 - (da) a standard is in the Directory of Assessment Standards; or

- (e) the person is an agent of an institution, a government training establishment, a registered establishment, or a relevant school when the person is not.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000.
- (3) A person commits an offence if the person, without reasonable excuse, makes a false representation for the purpose of receiving, or continuing to receive, free tertiary education from a tertiary education organisation.
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to a fine not exceeding \$5,000.
- (5) For the purposes of **subsection (3)**, **free tertiary education** means any tuition or training—
 - (a) that a tertiary education organisation provides to, or arranges for, eligible students; and
 - (b) that has costs (which would otherwise be payable by those students) that are (in whole or in part) met by money appropriated by Parliament.

Compare: 1989 No 80 s 292A

370 Offence to issue false qualifications and falsify records

- (1) A person commits an offence if the person—
 - (a) receives an award knowing that the award falsely represents, expressly or by implication, that the person has achieved a qualification listed on the Qualifications Framework; or
 - (b) knowingly or recklessly issues an award that falsely represents, expressly or by implication, that a person has achieved a qualification listed on the Qualifications Framework; or
 - (c) enters or changes an educational outcome on a student's record of achievement, knowing that or being reckless as to whether the entry or change has the effect of falsifying the student's record; or
 - (d) fails to enter an educational outcome on a student's record of achievement, knowing that or being reckless as to whether the omission has the effect of falsifying the student's record; or
 - (e) causes, without reasonable excuse or lawful authority, an entry or a change to be made on a student's record of achievement that has the effect of falsifying the student's record.
- (2) A person who commits an offence against **subsection (1)(a)** is liable on conviction to a fine not exceeding \$10,000.
- (3) A person who commits an offence against **subsection (1)(b), (c), (d), or (e)** is liable on conviction to a fine not exceeding \$50,000.

Compare: 1989 No 80 s 292C

371 Offence to provide or advertise cheating services

- (1) A person commits an offence if the person—
 - (a) provides a specified service with the intention of giving a student an unfair advantage over other students; or
 - (b) advertises a specified service knowing that the service has or is to have the effect of giving a student an unfair advantage over other students; or
 - (c) publishes, without reasonable excuse, an advertisement for a specified service.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000.
- (3) In this section,—

specified service, in relation to a student, means—

 - (a) completing an assignment or any other work that the student is required to complete as part of a programme or training scheme;
 - (b) providing or arranging the provision of an assignment that the student is required to complete as part of a programme or training scheme;
 - (c) providing or arranging the provision of answers for an examination that the student is required to sit as part of a programme or training scheme;
 - (d) sitting an examination that the student is required to sit as part of a programme or training scheme or providing another person to sit the exam in place of the student

student means a student of a programme or training scheme.

Compare: 1989 No 80 s 292E

372 Offence relating to registration of private training establishments

A private training establishment that contravenes **section 324** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292F(2), (3)

373 Offences relating to enrolment of international students at private training establishments or institutions

- (1) A private training establishment that contravenes **section 497(1) or (2)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (2) The council of an institution (including an NZIST subsidiary) that contravenes **section 495** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Compare: 1989 No 80 s 292F

374 Offences relating to allowances and student loans

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person, in response to a requirement under **clause 3(1) of Schedule 9** or a question asked under **clause 3(3) of Schedule 9**, knowingly—
 - (a) makes a false or misleading statement; or
 - (b) makes a statement from which any material matter has been omitted; or
 - (c) provides any false or misleading paper, document, or record; or
 - (d) provides a paper, document, or record from which any material matter has been omitted.
- (2) A recipient or non-recipient commits an offence and is liable on conviction to a fine not exceeding \$2,000 if the recipient or non-recipient refuses to comply with **clause 3(3) of Schedule 9**.
- (3) A recipient commits an offence and is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 if the recipient, for the purpose of receiving or continuing to receive a statutory allowance or student loan, or a statutory allowance at a particular rate or any amount of a student loan, other than that to which the recipient is entitled,—
 - (a) knowingly makes a false or misleading statement in an application for a statutory allowance or student loan; or
 - (b) knowingly makes a false or misleading statement in a notification of a change in the recipient's circumstances that materially affects the recipient's entitlement—
 - (i) to a statutory allowance or student loan; or
 - (ii) to be paid a statutory allowance at a particular rate or a particular amount of a student loan; or
 - (c) wilfully fails to comply with **clause 3(4) of Schedule 9**.
- (4) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a prosecution under this section must be commenced within 12 months of the date on which MSD becomes aware of the offence.

Compare: 1989 No 80 s 307AA; 1993 No 87 s 226A

General provisions relating to offences

375 Injunctions and orders of High Court

- (1) If a person has engaged, is engaging, or proposes to engage in conduct that contravenes **section 495(1)** or any of **sections 366 to 373 and 376**, the High Court may, on application by NZQA, grant an injunction or make any appropriate order—
 - (a) restraining the person from engaging in that conduct; or

- (b) for the purpose of ensuring that the person does not engage in that conduct.
- (2) The court may grant the injunction or make the order on any terms that it thinks fit.

Compare: 1989 No 80 s 292H

376 Liability of body corporate and directors in respect of certain offences

- (1) If, in proceedings in respect of conduct engaged in by a body corporate, being conduct to which any of **sections 365 to 373** apply, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of that individual's actual or apparent authority, had that state of mind.
- (2) For the purpose of **sections 365 to 373**, any conduct engaged in on behalf of a body corporate is to be treated as having been engaged in also by the body corporate if the conduct was engaged in by—
 - (a) a director, an employee, or an agent of the body corporate, acting within the scope of that individual's actual or apparent authority; or
 - (b) any other individual acting on the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee or agent.
- (3) If a body corporate is convicted of an offence against any of **sections 365 to 373**, any director of the body corporate and, if the body corporate is a private training establishment, any governing member of the establishment is to be treated as having committed the same offence, if the director or governing member—
 - (a) approved of the act that constituted the offence; or
 - (b) knew the offence was to be or was being committed and failed to take all reasonable steps to prevent it.
- (4) In this section, **state of mind**, in relation to an individual, includes the knowledge, intention, opinion, belief or purpose of the individual and the individual's reasons for that intention, opinion, belief, or purpose.

Compare: 1989 No 80 s 292B

Part 5

Performance, funding, and support

377 Outline of Part 5

- (1) This Part, which concerns performance, funding, and support agencies, is divided into 8 subparts.
- (2) **Subpart 1** concerns the Tertiary Education Commission.

- (3) **Subpart 2** concerns the New Zealand Qualifications Authority.
- (4) **Subpart 3** concerns the Education Review Office.
- (5) **Subpart 4** concerns the Teaching Council.
- (6) **Subpart 5** concerns Education New Zealand.
- (7) **Subpart 6** concerns international students.
- (8) **Subpart 7** concerns the pastoral care of students.
- (9) **Subpart 8** sets out several offences provisions.

Compare: 1989 No 80 s 308

Subpart 1—Tertiary Education Commission

Preliminary provisions

378 Outline of framework for planning, funding, and monitoring in tertiary education sector

- (1) This section outlines the framework for planning, funding, and monitoring in the tertiary education sector and describes, in general terms, how the framework works:
 - (a) the Minister determines the design of funding mechanisms and whether funding under those mechanisms is via plans:
 - (b) TEC develops the details of how to implement funding mechanisms:
 - (c) TEC issues guidance on what must be contained in proposed plans:
 - (d) TEC identifies criteria for assessing proposed plans:
 - (e) an organisation prepares a proposed plan—
 - (i) in consultation with the persons or bodies the organisation considers ought to be consulted and any other persons specified by TEC; and
 - (ii) in a manner consistent with TEC’s guidance:
 - (f) the organisation submits its proposed plan to TEC:
 - (g) TEC applies assessment criteria to the proposed plan and decides whether or not to give funding approval:
 - (h) if the proposed plan is given funding approval, TEC determines the amount of funding payable to the organisation by applying the appropriate funding mechanism:
 - (i) if an organisation’s proposed plan receives funding approval, TEC monitors the organisation’s performance to determine if it is achieving, or has achieved, the outcomes it has specified in its plan.
- (2) This section is by way of explanation only.

- (3) If any other section in this Act conflicts with this section, the other section prevails.

Compare: 1989 No 80 s 159ABA

Tertiary Education Commission

379 TEC continued

- (1) The Tertiary Education Commission (**TEC**) established under section 159C of the Education Act 1989 is continued.
- (2) TEC is—
- (a) owned by the Crown; and
 - (b) is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to TEC except to the extent that this Act expressly provides otherwise.
- (4) The members of TEC are the board for the purposes of the Crown Entities Act 2004.
- (5) **Schedule 17** sets out provisions regarding TEC, including the funding mechanisms that it operates.

Compare: 1989 No 80 s 159C

380 Composition of TEC

- (1) TEC comprises at least 6, but not more than 9, members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004 after consultation with the Minister for Māori Development.
- (2) At least 2 months before appointing a member, the Minister must advertise the Minister's intention to appoint a member and must seek responses from interested persons.
- (3) When appointing members of TEC, the Minister must have regard to the need for its members to collectively have broad experience and expertise, and deep knowledge, about areas of the tertiary education sector.
- (4) **Subsection (3)** does not limit section 29 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 159D

381 Chief executive

- (1) TEC must appoint a chief executive in accordance with section 117 of the Crown Entities Act 2004.
- (2) The chief executive may not be a member of TEC.
- (3) TEC must—
- (a) act independently when appointing the chief executive; and

- (b) monitor and evaluate the performance of the chief executive.

Compare: 1989 No 80 s 159KA

382 Responsibilities of chief executive

The chief executive of TEC must—

- (a) ensure the efficient and effective administration of the affairs of TEC; and
- (b) act in accordance with lawful policies and directions given to the chief executive by TEC.

Compare: 1989 No 80 s 159KB

383 Chief executive must monitor and report on institutions

The chief executive of TEC—

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

Compare: 1989 No 80 s 159KBA

383A Additional requirement of NZIST's council to provide information

- (1) The chief executive of TEC may, by written notice to NZIST's council, require it to provide any information that the chief executive considers is reasonably required in relation to the operation of NZIST or any related entity of NZIST for the purpose of determining whether there is a risk to, or arising from,—
- (a) the governance, management, or financial position of NZIST or a related entity of NZIST; or
- (b) the education and training performance of students enrolled at NZIST or a related entity of NZIST.
- (2) If NZIST's council receives a notice under **subsection (1)**, it must provide the chief executive of TEC with the required information within the period specified in the notice.
- (3) The chief executive of TEC may revoke or amend a notice given under **subsection (1)**.

Compare: 1989 No 80 s 159KBB

384 Declaration of interests

- (1) A person who is proposed to be appointed as chief executive of TEC must declare any interests (within the meaning of that term in section 10 of the Crown Entities Act 2004) to TEC 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 referred to section 62 of the Crown Entities Act 2004, the chief executive must disclose that interest to TEC.

Compare: 1989 No 80 s 159KC

385 Principles guiding how TEC operates

- (1) In performing its functions, TEC must—
- (a) comply with any direction of the Minister given under section 103 of the Crown Entities Act 2004; and
 - (c) work closely with tertiary education providers and workforce development councils and their stakeholders.
- (2) TEC must have regard to the tertiary education strategy when performing its functions under this Act or any other enactment.

Compare: 1989 No 80 ss 159AB, 159G

386 Functions of TEC

- (1) The functions of TEC are—
- (a) to give effect to the tertiary education strategy issued under **section 7** by—
 - (i) prescribing and publishing guidance on the content of, and processes associated with seeking funding approval for, proposed plans; and
 - (ii) prescribing and publishing guidance on the criteria TEC is to use to assess proposed plans; and
 - (iii) assessing proposed plans and deciding whether they are to receive funding approval by applying the relevant assessment criteria; and
 - (iv) determining the amount of funding payable to organisations by applying the appropriate funding mechanisms; and
 - (v) allocating funding to organisations that have plans; and
 - (vi) allocating funding to organisations that are not required to have plans in order to receive funding; and
 - (vii) prescribing what plan summaries must contain for the purposes of public inspection; and
 - (viii) building the capability of organisations; and
 - (b) to provide advice to the Minister about the activities and performance of tertiary education organisations and the tertiary education sector generally; and
 - (c) to develop details of how to implement funding mechanisms; and
 - (d) to implement funding mechanisms; and

- (e) to provide a publicly available careers information service that includes a database of information about occupations and tertiary education and training; and
 - (f) to facilitate and strengthen the connections between schools, employers, and tertiary education organisations to ensure that students are prepared for employment and further education or training, or both; and
 - (g) to provide advice to the Minister on the implementation of policy and on the operational implications of new policy initiatives; and
 - (h) to monitor the performance of organisations that receive funding from TEC, including by measuring performance against specified outcomes; and
 - (i) to undertake any functions directed by the Minister under **section 390B**; and
 - (j) to undertake any functions delegated to TEC, including (without limitation) functions relating to the funding of organisations other than under **section 397 or 399**; and
 - (k) to ensure the availability within industry of high-quality vocational education and training; and
 - (l) to promote the availability of vocational education and training to people of a kind or description specified in TEC's statement of intent as people to whom that training has not traditionally been available (whether within a particular industry or industries, or generally); and
 - (m) to develop and recommend to the Minister an apprenticeship training code for the purposes of **section 356**; and
 - (n) to make the apprenticeship training code available as required by **section 357**; and
 - (o) to monitor the performance of persons carrying out apprenticeship training activities (whether or not under a plan) to ensure that they comply with the apprenticeship training code; and
 - (p) to exercise the powers and perform the functions of TEC under **sections 359 to 362** (which relate to work-based training levies); and
 - (q) to undertake any other function conferred on it by this Act or any other enactment.
- (2) In addition, TEC may provide information and other tertiary-related services to the Crown, provided that those functions are consistent with TEC's statement of intent and are consistent with, and do not displace, any of its functions under **subclause subsection (1)**.

Compare: 1989 No 80 s 159F

386A Certain powers may not be delegated

- (1) TEC may not delegate—

- (a) the power to appoint a chief executive; or
 - (b) any other power that the Minister specifies by notice in writing to TEC.
- (2) This clause applies despite section 73 of the Crown Entities Act 2004.
Compare: 1989 No 80 s 159KG

387 Duties of TEC in relation to workforce development councils

- (1) TEC must—
- (a) have regard to advice from a workforce development council in relation to its 1 or more specified industries when assessing any proposed plan under **section 397** or when considering funding an organisation other than via a plan under **section 399** in relation to vocational education and training; and
 - (b) give effect to advice from a workforce development council about the mix of vocational education and training needed for the 1 or more industries covered by the workforce development council when deciding to give funding approval to organisations under **section 397(5)**.
- (2) The duty in **subsection (1)(b)** is subject to—
- (a) any funding limits set by the Minister under **section 396** and TEC under **section 396C**; and
 - (b) any constraints on the capacity or ability of organisations to provide, arrange, and support the mix of vocational education and training.
- (3) TEC must advise a workforce development council, in writing, if it is unable to give effect to the workforce development council’s advice about the mix of vocational education and training needed for the council’s specified industries due to any limits or constraints referred to in **subsection (2)** and advise the workforce development council about—
- (a) what specific actions TEC intends to take to address those limits or constraints within the next 3 years; and
 - (b) its right to object to the Minister if the workforce development council reasonably believes that TEC has not adequately responded to its advice about the mix of vocational education and training required to meet the needs of its specified industries.

Compare: 1989 No 80 s 159FA

388 Power of TEC to require information from workforce development council

- (1) The chief executive of TEC may, by written notice to a workforce development council, require it to provide the chief executive with any information about the financial position or operations (or both) of the workforce development council (whether or not funded under a plan under **section 397**).

- (2) A workforce development council that receives a notice under **subsection (1)** must provide the chief executive of TEC with the required information within the period specified in the notice.
- (3) The chief executive of TEC may revoke or amend a notice given under **subsection (1)**.

Compare: 1989 No 80 s 159FB

389 Power of TEC to audit workforce development councils

- (1) For the purpose of ascertaining whether a workforce development council is complying, or has complied, with this Act, the chief executive of TEC may commission an independent audit of the workforce development council.
- (2) The audit may (without limitation) include an assessment of—
 - (a) the performance of the workforce development council's functions;
 - (b) the application of funding provided to the workforce development council by TEC.

Compare: 1989 No 80 s 159FC

390 Secretary may delegate certain functions and powers to TEC

- (1) The Secretary may delegate to TEC any functions or powers of the Secretary under regulations made under **section 608 or 609 or clause 3 of Schedule 9** (which relate to student allowances).
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may not include a power to further delegate any function or power; and
 - (c) may be revoked by notice in writing.
- (3) TEC may perform or exercise any functions or powers delegated to it in the same manner and with the same effect as if the functions or powers had been conferred on TEC directly, rather than by delegation.
- (4) If TEC purports to act under a delegation, TEC is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Compare: 1989 No 80 s 159AF

390A Minister may delegate functions or powers to TEC

- (1) The Minister may, either generally or specifically, delegate to TEC any or all of the Minister's functions and powers under this Act (except those referred to in **section 396**) or any other Act, including functions or powers delegated to the Minister under this Act or any other Act.
- (2) A delegation 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) TEC may perform or exercise any functions or powers delegated to it in the same manner and with the same effect as if they had been conferred on it directly and not by delegation (subject to any general or special directions given or conditions imposed by the Minister).
- (6) If TEC purports to act under any delegation, TEC 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 Minister from performing any function or exercising any power or affect the Minister’s responsibility for the actions of any person acting under the delegation.

Compare: 1989 No 80 s 159I

390B Minister may direct TEC

- (1) The Minister may, in accordance with section 112 of the Crown Entities Act 2004, direct TEC to undertake additional functions that are consistent with TEC’s objectives.
- (2) However, the Minister may not direct TEC to provide or deny funding under **section 397 or 399** to any specified organisation.
- (3) If the Minister gives a direction to TEC, TEC must include in its annual report for each year to which the direction relates a report on how it has responded to the direction.
- (4) Every direction must be consistent with the tertiary education strategy and the functions of TEC.

Compare: 1989 No 80 s 159J

391 Charging

- (1) TEC may charge a commercial rate for any goods and services that it provides under **section 386(1)(e) and (f)**.
- (2) However, TEC may not charge a commercial rate for any other goods and services that it provides unless the Minister approves.
- (3) TEC may charge an organisation a fee relating to the cost of TEC investigating whether the organisation has breached or is breaching a condition subject to which the organisation was given funding approval under **section 397** or funding under **section 399** if TEC finds that the organisation has breached or is breaching the condition.

- (4) However, TEC may charge a fee under **subsection (3)** only if it has notified the affected organisation of the proposed investigation and the date on which the investigation is to start.
- (5) In deciding whether to charge an organisation a fee under **subsection (3)** and the amount of the fee (if one is to be charged), TEC must have regard to—
- (a) the nature and seriousness of the breach; and
 - (b) the effect that a fee would have on the operation, long-term viability, and performance of the organisation.

Compare: 1989 No 80 s 159E(1)–(5)

392 Application of Commerce Act 1986

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

Compare: 1989 No 80 s 159K

Funding mechanisms

396 Minister must determine design of funding mechanisms

- (1) The Minister must determine the design of the funding mechanisms that TEC uses to fund organisations.
- (1A) Without limiting **subsection (1)**, in making a determination, the Minister must—
- (a) identify the general form and essential components of each funding mechanism; and
 - (b) indicate which of the funding mechanisms relates to—
 - (i) funding to be paid by TEC under **section 397** (which relates to funding organisations via plans); and
 - (ii) funding to be paid by TEC under **section 399** (which relates to funding organisations other than via plans); and
 - (iii) other types of funding (if any).
- (2) Without limiting **subsection (1)**, in making a determination, the Minister may—
- (a) specify the amount of money, or the proportion of an amount of money, available under any particular funding mechanism; and
 - (b) provide for funding to different groups of organisations or types of organisation; and
 - (c) provide for different versions of, or modifications to, a funding mechanism when applying it to different groups of organisations or types of organisation; and

- (d) specify the conditions that TEC must attach to funding that is provided under funding mechanisms, including (without limitation) conditions setting limits on fees that organisations may charge—
 - (i) domestic students;
 - (ii) employers for supporting their employees' work-based training; and
- (e) provide for funding that targets particular groups of students.

Compare: 1989 No 80 s 159L

396A Restrictions on design of funding mechanisms

- (1) In determining a design for a funding mechanism under **section 396** or in varying a determination under **section 396D**, the Minister may not—
 - (a) identify a specified organisation or specified organisations to which funding is to be provided or denied under any funding mechanism; or
 - (b) specify conditions under **section 396(2)(d)** that set limits on the fees that organisations may charge domestic students or that organisations may charge employers until—
 - (i) the Minister has published a notice in the *Gazette* that—
 - (A) states that the Minister proposes to specify conditions of that kind; 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 later than 21 days after the date of the *Gazette* notice; and
 - (ii) the date by which submissions must be received has passed.
- (2) However, the Minister may direct that funding be provided to NZIST via a funding mechanism if the Minister reasonably considers that it is consistent with the efficient use of national resources and in the national interest to do so.

Compare: 1989 No 80 s 159M

396B Funding mechanisms consistent with quality assurance principle

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

Compare: 1989 No 80 s 159N

396C TEC to implement funding mechanisms

TEC must—

- (a) develop the details of how to implement the Minister's determination of the design of funding mechanisms under **section 396**; and
- (b) implement the funding mechanisms.

Compare: 1989 No 80 s 159O

396D Variation of determination of design of funding mechanisms

- (1) After TEC has implemented, or started to implement, the funding mechanisms under **section 396C**, the Minister may vary the determination of the design of the funding mechanisms.
- (2) The Minister may only vary a determination—
 - (a) if it is reasonably necessary to do so; and
 - (b) by making changes in relation to the matters mentioned in **section 396(2)**.
- (3) Before deciding to vary a determination, the Minister must consult—
 - (a) all organisations that would be affected by a variation that the Minister proposes; and
 - (b) all other persons and organisations that the Minister thinks fit to consult.
- (4) However, the Minister is not required to consult under **subsection (3)** in relation to a variation of the conditions under **section 396(2)(d)** that set limits on the fees that organisations may charge domestic students and employers.
- (5) If the Minister varies a determination, an organisation affected by the variation must—
 - (a) consider whether any amendments are needed to its plan as a result of the variation; and
 - (b) if it considers that a significant amendment is needed to its plan, or that its plan needs to be replaced, ask TEC to approve the significant amendment to, or the replacement of, its plan under **clause 28 of Schedule 17**.
- (6) If the Minister varies a determination and, as a result of the variation, TEC must attach new conditions to funding under a funding mechanism,—
 - (a) TEC must attach the new conditions to any funding approval that it has given under that funding mechanism; and
 - (b) TEC must notify any affected organisation of the attachment of the new conditions to the organisation's funding approval; and
 - (c) the new conditions take effect on the date on which the affected organisation is so notified.
- (7) If the Minister varies a determination, the variation takes effect on a date specified by the Minister, which must be no earlier than whichever is the later of the following:

- (a) the day that is 3 months after the date on which the Minister varies the determination;
 - (b) the beginning of the calendar year after the calendar year during which the Minister varies the determination.
- (8) However, if the Minister varies a determination in response to, or to support recovery from, an epidemic or an emergency declared or notified under an enactment, the variation takes effect on a date specified by the Minister.

Compare: 1989 No 80 s 159OA

396E Criteria for assessing proposed plans

- (1) TEC must prescribe and give public notice of the criteria that TEC is to use to assess proposed plans to determine if they are to receive funding approval.
- (2) The prescribed criteria must include (without limitation) criteria for assessing—
 - (a) how an organisation contributes to the Government’s current and medium-term priorities described in the tertiary education strategy; and
 - (b) the tertiary education programmes and activities of an organisation in relation to which funding is sought under **section 397**; and
 - (c) the performance indicators used in measuring whether the specified outcomes relating to those tertiary education programmes and activities are being or have been achieved; and
 - (d) the extent and nature of an organisation’s consultation over its proposed plan.
- (3) When prescribing matters under ~~subclause subsection (1)~~, TEC may include standard criteria, as well as different criteria applying to different organisations, types of organisation, or groups of organisations.
- (4) Notices given under ~~subclause subsection (1)~~ may be—
 - (a) given at different times; and
 - (b) amended by TEC.
- (5) TEC must give public notice of a significant amendment made under ~~subclause subsection (4)(b)~~.

Compare: 1989 No 80 s 159Y

397 TEC may fund tertiary education programmes and activities

- (1) TEC must assess whether a proposed plan is to receive funding approval by applying the assessment criteria prescribed under **section 396E**.
- (2) After applying the assessment criteria, TEC may decide to—
 - (a) fund (in whole or in part) all or some of the tertiary education programmes and activities described in the proposed plan under **clause**

- 10(d)(i) and (ii) of Schedule 17** in relation to which funding is sought; or
- (c) not fund any of the tertiary education programmes or activities described in the proposed plan under **clause 10(d)(i) and (ii) of Schedule 17** in relation to which funding is sought.
- (3) Before deciding not to fund some or any, or part of some or any, of the tertiary education programmes or activities, TEC must—
- (a) notify the organisation of its proposed decision; and
- (b) give the organisation a reasonable opportunity to be heard.
- (4) TEC must give its reasons to the affected organisation if it decides not to fund some or any, or part of some or any, of the tertiary education programmes or activities.
- (5) In deciding to give funding approval, TEC must—
- (a) specify the date from which that funding approval has effect; and
- (b) determine the amount of funding payable to the organisation by applying the appropriate funding mechanism; and
- (c) arrange for the payment to the organisation of the amount of funding determined under **paragraph (b)**.

Compare: 1989 No 80 s 159YA

398 Conditions on receiving funding

- (1) It is a condition of an organisation receiving funding under **section 397** that the organisation supply to TEC or the Ministry, as required by TEC or the Ministry, and in a form specified by TEC or the Ministry, any financial, statistical, or other information that TEC or the Ministry requires the organisation to supply.
- (2) TEC may give funding approval subject to conditions, but only if the conditions are—
- (a) conditions that the Minister has determined TEC must attach to funding under **section 396(2)(d)**; or
- (b) conditions that TEC considers necessary to ensure that the specified outcomes in a plan that relate to tertiary education programmes and activities in relation to which funding is being given are being achieved or are to be achieved; or
- (c) conditions that TEC considers reasonably necessary to enable TEC to effectively monitor the performance of organisations and the tertiary education sector generally.
- (3) If TEC intends to give funding approval subject to a condition of the type described in **subsection (2)(c)**, TEC must, before giving funding approval,—

- (a) give the affected organisation at least 21 days' notice of the proposed condition; and
 - (b) consider any submissions on the proposed condition made by the organisation.
- (4) TEC may amend any condition imposed under **subsection (2)**.
- (5) The amendment to the condition takes effect when the organisation has been given reasonable notice of it.

Compare: 1989 No 80 s 159YC

398A TEC may decline to assess proposed plans

- (1) TEC may decline to assess a proposed plan under **section 397** if it is satisfied on reasonable grounds that the proposed plan does not adequately satisfy the requirements of **Schedule 17** (including, unless the organisation is exempt under **clause 13 of Schedule 17**, complying with the matters prescribed by TEC under **clause 12 of Schedule 17**).
- (2) Before making a decision to decline to assess an organisation's proposed plan, TEC must discuss with the organisation why the proposed plan does not adequately satisfy the requirements of **Schedule 17**.
- (3) TEC must give its reasons to the affected organisation if it declines to assess the organisation's proposed plan.

Compare: 1989 No 80 s 159YB

399 Funding other than via plans

- (1) If a funding mechanism provides for funding for an organisation other than via plans, TEC may fund that organisation in accordance with that funding mechanism.
- (2) Nothing in **subsection (1)** limits TEC's powers to fund organisations in other ways under a delegated authority or another enactment.

Compare: 1989 No 80 s 159ZC

400 Conditions on funding received under section 399

- (1) It is a condition of receiving funding under **section 399** that the recipient supply TEC or the Ministry, as required by TEC or the Ministry, and in a form specified by TEC or the Ministry, any financial, statistical, or other information that TEC or the Ministry requires the organisation to supply.
- (2) TEC may impose conditions on funding received by an organisation under **section 399**, but only if the Minister has provided that, under the funding mechanism under which that funding is provided,—
- (a) any or specified conditions may be imposed; or
 - (b) specified conditions must be imposed.
- (3) TEC may amend any condition imposed under **subsection (2)**.

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

Compare: 1989 No 80 s 159ZD

Subpart 2—New Zealand Qualifications Authority

401 NZQA continued

- (1) The body called the New Zealand Qualifications Authority (**NZQA**) in existence immediately before the commencement of this Act is continued.
- (2) NZQA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to NZQA except to the extent that this Act expressly provides otherwise.
- (4) The members of NZQA are the board for the purposes of the Crown Entities Act 2004.

Compare: 1989 No 80 s 256A

402 Constitution

- (1) NZQA must have at least 8, but not more than 10, members.
- (2) In appointing members, the Minister must consult the persons, authorities, and bodies that the Minister thinks fit and must have regard to the interests of industry, the professions, and the authorities and bodies that are respectively responsible for providing secondary and tertiary education.
- (3) **Subsection (2)** does not limit section 29 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 256B

403 Chief executive of NZQA

- (1) NZQA must appoint a chief executive of NZQA, on terms and conditions agreed by NZQA and the person appointed in accordance with section 117 of the Crown Entities Act 2004.
- (2) NZQA may not delegate the power to appoint a chief executive.
- (3) **Subsection (2)** applies despite section 73 of the Crown Entities Act 2004.
- (4) A delegation under section 73 of the Crown Entities Act 2004 to the chief executive, if there is no chief executive for the time being, or if the chief executive is absent from duty, continues to have effect as if made to the person for the time being acting in place of the chief executive.

Compare: 1989 No 80 ss 256C, 256D

404 Functions of NZQA

- (1) NZQA has the following functions:
- (a) to oversee the setting of standards for qualifications in relevant schools and in tertiary education:

- (b) to monitor and regularly review, and advise the Minister on, the standards for qualifications in relevant schools and in tertiary education, either generally or in relation to a particular organisation or a particular programme or training scheme:
 - (c) to maintain mechanisms for the recognition of learning (for example, the recognition of learning through qualifications gained and standards met):
 - (d) to maintain the Qualifications Framework and Directory of Assessment Standards:
 - (e) to monitor, through the exercise of its powers under this Act, compliance by workforce development councils with the prescribed quality assurance requirements, and to address non-compliance:
 - (f) to monitor the quality and results of a workforce development council's systems and procedures for its moderation activities:
 - (g) to make rules, not inconsistent with this Act, under any provision of this Part that empowers NZQA to make rules:
 - (h) to ensure there are mechanisms in place to guarantee that relevant schools and tertiary education providers that provide programmes or training schemes that, in the view of NZQA, require national consistency have assessment and moderation procedures that are fair, equitable, and consistent, and comply with the appropriate standards:
 - (i) to assist overseas governments, and agencies of those governments, by—
 - (i) conducting examinations and assessments:
 - (ii) approving programmes and training schemes:
 - (iii) granting accreditations for the provision of approved programmes:
 - (iv) assisting governments and agencies to develop and conduct examinations, and to develop and confer awards:
 - (j) to maintain effective liaison with overseas certifying and validating bodies, in order to recognise overseas educational and vocational qualifications in New Zealand and to achieve recognition overseas of New Zealand educational and vocational qualifications:
 - (k) to ensure that post-school educational and vocational qualifications maintain international comparability:
 - (l) to promote and monitor the delivery of inter-institutional programmes and training schemes:
 - (m) any other functions that are conferred on it by this Act or any other enactment.
- (2) NZQA may consult any persons, authorities, and bodies that it thinks fit for the purposes of performing any of its functions.

- (3) NZQA must have regard to the tertiary education strategy when performing its functions under this Act or any other enactment.

Compare: 1989 No 80 ss 159AB, 246A

405 Additional functions of NZQA relating to entrance to universities

- (1) In addition to its other functions, NZQA has,—
- (a) in relation to the rights of people who have not ~~attained the age of~~ turned 20 years to obtain entrance to universities, the function of establishing and maintaining, by any means that it thinks fit, a common educational standard as a prerequisite for entrance to a university, other than discretionary entrance and entrance *ad eundem statum*; and
 - (b) the function of consulting the universities about the criteria to be established for discretionary entrance, or entrance *ad eundem statum*, to universities.
- (2) A person who is refused discretionary entrance or entrance *ad eundem statum* to a university on grounds relating to the person's educational qualifications may appeal to NZQA against the refusal.
- (3) NZQA must consider the appeal and,—
- (a) if it is satisfied that the person meets the criteria established by the universities, as mentioned in **subsection (1)(b)**, must allow the appeal and direct the council of the university concerned to admit the person as a student and, where appropriate, to grant the person the status that NZQA determines; or
 - (b) if it is not so satisfied, must dismiss the appeal.
- (4) The council of a university must comply with a direction given to it by NZQA under **subsection (3)(a)**.
- (5) Before establishing standards for entrance to universities, NZQA must consult the council of each university and the Vice-Chancellors Committee.

Compare: 1989 No 80 s 247

406 Research

NZQA has the power to carry out any research activities that it considers relevant to the performance of its functions.

Compare: 1989 No 80 s 256

Qualifications framework

407 Qualifications Framework

- (1) The Qualifications Framework—
- (a) consists of all qualifications that have been approved and listed by NZQA in accordance with the rules made under **section 423**; and

- (b) includes the rules relating to the Qualifications Framework made under that section.
- (2) NZQA—
 - (a) must list on the Qualifications Framework all qualifications that it has approved in accordance with the rules:
 - (b) may, in accordance with the rules, amend, add to, remove, or alter the status of any qualification on the framework.
- (3) If a qualification is removed from the Qualifications Framework,—
 - (a) any programme approval held by an institution in respect of the qualification lapses; and
 - (b) any accreditation granted to an institution in respect of the qualification lapses.

Compare: 1989 No 80 s 248

Directory of Assessment Standards

408 Directory of Assessment Standards

- (1) The Directory of Assessment Standards consists of all standards approved by NZQA for use by institutions as standards for the assessment of students.
- (2) An application to have standards listed in the Directory—
 - (a) may only be made by an approved standard-setting body; and
 - (b) must be made in accordance with the rules.

Compare: 1989 No 80 s 248A

409 Standard-setting bodies

- (1) An approved standard-setting body includes—
 - (a) a workforce development council established in accordance with **section 344**; and
 - (b) the Ministry; and
 - (c) NZQA; and
 - (d) any other body approved by NZQA under **subsection (3)**.
- (2) A body may apply, in accordance with the rules, to NZQA for approval as a standard-setting body.
- (3) In deciding whether to approve a standard-setting body, NZQA must apply the criteria set out in the rules, and must be satisfied that the applicant is able to—
 - (a) draft standards that meet the requirements in the rules; and
 - (b) manage consistency across New Zealand in learning outcomes in the relevant subject areas; and

(c) carry out national moderation of assessment of students.

Compare: 1989 No 80 s 248B

410 Approval of programmes

- (1) An institution may apply to NZQA for approval of a programme.
- (2) NZQA—
 - (a) may grant or refuse to grant approval of the programme to the applicant; and
 - (b) is required only to consider the programme as a whole; and
 - (c) must give the applicant written notice of its decision to grant or refuse approval; and
 - (d) may grant approval for a specified period or indefinitely.
- (3) If 2 or more institutions have prepared a programme together, they may make a joint application for approval of the programme.
- (4) If NZQA considers that there may be grounds for withdrawing approval of a programme,—
 - (a) NZQA must give written notice to the institution concerned stating the grounds on which NZQA is considering withdrawing approval; and
 - (b) NZQA must give the institution reasonable time (as specified in the notice) to make submissions on the matter; and
 - (c) after considering those submissions, NZQA—
 - (i) may withdraw approval if it considers there are reasonable grounds to do so; and
 - (ii) must notify the institution of the withdrawal (if any) and the reasons for it.
- (5) NZQA may withdraw approval of a programme at the written request of the institution concerned.
- (6) This section—
 - (a) is subject to **section 424**;
 - (b) does not limit NZQA's power to withdraw a programme approval under **section 430(6)**;
 - (c) does not apply in respect of NCEA.

Compare: 1989 No 80 s 249

411 Conditions on programme approvals

- (1) Every programme approval is subject to the condition that the institution complies at all times with the relevant rules, except to the extent that NZQA exempts the institution, by a condition on the approval, from compliance.

- (2) When approving a programme, NZQA may impose conditions on the approval that are specific to the programme or to a class of programmes.
- (3) NZQA may, with the agreement of the institution that holds the programme approval,—
 - (a) impose new conditions on the approval; or
 - (b) amend or revoke any existing conditions.
- (4) NZQA may, without the agreement of the institution, impose conditions on a programme approval, or amend or revoke any existing conditions, but only if NZQA 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, NZQA must give notice in writing to the institution that holds the approval of the new, amended, or revoked conditions.

Compare: 1989 No 80 s 249A

Accreditation to provide approved programmes

412 Accreditation to provide approved programmes

- (1) An institution may not offer or provide all or part of an approved programme unless the institution is granted accreditation to provide the programme or part of the programme.
- (2) An institution may apply to NZQA for a grant of accreditation to provide all or part of a programme.
- (3) If the programme for which accreditation is sought incorporates standards from the Directory of Assessment Standards, the applicant must obtain consent to assess against those standards.
- (4) NZQA—
 - (a) may grant or refuse to grant accreditation to the institution to provide all or part of the programme; and
 - (b) must give the institution written notice of its decision to grant or refuse accreditation; and
 - (c) may grant accreditation without limitation as to time or for a specified period.
- (5) This section—

- (a) does not apply to any secondary school qualification or class of secondary school qualification that NZQA exempts, by notice in the *Gazette*, from the application of this section:
- (b) is subject to **section 424**.

Compare: 1989 No 80 s 250

413 Conditions on accreditation

- (1) Every accreditation is subject to the condition that the institution complies at all times with the relevant rules made under **section 423**, except to the extent that NZQA exempts the institution, by a condition on the accreditation, from compliance.
- (2) When granting accreditation to an institution to provide an approved programme, NZQA may impose conditions on the accreditation that are—
 - (a) specific to the programme or a particular class of programmes; or
 - (b) specific to the institution or a particular class of institutions.
- (3) NZQA may, with the agreement of the accredited institution, impose new conditions on the accreditation and may amend or revoke any existing conditions.
- (4) NZQA may, without the agreement of the institution, impose conditions on an accreditation, or amend or revoke any existing conditions, but only if NZQA 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, NZQA must give notice in writing to the accredited institution of the new, amended, or revoked conditions.

Compare: 1989 No 80 s 250A

414 Lapse of accreditation

- (1) An accreditation granted to an institution lapses when—
 - (a) 12 months have passed since accreditation was granted and the institution has not during that time provided all or part of the programme to which the accreditation relates; or
 - (b) 12 months have passed since the institution last provided all or part of the programme to which the accreditation relates; or
 - (c) the programme to which the accreditation relates ceases to be an approved programme; or

- (d) the status of the qualification to which the accreditation relates is discontinued on the Qualifications Framework.
- (2) Despite **subsection (1)**, NZQA may, if it considers that the circumstances so require, extend the time specified in **subsection (1)(a) or (b)**.
- (3) NZQA must give written notice of the lapse of an accreditation to the institution concerned.

Compare: 1989 No 80 s 250B

415 Withdrawal of accreditation

- (1) If NZQA considers that there may be grounds for withdrawing an accreditation from an institution, NZQA must give written notice to the institution—
 - (a) setting out the grounds on which NZQA is considering withdrawing the accreditation; and
 - (b) giving the institution a reasonable period to make submissions on the matter.
- (2) After that period, and having considered any submission made by the institution, NZQA may, on any reasonable grounds, withdraw the accreditation.
- (3) If NZQA withdraws an accreditation under **subsection (2)**, it must give notice of the withdrawal, with reasons, to the institution concerned.
- (4) NZQA may withdraw an accreditation at the written request of the institution concerned.
- (5) This section does not limit NZQA's power to withdraw an accreditation under **section 430(6)**.

Compare: 1989 No 80 s 250C

Training schemes and consents to assess against standards

416 Application for training scheme approval

- (1) An institution may apply to NZQA for approval to provide a training scheme.
- (2) NZQA—
 - (a) may grant or refuse to grant approval to the training scheme; and
 - (b) must give the institution and any joint applicant written notice of its decision to grant or refuse approval; and
 - (c) may grant approval for a specified period or indefinitely.
- (3) If the training scheme incorporates assessment standards listed in the Directory of Assessment Standards, NZQA may not grant training scheme approval until the institution has obtained consent to assess against those standards.

- (4) This section does not apply to any secondary school qualification or class of secondary school qualification that NZQA exempts, by notice in the *Gazette*, from the application of this section.

Compare: 1989 No 80 s 251

417 Conditions of training scheme approval

- (1) Every training scheme approval is subject to the condition that the institution complies at all times with the relevant rules made under **section 423** except to the extent that NZQA exempts the institution, by a condition on the approval, from compliance.
- (2) NZQA may impose conditions on a training scheme approval, and for that purpose, **section 413(2) to (5)** applies as if each reference to accreditation were a reference to a training scheme approval under this section.

Compare: 1989 No 80 s 251A

418 Lapse of training scheme approval

- (1) A training scheme approval granted to an institution lapses when—
- (a) 12 months have passed since approval was granted and the institution has not during that time provided all or part of the training scheme to which the approval relates; or
 - (b) 12 months have passed since the institution last provided all or part of the training scheme to which the approval relates.
- (2) Despite **subsection (1)**, NZQA may, if it considers that the circumstances so require, extend the time specified in **subsection (1)(a) or (b)**.
- (3) NZQA must give written notice of the lapse of a training scheme approval to the institution concerned.

Compare: 1989 No 80 s 251C

419 Withdrawal of training scheme approval

- (1) If NZQA considers that there may be grounds for withdrawing a training scheme approval from an institution, NZQA must give written notice to the institution—
- (a) setting out the grounds on which NZQA is considering withdrawing the approval; and
 - (b) giving the institution a reasonable period to make submissions on the matter.
- (2) After the period referred to in **subsection (1)(b)**, and having considered any submission made by the institution, NZQA—
- (a) may, on reasonable grounds, withdraw the training scheme approval; and
 - (b) must give notice of the withdrawal, with reasons, to the institution concerned.

- (3) This section does not limit NZQA's power to withdraw a training scheme approval under **section 430(6)**.
- (4) NZQA may withdraw a training scheme approval at the written request of the institution concerned.

Compare: 1989 No 80 s 251B

Consent to assess against standards

420 Consent to assess against standards

- (1) An institution that proposes to assess its students against standards listed in the Directory of Assessment Standards must apply to NZQA for consent to assess against those standards.
- (2) NZQA may grant or refuse consent to assess against those standards.
- (3) NZQA may withdraw a consent, but only after complying with **subsection (4)**.
- (4) Before NZQA withdraws a consent, it must—
 - (a) give written notice of its intentions to the institution; and
 - (b) give the institution a reasonable opportunity to respond to the notice; and
 - (c) consider any submissions made by the institution in response to the notice.
- (5) NZQA must give the institution written notice of its decision under **subsection (3)**, and must give reasons for its decision.
- (6) Despite **subsection (3)**, NZQA may withdraw a consent at the written request of the institution concerned.

Compare: 1989 No 80 s 252

421 Conditions on consent

- (1) Every consent to assess against standards is subject to the condition that the institution complies at all times with the relevant rules made under **section 423** except to the extent that NZQA exempts the institution, by a condition on the consent, from compliance.
- (2) NZQA may impose conditions on a consent to assess against standards, and for that purpose **section 413(2) to (5)** applies as if each reference to accreditation were a reference to a consent to assess against standards.

Compare: 1989 No 80 s 252A

422 When consent expires or ceases to have effect

- (1) A consent to assess against standards expires—
 - (a) when any training scheme approval or accreditation to which the consent relates is withdrawn, lapses, expires, or otherwise ceases to have effect:

- (b) when the status of all standards to which the consent relates is discontinued in the Directory of Assessment Standards.
- (2) If the status of any standard to which the consent relates is discontinued in the Directory of Assessment Standards, the consent ceases to have effect in respect of that standard.

Compare: 1989 No 80 s 252B

Rules

423 Rules

- (1) NZQA may make rules—
 - (a) prescribing the process for, and the information required in, an application for—
 - (i) registration of a private training establishment:
 - (ii) approval of a programme:
 - (iii) approval of a training scheme:
 - (iv) accreditation:
 - (v) consent to assess against standards:
 - (vi) approval as a standard-setting body:
 - (vii) the listing of a qualification on the Qualifications Framework:
 - (viii) the listing of a standard on the Directory of Assessment Standards:
 - (b) prescribing criteria that NZQA must apply when considering—
 - (i) each class of application described in **paragraph (a)**; and
 - (ii) different kinds of application within each class:
 - (c) prescribing requirements that the applicant must meet in order to maintain the registration, approval, accreditation, or consent granted by NZQA:
 - (d) prescribing the amount of, or the method of determining, the annual registration fee required under **section 330**:
 - (e) prescribing the requirements for the protection of student fees that must be met by a private training establishment, any person to whom **section 336** applies, any agent or person purporting to act as an agent for a student or private training establishment, and any independent trustee:
 - (f) prescribing matters relating to the general operation of the Qualifications Framework and the Directory of Assessment Standards:
 - (g) prescribing the quality assurance requirements that must be met by providers of adult and community education:

- (h) prescribing the amount of, or the method of determining, the annual fee payable by a workforce development council and when and how that fee is payable:
- (i) prescribing quality assurance requirements for workforce development councils, including (without limitation) requirements relating to the performance of the relevant functions of workforce development councils:
- (ia) prescribing matters relating to training packages:
- (j) providing for the review, amendment, removal, or alteration of the status of qualifications and standards, including their components (including where amendments to titles occur, consequential amendments to programmes of study or training titles, accreditations, and consents to assess against standards):
- (k) providing any special requirements for NCEA and other secondary school qualifications or awards for the purposes of the Qualifications Framework:
- (l) providing for the conduct of assessments and examinations relating to any qualifications or awards:
- (m) prescribing the details for credits, cross-credits, recognition of prior learning, and moderation:
- (n) prescribing requirements for qualifications in respect of which NZQA is the qualifications developer:
- (o) prescribing requirements relating to work-based training:
- (p) providing for the following matters for the purposes of **section 342**:
 - (i) the kinds of enrolment and academic records that must be kept:
 - (ii) the manner in which the records must be kept:
 - (iii) how long the records must be kept:
- (q) prescribing reporting requirements that institutions or workforce development councils must comply with in relation to the student's record of achievement that is maintained by NZQA:
- (r) for the purposes of rules made under **paragraph (q)**, specifying the qualifications or standards for which institutions or workforce development councils are required to report the credits gained by students undertaking or who have undertaken study or training towards those qualifications or standards:
- (s) prescribing the quality assurance requirements for tertiary education bodies in respect of which NZQA grants approvals or consents under this subpart:
- (t) prescribing the types of programmes and training schemes that are exempt from the requirements specified in **section 337(1)**:

- (u) providing for any other matters contemplated by this subpart and **subpart 5 of Part 4**, necessary for their administration, or necessary for giving them full effect.
- (2) Without limiting any power to make rules under this section, restrictions on the use of standards may be included in any rules made under **subsection (1)(b)** that—
 - (a) prescribe criteria that NZQA must apply when considering applications for approval of a programme leading to a degree or postgraduate qualification:
 - (b) prescribe criteria that NZQA must apply when considering applications for the listing of a degree or postgraduate qualification on the Qualifications Framework:
 - (c) prescribe criteria that NZQA must apply when considering applications for the listing of a standard in the Directory of Assessment Standards that relates to any programme leading to a degree or postgraduate qualification.
- (3) Rules made under **subsection (1)(n)** may specify different requirements for different qualifications.
- (4) Before making rules under this section that apply to a class of institutions, NZQA must consult,—
 - (a) if the rules relate to universities, the Vice-Chancellors Committee; and
 - (b) if the rules relate to bodies that provide adult and community education, those bodies or a body that represents their interests; and
 - (c) if the rules relate to a class of institutions in respect of which there is a body whose function is to set up programme approval and moderation procedures, the representative bodies of those institutions, and any other bodies as NZQA considers appropriate.
- (5) Any proposed rules under this section must be approved by the board of NZQA and the Minister before being made, but, if the rules relate to any matter described in **subsection (1)(l)**, the approval of the Minister is not required.
- (6) Any rules made under this section must be—
 - (a) published on an Internet site maintained by or on behalf of NZQA; and
 - (b) made available in printed form for purchase at a reasonable price on request by members of the public.
- (7) Rules made under this section are a disallowable instruments, but not a legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 253

Functions and powers of NZQA in relation to universities

424 Exercise of certain powers of NZQA by Vice-Chancellors Committee

- (1) In this section **powers of NZQA** means NZQA's powers under **sections 410 to 419, 429(1)(b), and 430**.
- (2) The powers of NZQA, as far as they are applicable to universities, may be exercised by the Vice-Chancellors Committee in relation to universities as if references to NZQA in the relevant provisions were references to the Vice-Chancellors Committee.
- (3) In exercising the powers of NZQA, the Vice-Chancellors Committee—
 - (a) must apply the relevant rules made under **section 423**;
 - (b) may charge fees to a university for the grant of any approval or accreditation;
 - (c) may list or arrange for the listing of qualifications offered by universities on the Qualifications Framework;
 - (d) may correct any errors or omissions in the listing of qualifications on the Qualifications Framework.
- (4) To avoid doubt, this section does not limit NZQA's power to delegate its functions or powers under the Crown Entities Act 2004.

Compare: 1989 No 80 s 253A

Granting of awards

425 Powers of NZQA in granting of awards

- (1) A person may apply to NZQA for consent—
 - (a) to grant an award that is described as a degree or the description of which includes the word bachelor, master, or doctor;
 - (b) to grant an award that is described as a postgraduate qualification, for example, a postgraduate certificate or diploma.
- (2) NZQA may, in accordance with this section, grant or refuse its consent.
- (3) NZQA may not consent to the granting of an award of a kind referred to in **subsection (1)** unless it is satisfied that the award recognises the completion of a programme of advanced learning that—
 - (a) is taught mainly by people engaged in research; and
 - (b) emphasises general principles and basic knowledge as the basis for self-directed work and learning.
- (4) NZQA may not withhold its consent to the use of any particular term or the granting of an award that, or whose name or description, includes any particular word, unless satisfied on reasonable grounds that it should do so.

Compare: 1989 No 80 s 253B

426 NCEA may not be provided outside New Zealand

- (1) A person may not provide, or offer to provide, an NCEA qualification outside New Zealand.
- (2) **Subsection (1)** does not apply in respect of—
 - (a) domestic students outside New Zealand if they are studying through a distance school; or
 - (b) students outside of New Zealand if they are studying in a jurisdiction with which New Zealand has entered into an arrangement that authorises the teaching and assessment of NCEA standards in that jurisdiction.

Use of certain terms in name or description of registered establishment or wānanga

427 Minister may consent to use of certain terms in name or description of registered establishment or wānanga

- (1) A registered establishment may apply to the Minister for consent to describe itself using the term university.
- (2) A wānanga may apply to the Minister for consent to describe itself using the term university.
- (3) Before deciding whether to grant consent under **subsection (1) or (2)**, the Minister must—
 - (a) take into account the characteristics of institutions as described in **section 248(2)(d)**; and
 - (b) receive advice about the application from NZQA and from TEC; and
 - (c) be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and
 - (d) consult the institutions, organisations representing institutions, and other relevant bodies that the Minister thinks fit; and
 - (e) in the case of a wānanga, consult the persons or bodies who are knowledgeable in āhuatanga Māori (Māori tradition) and tikanga Māori (Māori custom) within a kaupapa Māori pedagogy that the Minister thinks fit.
- (4) The Minister may grant consent under **subsection (1) or (2)** subject to conditions that the Minister considers reasonably necessary to—
 - (a) ensure that students, employers, and members of the public are adequately informed of the legal status or the characteristics of the registered establishment or wānanga to which the consent is granted; and
 - (b) ensure adequate protection of the quality and reputation of the institutions that may use the term without applying to do so; and

- (c) protect the interests of the tertiary education system and the nation as a whole.
- (5) The Minister may carry out a review of a registered establishment or wānanga to assess whether it is continuing to comply with any conditions subject to which it was granted consent under **subsection (1) or (2)**.
- (6) If, having regard to a review carried out under **subsection (5)**, the Minister is not satisfied that a registered establishment or wānanga is continuing to comply with the conditions subject to which it was granted consent under **subsection (1) or (2)**, 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.

Compare: 1989 No 80 s 253C

Fees

428 Fees

- (1) NZQA may—
 - (a) charge fees to any person or institution for any of the following:
 - (i) programme approval:
 - (ii) training scheme approval:
 - (iii) accreditation:
 - (iv) consent to assess against standards:
 - (v) approval to list qualifications on the Qualifications Framework:
 - (vi) approval to list standards in the Directory of Assessment Standards:
 - (vii) registration of a private training establishment:
 - (viii) approval to be a standard-setting body:
 - (ix) consent to award a degree:
 - (x) consent for the use by a registered establishment of certain terms in its name:
 - (xi) reporting credits for the purposes of rules made under **section 423(1)(q) and (r)**:
 - (b) charge fees to any person or institution for any services provided by NZQA, including fees in relation to sitting an examination conducted by NZQA, to the making of any assessment by NZQA, or to the granting to any person of an award certifying that the person had passed the examination or been so assessed:

- (c) charge fees to any person or institution for any quality assurance activities undertaken by NZQA.
- (2) A fee may not be charged under **subsection (1)(b)** to a person who is a student at a relevant school unless the Minister has consented to the charging of the fee.
- (3) All fees that are to be charged under **subsection (1)** must be—
 - (a) published on an Internet site maintained by or on behalf of NZQA; and
 - (b) made available in printed form for purchase at a reasonable price on request by members of the public.

Compare: 1989 No 80 s 254

Enforcement powers of NZQA

429 Power to obtain information

- (1) The chief executive or a person authorised by the chief executive may, subject to **subsection (2)**,—
 - (a) by written notice to the Secretary, require the Secretary, within a reasonable period that is specified in the notice, to supply to NZQA the information or documents relating to institutions that are specified in the notice; and
 - (b) by written notice to the chief executive of an institution or a workforce development council, require the chief executive, within a reasonable period that is specified in the notice, to supply to NZQA the information or documents relating to the institution or workforce development council that are specified in the notice.
- (2) The powers conferred by **subsection (1)** may be exercised only where the obtaining of the information or documents is necessary for the purposes of the performance of the functions of NZQA.

Compare: 1989 No 80 s 254A

430 Compliance notices

- (1) NZQA may issue a compliance notice to an institution requiring the institution to do, or refrain from doing, a particular thing in relation to—
 - (a) the institution's registration as a registered establishment; or
 - (b) the institution's programme approvals, training scheme approvals, or accreditation; or
 - (c) any consent that the institution has to assess against standards; or
 - (d) any quality assurance conditions on work-based training; or
 - (e) any notice issued under **section 429(1)(b)**.
- (2) A compliance notice must be in writing and must state—

- (a) the date on which it is issued; and
 - (b) a time on or before which, or a period within which, the institution must comply with the notice; and
 - (c) the consequences or possible consequences of non-compliance with the notice.
- (3) NZQA may publish any compliance notice (or a summary of the notice) on an Internet site maintained by or on behalf of NZQA.
- (4) An institution that receives a compliance notice must comply with it within the time or period stated in the notice.
- (5) NZQA may, before the expiry of the time or period referred to in **subsection (2)(b)**, extend that time or period during which the notice must be complied with.
- (6) If the institution does not comply with the compliance notice, NZQA may immediately,—
- (a) if the notice related to the registration of a registered establishment, cancel the registration, or impose new conditions, or amend or revoke any existing conditions, on the registration; or
 - (b) if the notice related to a programme or training scheme approval, withdraw the approval, or impose new conditions, or amend or revoke any existing conditions, on the approval; or
 - (c) if the notice related to an accreditation, withdraw the accreditation, or impose new conditions, or amend or revoke any existing conditions, on the accreditation; or
 - (d) if the notice related to a consent to assess against standards, withdraw the consent, or impose new conditions, or amend or revoke any existing conditions, on the consent; or
 - (e) if the notice related to any quality assurance conditions on work-based training, withdraw the programme or training scheme approval to which the training relates, or impose new conditions, or amend or revoke any existing conditions, on the approval.
- (7) NZQA may not do any of the things specified in **subsection (6)** until the later of the following:—
- (a) 10 days from the date of issue of the notice:
 - (b) the expiry of the time or period referred to in **subsection (2)(b)**.
- (8) If NZQA withdraws programme approval, it must also withdraw any consent to assess against standards or any accreditation in respect of the programme approval.
- (9) If NZQA withdraws any training scheme approval, it must also withdraw any consent to assess against standards in respect of the training scheme approval.

Compare: 1989 No 80 s 255

*Miscellaneous provisions***432 Child care allowances**

A member of NZQA may be paid any allowances in respect of child care that NZQA determines.

Compare: 1989 No 80 s 256F

433 Taxation

- (1) NZQA is to be treated as the agent of the Crown in respect of its property and the performance of its functions and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.
- (2) **Subsection (1)** does not exempt NZQA from—
 - (a) the payment of goods and services tax under the Goods and Services Tax Act 1985; or
 - (b) any obligation imposed by that Act.

Compare: 1989 No 80 s 256G

Subpart 3—Education Review Office

434 Education services to which this subpart applies

- (1) This subpart applies to every education service (other than a service provided only to or for people over 16 years ~~of age~~ who are not enrolled at a State school)—
 - (a) that is provided by an organisation that is—
 - (i) owned or operated by the Crown; or
 - (ii) forbidden by law to provide that service (or a service of that kind) unless it holds a licence, permit, or other authority issued by or on behalf of the Crown; or
 - (b) whose provision is (wholly or partly)—
 - (i) funded by money appropriated by Parliament; or
 - (ii) regulated by or under statute.
- (3) **Sections 439 to 442** apply in relation to education services provided to persons who are exempted from the requirements of **section 34**; and, for the purposes of this subsection and **sections 439 to 442**, education service is to be construed in that context, and the meaning it has in the definition of applicable service in **section 10(1)** does not apply.

Compare: 1989 No 80 s 324

435 Chief Review Officer to perform certain functions

The Chief Review Officer must—

- (a) administer reviews, either general or relating to particular matters, of the performance of applicable organisations in relation to the applicable services they provide—
 - (i) when directed by the Minister to do so; or
 - (ii) on the Chief Review Officer's own motion (despite **section 32 of the State Sector Act 1988**); and
- (b) administer the preparation of reports to the Minister on the undertaking and results of the reviews; and
- (c) give the Minister any other assistance and advice on the performance of the applicable organisations that the Minister requires.

Compare: 1989 No 80 s 325

435A Information requests

- (1) In carrying out the functions specified in **section 435**, the Chief Review Officer may request in writing from an applicable organisation or applicable person such information that the Chief Review Officer considers is reasonably necessary or desirable for the purposes of carrying out those functions.
- (2) In this section, **applicable organisation**, in relation to an early childhood service, includes an entity that owns the service (wholly or partly) or operates the service.

436 Review officers

The Chief Review Officer—

- (a) may designate any suitably qualified person (whether or not an employee of the Chief Review Officer) a review officer; and
- (b) must ensure that every person for the time being so designated has a certificate to that effect, in a form approved by the Chief Review Officer.

Compare: 1989 No 80 s 326

Provisions concerning students with enrolment exemption

439 Functions of Chief Review Officer

The Chief Review Officer—

- (a) may carry out reviews (which may be general or in relation to particular matters) of the education services provided to persons exempted from the requirements of **section 34**, and must carry out the reviews when directed by the Minister to do so; and
- (b) must administer the preparation of reports to the Minister on the undertaking and results of the reviews; and

- (c) must give the Minister any other assistance and advice that the Minister requires on the education services provided to persons exempted from the requirements of **section 34**.

Compare: 1989 No 80 s 328A

440 Review officers

Review officers designated under **section 436** are also review officers for the purposes of **section 439, and sections 441 and 442** apply to them accordingly.

Compare: 1989 No 80 s 328B

441 Powers of review officers for purposes of section 439

- (1) For the purposes of enabling any functions of the Chief Review Officer to be performed for the purposes of **section 439**, any review officer may, at any reasonable time and having given reasonable notice,—
- (a) conduct inspections or inquiries:
 - (b) require a parent or other person to produce, and permit the review officer to make copies or extracts of, documents or information relating to—
 - (i) the education service the parent or other person provides; or
 - (ii) people to whom the education service is (or has been) provided:
 - (c) require a parent or other person to make or provide statements, in the form and manner that is reasonable in the circumstances, about any matters relating to provision of the education service provided by that parent or person:
 - (d) inspect the work of any person to whom the education service concerned is (or has been) provided:
 - (e) meet and talk with any person to whom the education service concerned is being provided.
- (2) Nothing in this section confers on a review officer the power to enter any dwelling house without the consent of the owner or occupier.

Compare: 1989 No 80 s 328C

442 Review officers to prove identity before acting under section 441

A review officer who exercises any power under **section 441** must, before exercising that power and, if requested at any later time, produce to the parent or other person providing the education service concerned the review officer's certificate of designation.

Compare: 1989 No 80 s 328D

Provisions concerning hostels

443 Functions of Chief Review Officer

The Chief Review Officer—

- (a) may carry out reviews (which may be general or in relation to particular matters) of the provision of a safe physical and emotional environment that supports learning for students accommodated in hostels, and must carry out those reviews when directed by the Minister to do so; and
- (b) must administer the preparation of reports to the Minister on the undertaking and results of the reviews; and
- (c) must give the Minister any other assistance and advice that the Minister requires on the provision of a safe physical and emotional environment that supports learning for students accommodated at hostels.

Compare: 1989 No 80 s 328E

444 Review officers

Review officers designated under **section 436** are also review officers for the purposes of **section 443, and sections 445 and 446** apply to them accordingly.

Compare: 1989 No 80 s 328F

445 Powers of review officers for purposes of section 443

- (1) For the purposes of enabling any functions of the Chief Review Officer to be performed under **section 443**, any review officer may, at any reasonable time and having given reasonable notice to the management of the hostel, enter any hostel and do 1 or more of the following:
 - (a) conduct inspections or inquiries:
 - (b) require any person to produce documents or information relating to—
 - (i) the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel; or
 - (ii) the students accommodated in the hostel:
 - (c) make copies or extracts of any documents and information referred to in **paragraph (b)**:
 - (d) require any person to make or provide statements, in any form and manner that is reasonable in the circumstances, about any matters relating to the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel:
 - (e) meet and talk to any person who is accommodated at the hostel.
- (2) Nothing in this section confers on a review officer the power to enter any room or sleeping area of a student accommodated at the hostel unless—

- (a) the review officer believes on reasonable grounds that entry or inspection is necessary for the purpose of review; and
 - (b) the review officer produces the review officer's certificate of designation to the student; and
 - (c) the student is present during the inspection.
- (3) This section does not limit any other powers of a review officer under this Act.
Compare: 1989 No 80 s 328G

446 Review officers to prove identity before acting under section 445

A review officer who exercises any power under **section 445** must, before exercising that power and, if requested at any later time, produce to the person apparently in charge the review officer's certificate of designation.

Compare: 1989 No 80 s 328H

Subpart 4—Teaching Council

447 Continuation of Teaching Council

- (1) The Teaching Council of Aotearoa New Zealand is continued.
- (2) The Teaching Council is a body corporate with perpetual succession and is capable of—
 - (a) holding real and personal property; and
 - (b) suing and being sued; and
 - (c) otherwise doing and suffering all that bodies corporate may lawfully do and suffer.
- (3) **Schedule 18** sets out provisions regarding the Teaching Council.
Compare: 1989 No 80 s 379

448 Composition of Teaching Council

- (1) The Teaching Council comprises 13 members as follows:
 - (a) 6 members appointed by the Minister in accordance with **section 449**;
 - (b) 7 elected members, being—
 - (i) 1 teacher representing the early childhood education sector, elected by teachers from that sector; and
 - (ii) 1 teacher representing the primary education sector, elected by teachers from that sector; and
 - (iii) 1 teacher representing the secondary education sector, elected by teachers from that sector; and
 - (iv) 1 teacher educator, elected by registered teachers working in the fields of initial and ongoing teacher education; and

- (v) 1 principal representing the primary education sector, elected by principals from that sector; and
 - (vi) 1 principal representing the secondary education sector, elected by principals from that sector; and
 - (vii) 1 early childhood education service leader, representing leadership in the early childhood education sector, elected by leaders from that sector.
- (2) Each of the elected members must be a registered teacher holding a current practising certificate, except the teacher educator, who need not hold a current practising certificate but must—
- (a) be a registered teacher; and
 - (b) have 5 or more years of experience in the field of initial teacher education or ongoing teacher education, or both; and
 - (c) be currently working in one of those fields.
- (3) The Minister—
- (a) must appoint one of the members appointed or elected under this section as chairperson; and
 - (b) may appoint one of the members appointed or elected under this section as a deputy chairperson.
- (4) The elected members of the Teaching Council must be nominated and elected in accordance with rules made under **section 458**.
- (5) However,—
- (a) elections must be held at least 4 months before members take office; and
 - (b) the Teaching Council must provide confirmation of the election results to the Minister at least 3 months before members take office.
- (6) The electors specified in **subsection (1)(b)(i), (ii), (iii), (v), and (vi)** must be—
- (a) registered teachers with current practising certificates; or
 - (b) currently authorised persons.
- (7) The electors specified in **subsection (1)(b)(vii)** must be early childhood education service leaders who are registered teachers with current practising certificates.

Compare: 1989 No 80 s 380

449 Ministerial appointment as member

- (1) The members of the Teaching Council appointed by the Minister must be persons nominated after notification of the Teaching Council vacancy in the *Gazette* and consultation by the Minister undertaken in accordance with **subsection (3)**.

- (2) A *Gazette* notice must specify the appointment process and must list the criteria for appointment specified in **subsections (3) and (4)**.
- (3) At least 1 of the appointed members must be appointed after the Minister consults, as the Minister thinks fit, representatives of parent and community interest groups in relation to schools and early childhood services.
- (4) When considering whether to appoint a member of the Teaching Council, the Minister must—
 - (a) take into account each candidate's ability to carry out the duties of a member of the Teaching Council and represent the public interest; and
 - (b) have regard to the collective skills, experience, and knowledge of members of the Teaching Council, including (without limitation) the candidate's knowledge and experience in any of the following areas:
 - (i) education:
 - (ii) governance:
 - (iii) leadership experience and skills:
 - (iv) financial skills:
 - (v) understanding of the partnership principles of Te Tiriti o Waitangi.

Compare: 1989 No 80 Schedule 21 cl 1

450 Disqualification from office

- (1) The following persons are disqualified from being members:
 - (a) a person who is an undischarged bankrupt:
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under any enactment other than this Act:
 - (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
 - (d) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare:
 - (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless the person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person:
 - (f) a member of Parliament:

- (g) an elected member of the Teaching Council—
 - (i) who ceases to be registered as a teacher; or
 - (ii) who ceases to hold a current practising certificate; or
 - (iii) whose registration as a teacher is suspended; or
 - (iv) whose practising certificate is suspended.
- (2) **Subsection (1)(g)(ii) and (iv)** does not apply to teacher educators.
Compare: 1989 No 80 Schedule 21 cl 2

450A Purpose of Teaching Council

The purpose of the Teaching Council is to ensure safe and high-quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English-medium and Māori-medium settings through raising the status of the profession.

Compare: 1989 No 80 s 377

451 Functions of Teaching Council

- (1) The functions of the Teaching Council are as follows:
 - (a) to provide leadership to teachers and direction for the education profession:
 - (b) to enhance the status of teachers and education leaders:
 - (c) to identify and disseminate best practice in teaching and leadership and foster the education profession's continued development in light of research and evidence of changes in society and technology:
 - (d) to carry out the functions under **Schedule 3** relating to teacher registration:
 - (e) to establish and maintain any criteria for teacher registration under **Schedule 3** that the Teaching Council considers necessary or desirable:
 - (f) to review, at any time, the criteria for teacher registration established under **paragraph (e)** and, after consulting the Minister,—
 - (i) vary, delete, or replace 1 or more of the criteria; or
 - (ii) add 1 or more criteria; or
 - (iii) delete all of the criteria and substitute new criteria:
 - (g) to establish and maintain standards for qualifications that lead to teacher registration:
 - (h) to review, at any time, the standards for qualifications established under **paragraph (g)** and, after consulting the Minister,—
 - (i) vary, delete, or replace 1 or more of the standards; or
 - (ii) add 1 or more standards; or
 - (iii) delete all of the standards and substitute new standards:

- (i) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes:
 - (j) to establish and maintain—
 - (i) standards for ongoing practice; and
 - (ii) criteria for the issue of practising certificates of different kinds:
 - (k) to establish and maintain a code of conduct for teachers under **section 457**:
 - (l) to monitor and enforce the requirements relating to mandatory reporting in this subpart and **Schedule 3**:
 - (m) to perform the disciplinary functions in this subpart relating to teacher misconduct and reports of teacher convictions:
 - (n) to set the criteria for reporting serious misconduct and for reporting on competence issues:
 - (o) to perform the functions in this subpart relating to teacher competence:
 - (p) to co-ordinate a system providing for the vetting by the Police of all teachers:
 - (q) to perform any other functions conferred on it by this Act or any other enactment.
- (2) When performing its functions and exercising its powers, the Teaching Council must act in accordance with the rules of natural justice.

Compare: 1989 No 80 s 382

452 Powers of Teaching Council

- (1) The Teaching Council may, by notice in the *Gazette*, fix fees for 1 or more of the following:
- (a) any addition or alteration to a person's registration as a teacher:
 - (b) any addition or alteration to a person's limited authority to teach:
 - (c) any addition or alteration to a person's practising certificate:
 - (d) inspection of the register of registered teachers or any other register or any other documents kept by the Teaching Council that are open to inspection:
 - (e) the supply of a copy of any entry in a register or other document referred to in **paragraph (d)**:
 - (f) the provision of professional leadership:
 - (g) costs relating to the performance of disciplinary functions:
 - (h) any other matter for which this Act provides that the Teaching Council may charge fees.
- (2) A notice under **subsection (1)**—

- (a) must be published on an Internet site maintained by or on behalf of the Teaching Council; and
 - (b) must state where printed copies of it are available free; and
 - (c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (3) The Teaching Council must make printed copies of every notice under **subsection (1)** that is in force available, free of charge, at the place stated in it.
 - (4) The Teaching Council may charge a fee for anything that it has fixed a fee for under **subsection (1)**.
 - (5) The Teaching Council may also charge for any goods or services it provides in accordance with its functions.
 - (6) The Teaching Council may, by written notice to a governing body, require the governing body to give the Teaching Council, within a time specified in the notice, any information specified in the notice, and the governing body must within that time give the Teaching Council in writing all information so required that is reasonably necessary or desirable for the Teaching Council to have for the proper administration of this subpart.
 - (7) The Teaching Council has all other powers conferred by this Act or reasonably necessary to enable it to perform its functions.
 - (8) For the purposes of **subsection (6)**, **governing body** means the board of any State school or a service provider that operates any licensed early childhood service or any certified playgroup or the managers of ~~any~~ private school.

Compare: 1989 No 80 s 383

453 Ministerial powers

- (1) For the purpose of ascertaining whether the Teaching Council is complying, or has complied, with this subpart and **Schedule 3**, the Minister may commission an independent audit of the conduct of the Teaching Council's functions.
- (2) The Minister may, by written notice to the Teaching Council, require the Teaching Council to provide to the Minister any financial, statistical, or other information, including information relating to the performance of the functions of the Teaching Council or any of its committees.

Compare: 1989 No 80 s 384

454 Issue of statement of Government policy relating to Teaching Council's functions

- (1) The Minister may, at any time, issue a statement of Government policy relating to 1 or more of the Teaching Council's functions specified in **section 451(1)**.
- (2) Before issuing a statement of Government policy, the Minister must consult the Teaching Council.

- (3) Every statement of Government policy must be—
 - (a) given in writing to the Teaching Council; and
 - (b) published in the *Gazette*; and
 - (c) presented to the House of Representatives.
- (4) A statement of Government policy comes into effect on the date specified in the *Gazette* notice, which date must be on or after the date of the notice and is to be treated as the date on which the statement is issued.
- (5) When performing its functions, the Teaching Council must have regard to any relevant statement of Government policy.
- (6) A statement of Government policy may be amended, revoked, or replaced in the same way as it is given.
- (7) A statement of Government policy issued under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 382A

455 Reports

- (1) At least every 3 years, following consultation with teachers, the Government, and the public, the Teaching Council must publish on an Internet site maintained by or on behalf of the Teaching Council a report setting out its strategic direction for the next 5 years.
- (2) The Teaching Council must present to the House of Representatives an annual report on its operations, including (without limitation) the audited financial statements of the Teaching Council.

Compare: 1989 No 80 s 385

456 Advisory committees

The Teaching Council may establish advisory committees for specific aspects of its operation or for particular issues as it sees fit.

Compare: 1989 No 80 s 386

457 Code of conduct

- (1) The Teaching Council must establish and maintain a code of conduct for teachers.
- (2) When preparing the code of conduct (and any amendments to it), the Teaching Council—
 - (a) must take all reasonable steps—
 - (i) to consult those who are to be bound by it; and
 - (ii) to consult the State Services Commissioner; and

- (b) must have regard to any relevant minimum standards of integrity and conduct or code of conduct that the State Services Commissioner sets or issues under **section 57 of the State Sector Act 1988**.
- (3) The code of conduct must be signed by the chairperson of the Teaching Council, and—
 - (a) notice of it must be given in the *Gazette*; and
 - (b) the notice must say where copies of the code may be obtained free of charge; and
 - (c) the notice must give the date on which the code comes into force, which must be a date on or after the date of the *Gazette* notice; and
 - (d) the Teaching Council must take all reasonable steps to ensure that those bound by the code are aware of its existence and are able to obtain copies of it, including (without limitation) publishing the code on an Internet site maintained by or on behalf of the Teaching Council.
- (4) The Teaching Council may amend the code of conduct, and every amendment—
 - (a) must be notified in the *Gazette*; and
 - (b) forms part of the code on the date specified in the notice as the date on which it is to come into force.
- (5) The code of conduct, and every amendment of it, is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (6) The code of conduct prepared under this section is binding on all teachers who hold a practising certificate and on all authorised persons.

Compare: 1989 No 80 s 387

458 Teaching Council to make rules

- (1) The Teaching Council must make rules providing for—
 - (a) the conduct of elections for electing members to the Teaching Council, including the election process; and
 - (b) a Complaints Assessment Committee to—
 - (i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
 - (ii) carry out any other function, and exercise any power, given under this Act or delegated to it by the Teaching Council; and
 - (c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and

- (d) a Competence Authority to consider reports and complaints about teacher competence and to exercise the powers given under this Act; and
 - (e) the practices and procedures of the disciplinary bodies and the Competence Authority; and
 - (f) the procedures of the Teaching Council for dealing with reports received under the mandatory reporting provisions in **sections 461 to 465**; and
 - (g) the procedures relating to Police vetting, and in particular the rights of persons who are vetted; and
 - (h) the requirements that teachers must meet to satisfy the refresh process referred to in **clause 10 of Schedule 3**.
- (2) The Teaching Council may make rules for any other purpose relating to the performance of its functions.
- (3) When preparing rules (and any amendments to them), the Teaching Council must take all reasonable steps to consult those affected by the rules.
- (4) When rules are made under this section,—
- (a) notice of them must be given in the *Gazette*; and
 - (b) the notice must say where copies of the rules may be obtained free of charge; and
 - (c) the notice must give the date on which the rules come into force, which must be a date on or after the date of the *Gazette* notice; and
 - (d) the Teaching Council must take all reasonable steps to ensure that those affected by the rules are aware of their existence and are able to obtain copies of them.
- (5) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 388

459 Delegations

- (1) The Teaching Council may delegate any of its powers (other than this power of delegation), either generally or specifically, as it sees fit.
- (2) Despite **subsection (1)**, the Teaching Council may not delegate its powers—
- (a) to appoint a chief executive:
 - (b) to make rules:
 - (c) relating to voluntary deregistration:
 - (d) relating to cancellation of registration, practising certificates, or limited authorities to teach:

- (e) to establish and maintain a code of conduct for teachers under **section 457**.

Compare: 1989 No 80 s 389

460 Chief executive and employees

- (1) The Teaching Council may appoint a chief executive and any other employees it thinks necessary for the efficient performance of its functions.
- (2) A person appointed under **subsection (1)** may not be a member of the Teaching Council.

Compare: 1989 No 80 s 390

Mandatory reporting

461 Mandatory reporting of dismissals and resignations

- (1) When an employer dismisses a teacher for any reason, the employer must immediately report the dismissal to the Teaching Council.
- (2) If, within the 12 months before the resignation of a teacher from a teaching position (including a fixed-term position) or the expiry of the term of a teacher's fixed-term position, the teacher's employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the teacher's conduct, or the teacher's competence, the employer must, immediately after the resignation or expiry, report it to the Teaching Council.
- (3) A report must be in writing and must include,—
- (a) for a dismissal, the reason for the dismissal; and
 - (b) for a resignation or an expiry,—
 - (i) a description of the conduct or competence issues that the employer was concerned about; and
 - (ii) a report of what action (if any) the employer took with respect to the issues.

Compare: 1989 No 80 s 392

462 Mandatory reporting of complaints received about former employees

- (1) The former employer of a teacher must immediately report to the Teaching Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives a complaint about the teacher's conduct or competence while the teacher was an employee.
- (2) A report must be in writing and must include,—
- (a) for an oral complaint, a description of the aspects of the teacher's conduct or competence complained of; and
 - (b) for a written complaint, a copy of the complaint; and

- (c) a report of what action (if any) the employer took with respect to the matters complained of.

Compare: 1989 No 80 s 393

463 Mandatory reporting of possible serious misconduct

- (1) The employer of a teacher must immediately report to the Teaching Council if it has reason to believe that the teacher has engaged in serious misconduct.
- (2) A report must be in writing and include—
- (a) a description of the conduct of the teacher that the employer believes to be serious misconduct; and
- (b) a description of what action (if any) the employer has taken in relation to it.

Compare: 1989 No 80 s 394

464 Mandatory reporting of failure to reach required level of competence

- (1) The employer of a teacher must immediately report to the Teaching Council if the employer, despite undertaking competency procedures with the teacher, is satisfied that the teacher has not reached the required level of competence.
- (2) A report must be in writing and include—
- (a) a description of the competence issues leading to the report; and
- (b) a description of the action that the employer has taken in relation to it.

Compare: 1989 No 80 s 395

465 Mandatory reporting of convictions

- (1) Every holder of a practising certificate, and every authorised person, who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Teaching Council.
- (2) Failure to report a conviction to the Teaching Council in accordance with **subsection (1)** is misconduct that may give rise to disciplinary proceedings.
- (3) The Registrar of every court must, unless the court expressly orders otherwise, report to the Teaching Council when a person whom the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more.
- (4) If the Registrar has reported a conviction to the Teaching Council under **subsection (3)**, then, if that conviction is subsequently quashed, the Registrar must notify the Teaching Council of that fact.

Compare: 1989 No 80 s 397

Disciplinary functions

466 Disciplinary bodies

- (1) The constitution of the disciplinary bodies must be set out in the rules, and those rules must be consistent with this section.
- (2) Both disciplinary bodies may operate in panels, and more than 1 panel of each body may operate at any one time.
- (3) The Disciplinary Tribunal must include at least 1 person who is selected from a list, prepared by the Minister after consultation with the Teaching Council, of people who are not teachers, employers, or members of an employing body.
- (4) The majority of members on the Disciplinary Tribunal, and on every panel of the Disciplinary Tribunal, must be registered teachers.
- (5) No member of the Complaints Assessment Committee may be a member of the Disciplinary Tribunal.
- (6) Rules must provide for the replacement of any member of a disciplinary body who, in relation to a particular complaint,—
 - (a) made the complaint; or
 - (b) is otherwise in a position of conflict of interest.
- (7) When performing their functions and exercising their powers, the disciplinary bodies must act in accordance with the rules of natural justice.

Compare: 1989 No 80 s 398

467 Complaints about conduct

- (1) A person who wishes to make a complaint about the conduct of a teacher, including complaints about possible breaches of the code of conduct prepared by the Teaching Council under **section 457**, must first make the complaint to the teacher's employer, unless one of the circumstances in **subsection (2)** applies.
- (2) Any person (including a parent, an employer, or a member of the Teaching Council) may make a written complaint to the Teaching Council about the conduct of a teacher—
 - (a) if the complaint is about a teacher who is not currently employed by an employer; or
 - (b) if the complainant considers, on reasonable grounds, that the employer is unable to deal with the complaint effectively because of an actual or a perceived conflict of interest; or
 - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
 - (d) in any other exceptional circumstance.

- (3) A complaint by an employer or a former employer must include a report of any action that the employer or former employer has taken in relation to it.

Compare: 1989 No 80 s 399

468 Complaints and reports relating to teacher conduct

- (1) The Teaching Council may refer to the Complaints Assessment Committee—
- (a) any report it receives under any of **sections 461 to 463 and 465** that relates to teacher conduct; and
 - (b) any complaint it receives under **section 467**.
- (2) The Teaching Council may refer to the Complaints Assessment Committee any matters that relate to teacher conduct of its own motion as it sees fit.
- (3) In relation to a complaint received under **section 467** from a person other than the current employer of the teacher concerned,—
- (a) if the Complaints Assessment Committee considers that the complaint should have been sent first to the teacher's employer or former employer, the Complaints Assessment Committee must refer the matter to the employer or former employer; and
 - (b) if the teacher is currently employed by an employer and it has not already referred the matter to the employer under **paragraph (a)**, it must notify the employer that it has received a complaint about the teacher.
- (4) An employer to whom a complaint is referred under **subsection (3)**, or who is required to provide information in the course of an investigation by the Complaints Assessment Committee, must report to the Complaints Assessment Committee as required by it.

Compare: 1989 No 80 s 400

469 Powers of Complaints Assessment Committee

- (1) The Complaints Assessment Committee may investigate any report, complaint, or matter referred to it under **section 468**.
- (2) Following an investigation, the Complaints Assessment Committee may do 1 or more of the following:
- (a) resolve to take the matter no further:
 - (b) refer the teacher concerned to a competency review:
 - (c) refer the teacher concerned to an impairment process, which may involve either or both of the following:
 - (i) assessment of an impairment:
 - (ii) assistance with an impairment.
- (3) If the Complaints Assessment Committee makes a finding of misconduct that is not serious misconduct, by agreement with the teacher and the person who

made the complaint or report or referred the matter, it may do 1 or more of the following:

- (a) censure the teacher:
 - (b) impose conditions on the teacher's practising certificate or authority, including (without limitation) requiring the teacher to undergo supervision or professional development:
 - (c) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - (d) annotate the register or the list of authorised persons in a specified manner:
 - (e) direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.
- (4) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing.
 - (5) The Complaints Assessment Committee must refer to the Disciplinary Tribunal any matter that the Committee considers may possibly constitute serious misconduct.
 - (6) When a matter is referred to the Disciplinary Tribunal under **subsection (5)**, a notice must be sent to the teacher concerned setting out the charge of misconduct against the teacher.
 - (7) Any person authorised by the Complaints Assessment Committee may require an employer, a former employer, or a government agency to provide information that the person considers necessary for the purposes of an investigation.

Compare: 1989 No 80 s 401

470 Interim suspension until matter about or involving possible serious misconduct concluded

- (1) At any time between when the Complaints Assessment Committee receives a complaint or receives or becomes aware of a report that is about or involves a teacher's possible serious misconduct and when the matter is concluded (as defined in **section 471(6)**), the Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.
- (2) On an application under **subsection (1)** for an interim suspension, the chairperson of the Disciplinary Tribunal may, having regard primarily to the safety of the children in the school or early childhood education and care service and to the reputation of the teaching profession, either with or without a hearing, suspend the teacher's practising certificate or authority.

Compare: 1989 No 80 s 402

471 Duration of interim suspension

- (1) The duration of an interim suspension under **section 470** is initially until the earliest of the following occurs:
 - (a) the expiry of a period specified by the chairperson of the Disciplinary Tribunal at the time the interim suspension commences;
 - (b) the expiry of a period specified by the chairperson of the Disciplinary Tribunal after the interim suspension commences;
 - (c) any conditions specified by the chairperson of the Disciplinary Tribunal are met;
 - (d) the interim suspension is otherwise lifted or revoked, for example, as the result of a review under **subsection (2)**.
- (2) The chairperson of the Disciplinary Tribunal must review the initial interim suspension decision if the teacher—
 - (a) requests a review during the initial interim period of suspension; and
 - (b) provides a written explanation or statement in support of the request.
- (3) The Disciplinary Tribunal may renew an interim suspension under **section 470** for further successive periods specified by the chairperson of the Disciplinary Tribunal if, at the end of the relevant period of interim suspension,—
 - (a) the matter has not been concluded; and
 - (b) the interim suspension has not been otherwise lifted or revoked, for example, as the result of an appeal against it under **subsection (4)**.
- (4) A teacher whose practising certificate or authority is subject to an interim suspension under **section 470** that is renewed under **subsection (3)** may, during a further period of interim suspension, appeal against the interim suspension to the Disciplinary Tribunal at a hearing if the teacher believes that there is an unreasonable delay in concluding the matter.
- (5) A hearing under **subsection (4)** is before the Disciplinary Tribunal, and **sections 473 to 476** apply to it.
- (6) For the purposes of this section and **section 470(1) and clauses 8(4) and 21(4) of Schedule 3**, a matter is **concluded** when the later of the following occurs in relation to the complaint or report:
 - (a) the Complaints Assessment Committee has carried out whatever action it decides to take under **section 469(2)**;
 - (b) the Disciplinary Tribunal has carried out whatever action it decides to take under **section 472(1)**, if the Complaints Assessment Committee has referred the matter to the Disciplinary Tribunal under **section 469(4) or (5)**.

Compare: 1989 No 80 s 403

472 Powers of Disciplinary Tribunal

- (1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:
 - (a) any of the things that the Complaints Assessment Committee could have done under **section 469(2)**:
 - (b) censure the teacher:
 - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
 - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - (e) annotate the register or the list of authorised persons in a specified manner:
 - (f) impose a fine on the teacher not exceeding \$3,000:
 - (g) order that the teacher's registration or authority or practising certificate be cancelled:
 - (h) require any party to the hearing to pay costs to any other party:
 - (i) require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:
 - (j) direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.
- (2) Despite **subsection (1)**, following a hearing that arises out of a report under **section 465** of the conviction of a teacher, the Disciplinary Tribunal may not do anything specified in **subsection (1)(f), (h), or (i)**.
- (3) A fine imposed on a teacher under **subsection (1)(f)**, and a sum ordered to be paid to the Teaching Council under **subsection (1)(i)**, are recoverable as debts due to the Teaching Council.

Compare: 1989 No 80 s 404

473 Evidence at Disciplinary Tribunal hearings

- (1) The Disciplinary Tribunal may—
 - (a) receive evidence on oath (and for that purpose an officer or employee of the Teaching Council may administer an oath); and
 - (b) permit a person appearing as a witness before it to give evidence by written statement and verify that statement by oath.
- (2) A hearing before the Disciplinary Tribunal is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961 (which relates to punishment for perjury).

- (3) Except as provided in **subsections (4) to (6)**, every hearing of the Disciplinary Tribunal must be held in public.
- (4) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (~~including (without limitation)~~ including, without limitation, the privacy of the complainant (if any)) and to the public interest, it may hold a hearing or part of a hearing in private.
- (5) The Disciplinary Tribunal may, in any case, deliberate in private about its decision or about any question arising in the course of a hearing.
- (6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:
 - (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
 - (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
 - (c) an order prohibiting the publication of the name, or any particulars of the case, of the person charged or any other person.

Compare: 1989 No 80 s 405

474 Powers of Disciplinary Tribunal in relation to witnesses

- (1) The Disciplinary Tribunal may require a person to do either or both of the following:
 - (a) attend and give evidence at a hearing of the Disciplinary Tribunal:
 - (b) produce any documents, records, or other information in the person's custody or control that relate to the subject matter of the hearing, whether specified by the Disciplinary Tribunal or not.
- (2) A requirement under **subsection (1)** must be in writing and signed by the chairperson of the Disciplinary Tribunal.
- (3) A person required to attend a hearing is entitled to be paid, by the party calling the person (or, if called by the Disciplinary Tribunal itself, by the Teaching Council), witnesses' fees, allowances, and travelling expenses prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations apply accordingly.

Compare: 1989 No 80 s 406

475 Privileges and immunities

- (1) A person who does any of the following has the same privileges as witnesses in court:
 - (a) provides documents, things, or information to a disciplinary body:
 - (b) produces documents or things to a disciplinary body:

- (c) gives evidence to, or answers questions from, a disciplinary body.
- (2) A counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court.
- (3) If a person is represented at a hearing before a disciplinary body by a person other than a barrister or solicitor,—
 - (a) any communications between the person and the representative in relation to the hearing are as privileged as they would have been if the representative had been a barrister or solicitor; and
 - (b) the representative is treated as counsel for the purposes of **subsection (2)**.

Compare: 1989 No 80 s 408

476 Appeals against decisions of disciplinary bodies

- (1) The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under **section 470(2) or 472** may appeal against that decision to the District Court.
- (2) The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under **section 470(2) or 472**.
- (3) An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
- (4) **Clause 5(2) to (6) of Schedule 3** applies to an appeal under this section as if it were an appeal under **clause 5(1) of Schedule 3**.

Compare: 1989 No 80 s 409

Review of competence

476A Competence Authority

- (1) The constitution of the Competence Authority must be set out in rules made under **section 458**, and those rules must be consistent with this section.
- (2) The Competence Authority may operate in panels, and more than 1 panel may operate at any one time.
- (3) The Competence Authority must include at least 1 person who is selected from a list, prepared by the Minister after consultation with the Teaching Council, of people who are not teachers, employers, or members of an employing body.
- (4) The majority of members on the Competence Authority, and on every panel of the Competence Authority, must hold practising certificates.
- (5) No member of the Competence Authority may be a member of the Complaints Assessment Committee or the Disciplinary Tribunal.
- (6) The rules must provide for the replacement of any member of the Competence Authority who, in relation to a particular complaint,—

- (a) made the complaint; or
 - (b) is otherwise in a position of conflict of interest.
- (7) The rules must also provide for the Competence Authority to co-opt up to 2 members onto the Competence Authority for their specialist knowledge and expertise in relation to a particular complaint.
- (8) Members co-opted onto the Competence Authority may be in addition to any limit on the number of members set in the rules.
- (9) When performing its functions and exercising its powers, the Competence Authority must act in accordance with the rules of natural justice.

Compare: 1989 No 80 s 410AA

477 Complaints about competence

- (1) A person who wishes to make a complaint about a teacher's competence must first make the complaint to the teacher's employer, unless one of the circumstances in **subsection (2)(a) to (d)** applies.
- (2) Any person (including a parent, an employer, or a member of the Teaching Council) may make a written complaint to the Teaching Council about the competence of a teacher—
- (a) if the complaint is about a teacher who is not currently employed by an employer; or
 - (b) if the complainant considers, on reasonable grounds, that the employer is not able to deal with the complaint effectively because of an actual or a perceived conflict of interest; or
 - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
 - (d) in any other exceptional circumstance.
- (3) The Teaching Council may investigate any matters that relate to teacher competence of its own motion as it sees fit.
- (4) The Teaching Council may, after any investigation it decides to make, refer to the Competence Authority a complaint or other matter that relates to competence for a decision as to whether the required level of competence has been attained.
- (5) A complaint under this section by an employer or a former employer must include a description of the competence issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.
- (6) If the Teaching Council considers that a complaint should first have been sent to the teacher's employer, it must refer it to the employer, and, in any other case, it must notify the employer (if the teacher is currently employed by an employer) that—

- (a) it has received a complaint about the teacher's competence; or
 - (b) it is investigating the teacher's competence of its own motion.
- (7) When the Teaching Council refers a complaint to an employer, the employer must report as required by the Teaching Council.
- (8) If the Teaching Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Teaching Council may investigate the complaint.
- (9) When a complaint about competence is made by a member of the Teaching Council, that member may not be involved in any investigation of the complaint.

Compare: 1989 No 80 s 410

478 Investigation by Teaching Council of mandatory reports relating to competence and referral to Competence Authority for decision

- (1) The Teaching Council may, after any investigation it decides to make, refer to the Competence Authority a report it receives under **section 461, 462, or 464** that relates to competence.
- (2) When investigating a report that relates to competence under **section 461, 462, or 464**, the Teaching Council may require the teacher's employer or former employer to supply information in addition to the information supplied in the report and, in that case, the employer or former employer must supply it.
- (3) When a report that relates to competence is made under **section 461, 462, or 464** by a member of the Teaching Council, that member may not be involved in any investigation of the report.

Compare: 1989 No 80 s 411

478A Powers of Competence Authority after finding required level of competence not attained

Following any investigation by the Teaching Council under **section 477**, or of a report received by the Teaching Council under **section 478** and referred to the Competence Authority, the Competence Authority may, if satisfied that a teacher has not attained the required level of competence,—

- (a) do any 1 or more of the following:
- (i) impose conditions on the teacher's practising certificate or authority:
 - (ii) refer the teacher to an impairment process, which may involve either or both of the following:
 - (A) assessment of an impairment:
 - (B) assistance with an impairment:
 - (iii) annotate the register or the list of authorised persons in a specified manner, in relation to any action taken under **subparagraph (i)**:

- (iv) direct the Teaching Council to impose conditions on any subsequent practising certificate or authority issued to the teacher; or
- (b) order the Teaching Council to cancel the teacher's registration, practising certificate, or authority.

Compare: 1989 No 80 s 412

478B Appeals against decisions of Competence Authority

- (1) A teacher who is the subject of a decision by the Competence Authority made under **section 478A** may appeal against that decision to the District Court.
- (2) An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
- (3) **Clause 5(2) to (6) of Schedule 3** applies to an appeal under this section as if it were an appeal under **clause 5(1) of Schedule 3**.

Compare: 1989 No 80 s 412A

Subpart 5—Education New Zealand

479 Education New Zealand continued

- (1) The body called Education New Zealand in existence before the commencement of this Act is continued.
- (2) Education New Zealand is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to Education New Zealand except to the extent that this Act expressly provides otherwise.

Compare: 1989 No 80 s 269

480 Functions

- (1) The functions of Education New Zealand are—
 - (a) to deliver strategies, programmes, and activities for promoting, together with providers and other government agencies, New Zealand education overseas; and
 - (b) to promote New Zealand as an educational destination for international students; and
 - (c) to promote the provision of New Zealand education and training services overseas; and
 - (d) to manage, in collaboration with other government agencies, activities undertaken by representatives appointed to act on behalf of the New Zealand Government in relation to international education; and
 - (e) to carry out research on international education markets and marketing strategies; and

- (f) to administer any international programmes or activities that are consistent with the Government's policy on international education; and
 - (g) to provide information, advice, and assistance to providers on strategies to promote industry co-ordination and professional development; and
 - (h) to provide information to international students about living and studying in New Zealand; and
 - (i) to work with other agencies to ensure that international students are adequately supported while living and studying in New Zealand; and
 - (j) to foster collaborative networks with former international students; and
 - (k) to perform any other function directed by the Minister under **subsection (3)**.
- (2) In performing its functions under this Act or any other enactment, Education New Zealand must give effect to the Government's policy on international education.
- (3) The Minister may direct Education New Zealand to perform any function that the Minister considers consistent with the Government's policy on international education.
- (4) In this section, **provider** means any organisation that provides education, training, or education-related services.

Compare: 1989 No 80 s 270

481 Membership of board of Education New Zealand

- (1) The board of Education New Zealand consists of at least 5 members and no more than 7 members appointed by the Minister under section 28 of the Crown Entities Act 2004.
- (2) Before appointing any member to the board, the Minister must consult—
- (a) the bodies that represent the organisations involved in the provision of international education; and
 - (b) any organisations or people that, in the Minister's opinion, have a substantial interest in the board's operations.

Compare: 1989 No 80 s 272

482 Special advisers to board

- (1) The Minister may appoint as special advisers to the board—
- (a) the Secretary; and
 - (b) the chief executive of the department responsible for the administration of the Immigration Act 2009; and
 - (c) any other person as the Minister determines.
- (2) The function of a special adviser is to assist the board to align its strategies and activities with Government policy.

- (3) A special adviser may attend any meeting of the board or any board committees but may not vote.
- (4) The board (including any board committee) must give the special advisers sufficient notice of its meetings and copies of all documents and materials to be considered at each meeting.
- (5) A special adviser may delegate to any person the functions and powers conferred by this section, and the delegate may perform or exercise those functions and powers in the same manner and with the same effect as if they had been conferred directly by this section.
- (6) Every person purporting to act under a delegation under **subsection (5)** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Compare: 1989 No 80 s 272A

483 International education advisory committee

- (1) The Minister may establish an international education advisory committee to provide expert advice to the board on matters relating to the performance of its functions.
- (2) The board must consider any advice it receives from the committee.
- (3) The members of the committee must be appointed by the Minister, on terms and conditions that the Minister determines, by written notice to each member.
- (4) When appointing members of the committee, the Minister must ensure, as far as practicable, that—
 - (a) the committee's membership is broadly representative of the international education industry; and
 - (b) the members collectively have sufficient experience and knowledge of the international education industry to give appropriate advice to the board.
- (5) The Minister may give terms of reference on the topics or subject areas on which the committee may advise the board.
- (6) The committee must comply with any terms of reference given by the Minister.
- (7) The committee may determine its own procedure.

Compare: 1989 No 80 s 272B

484 Chief executive

- (1) The board—
 - (a) must appoint a chief executive of Education New Zealand; and
 - (b) must act independently when appointing the chief executive; and
 - (c) may not delegate its duty under **paragraph (a)**.

- (2) The chief executive may not be a member of the board.

Compare: 1989 No 80 s 273

485 Responsibilities of chief executive

The chief executive is responsible for—

- (a) the effective and efficient management and administration of Education New Zealand; and
- (b) the achievement of outcomes identified in the statement of intent of Education New Zealand.

Compare: 1989 No 80 s 273A

487 Application of Part 2 of Commerce Act 1986

- (1) For the purposes of section 43 of the Commerce Act 1986, the Governor-General may, by Order in Council, specifically authorise any act, matter, or thing, or kind of act, matter or thing, to be done or omitted to be done by Education New Zealand.
- (2) Part 2 of the Commerce Act 1986 does not apply to any act, matter, or thing, or kind of act, matter, or thing, that is specifically authorised under **subsection (1)**.

Compare: 1989 No 80 s 274

Subpart 6—International students

488 Purpose of subpart 6

The purpose of this subpart is to ensure that international students trust New Zealand education and consider it appropriate, which is to be achieved by—

- (a) providing for the health, safety, and welfare of international students studying in New Zealand; and
- (b) regulating enrolment, the payment of fees, and the repayment of fees; and
- (c) providing for levies on institutions enrolling international students to offset the contribution of the State to the costs of educating international students.

International students at schools

489 Enrolment of international students

- (1) Subject to **section 490(3)**, an international student may not be enrolled at a State school without the board's consent.
- (2) Subject to **sections 75 and 491** and to **subsections (3) to (6)**, once enrolled at a State school an international student has the same rights to remain enrolled, and to tuition, at the school as a domestic student.

- (3) If an international student's conduct is in breach of the student's contract of enrolment, the school's board may take appropriate disciplinary action against the student.
- (4) For the purposes of **subsection (3)**, disciplinary action, including suspension, exclusion, or the termination of the student's enrolment, is **appropriate disciplinary action** if it is taken in accordance with the applicable code issued under **section 504** and the student's contract of enrolment.
- (5) An international student may not be enrolled at a State school if the student's enrolment has the effect that a domestic student who is entitled to enrol there and has applied for enrolment is not able to be enrolled.
- (6) An international student may not be enrolled in any subject, course, or programme at a State school if the student's enrolment has the effect that a domestic student who is entitled to enrol in the subject, course, or programme and has applied for enrolment in it is not able to be enrolled in it.
- (7) Despite **subsection (5) or (6)**, although domestic students may not be able to be enrolled, an international student may be enrolled at a State school, or in any subject, course, or programme at a State school, if the enrolment is in a vacant place—
 - (a) that the board established for international students; and
 - (b) the continued availability of which is dependent on the fees payable by international students enrolled in it.
- (8) As soon as practicable after an international student is enrolled at a State school, the principal must give the Secretary written notice of—
 - (a) the student's name, age, and nationality; and
 - (b) the day on which the student began (or will begin) to receive tuition at the school.
- (9) Despite anything in this section or **section 491**, an international student may, with the consent of the principal and during a period of not more than 28 consecutive days (or any longer period the Secretary approves for any particular student), receive tuition at or from a State school—
 - (a) without the consent of the school's board; and
 - (b) without paying the amount required by **section 491**.
- (10) If **subsection (9)** applies, the student may not be counted for the purpose of calculating or ascertaining the school's entitlement to teachers or funding.

Compare: 1989 No 80 s 4

490 Certain international students may enrol at State schools as of right

- (1) The Minister may, by notice in the *Gazette*, declare international students of a specified kind or description to be entitled to enrol at State schools.
- (2) A notice may be unconditional or subject to any conditions specified in it.

- (3) An international student of a kind or description for the time being specified in a notice under **subsection (1)** has the same rights to enrolment and tuition at State schools as a domestic student, subject to **section 491** and any conditions specified in the notice.

Compare: 1989 No 80 s 4A

491 Fees for international students

- (1) Subject to **section 489(9)**, no international student may receive tuition in any subject, course, or programme at a State school unless there has been paid to the school's board an amount fixed by the board that is not less than the sum of the following amounts:
- (a) the board's best estimate of the cost involved (including the appropriate proportion of the board's administrative and other general costs) in providing tuition in the subject, course, or programme for 1 student:
 - (b) an amount that is in the board's opinion an appropriate reflection of the use made of the board's capital facilities by 1 student receiving tuition in the subject, course, or programme:
 - (c) the amount (if any) prescribed under **section 493** for a student receiving tuition at a State school in the subject, course, or programme:
 - (d) all other fees (if any) prescribed by the board.
- (2) Nothing in **subsection (1)** prevents a board from accepting any amount required by that subsection to be paid by instalments but, subject to **section 495(2)**, no international student may continue to receive tuition in any subject, course, or programme at a State school unless the sum of the following amounts is less than the sum of the instalments paid up to that time:
- (a) the board's best estimate of the cost involved (including the appropriate proportion of the board's administrative and other general costs and the appropriate proportion of any initial or start-up costs of the subject, course, or programme) in providing tuition in the subject, course, or programme for 1 student up to that time:
 - (b) an amount that is in the board's opinion an appropriate reflection of the use made of the board's capital facilities by 1 student receiving tuition in the subject, course, or programme:
 - (c) the appropriate proportion of the amount (if any) prescribed under **section 493** for a student receiving tuition at a State school in the subject, course, or programme:
 - (d) all other fees (if any) prescribed by the board.
- (3) If an international student has received tuition in a subject, course, or programme at a State school without paying the full amount required by **subsection (1)** in respect of the subject, course, or programme, the board may, in any

court of competent jurisdiction, recover the underpayment from the student (or a parent of the student) as a debt due to the board.

- (4) A board's grant under **section 518** may be reduced if the student's education has been subsidised by money appropriated by Parliament.
- (5) A grant may not be reduced under **subsection (4)** unless the Secretary has given the board concerned written notice of the circumstances taken into account when the proposed reduction was decided on.
- (6) If the board disagrees that a grant should be reduced under **subsection (4)**, or disputes the amount by which it should be reduced, the following provisions apply:
 - (a) the board may, within 28 days of getting notice from the Secretary under **subsection (5)**, by written notice to the Secretary giving the name and address of a proposed arbitrator, require the dispute to be settled by arbitration:
 - (b) if, within 14 days of getting the board's notice, the Secretary has agreed an arbitrator with the board, the agreed arbitrator must settle the dispute:
 - (c) if, within 14 days of getting the board's notice, the Secretary has not agreed an arbitrator with the board, an arbitrator appointed jointly by the Secretary and the arbitrator originally proposed by the board must settle the dispute:
 - (d) the arbitrator's decision is final.
- (7) If an international student withdraws from a subject, course, or programme at a State school, the school's board may refund to the person who paid (in respect of the student's enrolment in the subject, course, or programme) the amount of the fees referred to in **subsection (1)** (or the sum of any instalments paid in respect of those fees) any amount it thinks fit not exceeding the extent (if any) by which the amount paid exceeds the sum of the following amounts:
 - (a) the board's best estimate of the cost involved (including the appropriate proportion of the board's administrative and other general costs and the appropriate proportion of any initial or start-up costs of the subject, course, or programme) in providing tuition in the subject, course, or programme for 1 student up to that time:
 - (b) an amount that is in the board's opinion an appropriate reflection of the use made of the board's capital facilities by 1 student receiving tuition in the subject, course, or programme:
 - (c) the appropriate proportion of the amount (if any) prescribed under **section 493** for a student receiving tuition at a State school in the subject, course, or programme:
 - (d) all other fees (if any) prescribed by the board.

Compare: 1989 No 80 s 4B

492 Exemption from paying fees

The Minister may, by notice in the *Gazette*, exempt international students of a particular kind or description from paying all or a specified proportion or amount of the amount required by **section 491** to be paid.

Compare: 1989 No 80 s 4C

493 Board must reimburse the Crown for expenditure relating to international students

- (1) The Minister must, by notice in the *Gazette*, set fees to be paid by boards in respect of international students enrolled at State schools.
- (2) Fees may be set for 1 or more of the following:
 - (a) all State schools, State schools of a specified kind or description, or specified State schools:
 - (b) all international students, or international students of a specified kind or description:
 - (c) all subjects, courses, and programmes; subjects, courses, and programmes of a specified kind or description; or specified subjects, courses, or programmes.
- (3) Within 28 days of the first day in any year on which an international student enrolled at a State school attends the school, the board must pay to the Secretary the appropriate fee (if any) prescribed under **subsection (1)**.
- (4) The Minister may pay to the proprietors of a State integrated school whose board has paid a fee under this section a portion of that fee, as determined in accordance with a formula prescribed under **subsection (5)**, for the purpose of reimbursing the proprietors for that part of the levy associated with the use of capital assets owned by the proprietors.
- (5) The Minister may, by notice in the *Gazette*, prescribe a formula for the payment of money under **subsection (4)**, and may prescribe different formulas to apply to different schools or classes of school.

Compare: 1989 No 80 s 4D

494 Courses for international students

- (1) The board of a State school or the managers of a school registered under **section 200** may not establish, or permit any student to enrol or continue to be enrolled in, any class, course, or programme intended exclusively or mainly for international students unless the class, course, or programme is for the time being approved by NZQA.
- (2) NZQA may not approve a class, course, or programme under **subsection (1)** unless satisfied on reasonable grounds that—
 - (a) the school has or will have adequate staff, equipment, and premises to provide it; and

- (b) the standard of instruction provided in it will not be lower than the standard that would be expected in any similar class, course, or programme for domestic students.

Compare: 1989 No 80 s 4E

International students at tertiary education and vocational education and training institutions

495 Enrolment of international students

- (1) An institution's council may not permit the enrolment of an international student at the institution for all or part of a programme unless—
 - (a) the programme is approved by NZQA and the institution is accredited to provide the programme; or
 - (b) the programme is exempted under **section 498**.
- (2) An institution's council may not permit the enrolment of an international student at the institution for all or part of a training scheme unless the scheme is an approved training scheme or exempted under **section 498**.
- (3) An international student—
 - (a) may not be enrolled at an institution if the student's enrolment there has the effect that a domestic student who is eligible to enrol there and has applied for enrolment is not able to be enrolled;
 - (b) may not be enrolled in any programme or training scheme at an institution if the student's enrolment has the effect that a domestic student who is eligible to enrol in the programme or scheme and has applied for enrolment in it is not be able to be enrolled in it.
- (4) Despite **subsection (3)**, although domestic students may not be able to be enrolled, an international student may be enrolled at an institution, or in any programme or scheme at the institution, if the enrolment is in a vacant place—
 - (a) that the institution's council established for international students; and
 - (b) whose continued availability is dependent on the fees payable by international students enrolled in it.

Compare: 1989 No 80 s 224(7)–(11)

496 Fees for international students

- (1) An institution's council must take all reasonable steps to ensure that no person is enrolled at the institution until it has established whether the person is a domestic student or an international student.
- (2) An international student may not be enrolled or continue to be enrolled in any programme of study or training at an institution unless there have been paid to the council in respect of the student—

-
- (a) an amount fixed by the council that is not less than the council's best estimate of—
- (i) the cost involved (including the institution's marginal administrative and other general costs, and the appropriate portion of any initial or start-up costs of the programme) of providing tuition in the programme for 1 student, in the case of a programme in which no domestic student is enrolled;
 - (ii) the marginal cost involved (including the institution's marginal administrative and other general costs, and any marginal initial or start-up costs of the programme) of providing tuition in the programme for 1 student in addition to the domestic students receiving tuition in the programme, in every other case; and
- (b) an amount fixed by the council that is not less than an amount that in the council's opinion is an appropriate reflection of the use by 1 student receiving tuition in the programme of the capital facilities (if any) whose provision at the institution is necessary owing only to the institution's provision of tuition to international students in addition to domestic students; and
- (c) all other fees (if any) prescribed by the council.
- (3) Despite **subsection (2)**, a council may accept from an international student in respect of any programme of study or training at an institution an amount that is less than the sum of the amounts referred to in that subsection by an amount that is no greater than the sum of—
- (a) any amounts by which the council has decided to subsidise the student in respect of the programme; and
 - (b) the appropriate proportion of any amounts by which the council has decided to subsidise the student in respect of programmes of a kind or description that include the programme; and
 - (c) the appropriate proportion of any amounts by which the council has decided to subsidise students of a kind or description that include the student in respect of the programme; and
 - (d) the appropriate proportion of any amounts by which the council has decided to subsidise students of a kind or description that include the student in respect of programmes of a kind or description that include the programme,—
- out of the general revenue of the council (not being funds provided under **sections 397 or 399**) or out of any special supplementary grant under that section that may be used for the purpose.
- (4) **Subsection (2)** does not prevent a council from accepting payment of a fee by instalments.

- (5) If an international student has received tuition in a programme of study or training at an institution without paying the full amounts required by **subsection (2)(a) or (b)** in respect of the programme, the institution may, in any court of competent jurisdiction, recover the underpayment from the student as a debt to the institution.
- (6) In any year, the amount of any grant for an institution may be reduced from what it would otherwise have been by any amount by which (in the Secretary's opinion), because the full amount required by **subsection (2)(a)** in respect of a programme of study or training at the institution in which an international student was enrolled has not been paid to the institution, the student's education has been subsidised by money appropriated by Parliament.
- (7) A grant may not be reduced under **subsection (6)** unless the Secretary has given to the council of the institution written notice of the circumstances taken into account when the proposed reduction was decided on.
- (8) If an institution's council disagrees that a grant should be reduced under **subsection (6)**, or disputes the amount by which it should be reduced, the following provisions apply:
 - (a) the council may, within 28 days of getting notice from the Secretary under **subsection (7)**, by written notice to the Secretary giving the name and address of a proposed arbitrator, require the dispute to be settled by arbitration:
 - (b) if, within 14 days of getting the council's notice, the Secretary has agreed an arbitrator with the council, the agreed arbitrator must settle the dispute:
 - (c) if, within 14 days of getting the council's notice, the Secretary has not agreed an arbitrator with the council, an arbitrator appointed jointly by the Secretary and by the arbitrator originally proposed by the council must settle the dispute:
 - (d) the arbitrator's decision is final.
- (9) An institution's council must,—
 - (a) when an international student enrolls, or resumes attendance, at the institution, give to the Secretary written notice (to the best of the council's knowledge) of the student's name, nationality, and programme of study or training:
 - (b) when an international student ceases to be enrolled at, or ceases to attend, the institution, notify the Secretary in writing:
 - (c) comply with all accounting requirements relating to international students enrolled at institutions contained in any notice published by the Minister in the *Gazette* that is for the time being in force.
- (10) An institution's council must take all reasonable steps to ensure that when a student enrolls at the institution (whether for the first time or for a subsequent

time) the student is given written notice of the circumstances (if any) in which the student is or may be entitled to a refund of all or any part of fees under this section paid or to be paid to the council.

- (11) The power of a council to refund to a student all or any part of any fees paid to it under this section is not limited or affected by—
- (a) any failure to comply with **subsection (10)**; or
 - (b) the fact that the circumstances fall outside those notified under that subsection; or
 - (c) the fact that the refund is larger than a notice under that subsection provides for.

Compare: 1989 No 80 s 228

497 Requirements that private training establishments must comply with before enrolling international students

- (1) A private training establishment may not enrol an international student in all or part of a programme at the establishment unless—
- (a) the establishment is registered under **section 327** and is a signatory to the applicable code issued under **section 504**; and
 - (b) either—
 - (i) the programme is an approved programme and the establishment is accredited to provide the entire programme; or
 - (ii) the programme is of less than 3 months' duration and is exempted under **section 498**; and
 - (c) if standards from the Directory of Assessment Standards are included in the programme, the establishment has a consent to assess against standards.
- (2) A private training establishment may not enrol an international student in a training scheme at the establishment unless—
- (a) the establishment is a registered establishment and is a signatory to the applicable code issued under **section 504**; and
 - (b) either—
 - (i) the training scheme is an approved training scheme; or
 - (ii) the training scheme is of less than 3 months' duration and is exempted under **section 498**; and
 - (c) if standards from the Directory of Assessment Standards are included in the training scheme, the establishment has a consent to assess against those standards.
- (3) For the purposes of this section and **section 498**, a programme or training scheme is of **less than 3 months' duration** if the period starting on the day on which the programme or scheme 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 on which the programme or training scheme is, or is proposed to be, provided during that period.

Compare: 1989 No 89 s 232A

498 Exemptions

- (1) NZQA may, by notice in the *Gazette*,—
 - (a) exempt programmes for the purposes of **section 497(1)(b)(ii)**; or
 - (b) exempt training schemes for the purposes of **section 497(2)(b)(ii)**.
- (2) A notice under **subsection (1)**—
 - (a) may exempt only programmes or training schemes that are, or are likely to be, of less than 3 months' duration; and
 - (b) may identify programmes or training schemes, or classes of programmes or training schemes, that are exempt; and
 - (c) may identify programmes or training schemes by reference to a provider, or a class of providers, that offers them; and
 - (d) may be in respect of programmes or training schemes that have been completed, are in progress, or have not yet started.

Compare: 1989 No 80 s 232B

499 Refund entitlements of international students

- (1) A private training establishment must—
 - (a) allow every international student enrolled for a programme or training scheme that is of 3 months' duration or more to withdraw from it within the refund period; and
 - (b) refund to every international student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that programme or training scheme, and, if withdrawal from the programme or scheme also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under **section 500**; and
 - (c) allow every international student enrolled for a programme or training scheme that is of less than 3 months' duration to withdraw from it within a period (being less than 7 days) specified by NZQA; and
 - (d) refund to every international student who so withdraws a minimum amount or proportion, specified by NZQA, of any payments made by the student to the establishment in respect of the programme or training scheme.
- (2) For the purposes of **subsection (1)(c)**, a programme or training scheme is of less than 3 months' duration if the period starting on the day on which the pro-

gramme or scheme 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 on which the programme or training scheme is, or is proposed to be, provided during that period.

- (3) When the refund period, in relation to any fees paid by or on behalf of an international student, has expired,—
- (a) the fees paid must continue to be held in trust with the independent trustee and the private training establishment must be paid from the trust in the manner prescribed in the rules made under **section 423**; or
 - (b) the private training establishment may, if NZQA approves, make alternative arrangements in relation to the fees paid.
- (4) In this section, **refund period** means the period that begins when the student's fees are paid to the private training establishment (or paid directly to the independent trustee) and ends on the date specified in the notice made under **section 500**.

Compare: 1989 No 80 s 235A

500 Refund requirements set by *Gazette* notice

- (1) For the purposes of refunds under **section 499**, the Minister must specify, by notice in the *Gazette*,—
- (a) either—
 - (i) the end of the period within which an international student may withdraw from a programme or training scheme of 3 months' duration or more and be entitled to a refund under that section; or
 - (ii) a means by which the end of that period may be calculated or ascertained; and
 - (b) the maximum percentage of the payment or payments that an establishment may retain; and
 - (c) the cost components of the fee total on which the maximum percentage is determined; and
 - (d) the expenses or categories of expenses that the establishment must show that it has incurred in relation to an international student in order to deduct the maximum percentage.
- (2) Before giving notice, the Minister must, as the Minister considers appropriate, consult any 1 or more of the following:
- (a) private training establishments:
 - (b) sector and industry representative organisations:
 - (c) any other relevant bodies.

- (3) A notice under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 235B

501 Private training establishment to notify immigration officer if student withdraws from programme or training scheme

- (1) A private training establishment must ensure that, within 7 days of the withdrawal of any student from a programme or training scheme at the establishment, an immigration officer (within the meaning of section 4 of the Immigration Act 2009) is given written notice of the name of the student and the programme or training scheme, and the day on which the student withdrew.
- (2) **Subsection (1)** does not apply to a student if the establishment is satisfied on reasonable grounds that the student is a domestic student.

Compare: 1989 No 80 s 235E

Subpart 7—Pastoral care of students

Enrolment of international students

502 Signatory providers may enrol persons as international students

- (1) A provider may enrol a person as an international student or continue to have an international student enrolled, as long as the provider is a signatory provider.
- (2) A provider may not enrol a person as an international student or continue to have an international student enrolled, or provide educational instruction for the person, if the provider—
- is not a signatory provider; or
 - is removed as a signatory provider under **section 504A(2)**; or
 - ceases to be a signatory provider for any other reason provided in the code.
- (3) A signatory provider that is subject to a sanction under **section 504A(1)** may continue to have international students enrolled and may provide educational instruction to those students, but only to the extent permitted by the sanction.

Compare: 1989 No 80 s 238E

503 Providers must enrol persons as international students in certain circumstances

A provider must enrol a person as an international student if the person is not a domestic student and the provider—

- provides the person with educational instruction for more than 2 weeks; or

- (b) accepts tuition fees from the person.

Compare: 1989 No 80 s 238F

Pastoral care of domestic and international students

504 Pastoral care codes of practice

- (1) The Minister may issue—
- (a) a code that provides a framework for the pastoral care of domestic tertiary students:
 - (b) a code that provides a framework for the pastoral care of international students:
 - (c) a code that provides a framework for the pastoral care of domestic tertiary students and international students.
- (1A) The purpose of a code,—
- (a) in respect of domestic tertiary students, is to support the Government’s objectives for the education of domestic tertiary students by—
 - (i) requiring providers to take all reasonable steps to maintain the well-being of domestic tertiary students; and
 - (ii) ensuring, so far as is possible, that domestic tertiary students have a positive experience that supports their educational achievement:
 - (b) in respect of international students, is to support the Government’s objectives for international education by—
 - (i) requiring providers to take all reasonable steps to protect international students; and
 - (ii) ensuring, so far as is possible, that international students have in New Zealand a positive experience that supports their educational achievement.
- (1B) The scope of a code,—
- (a) in respect of domestic tertiary students, is to prescribe, alongside other quality assurance prescribed by this Act,—
 - (i) outcomes sought from providers for their domestic tertiary students; and
 - (ii) key processes required of providers to support the well-being, achievement, and rights of domestic tertiary students:
 - (b) in respect of international students, is to prescribe, alongside other quality assurance prescribed by this Act,—
 - (i) outcomes sought from providers for their international students; and
 - (ii) key processes required of providers to support the well-being, achievement, and rights of international students.

- (1C) Without limiting **subsections (1) to (1B)**, a code may include provisions for 1 or more of the following purposes:
- (a) despite anything in the Public Finance Act 1989, requiring providers to indemnify the code administrator:
 - (b) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (1D) Before issuing a code, the Minister must consult—
- (a) those parties that the Minister considers likely to be affected by the code, including representatives of students, parents, providers, signatory providers, and the staff of providers and signatory providers; and
 - (b) the Privacy Commissioner.
- (1E) A code—
- (a) in respect of domestic tertiary students is binding on all providers:
 - (b) in respect of international students is binding on all signatory providers.
- (1F) A code—
- (a) may make different provisions in relation to students under the age of 18 years and in relation to students aged 18 years or over:
 - (b) must be published on an Internet site maintained by or on behalf of the Ministry:
 - (c) is a disallowable instrument, but is not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) A code must be made and administered in accordance with regulations made under **section 611**.

Compare: 1989 No 80 s 238G

504A Sanctions for breach of code

- (1) If satisfied that a provider or signatory provider has breached the relevant code or failed to comply with a quality improvement notice or compliance notice issued under regulations made under **section 611**, a code administrator may,—
- (a) in the case of signatory providers, impose new, or amend or revoke any existing, conditions on the signatory provider's approval as a signatory provider:
 - (b) in the case of providers and signatory providers, impose limitations on the provider's or the signatory provider's power to enrol students.
- (2) If satisfied that a signatory provider has not complied with a sanction imposed under **subsection (1)** or notice issued under regulations made under **section**

611, a code administrator may remove the signatory provider as a signatory provider.

Compare: 1989 No 80 s 238L

Dispute resolution

505 Student contract dispute resolution scheme established

- (1) This section establishes a student contract dispute resolution scheme (the **DRS**).
- (2) The purpose of the DRS is to resolve contractual and financial disputes between students (and former and prospective students) and providers or signatory providers.
- (3) Every provider or signatory provider that enrolls, intends to enrol, or has enrolled students is subject to and must (in relation to any contractual or financial dispute with a student or a former or prospective student) comply with the rules of the DRS prescribed under **section 508**.
- (4) The Minister—
 - (a) may, by notice in the *Gazette*, appoint 1 or more persons or agencies to be responsible for administering the DRS; and
 - (b) must take reasonable steps to ensure that there is at all times a person or an agency appointed to be responsible for administering the DRS; and
 - (c) may impose any conditions on the appointment that the Minister thinks fit.
- (5) A student claimant may lodge with the DRS operator for resolution under the DRS any contractual or financial dispute with a provider or signatory provider, but only if—
 - (a) the provider or signatory provider has been given an opportunity to resolve the dispute, but the student claimant is not satisfied with the process or outcome, or both; or
 - (b) the provider or signatory provider—
 - (i) has not tried to resolve the dispute; or
 - (ii) has refused to try to do so.
- (5A) However, a student may not lodge a dispute for resolution under **subsection (5)** later than 7 years after the date of the act or omission on which the dispute is based.
- (6) The resolution of a dispute is binding on all parties to the dispute if—
 - (a) it is the outcome of an adjudication of the dispute by or on behalf of the DRS operator; or

- (b) it is produced by mediation that is undertaken by or on behalf of the DRS operator and whose outcome the parties to the dispute have agreed is to be binding.
- (7) The DRS operator—
- (a) may charge fees to a student claimant or the provider concerned, or both, according to the rules of the DRS prescribed under **section 508**; but
 - (b) (despite those rules) may in its absolute discretion partially or completely exempt any person, or class of persons, from the payment of fees.

Compare: 1989 No 80 s 238M

506 Cap on amount to be paid

In resolving any dispute, the DRS operator—

- (a) may not require a provider or signatory provider to pay to a student claimant in relation to any particular claim any amount exceeding \$200,000; but
- (b) may charge the provider fees in addition to any amount required to be paid.

Compare: 1989 No 80 s 238N

507 District Court to enforce DRS

- (1) The District Court may,—
- (a) on the application of a student claimant or the DRS operator, make an order requiring a provider or signatory provider to comply with the rules of the DRS or to give effect to any resolution that is binding under **section 505(6)**; or
 - (b) on the application of the provider or signatory provider or the DRS operator, make an order requiring a student claimant to give effect to any resolution that is binding under **section 505(6)**.
- (2) If an order (or part of an order) requiring the provider or signatory provider to comply with the resolution requires the provider or signatory provider to pay any sum of money to any person, that order (or part) may be enforced as if it were a judgment by the District Court for the payment of that sum of money to that person.
- (3) If the District Court is satisfied that the terms of the resolution of a dispute by the DRS operator are manifestly unreasonable, the court may modify the resolution before giving effect to it.
- (4) **Subsection (3)** overrides **subsections (1) and (2)** and **section 505(6)**.

Compare: 1989 No 80 s 238O

508 Rules of student contract dispute resolution scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make rules for the functioning and administration of the DRS.
- (2) Before recommending that an order be made, the Minister must consult any relevant bodies and sector representatives that the Minister thinks fit.
- (3) The rules may prescribe fees, or a means by which fees can be calculated or ascertained.

Compare: 1989 No 80 s 238P

Export education levy

509 How export education levy may be applied

- (1) Funds arising from an export education levy imposed in accordance with regulations made under **section 604** may be applied for the following purposes:
 - (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 making of payments as set out in **subsections (2) and (3)**:
 - (c) the administration and audit of the code in respect of international students:
 - (d) the funding of the cost of the operation of the DRS established by **section 505** that is attributable to international students:
 - (e) the general administration of the levy and associated purposes.
- (2) **Subsection (3)** applies if—
 - (a) an international student is or was enrolled at a private training establishment or a private school for a course of study or training; and
 - (b) at the time of the international student's enrolment, the private training establishment held a current registration under **section 327**, or the private school held a current registration under **section 200**; and
 - (c) the private training establishment or private school has not provided, cannot provide, or is not to provide, in whole or in part, the course of study or training.

- (3) If this subsection applies, the levy funds may be used for any of the following purposes:
- (a) to make payment to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment or private school in respect of the student's course of study or training if, and to the extent that,—
 - (i) the private training establishment or private school has not refunded the tuition fees or other payment; and
 - (ii) the agency responsible for the administration of the levy approves the reimbursement of the student as necessary and appropriate in the circumstances:
 - (b) with the approval of the Minister, to reimburse the Crown for any sum provided by the Crown and paid to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any other payment made by or on behalf of that student to the private training establishment or private school in respect of the student's course of study or training if, and to the extent that,—
 - (i) the private training establishment or private school had not refunded the tuition fees or other payment; and
 - (ii) the agency responsible for the administration of the levy approved the reimbursement of the student as necessary and appropriate in the circumstances:
 - (c) with the approval of the Minister, to reimburse, in whole or in part, the agency responsible for the administration of the levy, or any Crown entity, for—
 - (i) costs incurred by that agency or Crown entity in placing the student with an alternative provider; or
 - (ii) other costs incurred by that agency or Crown entity as a direct result of the private training establishment or private school not providing the course of study or training.
- (4) Levy funds must be kept in a separate bank account that is used only for the purposes of the levy.
- (5) 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.

- (6) 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.

Compare: 1989 No 80 s 238R

Subpart 8—Offences

509A Offence relating to providing or offering to provide NCEA outside New Zealand

A person who intentionally contravenes **section 426(1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

510 Offence relating to failure to report certain matters to Teaching Council

- (1) An employer or a former employer commits an offence, and is liable on conviction to a fine not exceeding \$25,000, if it fails without reasonable justification to report to the Teaching Council in relation to any matter of conduct as required under **section 461, 462, or 463**.
- (2) An employer or a former employer commits an offence, and is liable on conviction to a fine not exceeding \$5,000, if it fails without reasonable justification to report to the Teaching Council in relation to any matter of competence as required under **section 461, 462, or 464**.

Compare: 1989 No 80 s 396

511 Other offences

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$500, if the person, without lawful justification, fails or refuses—
- (a) to attend and give evidence when required by the Disciplinary Tribunal; or
 - (b) to answer truthfully and fully any question put to the person by a member of the Disciplinary Tribunal; or
 - (c) to produce any document, record, or other information as required by the Disciplinary Tribunal.
- (2) A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if the person, without lawful excuse, breaches an order made by the Disciplinary Tribunal under **section 473(6)**.

Compare: 1989 No 80 s 407

512 Offence relating to breach of code resulting in serious harm to or death of students

- (1) A provider or signatory provider commits an offence if—
- (a) the provider or signatory provider, without reasonable excuse, breaches the applicable code; and

- (b) the breach results in serious harm to or the death of 1 or more of its students.
- (2) A provider who commits an offence against this section is liable on conviction to a fine not exceeding \$100,000.
- Compare: 1989 No 80 s 238S

513 Pecuniary penalty relating to breach of code

- (1) On the application of a code administrator, a court may order a provider or signatory provider to pay to the Crown any pecuniary penalty that the court determines to be appropriate if the court is satisfied that the provider or signatory provider has, without reasonable excuse, committed a serious breach of the applicable code.
- (2) The amount of any pecuniary penalty may not exceed \$100,000.
- Compare: 1989 No 80 s 238T

514 Relationship between offences and penalties

- (1) Once criminal proceedings against a provider or signatory provider for an offence against **section 512** are determined, a court may not order the provider or signatory provider to pay a pecuniary penalty under **section 513** in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings.
- (2) Once civil proceedings against a provider or signatory provider for a pecuniary penalty under **section 513** are determined, the provider or signatory provider may not be convicted of an offence against **section 512** in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings.
- (3) Any uncompleted proceedings for an order under this Act that a provider or signatory provider pay a pecuniary penalty must be stayed if criminal proceedings are started or have already been started against the provider or signatory provider for the same act or omission, or substantially the same act or omission, in respect of which the pecuniary penalty order is sought.

Compare: 1989 No 80 s 238U

Part 6

Administration of education system

515 Outline of Part 6

- (1) This Part, which concerns the administration of New Zealand's education system, is divided into 9 subparts.
- (2) **Subpart 1** concerns funding.
- (3) **Subpart 2** concerns property and assets.
- (4) **Subpart 3** concerns the payment of salaries.

- (5) **Subpart 4** concerns employment matters.
- (6) **Subpart 5** concerns information and reporting.
- (7) **Subpart 6** concerns entry and inspection.
- (8) **Subpart 7** sets out provisions empowering the making of regulations.
- (9) **Subpart 8** sets out offence provisions.
- (10) **Subpart 9** sets out consequential amendments and repeals.

Compare: 1989 No 80 s 308

Subpart 1—Funding

516 Funding of certain early childhood services and certified playgroups

- (1) In each year, out of money appropriated by Parliament,—
 - (a) the service provider of every licensed early childhood service—
 - (i) must be paid general grants; and
 - (ii) may be paid 1 or more discretionary grants; and
 - (b) the service provider who operates a certified playgroup—
 - (i) may be paid general grants; and
 - (ii) may be paid 1 or more discretionary grants; and
 - (c) the management of any body corporate may be paid a discretionary grant for the purpose of establishing a licensed early childhood service or certified playgroup.
- (2) The amount of every grant must be determined by the Minister.
- (3) The Minister may determine the means by which the amounts of grants may be calculated or ascertained, and—
 - (a) different means may be determined in respect of—
 - (i) grants of different classes or descriptions; and
 - (ii) licensed early childhood services of different classes or descriptions and certified playgroups; and
 - (b) the amount of any grant may be determined accordingly; but
 - (c) nothing in this subsection limits or affects the Minister’s power under **subsection (2)** to determine the amount of any grant.
- (4) Without limiting **subsection (3)**, the Minister may determine that no grant is payable in respect of any international student attending a licensed early childhood service.
- (5) Any grant—
 - (a) may be paid unconditionally, or subject to any conditions the Minister specifies in writing when the grant is paid or earlier; and

- (b) may be paid to be used for any purpose the service provider thinks fit, or for only the purposes that the Minister specifies in writing when the grant is paid or earlier; and
 - (c) may be withheld in whole or in part if the service provider fails to comply with any regulations made under **section 599 or 600** or any conditions of the licence or certificate.
- (6) The service provider must ensure that,—
- (a) where a grant has been paid subject to conditions, the conditions are complied with; and
 - (b) if a grant has been paid to be used only for purposes specified by the Minister under **subsection (5)(b)**, the grant is used only for those purposes.

Compare: 1989 No 80 s 311

517 Loans to licensed early childhood services

The Minister may, on any terms and conditions the Minister thinks fit, lend to the service provider of any licensed early childhood service money appropriated by Parliament for the purpose.

Compare: 1989 No 80 s 312

518 Grants and supplementary grants to boards

- (1) In each financial year, boards must be paid, out of money appropriated by Parliament for the purpose, grants and supplementary grants of the amounts that the Minister determines.
- (2) **Subsection (1)** is subject to **subsections (3) and (4)** and **section 522**.
- (3) However, in determining the amount of a grant, the Minister may not take into account international students (other than students entitled under **section 490(1)**) enrolled, or likely to be enrolled, at a school that the board administers.
- (4) A supplementary grant is payable on the condition that it be used for the purposes set out in the grant, and a board that receives a supplementary grant must use it for those purposes only.

Compare: 1989 No 80 s 79

519 Discretionary grants to boards

- (1) The Minister may, in or for a financial year, make discretionary grants to boards out of money appropriated by Parliament for the purpose.
- (2) **Subsection (1)** is subject to **subsections (3) to (7)**.
- (3) The Minister must determine the amount of each discretionary grant made under **subsection (1)**.

- (4) In determining the amount of a discretionary grant, the Minister must take no account of international students (other than students entitled under **section 490(1)**) enrolled, or likely to be enrolled, at any school administered by the board concerned.
- (5) A discretionary grant made under **subsection (1)**—
 - (a) must be made subject to the condition that a board that receives it does not seek or receive any solicited voluntary payment from parents; and
 - (b) may also be made subject to other conditions (except a condition that it be used for the purposes set out in the grant) determined by the Minister and published in the *Gazette* (in full, or by way of a general description and an indication of where the full text can be obtained).
- (6) A discretionary grant may be paid to a board only if the board has decided by resolution to receive the grant.
- (7) A board that receives a discretionary grant must take all reasonable steps to ensure that all conditions of the grant are complied with.

Compare: 1989 No 80 s 79A

520 Minister may prescribe exemptions to mandatory condition

- (1) The Minister may, by notice in the *Gazette*, prescribe exemptions to the condition in **section 519(5)(a)**.
- (2) Exemptions prescribed by a notice under this section enable any board, or class or classes of boards, specified in the notice to which a discretionary grant is made, or is to be made, to seek or receive any solicited voluntary payment from parents for any student activity or student activities specified in the notice.

Compare: 1989 No 80 s 79B

521 Application of Legislation Act 2012

A notice under **section 519(5)(b) or 520**, or both, and applying to any class or classes of boards is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 79C

522 Effect of non-compliance with conditions of earlier discretionary grants

- (1) In determining for the purposes of **section 518 or 519** the amount of any grant, supplementary grant, or discretionary grant payable to a board in respect of a school in or for a financial year, the Minister—
 - (a) must have regard to the extent to which the board has, in any 1 or more earlier financial years, failed to comply with all or any conditions of a discretionary grant paid to the board in respect of the school in or for those 1 or more earlier financial years; and

- (b) may, after consulting the board, determine for the grant, supplementary grant, or discretionary grant an amount that is less than it would otherwise have been.
- (2) However, the total of all reductions (if any) made under **subsection (1)(b)** because of non-compliance with all or any conditions of a discretionary grant paid to the board in respect of the school in or for those 1 or more earlier financial years may not exceed the amount of that discretionary grant.

Compare: 1989 No 80 s 79D

523 Grants for distance schools

Despite **section 518**,—

- (a) the board of a distance school must in each financial year be paid, out of money appropriated by Parliament for the purpose, a single grant of an amount that the Minister determines:
- (b) any part of a grant may be used for the payment of teacher salaries:
- (c) a board may not, out of money that is not part of a grant, pay any part (or all) of a teacher's salary, or pay to the Crown any part (or all) of a teacher's salary paid by the Crown, except—
- (i) with the Minister's consent; and
- (ii) in accordance with the conditions of the consent (if any):
- (d) the Minister must withhold consent under **paragraph (c)(i)** unless satisfied that special circumstances applying to the school make it inappropriate for the Minister to do so.

Compare: 1989 No 80 s 81A

524 Grants to educational bodies

- (1) An educational body may, on conditions that the Minister thinks fit, be paid grants out of money appropriated by Parliament for the purpose.
- (2) However, a grant may not be paid to a tertiary education provider or a workforce development council unless the Minister is satisfied that the payment is in the national interest.
- (3) The Minister may determine the amount of, and the conditions that apply to, each grant.
- (4) Before a grant is paid, the Minister may give the educational body written notice that the grant, or a part or parts of the grant (specified as a particular sum or as a proportion of the total grant), is not to be used except for purposes specified in the notice.
- (5) If notice is given, the educational body must ensure that no part of the grant to which the notice relates is used for purposes other than those specified for it in the notice.

- (6) Apart from this restriction, an educational body to which a grant is paid may apply the grant as it sees fit.
- (7) In the financial year during which a grant was paid to an educational body, and during the next financial year,—
 - (a) the Secretary may, by written notice, require the educational body to provide the Secretary with any financial report, or statistical or other information, relating to the educational body, within a time specified in the notice and in writing; and
 - (b) the educational body must take all reasonable steps to comply with the notice.
- (8) The Minister may, for the purposes of this section and **section 525**, recognise a body that provides any educational or developmental service or facility, including a tertiary education organisation, as an educational body.

Compare: 1989 No 80 s 321

525 Educational bodies to keep accounts

- (1) Every grant 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.
- (2) If a grant has conditions, the educational body receiving the grant must—
 - (a) keep records (in respect of the year in which the grant was paid and the year after), in a manner approved by the Minister, that show fully and fairly—
 - (i) the effect of the grant on the financial transactions, assets, liabilities, and funds of the educational body; and
 - (ii) the educational body's compliance with the conditions; and
 - (b) ensure that records are available for inspection at all reasonable times by a Ministry employee whom the Secretary has authorised for the purpose.

Compare: 1989 No 80 s 322

526 Reduction in grants if limits not met

When determining the amount of a grant payable to a board under **section 518**, the Minister—

- (a) must have regard to the extent to which the Secretary has caused teachers employed at the relevant school to be paid salaries greater in total than the salaries that would have been payable if the board had complied with **sections 548(1) and 550**; and

- (b) may, after consulting the board, reduce the amount that the grant would otherwise have been had the board complied.

Compare: 1989 No 80 s 91K

526A School transport

- (1) The Secretary may assist in the provision of school transport by doing any of the following:
- (a) paying registered schools, early childhood services, and certified play-groups to provide school transport for their students:
 - (b) arranging transport providers to provide school transport:
 - (c) contributing to the cost of parents providing school transport.
- (2) In providing school transport assistance for students enrolled at a State integrated school, the Secretary must have reasonable regard to the preference of parents to enrol their children at a State integrated school or a State school.
- (3) In this section, **school transport** means the transport of students to and from—
- (a) a registered school:
 - (b) an early childhood service:
 - (c) a certified playgroup:
 - (d) an educational activity that the Secretary has approved.

Compare: 1989 No 80 ss 139D, 446

Subpart 2—Property and assets

527 Centres situated on land owned by, or leased to, the Crown

- (1) The operation of an early childhood education and care centre on land owned by, or leased to, the Crown, and the occupation by an early childhood education and care centre of any building on that land, may be governed by—
- (a) a lease, tenancy, or licence between the Crown and the service provider who operates the centre under section 45 of the Public Works Act 1981; or
 - (b) a lease or licence between a board and the service provider; or
 - (c) a lease between a third party (to whom a lease has been granted by the Crown) and the service provider; or
 - (d) an occupancy document notified to the service provider who operates the centre by the Secretary.
- (2) If **subsection (1)(d)** applies to an early childhood education and care centre, the following provisions also apply:
- (a) the Secretary may direct the building of any capital works on that land that are intended for the centre's use:

- (b) the service provider who operates the centre must—
 - (i) pay to the Secretary the rent for the time being charged by the Secretary; and
 - (ii) comply with standards of maintenance and capital works as determined by the Secretary;
- (c) the service provider who operates the centre may not, without the Secretary's approval,—
 - (i) carry out any capital works on the land; or
 - (ii) grant any lease or sublease of, or grant any licence or permit in respect of, or assign any rights in respect of, or part with possession or control of, or allow any other person to share possession, control, or use of, the land or any other property of the Crown.
- (3) The Secretary may amend an occupancy document by written notice to the service provider who operates the early childhood education and care centre.
- (4) In this section, **lease** includes a sublease.

Compare: 1989 No 80 s 319J

528 Minister may declare land no longer needed for educational purposes

- (1) The Minister may, by notice in the *Gazette*, declare any land of the Crown to be no longer needed for educational purposes.
- (2) On publication of a notice under **subsection (1)**, any land referred to in the notice that was, immediately before publication of the notice, held for a purpose set out in **subsection (3)**, ceases to be held and may be disposed of as land no longer required for a public work.
- (3) **Subsection (2)** applies to land held—
 - (a) for education or educational purposes; or
 - (b) for, or for the purposes of, a school or other educational institution (whether or not any particular school or institution); or
 - (c) for any purpose related to or connected with a school or other educational institution (whether or not any particular school or institution); or
 - (d) for any similar purpose.

Compare: 1989 No 80 s 71B

529 Rent for teachers' residences

A teacher who is provided with a teacher's residence in respect of the teacher's teaching position must pay rent in accordance with a scheme prescribed by the Minister and notified in the *Gazette*.

Compare: 1989 No 80 s 88A

530 Transfer of Crown assets and liabilities to institutions

- (1) Despite any Act, rule of law, or agreement, the Minister may, on behalf of the Crown and on any terms and conditions the Minister agrees with an institution's chief executive, do any 1 or more of the following:
 - (a) transfer to an institution assets and liabilities of the Crown (being assets and liabilities relating to the activities to be carried on by the institution):
 - (b) vest in an institution any rights conferred by designations under operative district schemes applying to land transferred to the institution:
 - (c) grant to an institution leases, licences, easements, permits, or rights of any kind in respect of any assets or liabilities of the Crown.
- (2) The Minister must, within 12 sitting days after taking any action under **subsection (1)(a) or (b)**, present to the House of Representatives a copy of the document by which the action was taken.
- (3) Assets that are fixed to, or are under or over, any land may be transferred to an institution under this section whether or not any interest in the land is also transferred; but, if the asset is transferred, the asset and the land must be treated as separate assets each capable of separate ownership.
- (4) Any asset or liability of the Crown may be transferred to an institution under this section whether or not any Act or agreement relating to the asset or liability permits the transfer or requires any consent to the transfer.
- (5) If a transfer referred to in **subsection (4)** takes place,—
 - (a) the transfer does not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown or the institution under any Act or agreement:
 - (b) if the transfer is registrable, the person responsible for keeping the register must register the transfer as soon as practicable after written notice of the transfer is received by that person from any other person authorised for this purpose by the Minister:
 - (c) the presentation to the House of Representatives of any document relating to the transfer must be treated as notice of the transfer, and any third party must after the date of the document deal with the institution in place of the Crown:
 - (d) the Crown remains liable to any third party as if the asset or liability had not been transferred:
 - (e) any satisfaction or performance by the institution in respect of the asset or liability must also be treated as being satisfaction or performance by the Crown:
 - (f) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the institution must also be treated as being to the benefit of the Crown.

- (6) No provision in any agreement limiting the Crown's right to sell any assets to third parties, or for determining the consideration for the sale of any assets to third parties, or obliging the Crown to account to any person for the whole or part of the proceeds of sale by the Crown of any assets to third parties, or obliging the Crown to pay a greater price than otherwise by reason of or as a consequence of the sale of any assets to third parties, may have any application or effect in respect of any agreement or transfer entered into or made under this section or under the agreement or transfer.
- (7) If land, interests in land, licences, permits, or rights created on terms and conditions wholly or partly set out in any Act are transferred to an institution under this section, and the Governor-General has by Order in Council declared that this subsection applies in respect of that land or those interests, licences, permits, or rights, then the terms and conditions set out in the Act (whether or not repealed) and that are specified in the order (with all necessary modifications) continue to apply in respect of that land or those interests, licences, permits, or rights after the transfer unless the institution and the holders of that land or those interests, licences, permits, or rights otherwise agree.
- (8) If any requirement has been made under section 168 of the Resource Management Act 1991 in respect of any work that has been transferred to an institution under this Act, the procedures specified in the Resource Management Act 1991 may be completed as if a Minister of the Crown continued to be financially responsible for the work and as if the work were a public work.

Compare: 1989 No 80 s 206

531 Transfer of land

- (1) Crown land and any lands of the Crown other than lands registered under the Land Transfer Act 2017 that are to be transferred to an institution must—
 - (a) be identified by an adequate legal description, or on plans lodged in the office of the Chief Surveyor for the land district in which the land is situated (being plans certified as correct for the purposes of this section by that Chief Surveyor); and
 - (b) be approved by the Governor-General in Council and vest in the institution in accordance with, and on a date specified in, an Order in Council made for the purposes of this section.
- (2) All land that is subject to the Land Act 1948 or the Forests Act 1949 and that is transferred to an institution under this Act must cease to be subject to the Land Act 1948 or the Forests Act 1949 from the date of that transfer, unless otherwise expressly provided by this Act or any other Act.
- (3) Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer of land to an institution under this Act; but sections 40 and 41 of that Act apply after the transfer to the land as if the institution were the Crown and the land had not been transferred under **section 530** of this Act.

- (4) Nothing in this Act or in any transfer of land to an institution under **section 530** limits—
- (a) section 3 of the Petroleum Act 1937:
 - (b) sections 10 and 11 of the Crown Minerals Act 1991:
 - (c) section 354 of the Resource Management Act 1991.

Compare: 1989 No 80 s 207

532 Title to land

- (1) The Registrar-General of Land must, on written application by any person authorised by the Minister and on payment of the prescribed fee,—
- (a) register an institution as the owner, replacing the Crown, of the estate or the interest of the Crown in any land that is incorporated in the register or otherwise registered under the Land Transfer Act 2017 and that is transferred to the institution under **section 530** of this Act; and
 - (b) make the entries in the register and generally do all the things required to give effect to this section.
- (2) The powers conferred by **subsection (1)** may be exercised in respect of an estate or interest that is incorporated in the register owing to a lease or licence that has expired or has been determined.
- (3) The Registrar-General of Land must, on written application by any person authorised by the Minister and on payment of the prescribed fee, issue a record of title for land vested in an institution under **section 531(1)**.
- (4) As soon as the land is registered in accordance with **subsection (1)** or a record of title is issued in accordance with **subsection (3)**, the institution must, except where the interest acquired is either an easement in gross or an estate as lessee or mortgagee, be treated as being seised of an estate in fee simple in possession in respect of that land.
- (5) Applications in accordance with **subsections (1) and (3)** must specify the name of the institution and the date of the approval under **section 531(1)(b)** of the land to be transferred, together with a description of the land sufficient to identify it and, in the case of applications under **subsection (3)**, a certificate by the Chief Surveyor for the district concerned as to the correctness of the description.

Compare: 1989 No 80 s 208

533 Land certification

- (1) Before the Registrar-General of Land issues a record of title in respect of any land vested in an institution under **section 531(1)**, the Registrar-General of Land must either receive or request from the Surveyor-General, within the meaning of section 4 of the Cadastral Survey Act 2002 or any Chief Surveyor a certificate in the form set out in Schedule 2 of the Land Act 1948 as to the legal

description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the Registrar-General of Land thinks fit.

- (2) Where any land that has been vested in an institution under **section 531(1)**, and for which no record of title has been issued in the name of that institution, is to be transferred to any other person, the Registrar-General of Land must, before issuing a record of title, either receive or request from the Surveyor-General, within the meaning of section 4 of the Cadastral Survey Act 2002, or any Chief Surveyor for a certificate in the form set out in Schedule 2 of the Land Act 1948 as to the legal description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the Registrar-General of Land thinks fit.

Compare: 1989 No 80 s 209

534 Māori land claims

The submission in respect of any land or interest in land of a claim under section 6 of the Treaty of Waitangi Act 1975 does not prevent the transfer of that land or of any interest in that land or of that interest in land—

- (a) by the Crown to an institution; or
(b) by an institution to any other person.

Compare: 1989 No 80 s 210

535 Registrar-General of Land to register memorial

- (1) If any land or interest in land is transferred to an institution under **section 530** or vested in an institution by an Order in Council made under **section 539**, the Registrar-General of Land must, without fee, note on the record of title “Subject to **section 536 of the Education and Training Act 2019** (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties (for example, the owner of the land) to be heard in relation to the making of the recommendation)”.
(2) **Subsection (1)** does not apply in relation to any piece of land or interest in land that is excluded under **section 536(2) or (3)**.

Compare: 1989 No 80 s 211

536 Resumption of land on recommendations of Waitangi Tribunal

- (1) If the Waitangi Tribunal has, under section 8A(2)(a) of the Treaty of Waitangi Act 1975, recommended the return to Māori ownership of any land or interest in land transferred to an institution under **section 530** or vested in an institution by an Order in Council made under **section 539**, that land or interest in land must, if the recommendation has been confirmed with or without modifications under section 8B of that Act, be resumed by the Crown in accordance with **section 537** and returned to Māori ownership.

- (2) This section does not apply in relation to any piece of land that, at the date of its transfer to an institution under **section 530** or the date of its vesting in an institution by an Order in Council made under **section 539**, was subject to—
- (a) a deferred payment licence issued under the Land Act 1948; or
 - (b) a lease under which the lessee had the right of acquiring the fee simple.
- (3) This section does not apply in relation to any piece of land or interest in land in respect of which a certificate issued under section 8E(1) of the Treaty of Waitangi Act 1975 has been registered.

Compare: 1989 No 80 s 212

537 Resumption of land to be acquired under Public Works Act 1981

- (1) If **section 536** requires any land or interest in land to be resumed by the Crown, the responsible Minister must acquire that land or interest in land under Part 2 of the Public Works Act 1981 as if it were land or an interest in land required for both Government work and a public work and Parts 2, 4, 5, 6, and 7 of that Act and Schedules 1, 3, 4, and 5 of that Act, subject to any necessary modifications, apply accordingly.
- (2) The existence on the record of title to any land or interest in land acquired under **subsection (1)** of a memorial under **section 535** may not be taken into account in any assessment of compensation made under the Public Works Act 1981 in relation to the acquisition of that land or interest in land.
- (3) The power conferred by this section does not include the power to acquire or take and to hold under section 28 of the Public Works Act 1981 any interest in land described in section 8A(6) of the Treaty of Waitangi Act 1975.

Compare: 1989 No 80 s 213

538 Resumption of wāhi tapu

- (1) If the Governor-General is satisfied that any land or interest in land held by an institution, being land or an interest in land transferred to that institution under **section 530** or vested in that institution by an Order in Council made under **section 539**, is wāhi tapu, being land of special spiritual, cultural, or historical tribal significance, the Governor-General may, by Order in Council published in the *Gazette*, declare—
- (a) that the land or interest in land is resumed by the Crown on a date specified in the order; and
 - (b) that, on the date of its resumption in accordance with the order, that land or interest in land is no longer liable to resumption under **section 536**.
- (2) If any land or interest in land is resumed under **subsection (1)(a)**,—
- (a) the institution must transfer the land or interest in land to the Crown on the date specified in the order; and

- (b) the Crown must pay to the institution in respect of the land or interest in land the compensation that would have been payable to the institution if, on the date specified in the order, the land or interest in land had, under **section 537**, been acquired by the relevant Minister under Part 2 of the Public Works Act 1981.
- (3) Every memorandum of transfer executed in accordance with an order must—
 - (a) state that it is executed in accordance with the order; and
 - (b) give both the date of the order and the date of its publication in the *Gazette*.
- (4) Upon its resumption under **subsection (1)**, the land or interest in land must be dealt with in accordance with an agreement made between the Crown and the relevant iwi or, if they fail to agree, in accordance with any recommendation of the Waitangi Tribunal in accordance with a claim made under section 6 of the Treaty of Waitangi Act 1975.
- (5) A resumption of land or of an interest in land under **subsection (1)(a)** is not a subdivision of land within the meaning of section 218 of the Resource Management Act 1991.

Compare: 1989 No 80 s 214

539 Orders in Council relating to transfer of assets and liabilities

- (1) For the purpose of facilitating the transfer of assets and liabilities to an institution under **section 530**, the Governor-General may, by Order in Council, do any 1 or more of the following:
 - (a) vest in or impose on an institution any asset or liability (other than land to which **section 531(1)** applies), or any class of asset or liability, that the institution has agreed to have transferred to it;
 - (b) vest land in an institution for the purposes of **section 531(1)**;
 - (c) declare that a reference to the Crown or a Minister, officer, employee, department, or instrument of the Crown in any or all regulations, orders, notices, or documents is to be treated as being, or to include, a reference to an institution specified in the order;
 - (d) declare that an institution must assume or continue to have the rights and obligations of the Crown or a Minister, officer, employee, department, or instrument of the Crown in respect of applications for rights, objections, or proceedings before any court, authority, or other person, being rights and obligations that the institution has agreed to assume;
 - (e) declare, in respect of any assets or liabilities transferred to an institution under **section 530**, that the institution is to be treated as having specified rights or obligations in respect of those assets or liabilities, being rights or obligations that are required in respect of those assets or liabilities.

ities as a result of the change of ownership or responsibility from the Crown to the institution:

- (f) declare that any order made under this section is to be treated as being notice to all persons, and that specific notice need not be given to any authority or other person:
 - (g) direct any authority or other person to register or record the vesting or declaration.
- (2) Every order made under this section may be made on the terms and conditions that the Governor-General thinks fit, and has effect according to its terms.

Compare: 1989 No 80 s 215

540 Effect of disestablishment of institution

- (1) If an institution is disestablished, the following provisions apply.
- (2) The institution and the council of the institution cease to exist.
- (3) A person who would, but for the disestablishment of the institution, have been entitled to be granted an award of the institution is entitled to be granted an equivalent award,—
 - (a) if the institution is incorporated into another institution, of the other institution; or
 - (b) otherwise, of any institution that the Secretary directs.
- (4) A person who has partially completed a programme at the disestablished institution leading to an award is entitled—
 - (a) to enrol in a similar programme at—
 - (i) another institution if the disestablished institution is incorporated into that institution; or
 - (ii) any other institution that the Secretary directs to enrol the person; and
 - (b) to be granted the status, and the credit for work performed at the disestablished institution, as the council of the other institution, after consulting NZQA, thinks fit.
- (5) If the disestablished institution is, immediately upon its disestablishment, incorporated into another institution,—
 - (a) all real and personal property that, immediately before the disestablishment, was vested in the disestablished institution (including property held on trust) is vested in the other institution subject to all charges, encumbrances, estates, and interests, and any enactment, affecting that property; and
 - (b) the other institution becomes liable to pay and discharge all the debts, liabilities, and obligations of the disestablished institution that existed immediately before its disestablishment.

- (6) If the disestablished institution is not, immediately upon its disestablishment, incorporated into another institution,—
- (a) all real and personal property that, immediately before the disestablishment was vested in the council of the disestablished institution (including property held on trust) is vested in the Minister subject to all charges, encumbrances, estates, or interests, and any enactment, affecting that property; and
 - (b) the Minister becomes liable to pay and discharge all the debts, liabilities, and obligations of the council of the disestablished institution that existed immediately before its disestablishment.
- (7) If any real or personal property that was held by a disestablished institution on trust vests in the Minister under **subsection (6)(a)**, the Minister may appoint another institution to be the trustee of that property.
- (8) If any land vests in an institution or in the Minister under this section, the Registrar-General of Land, on the deposit with the Registrar-General of the plans and documents that the Registrar-General may require, must make the entries in the register and generally do all the other things necessary to give full effect to this section.
- (9) Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the disestablishment of an institution to which the institution was a party has effect after the disestablishment as if—
- (a) the institution into which the disestablished institution is incorporated or the Minister is substituted for the disestablished institution as a party to the contract, other instrument or proceeding; and
 - (b) any reference in the contract or other instrument, or in a pleading, affidavit or other document in the proceeding, to the disestablished institution in its capacity as a party to the contract, other instrument or proceeding is (except in relation to matters that occurred before the disestablishment) a reference to the institution in which the disestablished institution is incorporated or the Minister.
- (10) Despite **subsection (2)**, the council of the disestablished institution continues in existence for the purpose of complying, or facilitating compliance, with Part 4 of the Crown Entities Act 2004 and **section 293 of this Act** in relation to any academic year of the institution and,—
- (a) if the institution is incorporated into another institution, the council of the other institution; or
 - (b) otherwise, the Secretary,—
- must give to the council of the disestablished institution any assistance that the council requires for the purpose of complying with its obligations under those provisions and is responsible for paying any expenses incurred by the council

(including remuneration and expenses of members of the council) in so complying.

Compare: 1989 No 80 s 217

541 Taxes and duties where disestablished institution incorporated into another institution

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge,—
 - (a) a disestablished institution referred to in **section 540(5)** and the other institution referred to in that section must be treated as being the same person with effect on and from the date on which the real and personal property of the disestablished institution vests in the other institution under that section; and
 - (b) in respect of the liability under 1 or more of those enactments for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the disestablished institution so vests in the other institution, all transactions entered into by, and acts of, the disestablished institution before the vesting under **section 540(5)** must be treated as having been entered into by, or to be those of, the other institution and to have been entered into or performed by the other institution at the time when they were entered into or performed by the disestablished institution.
- (2) For the purposes of determining a matter referred to in **subsection (2A)**, shares held by a disestablished institution in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting under **section 540(6)** must be treated as having been acquired by the Minister at the time when they were acquired by the disestablished institution.
- (2A) The matters are whether—
 - (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007:
 - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007:
 - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007.
- (3) The vesting of all the real and personal property of a disestablished institution in another institution under **section 540(5)** may not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968.

- (4) Nothing in **subsection (2) or (3)** limits the generality of **subsection (1)**.

Compare: 1989 No 80 s 218

542 Taxes and duties in other cases

- (1) For the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994 and any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge,—
- (a) a disestablished institution referred to in **section 540(6)** and the Minister must be treated as being the same person with effect on and from the date on which the real and personal property of the disestablished institution vests in the Minister under that section; and
 - (b) in respect of the liability under 1 or more of those enactments for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the disestablished institution so vests in the Minister, all transactions entered into by, and acts of, the disestablished institution before the vesting under **section 540(6)** must be treated as having been entered into by, or to be those of, the Minister and to have been entered into or performed by the Minister at the time when they were entered into or performed by the disestablished institution.
- (2) For the purposes of determining a matter referred to in **subsection (2A)**, shares held by a disestablished institution in any company (whether directly or through any 1 or more interposed companies) immediately before the vesting under **section 540(6)** must be treated as having been acquired by the Minister at the time when they were acquired by the disestablished institution.
- (2A) The matters are whether—
- (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007;
 - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007;
 - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007.
- (3) The vesting of all the real and personal property of a disestablished institution in the Minister under **section 540(6)** may not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968.
- (4) Nothing in **subsection (2) or (3)** limits the generality of **subsection (1)**.

Compare: 1989 No 80 s 219

*School risk management schemes***543 School risk management scheme**

- (1) The Minister may, in accordance with this section, establish a school risk management scheme for the purpose of indemnifying participating boards—
 - (a) against accidental loss or damage to property of the participating boards:
 - (b) for any other purpose authorised by regulations made under **section 605**.
- (2) An indemnity under the school risk management scheme must be given in a form and contain terms and conditions authorised by regulations made under this Act.
- (3) A participating board is liable to pay to the Crown the annual fee set under **section 544**.
- (4) The Minister may, on giving reasonable notice to all participating boards, discontinue a school risk management scheme and direct the Secretary to wind up the scheme.

Compare: 1989 No 80 s 78D

544 School risk management scheme fee

- (1) In respect of each year during which a school risk management scheme has effect, the Minister must, by notice in the *Gazette*, set the amount of the annual fee payable by a participating board or the rate at which the amount is to be assessed.
- (2) The purpose of the annual fee is to recover the administration, insurance, and claims costs of the scheme.
- (3) The Secretary must deduct the fee from grants made to the participating board under **section 518**.
- (4) The Secretary must establish a separate bank account for the purposes of this section, and—
 - (a) all fees deducted under **subsection (3)** must be paid into the account; and
 - (b) the Secretary may authorise payments to be made from the account for the purposes of administering the scheme.
- (5) If the school risk management scheme is discontinued, the money held in the separate account after the scheme has been wound up must be paid into a Crown Bank Account in accordance with any directions of the Secretary to the Treasury.

Compare: 1989 No 80 s 78E

Subpart 3—Payment of salaries

545 Payroll service

- (1) The Secretary must ensure that a payroll service is established and maintained to provide for the payment of employees of boards who are employed in the education service.
- (2) A board must use the payroll service unless the Secretary directs otherwise.
- (3) A board required to use the payroll service must—
 - (a) keep all records that are necessary to enable the board to use the service; and
 - (b) provide those records to the Secretary on request.

Compare: 1989 No 80 s 89

546 Salaries of teachers at certain schools to be paid by the Crown

- (1) Despite any other provision in this Act, the Secretary must cause to be paid out of money appropriated by Parliament for the purpose the salaries of all regular teachers employed at payrolled schools.
- (2) This section applies to State schools apart from distance schools.

Compare: 1989 No 80 s 91C

547 Restrictions on payment of salaries of regular teachers by boards of payrolled schools

A board may not pay all or any part of the salary of a regular teacher in respect of employment at a payrolled school it administers unless—

- (a) the Minister has consented to the payment, and
- (b) the board complies with the conditions of the consent (if any).

Compare: 1989 No 80 s 91F

548 Payment of salaries of relieving teachers and employment-based trainee teachers

- (1) Boards must pay the salaries of relieving teachers and employment-based trainee teachers employed at schools they administer.
- (2) However, the Secretary must cause the salary of a relieving teacher or an employment-based trainee teacher to be paid out of money appropriated by Parliament for the purpose if, under an order under **subsection (3)**, the employment to which the payment relates justifies the central payment of the salary.
- (3) The Governor-General may, by Order in Council, specify the circumstances in which the employment of a relieving teacher or an employment-based trainee teacher justifies the central payment of the teacher's salary—
 - (a) immediately; or

- (b) after employment for an initial specified period of consecutive school days on which the school at which the teacher is employed is open for instruction.

Compare: 1989 No 80 s 91G

549 Limits on appointment and employment of regular teachers at payrolled schools

- (1) To limit the financial liability of the Crown under **section 546**, the Governor-General must in every year, by Order in Council, prescribe limits on the number of regular teachers who may be employed at payrolled schools during the next year.
- (2) The order may do any 1 or more of the following:
 - (a) apply different limits to different types of school or to particular schools;
 - (b) impose limits on the numbers of particular types of teachers who may be employed;
 - (c) set out 1 or more mechanisms by which the applicable limits are calculated;
 - (d) specify—
 - (i) the circumstances in which the Secretary may exempt any school or type of school from a limitation;
 - (ii) any conditions that apply to the exemption.

Compare: 1989 No 80 s 91H

550 Boards to comply with limit

If an order made under **section 549** applies, a board must ensure that the appointment and employment of teachers at the school are in accordance with any limit in that order while it applies.

Compare: 1989 No 80 s 91J

551 Secretary may grant exemptions in individual cases

Despite **section 550**,—

- (a) the Secretary may, in accordance with any conditions specified in an order made under **section 549**, by written notice to a board,—
 - (i) exempt the board from any limitation that the order imposes; or
 - (ii) amend or revoke the notice; and
- (b) the board may appoint and employ teachers at the school in accordance with the notice.

Compare: 1989 No 80 s 91I

Subpart 4—Employment matters

Education service

552 Application of Employment Relations Act 2000

Except as otherwise provided in this subpart, the Employment Relations Act 2000 applies in relation to the education service.

Compare: 1988 No 20 s 73

553 Negotiation of conditions of employment

- (1) Except as provided in **section 560**, the State Services Commissioner is responsible for negotiating under the Employment Relations Act 2000 every collective agreement applicable to employees of the education service as if the Commissioner were the employer.
- (2) Without limiting **subsection (1)**, for the purposes of initiating bargaining for a collective agreement, good-faith bargaining for a collective agreement, and entering into collective agreements,—
 - (a) the State Services Commissioner has the same rights, duties, and obligations under the Employment Relations Act 2000 as the Commissioner would have if the Commissioner were the employer; and
 - (b) employees of the education service are to be treated as if they were all employees of the Commissioner.
- (3) Unless otherwise directed in writing by the State Services Commissioner, an employer in the education service may not lock out employees or suspend striking employees in relation to negotiations by the Commissioner for a collective agreement applicable to those employees.
- (4) The State Services Commissioner must conduct the negotiations—
 - (a) with a union of which the employees are members; and
 - (b) in consultation with—
 - (i) the Secretary; and
 - (ii) representatives of the employer or employers who are to be bound by the collective agreement, which representatives must be employers, or organisations of employers, of persons employed in the education service.
- (5) Every collective agreement must be entered into between—
 - (a) the State Services Commissioner; and
 - (b) a union of which the employees to whom the collective agreement is applicable are members.
- (6) Every collective agreement entered into between the State Services Commissioner and any union and relating to employees in the education service is binding on—

- (a) the employers of the employees to whom the collective agreement is applicable; and
 - (b) the employees in the education service who are, or who become, members of the union.
- (7) Except as provided in this section, an employer who is bound by a collective agreement under **subsection (6)** has the rights, obligations, and duties that the employer would have, in respect of that collective agreement, under the Employment Relations Act 2000 as if that employer were a party to that agreement.

Compare: 1988 No 20 s 74

554 State Services Commissioner's powers when collective agreements are negotiated

- (1) During the negotiations for a collective agreement that is to bind any employees of a board, the State Services Commissioner has, for the purpose of those negotiations, all the rights, duties, and powers of an employer under the Employment Relations Act 2000 in respect of those employees.
- (2) To avoid doubt and without limiting the generality of **subsection (1)**, the powers referred to in that subsection include the power to lock out or suspend employees.
- (3) Despite **subsection (1)**, in the case of employees who are members of a union, the State Services Commissioner may, where there is a strike, exercise the power of suspension by advising the union of the class or classes of employees who are, or are to be, suspended, and, if the union is so advised, the suspension takes effect on the date specified for the purpose in the advice, and the Commissioner need not—
 - (a) separately advise any employee who is included in a class; or
 - (b) comply with section 89 of the Employment Relations Act 2000.
- (4) In any case where the State Services Commissioner has suspended or locked out an employee under this section, the Commissioner may, at the Commissioner's discretion, give either or both of the following directions:
 - (a) that the employee is not to be remunerated in respect of the period of the suspension or lockout;
 - (b) that any amount paid to the employee in respect of that period be deducted from any remuneration otherwise payable to the employee.
- (5) Any direction under **subsection (4)**—
 - (a) may be given to any person responsible for ~~paying or transferring effecting payments or transfers of sums of~~ money required for the remuneration of the employee; and
 - (b) must be followed by the person.

(6) The State Services Commissioner may give any notice that, as a result of a direction under **subsection (4)(b)**, is required to be given to an employee under section 6(3)(b) of the Wages Protection Act 1983.

(7) **Subsection (1)**—

- (a) overrides **section 568(2)**; and
- (b) is subject to **sections 556 and 557**.

Compare: 1988 No 20 s 74AA

555 Boards indemnified by State Services Commissioner

(1) If, in any claim or proceedings, a board becomes liable for costs or damages that arise from the exercise or purported exercise of any of the powers conferred on the State Services Commissioner by **section 554**, the Commissioner must, out of money appropriated for the purpose by Parliament, indemnify the board for those costs or damages.

(2) However, a board may not be indemnified for any costs or damages to the extent that those costs or damages arise out of conduct of the board that, in the reasonable opinion of the State Services Commissioner,—

- (a) is not in good faith; or
- (b) is engaged in without reasonable care.

Compare: 1988 No 20 s 74AB

556 Strikes in schools to be notified

(1) A strike by employees of any board is not lawful for the purposes of the Employment Relations Act 2000 unless the State Services Commissioner and each board are given notice in written or electronic form of the proposed strike 3 days before the commencement of the proposed strike.

(2) The notice required by **subsection (1)** must state—

- (a) the nature of the proposed strike, including whether or not the proposed action is to be continuous; and
- (b) the school or schools that are to be affected by the proposed strike; and
- (c) the period of the proposed strike, which is to be specified by giving—
 - (i) the date on and time at which the proposed strike is to commence; and
 - (ii) the date on and time at which, or an event on the occurrence of which, the proposed strike is to end.

(3) The notice must be signed by a representative of the employees' union.

(4) Unless the notice is withdrawn before the commencement of the strike, every employee is, throughout the period stated in the notice, to be treated as participating in the strike if—

- (a) the employee's duties are normally performed in a school affected by the strike; and
 - (b) the strike relates to the negotiation of a collective agreement that is to bind the employee; and
 - (c) the employee's name has not been notified to the State Services Commissioner in a current notice given under **section 557**.
- (5) A notice required under **subsection (1)** may be withdrawn by a representative of the employees' union giving written or electronic notice of the withdrawal to the State Services Commissioner and each board.
- (6) This section is in addition to, and does not limit or affect, the Employment Relations Act 2000.

Compare: 1988 No 20 s 74AC

557 Boards to notify State Services Commissioner about participation in strikes

- (1) As soon as practicable after the commencement of a strike notified under **section 556**, the board of each school to which the notice relates must—
- (a) provide the State Services Commissioner with a list of the names of the employees of the board who are not participating in the strike notified by the notice; and
 - (b) notify each of those employees that they have been included in the list.
- (2) A board that has complied, or is to comply, with **subsection (1)** must, at the written direction of the State Services Commissioner, provide the Commissioner with any information required by the Commissioner about the conduct of the strike to which the notice under **section 556** relates.
- (3) Information under **subsection (2)** may, without limitation, include, or consist of, information about the number of hours worked by any employee or any class of employee.
- (4) The State Services Commissioner may, at the Commissioner's discretion, require a board to inform the Commissioner, by a specified date, about the board's compliance with this section or any directions given under it.
- (5) If the State Services Commissioner has reasonable grounds for believing that a board has failed to comply with this section or any directions given under it, the Commissioner may report those grounds to the Minister.

Compare: 1988 No 20 s 74AD

558 Personal grievances and disputes

- (1) Despite **section 553**,—
- (a) in relation to a personal grievance, the employer is the employer as defined in **subsection (2)**; and

- (b) in relation to a dispute about the interpretation, application, or operation of any collective agreement, the employer is the employer as defined in **subsection (2)**, acting, if the State Services Commissioner so requires, together or in consultation with the Commissioner; and
 - (c) in relation to any other employment relationship problem (within the meaning of section 5 of the Employment Relations Act 2000), the employer is the employer as defined in ~~subsection (2)~~ **section 10(4)**.
- (2) In this section, **employer**,—
- (a) ~~in relation to a free kindergarten, means the free kindergarten association by which the free kindergarten is controlled:~~
 - (b) in relation to a school, means—
 - (i) the board; or
 - (ii) if a person has been appointed to act in place of the board, that person:
 - (c) ~~in relation to an institution, means the chief executive of the institution:~~
 - (d) in relation to any other education entity, means—
 - (i) the person or body designated by any enactment as the employer for the purposes of this section in respect of that entity; and
 - (ii) in the absence of a designated person or body, means any person or body designated for that purpose by the Minister:
 - (e) ~~in relation to the employment of a person as a teacher, means the Secretary.~~

Compare: 1988 No 20 s 74A

559 Delegation of State Services Commissioner's powers

- (1) The State Services Commissioner may delegate, in writing, any of the Commissioner's powers specified in **section 553** to—
 - (a) an employer; or
 - (b) any organisation of employers of persons employed in the education service.
- (2) If the State Services Commissioner, acting under **subsection (1)**, delegates to an employer or an organisation of employers the function, under **section 553(1)**, of conducting negotiations with a union of which the employees are members, the employer or organisation of employers must conduct those negotiations in consultation with—
 - (a) the Commissioner; and
 - (b) the Secretary.
- (3) Nothing in this section limits **section 23 of the State Sector Act 1988**.

Compare: 1988 No 20 s 74B

560 Negotiation of conditions of employment for employees of institutions

- (1) The chief executive of each institution is responsible, individually or jointly through an organisation of employers of persons employed in an institution, for negotiating under the Employment Relations Act 2000 collective agreements that are applicable to a group of employees in an institution.
- (2) Before entering into ~~any~~ collective agreement under the Employment Relations Act 2000, the chief executive of each institution or ~~any~~ organisation of employers representing jointly the chief executives, must consult the State Services Commissioner about the conditions of employment to be included in the collective agreement.

Compare: 1988 No 20 s 74C(3)

561 Senior positions at institutions

- (1) The conditions of employment of every person appointed to a senior position at an institution who is not bound by any collective agreement must be determined in each case by agreement between the employer and the person to be appointed, but the employer must consult the State Services Commissioner before finalising the conditions of employment.
- (2) For the purposes of **subsection (1)**, **senior position** means the position or positions immediately below, in seniority, the position of the chief executive of the institution, and any other positions that the council of the institution may designate as being senior positions within the institution.

Compare: 1988 No 20 s 74D

562 Actual conditions of employment

- (1) The State Services Commissioner may declare that all or any part of the conditions of employment fixed under a collective agreement for persons employed in the education service are to be the actual conditions of employment.
- (2) The State Services Commissioner may, in addition to the actual conditions declared under **subsection (1)**, approve further conditions of employment for an individual employee who is employed in the education service under a collective agreement if the conditions are—
 - (a) mutually agreed by the employee and their employer; and
 - (b) not inconsistent with the conditions of the collective agreement.
- (3) The conditions of employment of employees in the education service who are not bound by any collective agreement must be determined in each case by agreement between the employer and the individual employee, but the employer must obtain the written ~~agreement~~ concurrence of the State Services Commissioner to the conditions of employment with that individual employee.
- (4) The State Services Commissioner, in carrying out the function under **subsection ~~(2)~~ (3)**, may promulgate in writing to employers, either generally or spe-

cifically, the conditions of employment for persons who are to have their conditions of employment determined in accordance with that subsection.

- (5) Where the conditions of employment agreed between the employer and the person to be appointed comply with the conditions of employment promulgated by the State Services Commissioner, the employer must, without any further action, be treated as having obtained the written ~~agreement~~ concurrence of the Commissioner ~~to~~ with those conditions of employment.
- (6) In this section, **education service** excludes service in the employment of an institution.

Compare: 1988 No 20 s 75

563 Personal liability of education service chief executives and employees

Education service chief executives and employees are not personally liable for any act done or omitted by the education service chief executives or employees—

- (a) in good faith; and
- (b) in the performance or intended performance of the functions of the education service chief executives or employees.

Compare: 1988 No 20 s 77

Personnel provisions in relation to education service

564 General principles

- (1) Every employer in the education service must—
- (a) operate an employment policy that complies with the principle of being a good employer; and
- (b) make that policy (including the equal employment opportunities programme) available to its employees; and
- (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report (if any) on the extent of its compliance.
- (2) In this section, **good employer** means an employer who operates an employment policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
- (b) an equal employment opportunities programme; and
- (c) the impartial selection of suitably qualified persons for appointment; and
- (d) recognition of—
- (i) the aims and aspirations of Māori; and

- (ii) the employment requirements of Māori; and
 - (iii) the need for greater involvement of Māori in the education service; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) In addition to the requirements specified in **subsections (1) and (2)**, each employer must ensure that all employees maintain proper standards of integrity, conduct, and concern for—
- (a) the public interest; and
 - (b) the well-being of students attending the ~~institution~~ place of education.

Compare: 1988 No 20 s 77A

565 Code of conduct

- (1) The Secretary may issue a code of conduct covering the minimum standards of integrity and conduct that are to apply in the education service.
- (2) The Secretary may issue separate codes of conduct under this section to apply to different parts of the education service.
- (3) Before the Secretary issues a code of conduct under this section, the Secretary must consult—
 - (a) representatives of the employers whose employees are to be bound by the code of conduct, which representatives must be employers, or organisations of employers, of persons employed in the education service; and
 - (b) the organisations of employees employed in the education service that represent the employees who are to be bound by the code of conduct; and
 - (c) the State Services Commissioner, and must have regard to any code of conduct issued by the Commissioner under **section 57 of the State Sector Act 1988**.
- (4) Nothing in this section prevents an employer from prescribing standards of integrity or conduct that are to apply to that employer's employees (being standards that are not inconsistent with any code of conduct issued by the Secretary under this section and that apply in relation to employees of that employer).
- (5) Nothing in this section applies to any institution.

Compare: 1988 No 20 s 77B

566 Performance of teachers

- (1) The Secretary may prescribe matters that are to be taken into account by employers in assessing the performance of teachers.
- (2) Before the Secretary prescribes any matters under **subsection (1)**, the Secretary must consult—
 - (a) the Teaching Council; and
 - (b) the chief executive of the Education Review Office; and
 - (c) representatives of employers of teachers; and
 - (d) the organisations of teachers that represent teachers who are to be subject to the matters prescribed under this section.
- (3) Nothing in this section prevents an employer from prescribing matters to be taken into account in assessing the performance of teachers employed by that employer (being matters that are not inconsistent with any matters prescribed under this section by the Secretary and that apply to teachers employed by that employer).
- (4) Nothing in this section applies to any teachers employed in any institution, or any early childhood service that is not a free kindergarten.

Compare: 1988 No 20 s 77C

567 Equal employment opportunities

The Secretary is responsible for promoting, developing, and monitoring equal employment opportunities policies and programmes in the education service.

Compare: 1988 No 20 s 77D

568 Employees of institutions in education service

- (1) Subject to this Act, each employer—
 - (a) may appoint any employees (including acting, temporary, casual, or relieving employees) that the employer thinks necessary for the efficient performance or exercise of the functions, duties, and powers of the ~~institution~~ place of education; and
 - (b) may, subject to any conditions of employment included in the employment agreement applying to the employee, remove any employee from that employee's employment.
- (2) Unless expressly provided to the contrary in this Act, the employer has all the rights, duties, and powers of an ordinary employer in respect of the persons employed in that ~~institution~~ place of education.

Compare: 1988 No 20 s 77E

569 Duty to act independently

In matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining, or the ces-

sation of the employment of any employee, or other matters), the employer must act independently.

Compare: 1988 No 20 s 77F

570 Appointments on merit

An employer in making an appointment under this Act must give preference to the person who is best suited to the position.

Compare: 1988 No 20 s 77G

571 Obligation to notify vacancies

If an employer intends to fill a position that is vacant or is to become vacant in ~~the institution~~ a place of education (other than with an acting, temporary, casual, or relieving employee), the employer must, when practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

Compare: 1988 No 20 s 77H

572 Restriction of compensation for technical redundancy arising from closure or merger of schools

- (1) An employee in a school is not entitled to receive any payment or other benefit on the ground that the employee's position in the school (the **previous position**) has ceased to exist because the school is affected by a merger under **section 193** or is closed under **section 186** and, before the date on which the merger or the closure takes effect,—
 - (a) the employee is offered in writing employment in an equivalent position (whether or not the employee accepts the offer) in the continuing school or in the replacement school or in another school directly affected by the merger or the closure; or
 - (b) the employee is offered in writing, and accepts, employment in any other position in the continuing school or in the replacement school or in another school directly affected by the merger or the closure.
- (2) The Minister may determine whether a school is directly affected by a closure or merger, and that determination is binding on all parties.
- (3) **Subsection (1)(b)** is subject to any contrary provision in an employment agreement that provides for a payment on the ground that the employee's position has ceased to exist, but only if that payment is less than the amount that would otherwise be payable in any case to which **subsection (1)** does not apply.
- (4) A collective agreement that binds employees in schools may provide, consistently with **subsection (1)**, for the manner in which that subsection is to apply to those employees.

- (5) In this section, **employment in an equivalent position**, in relation to the employee's previous position, means employment that—
- (a) is generally similar in role, duties, and status; and
 - (b) requires similar qualifications, training, skills, and experience, but may have a different title; and
 - (c) is in the same general locality; and
 - (d) is on terms and conditions of employment that are no less favourable than those that applied to the employee immediately before the offer of employment (including any service-related redundancy conditions and superannuation conditions); and
 - (e) is on terms that treat the period of service with the school in which the previous position was held (and any other period of service recognised for the purposes of the previous position as continuous service) as if it were continuous service for the purposes of the position offered to the employee.

Compare: 1988 No 20 s 77HA

573 Appointment of employees following closure or merger of schools

- (1) **Sections 570 and 571** do not apply to an appointment of an employee to a position in a school if—
- (a) the appointment is made in connection with the closure of a school under **section 186** or the merger of schools under **section 193**; and
 - (b) the position that the employee previously held has ceased to exist as a result of the closure or merger.
- (2) **Subsection (1)** does not apply to the appointment of an employee to the position of principal.

Compare: 1988 No 20 s 77HB

574 Acting appointments

- (1) In the case of absence from duty of any employee (from whatever cause arising) or on the occurrence from any cause of a vacancy in any position with an employer (whether by reason of death, resignation, or otherwise) and while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the employer to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.
- (2) No direction and no acts done by any employee acting under a direction may, in any proceedings, be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee has not been appointed to any position to which the direction relates.

Compare: 1988 No 20 s 77I

*Senior appointments in ~~education~~ service institutions***575 Chief executives of institutions**

Despite anything to the contrary in any other enactment, the appointment and conditions of employment of every chief executive of an institution must be determined under this subpart.

Compare: 1988 No 20 s 77IA

576 Appointment of chief executive

- (1) Subject to **section 577**, each council of an institution must appoint its chief executive in accordance with this section.
- (2) Where there is a vacancy or an impending vacancy in the position of chief executive of an institution, the council of the institution must notify the vacancy or impending vacancy in the manner that it thinks sufficient to enable suitably qualified persons to apply for the position.
- (3) The council may—
 - (a) examine applicants for the position; and
 - (b) seek advice from the sources that it considers relevant.
- (4) The council may invite any other persons that it thinks fit to assist it to decide on the person to be appointed, and any person so invited may take part in the examination of applicants or in the council's deliberations on the matter, or in both.
- (5) In deciding upon the person to be appointed as chief executive, the council must have regard to the need to appoint a person who can—
 - (a) discharge the specific responsibilities placed on the chief executive; and
 - (b) imbue the employees with a spirit of service to the institution and to the community; and
 - (c) promote efficiency; and
 - (d) manage the institution in a responsible manner that reflects the needs of academic freedom, accountability, and the proper use of resources; and
 - (e) maintain appropriate standards of integrity and conduct among employees and ensure the well-being of students attending the institution; and
 - (f) ensure that the institution is a good employer; and
 - (g) promote equal employment opportunities.

Compare: 1988 No 20 s 77IB

577 Reappointment of chief executive

A council may reappoint its existing chief executive for a further term without first notifying the impending vacancy or examining other applicants.

Compare: 1988 No 20 s 77IC

578 Conditions of employment of chief executive

- (1) A chief executive must be appointed for a term of not more than 5 years.
- (2) A chief executive is eligible for reappointment.
- (3) Except where specific conditions of employment for a chief executive are provided in this Act, the conditions of employment of a chief executive must be determined in each case by agreement between the council of the institution and the chief executive, but the council must obtain the written agreement of the State Services Commissioner to the conditions of employment before finalising the conditions of employment with the chief executive or amending any or all of the conditions once they have been finalised.

Compare: 1988 No 20 s 77ID

579 Removal from office

The council, for just cause or excuse, may remove the chief executive from office.

Compare: 1988 No 20 s 77IE

580 Acting chief executive

- (1) All or any of the functions, powers, and duties of the chief executive or relating to the position may be exercised and performed by an employee for the time being directed by the council of the institution to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues if—
 - (a) a vacancy in the position of chief executive of an institution exists; or
 - (b) a chief executive of an institution is absent from duty (from whatever cause arising).
- (2) No direction and no acts done by any person acting under any direction may, in any proceedings, be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the person had not been appointed to the position of chief executive.
- (3) The council of the institution must determine the conditions of employment that are to apply to any person directed under **subsection (1)** to exercise and perform any of the functions, powers, and duties of a chief executive.

Compare: 1988 No 20 s 77IF

*Employment of others***581 Power of Secretary to employ teachers**

- (1) The Secretary may employ persons to work in State schools as teachers.
- (2) An order made under ~~this subpart~~ **section 549** that limits the number of teachers who may be employed at a State school does not include teachers employed under this section.
- ~~(3) **Schedules 3 and 18** apply to persons employed as teachers under this section as if the Secretary were a board, and with any other necessary modifications.~~
- (3) The following provisions apply to persons employed as teachers under this section as if the Secretary were a board, and with any other necessary modifications:
 - (a) **sections 88 to 92** (which set out restrictions on appointment and continued employment of teaching staff):
 - (b) **sections 461 to 478B** (which relate to mandatory reporting to, disciplinary functions of, and review of competence by the Teaching Council):
 - (c) **sections 510, 511, and 615** (which set out offence provisions):
 - (d) **Schedule 3** (which relates to teacher registration, practising certificates, and other matters):
 - (e) **clause 13 of Schedule 18** (which relates to Police vetting).

Compare: 1989 No 80 s 91N

582 Employment-based trainee teaching positions

- (1) On receipt of a request from a board, the Secretary may, by written notice to the board, establish an employment-based trainee teaching position for the school.
- (2) Despite any provision to the contrary in this Act, the board for which an employment-based trainee teaching position has been established may appoint only an employment-based trainee teacher to the position.

Compare: 1989 No 80 s 91O

583 Agreements with trainee teachers

- (1) The Minister may enter into an agreement with any person who undertakes teacher training.
- (2) The agreement must provide for—
 - (a) payment by the Minister to the person of an amount of money on condition that the person must, on completion of teacher training, work in New Zealand as a teacher for a specified period; and

- (b) an undertaking by the person that, if the person defaults on the condition, the person must repay the amount paid under the agreement (in full or as specified in the agreement).
- (3) The Minister may require the agreement with the person to be signed by a guarantor, in which case the person and the guarantor are jointly and severally liable.

Compare: 1989 No 80 s 139E

584 Minister must issue eligibility criteria relating to appointment of principals

- (1) The Minister must issue eligibility criteria that must be met by applicants for appointment to the position of a principal for the purposes of—
 - (a) ensuring consistency in the skills, competencies, knowledge, and expertise that applicants for appointment to the position must demonstrate; and
 - (b) supporting better understanding of the background and experience needed for school leadership among persons aspiring to the role of a principal as part of their future career; and
 - (c) providing confidence to boards in making appointments; and
 - (d) signalling the importance of the role of a principal across the wider school system.
- (2) Before issuing any criteria under **subsection (1)**, the Minister must make reasonable efforts to consult—
 - (aa) children and young people and their parents, whānau, and communities:
 - (a) national bodies representing the interests of—
 - (i) teachers:
 - (ii) principals:
 - (iii) boards:
 - (v) the disability community:
 - (vi) support staff in schools:
 - (vii) Māori education organisations:
 - (viii) proprietors of State integrated schools:
 - (b) national bodies with a particular role in respect of the character of designated character schools.
- (3) The Minister may delegate the Minister’s function under **subsection (1)** to any person or persons that the Minister thinks fit.
- (4) In making an appointment to the position of principal, a board must apply any criteria issued under **subsection (1)** and may also apply any specific additional criteria developed by it under **section 585**.

585 Board may develop additional criteria relating to appointment of principals

- (1) A board may develop additional criteria relating to the appointment of a principal at the relevant board's school.
- (2) Any additional criteria developed by the board must not be inconsistent with any eligibility criteria issued by the Minister under **section 584**.
- (3) In developing any additional criteria, the ~~Board~~ board must consult its school community.

Subpart 5—Information and reporting

586 Secretary may require information for administration of Act

- (1) The Secretary may, by written notice that complies with **subsection (2)**, require any of the following individuals or bodies to provide information:
 - (a) the board of ~~any~~ State school:
 - (b) the service provider who operates any licensed early childhood service or any certified playgroup:
 - (c) ~~a manager~~ the managers of a private school.
- (2) The notice must specify the information required and the date by which it must be provided to the Secretary.
- (5) The individual or body must provide the information in writing by the date specified in the notice.
- (6) Information that identifies individuals may be used only for the following purposes:
 - (a) ~~carrying out statistical analysis~~ statistical purposes:
 - (b) ensuring that institutions and students receive relevant resourcing:
 - (c) monitoring and ensuring student rights in respect of enrolment and attendance.
- (7) For the purposes of registering or inspecting private schools, information required under **subsection (1)** is relevant to determining whether a school meets the criteria for registration as a private school.

Compare: 1989 No 80 s 144A

587 Report on performance of school sector

- (1) The Minister must in each year, not later than **30 September**, prepare and present to the House of Representatives a report on the performance of the school sector in the immediately preceding financial year ending on **31 December**.
- (2) The report must include information about—
 - (a) the performance of the school sector:

- (b) the management performance in the school sector, including the quality of the management systems and practices in the school sector and the management of all the assets used in the school sector:
 - (c) the effectiveness of the school sector in terms of educational achievement.
- (3) The report—
- (a) must relate to all of the schools owned by the Crown; and
 - (b) may relate to other schools.

Compare: 1989 No 80 s 87B

588 National student numbers

The Secretary must ensure that national student numbers are assigned and used in accordance with **Schedule 23** and any regulations made under this Act.

Subpart 6—Entry and inspection

Review officers

588A Powers of entry and inspection for places other than dwelling houses

- (1) For the purpose of enabling any functions of the Chief Review Officer under **subpart 3 of Part 5** to be performed, a review officer may, at any reasonable time and having given reasonable notice to the applicable organisation or applicable person of an applicable organisation, enter any place (other than a dwelling house) occupied by the applicable organisation or applicable person, and—
- (a) conduct inspections or make inquiries:
 - (b) require any applicable person to produce documents or provide information, and permit the review officer to make copies of or take extracts from the documents or information, relating to—
 - (i) an applicable service that the applicable organisation provides; or
 - (ii) people to whom the service is (or has been) provided:
 - (c) require any applicable person of the applicable organisation, or any other person employed by the applicable organisation or any applicable person of the applicable organisation or involved in the management of the applicable organisation, to make or provide statements, in any form and manner the review officer specifies, about any matters relating to an applicable service:
 - (d) inspect the work of any person to whom an applicable service is (or has been) provided:
 - (e) meet and talk with any person to whom an applicable service is being provided.

- (2) In this section, **applicable organisation**, in relation to an early childhood service, includes an entity that owns the service (wholly or partly) or operates the early childhood service.

Compare: 1989 No 80 s 327

588B Review officers to prove identity before acting under section 588A

A review officer who enters any place under the authority of **section 588A** must, on first entering and, if requested at any later time, produce to the person apparently in charge the review officer's certificate of designation.

Compare: 1989 No 80 s 328

Early childhood services

589 Power to enter and inspect, without warrant, homes used by licensed home-based education and care services

- (1) For the purposes of enabling the functions of the Chief Review Officer to review and evaluate curriculum delivery and health and safety performance in a home used by a licensed home-based education and care service, a review officer may, at any reasonable time and having given reasonable notice to the relevant service provider, enter the home, and—
- (a) conduct inspections or inquiries, including (without limitation) observing any children present in the home who are receiving the service:
 - (b) require the person providing the service in the home—
 - (i) to make available documents or information, and permit the review officer to make copies or extracts of the documents or information, relating to curriculum delivery and health and safety performance of the service in the home:
 - (ii) to make or provide statements, in any form and manner the review officer specifies, about any matters relating to curriculum delivery and health and safety performance of the service in the home:
 - (c) inspect the work of any person to whom the service is (or has been) provided:
 - (d) meet and talk with the person providing the service in the home or any person to whom the service is being provided.
- (2) If a service provider receives a notice, the service provider must provide the Education Review Office with a list of the addresses of all the homes where the service provider provides a licensed home-based education and care service.
- (3) A review officer may only inspect those areas of a home that are used to provide the licensed home-based education and care service.
- (4) A review officer may request those given notice to provide, before the entry, information that is reasonably necessary or desirable to carry out the inspection or inquiries.

- (5) The request may be part of the notice.

589A Review officers to prove identity before acting under section 589

A review officer who enters any place under the authority of **section 589** must, on first entering and, if requested at any later time, produce to the person apparently in charge the review officer's certificate of designation.

Compare: 1989 No 80 s 328

590 Powers of entry and inspection without warrant

- (1) A person authorised under **subsection (3)** may, for the purpose of ensuring that the provisions of this Act and any regulations made under this Act, or the conditions of any licence, certificate, or grant issued or made under any of those provisions, are being complied with, or for the purpose of conducting any audit, at any reasonable time, do all or any of the following:
- (a) enter and inspect—
 - (i) any premises that—
 - (A) are or contain a licensed early childhood education and care centre; or
 - (B) are used to provide a licensed home-based education and care service (whether or not used as a home by the person providing the service); or
 - (C) are used to provide a licensed hospital-based education and care service; or
 - (D) are used by a certified playgroup:
 - (ii) any offices of a service provider that are related to those premises:
 - (b) inspect, photocopy, print, or copy onto a storage device any documents (whether held in electronic or paper form) that the person believes on reasonable grounds to be those of the licensed early childhood service or certified playgroup:
 - (c) remove any document described in **paragraph (b)**, whether in its original form or as an electronic or a paper copy.
- (2) If any documents are removed from premises under **subsection (1)(c)**, the person who removes them must—
- (a) leave at the premises a list of the documents removed; and
 - (b) return the documents, or a copy of them, to the premises as soon as practicable, unless to do so would prejudice any investigation being or to be carried out by the Ministry.
- (3) The Secretary may authorise in writing any person who, in the Secretary's opinion ~~of the Secretary~~, is suitably qualified and trained in the exercise of powers under **subsection (1)** to exercise those powers.

- (4) An authorisation under **subsection (3)** must contain—
 - (a) a reference to this section; and
 - (b) the full name of the person authorised; and
 - (c) a statement of the powers conferred on that person by this section.
- (5) A person exercising any power under **subsection (1)** must have the appropriate written authorisation and evidence of identity, and must produce them to the person in charge of the premises concerned (or the person having possession or control of the documents concerned)—
 - (a) on first entering the premises; and
 - (b) whenever subsequently reasonably required to do so by the person in charge.
- (6) For the purposes of this section and **section 591, inspection**, in relation to any premises, includes observing any children present there.

Compare: 1989 No s 319B

591 Powers of entry and inspection with warrant

- (1) A person who is authorised under **section 590** and who has reasonable grounds to believe that premises are being used as an early childhood education and care centre in contravention of this Act, or regulations made under **section 599**, may apply in writing on oath to a District Court Judge, Justice of the Peace, Community Magistrate, or Registrar or Deputy Registrar of any court for a warrant.
- (2) If the Judge or other person to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, the Judge or other person may issue a warrant directed to the person by name authorising the person to enter the premises.
- (3) A warrant issued under **subsection (2)** must contain—
 - (a) a reference to this section; and
 - (b) the full name of the person authorised; and
 - (c) a description of the premises concerned; and
 - (d) the date on which it was issued and the date on which it expires.
- (4) A warrant issued under **subsection (2)** must authorise the person named in it, at any reasonable time within 4 weeks after the date on which it is issued, to—
 - (a) enter the premises described in the warrant; and
 - (b) do on those premises anything necessary to ascertain whether those premises are being used as an early childhood education and care centre in contravention of this Act or any regulations made under **section 599**.
- (5) A person exercising any power under **subsection (4)**—

- (a) must have the appropriate warrant and evidence of identity and must produce them to the occupier of the premises concerned—
 - (i) on first entering the premises; and
 - (ii) whenever subsequently reasonably required to do so by that occupier; and
 - (b) may observe any children present.
- (6) A warrant issued under **subsection (2)** expires on the earlier of the following dates:
- (a) the date on which the purpose for which it was issued has been satisfied;
 - (b) the date specified as the date of expiry under **subsection (3)(d)**.

Compare: 1989 No 80 s 319C

Schools

592 Powers of entry and inspection

- (1) A person holding an authorisation under **subsection (3)** may, at any reasonable time,—
 - (a) enter and inspect any registered school;
 - (b) inspect, photocopy, print, or copy onto a storage device any documents (whether held in electronic or paper form) that the person believes on reasonable grounds to be those of the board or manager of the school;
 - (c) remove any document described in **paragraph (b)**, whether in its original form or as an electronic or a paper copy.
- (2) If any documents are removed from a school under **subsection (1)(c)**, the person who removes the documents must—
 - (a) leave at the school a list of the documents removed; and
 - (b) return the documents, or a copy of them, to the school as soon as practicable unless to do so would prejudice any investigation being or to be carried out by the Ministry.
- (3) The Secretary may authorise in writing any person to exercise the powers in **subsection (1)**.
- (4) An authorisation under **subsection (3)** must contain—
 - (a) a reference to this section; and
 - (b) the full name of the person authorised; and
 - (c) a statement of the powers conferred on that person by this section.
- (5) A person exercising any power under **subsection (1)** must have the appropriate written authorisation and evidence of identity, and must produce them to the person in charge of the premises concerned (or the person having possession or control of the books, records, or accounts concerned)—

- (a) on first entering the premises; and
 - (b) whenever subsequently reasonably required to do so by the person in charge.
- (6) In this section, **inspection**, in relation to ~~any~~ school, includes—
- (a) access to the written and recorded work of students enrolled there; and
 - (b) meeting and talking with students enrolled there.

Compare: 1989 No 80 s 78A

593 Entry where private school suspected of being unregistered

- (1) A person who holds an authorisation under **section 592(3)**, and who has reasonable cause to believe that any premises are being used as a private school in contravention of **section 230**, may apply for a warrant to enter the premises.
- (2) An application for a warrant must be in writing, on oath, and be made to a District Court Judge, Justice of the Peace, or Registrar or Deputy Registrar of any court.
- (3) A warrant may be issued if the person issuing it is satisfied that there is reasonable cause to believe that the premises are being used as a private school in contravention of **section 230**.
- (4) A warrant issued under **subsection (3)** must contain—
- (a) a reference to this section; and
 - (b) the full name of the person authorised; and
 - (c) a description of the premises concerned; and
 - (d) the date on which it was issued and the date on which it expires.
- (5) A warrant issued under **subsection (3)** authorises the person named in it, at any reasonable time within 4 weeks of the date on which it is issued, to enter and inspect the premises described in the warrant to ascertain whether those premises are being used as a private school in contravention of **section 230**.
- (6) A person acting under a warrant issued under **subsection (3)** must retain the warrant and must produce it, along with evidence of identity, to the occupier of the premises concerned—
- (a) on first entering the premises; and
 - (b) whenever subsequently reasonably required to do so by that occupier.

Compare: 1989 No 80 s 35S

School hostels

594 Purpose of sections 595, 596, and 606

The purpose of **sections 595, 596, and 606** is to help ensure the safety of students who board at hostels.

Compare: 1989 No 80 s 144B

595 Entry to inspect hostels

- (1) An authorised person may, at any reasonable time, do 1 or more of the following:
 - (a) enter any hostel premises and inspect the premises and facilities;
 - (b) inspect, and make and remove copies of, any information relating to the management of the hostel;
 - (c) require any person at a hostel to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the hostel.
- (2) An authorised person may exercise the powers in **subsection (1)** only for the purpose of monitoring compliance with minimum standards, codes of practice, licences, or licence conditions.
- (3) The person in charge (or apparently in charge) of the hostel must, if an authorised person requests it, co-operate in allowing the authorised person access to the premises, facilities, and information relating to the management of the hostel, including assisting the authorised person to copy (in usable form) any information required for the inspection.
- (4) An authorised person may not enter or inspect the room or sleeping area of a student accommodated at the hostel unless—
 - (a) the authorised person believes on reasonable grounds that entry or inspection is necessary for a purpose specified in **subsection (2)**; and
 - (b) prior notice of the inspection is given to the student, and the purpose of the inspection is explained; and
 - (c) the student is present during the inspection.

Compare: 1989 No 80 s 144D

596 Authorised persons

- (1) The Minister may, by notice in writing, appoint any person as an authorised person for the purpose of exercising the powers in **section 595**.
- (2) An authorisation under **subsection (1)** must state—
 - (a) the name of the authorised person; and
 - (b) the powers that the person may exercise under **section 595**; and

- (c) the date on which the authorisation was given, and the date (if any) on which it expires.
- (3) When an authorised person is exercising powers under **section 595**, the person must carry a copy of their authorisation and must produce it,—
 - (a) on entering a hostel to be inspected, to the person in charge, or apparently in charge, of the hostel; and
 - (b) if the authorised person wishes to speak to any person in connection with the inspection, to that person.

Compare: 1989 No 80 s 144E

Student accommodation

596A Entry to inspect student accommodation subject to codes

- (1) A code administrator may, in accordance with the requirements of the applicable code,—
 - (a) enter any student accommodation and inspect the premises and facilities;
 - (b) inspect, and make and remove copies of, any information relating to the management of student accommodation;
 - (c) ask any person at any student accommodation to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the student accommodation.
- (2) A code administrator may exercise the powers in **subsection (1)** only for the purposes of monitoring or investigating compliance with the relevant code.
- (3) A code administrator may not enter or inspect the room or sleeping area of a student accommodated at any student accommodation unless—
 - (a) the code administrator believes on reasonable grounds that the entry or inspection is necessary for the purposes specified in **subsection (2)**; and
 - (b) the code administrator gives the student at least 24 hours' written notice of the intended entry or inspection and that notice explains the purpose of the entry or inspection; and
 - (c) the student consents to the entry or inspection, and the student is present during the entry or inspection if being present is a condition of the consent.
- (4) **Subsection (3)(c)** does not apply if obtaining the student's consent is unreasonable in the circumstances.
- (5) A code administrator may, with the Minister's prior written approval and subject to any conditions that the code administrator or the Minister thinks fit, delegate any or all of the functions, duties, and powers specified in this section

to another person or agency (having regard to their knowledge, skills, or experience).

Compare: 1989 No 80 s 238H(5)–(9)

Private training establishments

597 Powers of entry and inspection

- (1) For the purpose of ensuring that a private training establishment (whether registered or not) and any agent of the establishment comply with this Act, the rules made under **section 423**, and any approval, consent, or other authorisation granted by NZQA, the chief executive may authorise any person to do, at any reasonable time, any 1 or more of the following things:
 - (a) enter and inspect any premises (other than a dwelling house) that are occupied by the private training establishment or its agent:
 - (b) require any person to produce documents or information under the control of the person:
 - (c) inspect, photocopy, print, or copy any documents (whether held in electronic or paper form) produced under **paragraph (b)** or that the authorised person believes on reasonable grounds to belong to the establishment:
 - (d) remove any document referred to in **paragraph (c)**, whether in its original form or as an electronic or a paper copy:
 - (e) require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies:
 - (f) inspect any education and training work and any related materials:
 - (g) meet and talk with any person.
- (2) A person authorised by the chief executive under **subsection (1)** must—
 - (a) produce evidence of the person’s authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and
 - (b) give the person in charge a list of all documents that have been removed (if any); and
 - (c) return any documents that have been removed unless to do so would prejudice any investigation.
- (3) An authorisation under **subsection (1)** must be in writing and contain—
 - (a) a reference to this section; and
 - (b) the full name of the person authorised; and
 - (c) a statement of the powers conferred on that person under this section.

Compare: 1989 No 80 s 255A

*Other entry and inspection provisions***598 Entry and inspection powers elsewhere in Act**

The right of parents who have children in early childhood centres to enter the premises is set out in **section 26**.

Subpart 7—Regulations and directions

*Regulations***599 Regulations relating to early childhood services**

- (1) The Governor-General may, by Order in Council, make regulations—
 - (a) providing for the licensing of service providers to provide early childhood services of any kind, and the transfer of licences:
 - (b) regulating the management, operation, and control of licensed early childhood services of any kind, and imposing duties on service providers:
 - (c) declaring specified early childhood services, or early childhood services of 1 or more specified types or descriptions, to be early childhood education and care services for the purpose of **Part 2**:
 - (d) modifying the definition of teaching position in **section 10(1)** for the purposes of applying it to Kura Kaupapa Māori or early childhood services or both:
 - (e) specifying licence application and licence application approval procedures, including—
 - (i) any fees and charges for applications and their determination; and
 - (ii) any conditions for approval that must be met.
- (2) The regulations may—
 - (a) prescribe, for the purposes of ensuring the health, comfort, care, education, and safety of children attending licensed early childhood services, minimum standards relating to—
 - (i) premises and facilities:
 - (ii) programmes of education, practices in relation to children’s learning and development, and implementation of the curriculum framework:
 - (iii) staff and parent and caregiver involvement (including adult-to-child ratios):
 - (iv) health and safety:
 - (v) practices in relation to behaviour management and limits on the use of physical restraint:

- (vi) communication and consultation with parents:
- (vii) the operation or administration of licensed early childhood services:
- (b) authorise the Minister, after consultation with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by the regulations, to prescribe criteria to be used by the Secretary to assess compliance with the minimum standards imposed by the regulations:
- (c) require the Secretary to publish a notice in the *Gazette*—
 - (i) stating that criteria referred to in **paragraph (b)** have been prescribed; and
 - (ii) setting out the criteria in full, or stating where or how a copy of the criteria may be obtained by members of the public:
- (d) limit or regulate the number of children who may attend licensed early childhood education and care centres or any premises used to provide a licensed home-based education and care service or a licensed hospital-based education and care service:
- (e) provide for the grant or refusal to grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of licences of 1 or more specified kinds for service providers for each kind of early childhood service, and prescribe the conditions under which licences may be granted, renewed, suspended, or transferred and the fees payable in respect of the grant, renewal, suspension, or transfer of the licences, or do any of those things:
- (f) prescribe conditions governing licensed early childhood services and the duties of their service providers:
- (g) prescribe the records to be kept by service providers in respect of children attending licensed early childhood education and care centres, licensed home-based education and care services, and licensed hospital-based education and care services:
- (h) regulate the qualifications to be held by any specified number or proportion of persons carrying out the following activities:
 - (i) the control and management of each licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service:
 - (ii) the education and care of children attending a licensed early childhood education and care centre, licensed home-based education and care service, or licensed hospital-based education and care service:
- (i) provide for transitional matters not dealt with in this Act:

- (j) prescribe offences punishable on conviction by a fine not exceeding \$500 in respect of the contravention of, or non-compliance with, the regulations.
- (3) The regulations may prescribe different standards and other requirements—
 - (a) for early childhood services of different types or descriptions; and
 - (b) in respect of different kinds of licences.
- (4) Criteria prescribed by the Minister for use in assessing compliance with minimum standards imposed by regulations made under this section—
 - (a) may differ in any way, including ~~for (but not limited to)~~ (without limitation) providing for—
 - (i) early childhood services of different types or descriptions; and
 - (ii) different kinds of licences; and
 - (iii) different minimum standards:
 - (b) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 317; 2001 No 88 s 69(2)(a) and (c)

600 Regulations relating to certifying playgroups

- (1) The Governor-General may, by Order in Council, make regulations for certifying playgroups.
- (2) The regulations may—
 - (a) prescribe, for the purpose of ensuring the health, comfort, care, education, and safety of children attending certified playgroups, minimum standards relating to—
 - (i) premises and facilities:
 - (ii) programmes of education, practices in relation to children’s learning and development, and implementation of the curriculum framework:
 - (iii) staff and parent and caregiver participation (including adult-to-child ratios):
 - (iv) health and safety:
 - (v) practices in relation to behaviour management and limits on the use of physical restraint:
 - (vi) communication and consultation with parents:
 - (vii) the operation and administration of playgroups:
 - (b) authorise the Minister, after consultation with those organisations that appear to the Minister to be representative of persons likely to be substantially affected by the regulations, to prescribe criteria to be used by

the Secretary to assess compliance with the minimum standards imposed by the regulations:

- (c) require the Secretary to publish a notice in the *Gazette*—
 - (i) stating that criteria referred to in **paragraph (b)** have been prescribed; and
 - (ii) setting out the criteria in full, or stating where or how a copy of the criteria may be obtained by members of the public:
 - (d) limit or regulate the number of children who may attend certified playgroups:
 - (e) provide for the grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of certificates of 1 or more specified kinds for playgroups, and prescribe the conditions under which certificates may be granted, renewed, or transferred and the fees payable in respect of the grant, renewal, or transfer of the certificates:
 - (f) prescribe conditions governing certified playgroups and the duties of their service providers:
 - (g) prescribe the records to be kept by the service provider in respect of children attending certified playgroups:
 - (h) regulate the qualifications to be held by any specified number or proportion of persons responsible for—
 - (i) the control and management of a certified playgroup:
 - (ii) the education and care of children attending a certified playgroup:
 - (i) provide for transitional matters not dealt with in this Act.
- (3) Criteria prescribed by the Minister for use in assessing compliance with minimum standards imposed by regulations made under this section—
- (a) may differ in any way, including ~~for (but not limited to)~~ (without limitation) providing for—
 - (i) different kinds of certificates; and
 - (ii) different minimum standards:
 - (b) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 319

601 Regulations relating to how schools must be run

- (1) The Governor-General may, by Order in Council, make regulations providing for the control, management, organisation, conduct, and administration of schools.
- (2) Regulations made under **subsection (1)** may—

- (a) provide differently for different classes or descriptions of schools:
 - (b) give powers to, or impose duties on, boards or principals (or both):
 - (ba) prescribe processes and procedures in respect of boards:
 - (c) provide for the development of enrolment schemes, including (without limitation) the extent to which boards may contribute to their design:
 - (d) provide for when schools must be open and closed for instruction:
 - (e) provide for the circumstances in which the Secretary may direct that a student be enrolled at a school.
- (3) Regulations made under this section prescribing a course of study may not restrict the method by or manner in which any subject forming part of the course is to be taught, except to the extent necessary to ensure that the teaching of the subject is consistent with the general aims of the course.

Compare: 1989 No 80 s 78

602 Regulations relating to planning, implementation, monitoring, and reporting for schools and boards

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) developing school strategic plans under **sections 133 to 139**:
 - (b) monitoring and reporting on a board's performance under **section 140**:
 - (c) monitoring and reporting on the performance of a school's students under **section 152**:
 - (d) preparing and delivering statements of variance and annual reports under **section 129**.
- (2) Without limiting **subsection (1)**, the regulations may make provision in relation to 1 or more of the following:
- (a) the form of school strategic plans:
 - (b) matters that must be dealt with in plans:
 - (c) when plans must be prepared or submitted:
 - (d) requirements for consultation in the development and implementation of plans:
 - (e) requirements for how and when plans are amended or expire:
 - (f) the information that must be included in a statement of variance under **section 129(1)(a)**:
 - (g) the form of statements of variance:
 - (h) the information that must be included in an annual report under **section 129(2)(a)**:
 - (i) the form and content of annual reports, including financial statements:

- (j) the form of reports on the performance of a school's students:
- (k) the information that must be included in reports on the performance of a school's students:
- (l) any other matters contemplated by, or necessary for giving full effect to, any of the following provisions:
 - (i) **section 86(1)(c)**:
 - (ii) **section 152**:
 - (iii) **sections 129 to 131**:
 - (iv) **sections 133 to 140**.

Compare: 2017 No 20 s 95

603 Regulations relating to board elections and appointments

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) specifying persons who are eligible and ineligible to be board members:
 - (b) prescribing the manner in which board members may be elected, co-opted, or appointed:
 - (c) prescribing a board member's term of office and providing for vacancies in board membership:
 - (d) prescribing the manner in which returning officers are to be appointed for the purposes of an election of board members.
- (2) Regulations made under **subsection (1)** may—
 - (a) provide for persons who are forbidden to participate in 2 elections to choose the election in which they prefer to stand or vote, or both; and
 - (b) provide for persons who do not exercise their choice within the time or in the manner provided for to be restricted to standing or voting, or both, in only 1 election; and
 - (c) require a person who has chosen or been restricted to 1 election to continue to be restricted to elections of the kind concerned if elections are later held to fill casual vacancies.
- (3) A person who has been nominated for election to a board is not eligible to be appointed returning officer for the election.

Compare: 1989 No 80 s 118

604 Regulations relating to imposition of export education levy

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing an export education levy on signatory 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 or the method of calculating the amount (or both) of export education levy payable by individual signatory providers, and may prescribe different amounts, or different methods of calculating the amounts, payable by different classes of signatory provider; and
 - (b) prescribe when the levy, or any part of the levy, is payable; and
 - (c) designate an agency to administer the levy and, if that agency is the Ministry, may authorise the Ministry to delegate all or specified aspects of the levy's collection and use to another body; and
 - (d) require a signatory provider to supply, on request by the agency responsible for the administration of the levy, information about student numbers or any other matter that is necessary to determine or verify the amount of levy payable by the signatory provider.
- (3) ~~Before recommending that an order be made~~ making a recommendation under **subsection (1)**, the Minister must consult signatory providers.

Compare: 1989 No 80 s 238Q

605 Regulations relating to school risk management scheme

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the establishment of a school risk management scheme:
- (b) defining accidental loss or damage and other terms for the purposes of the regulations:
- (c) setting out the scope of the indemnity that may be given by the Crown, including any exclusions:
- (d) setting out the procedure for lodging claims and their determination:
- (e) listing the kinds of costs that the Crown may deduct from money payable under the scheme to a participating board:
- (f) providing for the manner in which the parties may withdraw from the scheme:
- (g) providing for the manner in which the scheme may be varied, replaced, or terminated.

Compare: 1989 No 80 s 78F

606 Regulations relating to school hostels

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) adopting minimum standards that apply to hostel premises and facilities:
 - (b) adopting codes of practice relating to the management of hostels:

- (c) creating offences for failing to comply with minimum standards or codes of practice adopted by regulations, and providing for a penalty on conviction for any offence to be a fine not exceeding \$10,000:
 - (d) providing for exemptions from the application of minimum standards or codes of practice:
 - (e) prescribing a system of licensing for hostels, which may include provisions—
 - (i) providing for different sorts of licences:
 - (ii) setting out the conditions to be met before a licence may be issued:
 - (iii) prescribing the circumstances in which conditions may be imposed on a licence:
 - (iv) setting out the conditions or type of conditions that may attach to a licence:
 - (v) prohibiting students from boarding at an unlicensed hostel:
 - (vi) prohibiting the payment of a boarding bursary, or any government subsidy relating to the cost of boarding at a hostel, in respect of a student boarding at an unlicensed hostel:
 - (vii) creating offences for failure to comply with any or all licence conditions, and providing for a penalty on conviction for any offence to be a fine not exceeding \$10,000:
 - (viii) providing for the suspension or cancellation of any licence:
 - (ix) establishing a licensing body:
 - (x) prescribing fees payable on application for, or renewal of, a licence, and for the return or refund of any fees in specified circumstances:
 - (f) establishing a procedure for complaints about hostels by students, parents, and boards:
 - (g) providing for matters relating to the inspection of hostels and the authorisation of persons to inspect hostels:
 - (h) providing for any other matters necessary or expedient for giving effect to the purpose described in **section 594**.
- (2) Regulations made under **subsection (1)** may relate to all hostels, individual hostels, hostels of specified classes, or parts of hostels.

Compare: 1989 No 80 s 144C

607 Regulations relating to dispute resolution panels

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (aa) establishing 1 or more dispute resolution panels for the purpose of **subpart 9 of Part 3** and prescribing the process and procedures (if any) of the panels:
- (a) prescribing criteria for the appointment and removal of dispute resolution panel members:
- (b) prescribing the maximum number of members that may be appointed to a dispute resolution panel and specifying the number of panel members who must be local community members and expert members:
- (c) in relation to the Chief Referee and any deputy chief referees,—
 - (i) prescribing further criteria for appointment:
 - (ii) prescribing criteria for removal:
 - (iii) specifying the term of office:
- (ca) providing for the Chief Referee or a dispute resolution panel to receive, obtain, or use any specified information that is reasonably required for the purpose of performing or exercising their functions, duties, and powers under **subpart 9 of Part 3**;
- (d) ~~providing for any matters contemplated by **subpart 9 of Part 3**, necessary for its administration, or necessary for giving it full effect.~~

608 Regulations relating to student allowances

- (1) The Governor-General may, by Order in Council, make regulations for the purposes of **Schedule 9** by establishing student allowances to help recipients undertake—
 - (a) courses of education or training within New Zealand; and
 - (b) secondary and tertiary level courses of education inside and outside New Zealand.
- (2) Every student allowance must—
 - (a) be awarded in accordance with the regulations establishing it; and
 - (b) have an annual or other value set out in it.
- (3) The regulations may, in relation to the payment of student allowances for courses of study at private schools or private training establishments, apply to—
 - (a) all of those schools or establishments; or
 - (b) schools or establishments of a specified class or description only; or
 - (c) particular schools or establishments.
- (4) The regulations may require officials of institutions at which any student allowance established by the regulations is or has been payable to give the chief executive 1 or both of the following:
 - (a) information about payments made under the regulations to or in respect of recipients enrolled or formerly enrolled at the institution:

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- (b) statistical or other information relating to payments made under the regulations to or in respect of recipients enrolled or formerly enrolled at the institution, whether—
- (i) in general; or
 - (ii) in relation to recipients of a particular class or description; or
 - (iii) in relation to a particular recipient or particular recipients.
- (5) The regulations may be expressed to come into force, and may come into force, before the date on which they are made, but only if they—
- (a) increase the value or maximum value of any allowance, or the rate or maximum rate at which any allowance may be paid; or
 - (b) extend the class or classes of persons entitled to be paid an allowance, or entitled to be paid an allowance at any particular rate.
- (6) The regulations must adjust the rates of student allowances (except the rates of allowances provided for accommodation benefit) as at **1 April** each year so that in each case the new rate (after the deduction of standard tax) is the rate at that date (after the deduction of standard tax and before the adjustment under this section is made) adjusted by an amount equal to the percentage movement upwards in the CPI between the CPI for the quarter ended with **31 December** 1 year before the immediately preceding **31 December** and the CPI for the quarter ended with the immediately preceding **31 December**.
- (7) The adjustments may not reduce the weekly amounts of student allowances payable.
- (8) The adjustments come into force, or are considered to have come into force, on **1 April** of the calendar year in which they are made, and apply to student allowances payable on and after that date.
- (9) The power to make regulations under this section includes (and is to be treated as always having included) power to make regulations—
- (a) authorising the chief executive of MSD, for the purposes of assessing the eligibility of any person for an allowance, to take into account the income of that person's parents, spouse, or partner;
 - (b) defining parent, spouse, and partner, and any related terms, for the purposes of the regulations;
 - (c) stating when and to what extent income referred to in **paragraph (b)** is to be taken into account.
- (10) In this section,—
- CPI** means the New Zealand Consumers Price Index (All Groups) published by Statistics New Zealand

standard tax means the amount of tax calculated on a weekly basis that would be withholdable in accordance with tax code M stated in Schedule 5, Part A, clause 4, row 1 of the table of the Tax Administration Act 1994.

Compare: 1989 No 80 ss 303, 307

609 Regulations relating to Student Allowance Appeal Authorities

- (1) The Governor-General may, by Order in Council, make regulations for the purposes of **Schedule 10** prescribing how—
 - (a) appeals are to be made to a Student Allowance Appeal Authority; and
 - (b) a Student Allowance Appeal Authority is to deal with appeals and conduct its proceedings.
- (2) A Student Allowance Appeal Authority may regulate its procedures as it thinks fit, subject to—
 - (a) this Act and any regulations made under it; and
 - (b) any practice notes issued under **clause 6 of Schedule 10**.
- (3) The Ministry of Justice must provide for all the Student Allowance Appeal Authorities all administrative and secretarial services necessary to enable them to perform their functions.

Compare: 1989 No 80 s 306

610 Regulations relating to charging by TEC

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) prescribing the criteria against which TEC must assess a breach to determine the nature and seriousness of the breach for the purposes of **section 391(5)**;
 - (b) prescribing the criteria against which TEC must assess a proposed fee to determine, for the purposes of **section 391(5)**, the effect that the fee would have on the operation, long-term viability, and performance of an organisation;
 - (c) specifying the maximum percentage or proportion of the cost incurred by TEC in its investigation that may be charged as a fee by TEC under **section 391(3)**.
- (2) Before making a recommendation under **subsection (1)**, the Minister must consult the persons and organisations that the Minister thinks fit.

Compare: 1989 No 80 s 159E(6), (7)

611 Regulations relating to pastoral care

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations in relation to the following matters:

- (a) codes of practice for pastoral care of students, including (without limitation)—
 - (i) setting out the purpose and scope of a code:
 - (ii) providing for the appointment of code administrators:
 - (iii) specifying the functions and duties of code administrators, including (without limitation) the duty to issue improvement notices and compliance notices:
- (b) dispute resolution schemes relating to the pastoral care of students, including (without limitation)—
 - (i) establishing the schemes:
 - (ii) providing rules for the schemes:
 - (iii) prescribing fees for the scheme:
 - (iv) setting caps on the amounts that those found liable must pay to claimants.

611A Regulations relating to national student numbers

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:
 - (a) prescribing the assignment and use of national student numbers:
 - (b) identifying any agency or body as a specified user of national student numbers.
- (2) Before making a recommendation under **subsection (1)**, the Minister must consult the Privacy Commissioner.

Compare: 1989 No 80 s 347

612 Regulations relating to State integrated schools

- (1) The Governor-General may, by Order in Council, make regulations for the following purposes:
 - (a) prescribing a form of integration agreement:
 - (b) providing for the control, management, organisation, finance, and conduct of State integrated schools.
- (2) If there is a conflict between regulations made under this section and regulations made under another provision of this Act or any enactment repealed by this Act, the regulations made under this section apply prevail.

Compare: 1989 No 80 s 476

612A Regulations relating to composite schools

- (1) If a provision of this Act empowers the making of regulations relating to State primary or secondary schools or both, or to the staff or students of State pri-

mary or secondary schools or both, any regulations made under those provisions may be limited in their application to—

- (a) composite schools or composite schools of any specified class; or
 - (b) staff or students of composite schools or composite schools of any specified class.
- (2) Subject to any regulations to which **subsection (1)** refers, this Act applies to every composite school as if a reference in this Act to—
- (a) a State primary school were a reference to those classes and courses in that composite school providing primary education; and
 - (b) a State secondary school were a reference to those classes and courses in the composite school providing secondary education.

Compare: 1964 No 135 s 87

612B General regulations

The Governor-General may, by Order in Council, make regulations providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1989 No 80 s 301

Directions

612C ~~Directions relating to COVID-19~~

~~**Schedule 23A** provides for the Secretary to issue directions in relation to COVID-19.~~

612C Application and purpose of sections 612D to 612H

- (1) **Sections 612D to 612H** apply if—
- (a) a state of emergency is declared under section 66 or 68 of the Civil Defence Emergency Management Act 2002;
 - (b) a transition period is notified under section 94A of the Civil Defence Emergency Management Act 2002;
 - (c) an epidemic notice is in force under section 5 of the Epidemic Preparedness Act 2006.
- (2) The purpose of **sections 612D to 612H** is to support the response to, and recovery from, an emergency or an epidemic in a manner that—
- (a) avoids, remedies, or mitigates the actual or potential adverse effects of the emergency or epidemic; and
 - (b) facilitates co-ordinated processes among education entities and government agencies.

Compare: 1989 No 80 s 476A

612D Power of Secretary to direct education entities

- (1) The Secretary may direct the governing body of an education entity (or the governing bodies of a class of education entities) to comply with any specified requirements—
 - (a) to close or open the education entity or any part of it (including in relation to any specified category, class, or year group of students):
 - (b) to close or open the education entity for physical attendance or instruction, or both:
 - (c) to set restrictions on the attendance of students and those working at an education entity, having regard to any relevant employment or health and safety legislation:
 - (d) to operate, control, or manage the education entity:
 - (e) to provide education or instruction through the education entity in any specified ways.
- (2) The Secretary may renew, amend, or revoke a direction while the relevant state of emergency, transition period, or epidemic notice is in force.
- (3) **Schedule 23A** provides for directions in relation to COVID-19.
Compare: 1989 No 80 s 476C

612E Effect of directions

- (1) Every education entity to which a direction applies must give effect to the direction on the date on which the direction is given or on any later date that is specified in the direction.
- (2) A direction overrides every other provision of this Act (apart from the provisions set out in **sections 612C to 612H**).
- (3) However, a direction does not override the provisions of any other Act, including (without limitation) the Civil Defence Emergency Management Act 2002, the Epidemic Preparedness Act 2006, the Health Act 1956, and the Health and Safety at Work Act 2015.
Compare: 1989 No 80 s 476D

612F Publication of directions

As soon as practicable after a direction is given, the Secretary must publish the direction in the *Gazette* and on an Internet site maintained by or on behalf of the Ministry.

Compare: 1989 No 80 s 476E(1)

612G Expiry of directions

A direction expires on the earlier of—

- (a) the expiry date specified in the direction:

- (b) the date on which the relevant state of emergency, transitional period, or epidemic notice ends.

Compare: 1989 No 80 s 476E(2)

612H Academic freedom unaffected

Nothing in **sections 612C to 612G** limits the academic freedom of—

- (a) an institution other than NZIST as set out in **section 247**:
 (b) NZIST as set out in **section 305**.

Compare: 1989 No 80 s 476F

612I Power of boards to close schools

- (1) Despite anything in **Schedule 20**, a board may close a school it administers because of an epidemic, a flood, a fire, or any other emergency.
- (2) The Secretary may, by written notice to the board, reduce the number of half-days for which a school would otherwise be required by **clause 1 of Schedule 20** to be open for instruction if satisfied that its closure for instruction was necessary because of an epidemic, flood, fire, or other emergency.
- (3) The Secretary may direct a board to reopen a school if the Secretary, after consulting the board and any other parties that the Secretary considers relevant, is satisfied that the closure is no longer justified.
- (4) A board may not close a school if the Secretary has issued a direction under **section 612D** in respect of the school.

Compare: 1989 No 80 s 65E

Subpart 8—Offences

613 Offence relating to attempt to influence employer

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person directly or indirectly solicits or endeavours to influence, with respect to decisions on the matters described in **section 569**, any employer or any other person or persons to whom the employer has, under this Act or any other Act, delegated powers.
- (2) This section does not apply to a person giving information or advice or making representations to the employer or to any other person acting under a delegation from the employer in respect of any matter at the request or invitation of the employer or to any other person acting under a delegation.
- (3) Nothing in this section is to be construed so as to prevent any union from making representations to the employer or to any other person acting under a delegation from the employer on any matter affecting the salaries, wages, or conditions of employment of any employees who are members of that union.

Compare: 1988 No 20 s 76

614 Offences relating to national student numbers

- (1) A specified user commits an offence, and is liable on conviction to a fine not exceeding \$15,000, if the specified user uses or discloses a person's national student number otherwise than—
 - (a) in accordance with the authorisations under this Act or any regulations made under this Act that apply to that user; or
 - (b) as required by section 141 of the Intelligence and Security Act 2017 (to the extent that a permission granted under section 137 or 138 of that Act permits the Director-General of an intelligence and security agency to access information relating to national student numbers).
- (2) A person (**person A**) who is not a specified user commits an offence, and is liable on conviction to a fine not exceeding \$15,000, if the person, without reasonable excuse, keeps a record of, or requires the disclosure of, the national student number of another person (**person B**) if the number is, or is capable by person A of being, linked to any information that may lead person A to the identification of person B.

Compare: 1989 No 80 s 346

615 Offences relating to false representations

- (1) A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person—
 - (a) makes a statement to the Teaching Council about the person's qualifications or experience that would be perjury if made on oath in judicial proceedings; or
 - (b) not being a registered teacher, uses, or permits to be used, in connection with the person's name or business, the words "registered teacher", or any words or initials intended or likely to make any other person believe that the person is a registered teacher; or
 - (c) wilfully makes, or causes to be made, a false entry in, or falsification of, the register or a practising certificate; or
 - (d) falsely represents a document that is not a practising certificate to be a practising certificate; or
 - (e) falsely represents a document that is not a limited authority to teach to be a limited authority to teach; or
 - (f) is appointed to or continues to be employed in a position, knowing that the appointment or employment is contrary to **section 88 or 89**; or
 - (g) being the employer of a person to whom **section 91(1)** applies, fails or refuses to ensure that the person does not carry out any of the duties of the teaching position in which the person is employed; or
 - (h) being the employer of a person to whom **section 91(1)** applies, fails or refuses to take all reasonably practicable steps to ensure that the person

does not undertake any activities that might bring the person into contact with students enrolled at the school or children who attend the service; or

- (i) being a person to whom **section 91(1)** applies, carries out any of the duties of the teaching position in which the person is employed; or
 - (j) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of an employer in a teaching position after the sum of the following periods is 20 half-days, or any greater number of half-days the Teaching Council has allowed that person (each being a half-day on which a school or an early childhood education and care service at which the person was then employed was open for instruction):
 - (i) the period or periods for which that person has already during that year been employed by the employer in a teaching position or teaching positions; and
 - (ii) any period or periods for which that person has already during that year been employed by any other employer in a teaching position or teaching positions; and
 - (iii) any period or periods for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service; or
 - (k) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of the employer at an early childhood education and care service as a teacher after the sum of the following periods is 20 half-days, or any greater number of half-days the Teaching Council has allowed that person (each being a half-day on which an early childhood education and care service or a school at which the person was then employed was open for instruction):
 - (i) the period or periods for which that person has already during that year been employed by the employer as a teacher; and
 - (ii) any period or periods for which that person has already during that year been employed by an employer at any other early childhood education and care service as a teacher; and
 - (iii) any period or periods for which that person has during that year been employed in a teaching position by the employer at a State school.
- (2) A person commits an offence, and is liable on conviction to a fine not exceeding \$5,000, if the person appoints any person to a position, or continues to employ any person in a position, knowing that the appointment or employment is contrary to **section 88 or 89**.

Compare: 1989 No 80 s 374

616 Offence relating to obstructing power of entry

A person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, if the person obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by **section 590 or 591**.

Compare: 1989 No 80 s 319H

617 Offence relating to inspection of hostels

A person in charge (or apparently in charge) of a hostel commits an offence, and is liable on conviction to a fine not exceeding \$5,000, if the person fails, without reasonable excuse, to comply with **section 595(3)**.

Compare: 1989 No 80 s 144D(3)

618 Offence relating to powers of entry and inspection

A person commits an offence, and is liable on conviction to a fine not exceeding \$10,000, if the person obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by **section 597(1)**.

Compare: 1989 No 80 s 255A(4)

619 Offence relating to breach of order of Student Allowance Appeal Authority

A person who breaches an order that a Student Allowance Appeal Authority makes under **clause 5(8) of Schedule 10** is liable on conviction to a fine not exceeding \$3,000.

Compare: 1989 No 80 s 305(8)

Subpart 9—Consequential amendments, repeals, and revocations

620 Consequential amendments to this Act

- (1) On **1 January 2023**,—
- (aaa) in **section 69A(2)**, delete “**Schedule 19** and”:
 - (a) in **section 71(2)(b)**, delete “or **clause 14 of Schedule 19**,”:
 - (b) in ~~section 71(3)~~, delete “~~**Schedule 19**~~ and”:
 - (c) in **section 111**, delete “**Schedule 20** and”:
 - (d) in **section 119**,—
 - (i) replace “set out in the following schedules:” with “set out in **Schedule 19 20**.”:
 - (ii) repeal **paragraphs (a) and (b)**:
 - (e) in **section 177(6)**, replace “**21**” with “**1920**”:

- (f) in **section 183(3)**, delete “**clauses 8(7) and 12 of Schedule 22 and**”:
- (g) in **section 185(6)**, delete “**clauses 8(7) and 12 of Schedule 22 and**”:
- (h) in **section 191(9)**, delete “, **clause 16 of Schedule 19,**”:
- (i) in **section 193(5)(b)**, replace “**21**” with “**1920**”:
- (ia) in **section 612I(1)**, replace “Despite anything in **Schedule 20, a board**” with “**A board**”:
- (ib) in **section 612I(2)**, delete “required by **clause 1 of Schedule 20 to be**”:
- (j) in ~~subsection (3)~~**section 620A**, replace “**24**” with “**2022**”:
- (ja) in **section 621(4)**, replace “**24**” with “**22**”:
- (k) in **Schedule 1, clause 3(2)**, replace “**24**” with “**2022**”:
- (l) in **Schedule 6, clause 15(7)(b)**, replace “**21**” with “**1920**”:
- (m) in the **Schedule 21** heading, replace “**21**” with “**1920**”:
- (ma) in the **Schedule 21** heading, delete “**119(a),**”:
- (n) in **Schedule 21, clause 3(3)(a)**,—
- (i) delete “**clause 3 of Schedule 22 or**”:
- (ii) delete “**clause 8 of Schedule 22 or**”:
- (o) in ~~Schedule 21, clause 3(3)(b)~~, delete “~~**clause 8 of Schedule 22 or**~~”:
- (o) in **Schedule 21, clause 5(2)**, delete “**and clauses 1, 3, 8, 12, and 13 of Schedule 22**”:
- (oa) in **Schedule 22, clause 3(10)**, replace “**21**” with “**20**”:
- (ob) in **Schedule 22, clause 4(5)**, replace “**21**” with “**20**”:
- (oc) in **Schedule 22, clause 15(1)**, replace “**21**” with “**20**”:
- (od) in **Schedule 22, clause 15(4)**, replace “**21**” with “**20**”:
- (q) in the **Schedule 24** heading, replace “**24**” with “**2022**”.
- (2) On **1 January 2022**, in **section 588**, delete “**Schedule 23 and**”.
- (3) Amend the enactments specified in **Parts 1 to 3 of Schedule 24** as set out in that schedule.
- (3) On **1 December 2020**,—
- (a) in **section 85(1)(f)**, replace “1993” with “2020”:
- (b) in **Schedule 3, clause 9(2)**, replace “1993” with “2020”:
- (c) in **Schedule 3, clause 9(3)**, replace “1993” with “2020”.
- (4) On **1 December 2020**, in **Schedule 3**, after **clause 9(3)**, insert:

- (4) On or after 1 December 2020, no information may be supplied under this clause except under—
- (a) an information matching agreement entered into under Part 10 of the Privacy Act 1993 and continued by clause 11 of Schedule 1 of the Privacy Act 2020; or
 - (b) an approved information sharing agreement entered into under subpart 1 of Part 7 of the Privacy Act 2020.”
- (5) On 1 December 2020, in Schedule 9, clause 7, insert as subclause (2):
- (2) On or after 1 December 2020, no information may be supplied under this clause except under—
- (a) an information matching agreement entered into under Part 10 of the Privacy Act 1993 and continued by clause 11 of Schedule 1 of the Privacy Act 2020; or
 - (b) an approved information sharing agreement entered into under subpart 1 of Part 7 of the Privacy Act 2020.”
- (6) On 1 December 2020,—
- (a) in Schedule 9, clause 8(2), replace “may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive and any institution or, if they are unable to agree, settled by the Privacy Commissioner, by notice in writing or electronically” with “may, by notice in writing or electronically.”;
 - (b) in Schedule 9, clause 8(7), after “chief executive”⁴, insert “under the Privacy Act 2020”;
 - (c) in Schedule 9, clause 8(8),—
 - (i) replace “Section 104 of the Privacy Act 1993” with “Section 182 of the Privacy Act 2020”; and
 - (ii) replace “section 104(2)(a), (d), or (e) of the Privacy Act 1993” with “section 182(2)(a), (d), or (e) of the Privacy Act 2020”.
- (7) On 1 December 2020, in Schedule 9, after clause 8(8), insert:
- (9) On or after 1 December 2020, no information may be supplied under this clause except under—
- (a) an information matching agreement entered into under Part 10 of the Privacy Act 1993 and continued by clause 11 of Schedule 1 of the Privacy Act 2020; or
 - (b) an approved information sharing agreement entered into under subpart 1 of Part 7 of the Privacy Act 2020.”
- (8) On 1 December 2020,—
- (a) in Schedule 9, clause 9(2), replace “may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief

- executive and any institution or, if they are unable to agree, settled by the Privacy Commissioner, by notice in writing or electronically” with “may, by notice in writing or electronically,”:
- (b) in **Schedule 9, clause 9(7)**, after “chief executive”, insert “under the Privacy Act 2020”:
- (c) in **Schedule 9, clause 9(8)**,—
- (i) replace “Section 104 of the Privacy Act 1993” with “Section 182 of the Privacy Act 2020”; and
- (ii) replace “section 104(2)(a), (d), or (e) of the Privacy Act 1993” with “section 182(2)(a), (d), or (e) of the Privacy Act 2020”.
- (9) On **1 December 2020**, in **Schedule 9**, after **clause 9(8)**, insert:
- (9) On or after **1 December 2020**, no information may be supplied under this clause except under—
- (a) an information matching agreement entered into under Part 10 of the Privacy Act 1993 and continued by clause 11 of Schedule 1 of the Privacy Act 2020; or
- (b) an approved information sharing agreement entered into under subpart 1 of Part 7 of the Privacy Act 2020.”

620A Consequential amendments to other enactments

Amend the enactments specified in **Parts 1 to 3 of Schedule 24** as set out in that schedule.

621 Repeals and revocations

- (1) The following provisions of this Act are repealed on **1 January 2023**:
- (aa) **section 612D(3)** (which relates to **Schedule 23A**):
- (a) **Schedule 19** (which relates to enrolment schemes):
- (b) **Schedule 20** (which relates to when State schools must be open):
- (c) **Schedule 22** (which relates to electing and co-opting board members to boards of State schools, term of office of board members, and eligibility):
- (d) **Schedule 23A** (which relates to directions in relation to COVID-19).
- (2) **Schedule 23** (which relates to national student numbers) is repealed on **1 January 2022**.
- (3) The following are repealed:
- (a) Education Act 1964 (1964 No 135):
- (b) Education Act 1989 (1989 No 80):
- (c) Education Law Amendment Act 1933 (1933 No 37):
- (d) Education Legislation Act 2016 (2016 No 72):

- (e) Education Standards Act 2001 (2001 No 88);
 - (f) Education (Update) Amendment Act 2017 (2017 No 20);
 - (h) **Parts 7, 7A, and 7B of the State Sector Act 1988.**
- (4) The legislative instruments specified in **Part 4 of Schedule 24** are revoked.

Schedule 1

Transitional, savings, and related provisions

s 11ss 11, 344(2)(b)(ii)

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Part 1

Provisions relating to Act as enacted

Subpart 1—General transitional provisions

1 Interpretation

In this schedule, unless the context otherwise requires,—

1964 Act means the Education Act 1964

1989 Act means the Education Act 1989

former enactment means 1 or more of the following:

- (a) the 1964 Act;
- (b) the 1989 Act;
- (d) **Parts 7, 7A, and 7B of the State Sector Act 1988**

matter includes any action undertaken, any decision taken, any notice given, any proceedings commenced, ~~or any applications made, any agreement entered into, or any requirements imposed.~~

2 Matters initiated under former enactments

- (1) This clause applies to any matter initiated under a former enactment before the commencement of this clause.
- (2) If this clause applies, the provisions of the former enactment, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been repealed or replaced by this Act.
- (3) However, for the purposes of making amendments to a matter initiated under a provision of a former enactment, the matter may be amended under a corresponding provision in this Act (if any) as if the matter had been initiated under the corresponding provision.

3 References to former enactments

- (1) A reference in an enactment or a document to a former enactment, or to 1 or more of its provisions, ~~is to~~ must be interpreted as a reference to this Act, or to the corresponding provision of this Act, to the extent necessary to reflect sensibly the intent of the enactment or document.
- (2) **Subclause (1)** is subject to the consequential amendments in **Schedule 24**.

Compare: 2018 No 32 s 9(1)

3A Legislative instruments continued

- (1) The following legislative instruments made under the 1989 Act and the Education Standards Act 2001 continue in force and must be treated as if they were made under the corresponding provisions of this Act:
- (a) Education (Early Childhood Services) Regulations 2008 (SR 2008/204):
 - (b) Education (Education Review Office Authorised to Use National Student Numbers) Regulations 2019 (LI 2019/20):
 - (c) Education (Export Education Levy) Regulations 2011 (SR 2011/383):
 - (d) Education (Hostels) Regulations 2005 (SR 2005/332):
 - (e) Education (Ministry of Social Development Authorised to Use National Student Numbers) Regulations 2012 (SR 2012/338):
 - (f) Education (Playgroups) Regulations 2008 (SR 2008/205):
 - (g) Education (Pastoral Care of International Students) Code of Practice 2016 (LI 2016/57):
 - (h) Education (Payment of Relieving Teachers) Order 2012 (SR 2012/221):
 - (ha) Education (Refund Requirements for International Students) Notice 2012 (SR 2012/312):
 - (i) Education (Registration of Early Childhood Services Teachers) Regulations 2004 (SR 2004/236):
 - ~~(j) Education (Refund Requirements for International Students) Notice 2012 (SR 2012/312):~~
 - (k) Education (School Risk Management Scheme) Regulations 2003 (SR 2003/39):
 - (l) Education (2020 School Staffing) Order 2019 (LI 2019/180):
 - (m) Education (School Trustee Elections) Regulations 2000 (SR 2000/195):
 - (n) Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999 (SR 1999/202):
 - (o) Education (Statistics New Zealand Authorised to Use National Student Numbers) Regulations 2008 (SR 2008/134):
 - (p) Education (Surrender, Retention, and Search) Rules 2013 (SR 2013/469):
 - (q) Education (Tertiary Education—Criteria Permanent Residents Studying Overseas must Satisfy to be Domestic Students) Regulations 2016 (LI 2016/212):
 - (r) International Student Contract Dispute Resolution Scheme Rules 2016 (LI 2016/42):
 - (s) Student Allowances Regulations 1998 (SR 1998/277):

- (sa) Teaching Council of Aotearoa New Zealand Election Rules 2018 (LI 2018/234):
 - (t) Teaching Council Rules 2016 (LI 2016/122):
 - (u) ~~Teaching Council of Aotearoa New Zealand Election Rules 2018 (LI 2018/234):~~
- (2) The legislative instruments continued in force by this clause may be amended, revoked, or replaced under the corresponding provisions of this Act.

3B Title of legislative instrument changed

- (1) In the Education (School Trustee Elections) Regulations 2000, replace regulation 1 with:

1 Title

These regulations are the Education (Board Elections) Regulations 2000.

- (2) Unless the context otherwise requires, every reference to the Education (School Trustee Elections) Regulations 2000 in any enactment and any document must, after the commencement of this clause, be read as a reference to the Education (Board Elections) Regulations 2000.

4 Regulations for transitional and savings purposes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing transitional or savings provisions ~~for the purposes of—~~ either or both of the following purposes:
- (a) facilitating or ensuring the orderliness of the transition to this Act from a former enactment:
 - (b) ensuring that existing rights or obligations continue as part of, or despite, that transition.
- (2) The Minister may not recommend the making of regulations unless satisfied that they—
- (a) are reasonably necessary for either or both of the purposes in **subclause (1)(a) and (b)**; and
 - (b) are consistent with the purposes of this Act.
- (3) The transitional provisions or savings provisions prescribed by regulations made under **subclause (1)** may be provisions in addition to or instead of all other provisions of this schedule, and may—
- (a) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions (including definitions) of this Act do not apply, or apply with modifications or additions:
 - (b) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions

repealed, amended, or revoked by this Act are to continue to apply, or apply with modifications or additions, as if they had not been repealed, amended, or revoked:

- (c) provide for any other matter necessary for either or both of the purposes in **subclause (1)(a) and (b)**.
- (4) No regulations may be made under this clause on or after **1 January 2023**.
- (5) Any regulations made under this clause before **1 January 2023** are revoked on **1 January 2023**.

Compare: 1989 No 80 Schedule 1 cl 73; 2018 No 4 Schedule 1 cl 37; 2018 No 32 cl 68

5 Saving provisions

- (1) Despite any other provision in this Act, the following provisions of the 1989 Act, as they read immediately before the commencement of this clause, continue to apply until **1 January 2023** as if they had not been repealed or replaced by this Act:
 - (a) section 60A (curriculum statements and national performance measures):
 - (b) section 61 (school charter):
 - (c) section 62 (procedural requirements of preparing or updating school charter):
 - (ca) section 63 (effect of school charter):
 - (cb) section 63A (when school charter or updated charter takes effect):
 - (cc) section 63B (board must make copies of school charter available):
 - (d) section 78L (action plans):
 - (e) section 87 (annual reports).
- (2) Despite any other provision of this Act, a provision in any of sections 88 and 158 and clauses 3, 15, 17, 39, 40, and 41 of Schedule 6 of the 1989 Act, as the provision read immediately before the commencement of this clause, continues to apply until the date on which regulations under **section 601** are made that deal with the matter addressed in the provision.
- (3) Despite any other provision of this Act, a provision in any of sections 238H(1) to (4) and (9), 238I, 238J, and 238K of the 1989 Act, as the provision read immediately before the commencement of this clause, continues to apply until the date on which regulations under **section 611** are made that deal with the matter addressed in the provision.

Subpart 1A—Provisions for Part 2 (early childhood education)

5A Applications for licences

- (1) ~~This clause applies to an application for a licence to operate as an early childhood education and care centre lodged before the commencement of this clause.~~
- (2) ~~If this clause applies, the application must be determined in accordance with the relevant provisions of the 1989 Act (as they read immediately before the commencement of this clause).~~
- (3) ~~To avoid doubt, **section 17** of this Act does not apply.~~

5A Applications for licence to operate early childhood education and care centre

- (1) This clause applies to an application for a licence to operate as an early childhood education and care centre made before the date on which **section 17** comes into force but not finally determined before that date.
- (2) The application must be determined as if **section 17 and 17A** do not apply to it.

5B Review of **section 17(6)**

- (1) The Minister must, by no later than **1 August 2025**, review, or arrange for a review of, **section 17(6)**.
- (2) The review must—
 - (a) consider the purpose, operation, and effectiveness of **section 17(6)**; and
 - (b) assess whether any amendments to **section 17(6)** are necessary or desirable.
- (3) The Minister must prepare a report of the review, which must be published on an Internet site maintained by or on behalf of the Ministry.

Compare: 2020 No 4 s 10

Subpart 1B—Provisions for Part 3 (primary and secondary education)

5C Enrolment schemes

An enrolment scheme that complies with **section 69** (regardless of whether that section has commenced) may be established, amended, or abandoned in accordance with the 1989 Act as if sections 11A to 11Q of that Act were still in force if the process of establishing, amending, or abandoning the enrolment scheme is initiated in the period beginning on the commencement of this clause and ending with the close of **31 December 2020**.

5D Temporary power of Minister to approve provision of education outside New Zealand

- (1) The Minister may, on a case-by-case basis, grant approval to a State school to provide education in the 2020 calendar year to students outside New Zealand who, on or before **3 July 2020**, were enrolled at the school for that year.
- (2) A State school granted approval under **subclause (1)** may continue to provide education in the 2021 and 2022 calendar years to the students described in **subclause (1)**.
- (3) An approval granted to a State school under **subclause (1)** expires with the close of **31 December 2022**.

5E Temporary power of NZQA to approve provision of NCEA outside New Zealand

- (1) Despite **section 426**, NZQA may, in accordance with any rules made under **subclause (6)**, grant approval to a registered school to provide assessment for an NCEA qualification in the 2020 calendar year to students outside New Zealand who, on or before **3 July 2020**, were enrolled at the school for that year.
- (2) NZQA may specify the standards against which a registered school may or may not assess students—
 - (a) as part of an approval granted under **subclause (1)**; or
 - (b) in a direction given to the school after approval is granted under **subclause (1)**.
- (3) NZQA may impose conditions on an approval granted under **subclause (1)**, and, for that purpose, **section 413(2) to (5)** applies as if—
 - (a) each reference to accreditation were a reference to approval under **subclause (1)**; and
 - (b) each reference to an institution were a reference to a registered school.
- (4) NZQA may withdraw an approval granted under **subclause (1)**, and, for that purpose, **section 415(1) to (4)** applies as if—
 - (a) each reference to accreditation were a reference to approval under **subclause (1)**; and
 - (b) each reference to an institution were a reference to a registered school.
- (5) A registered school that is granted approval under **subclause (1)** may continue to provide assessment for an NCEA qualification in the 2021 and 2022 calendar years to students described in **subclause (1)**.
- (6) NZQA may, for the purposes of **subclause (1)**, make rules, in addition to any relevant requirements set out in rules made under **section 423**, prescribing—
 - (a) the process for an application for approval;
 - (b) the information required in an application for approval;

- (c) the criteria that NZQA must apply when considering an application for approval:
- (d) the requirements that the applicant must meet to maintain an approval.
- (7) NZQA may, in accordance with **section 428**, charge fees to any registered school for an application for approval under **subclause (1)**.
- (8) Any rules made under **subclause (6)**—
 - (a) must comply with the process set out in **section 423(4) to (7)**; and
 - (b) expire with the close of **31 December 2022**.

Subpart 2—~~Provisions~~ General provisions for Part 4 (tertiary education and vocational education and training)

Tertiary education strategy

6 Tertiary education strategy

- (1) This clause applies to the tertiary education strategy issued by the Minister under **section 159AA** of the 1989 Act and in force immediately before the commencement of this clause.
- (2) The strategy continues in force as if it were issued under **section 7**.

Institutions

7 Institutions (other than NZIST or NZIST subsidiary)

- (1) This clause applies to an institution (other than NZIST or an NZIST subsidiary) in existence immediately before the commencement of this clause.
- (2) The institution must be treated as having been established under **section 248**.
- (3) A reference in any other Act to an institution established under this Act must be read as including a reference to a body specified in the definition of institution in **section 10(1)**.

Compare: 1989 No 80 s 162(1)

Ministerial directions

8 Ministerial direction relating to compulsory student services fees

- (1) This clause applies to the direction relating to compulsory student services fees given by the Minister under section 227A of the 1989 Act and in force immediately before the commencement of this clause.
- (2) The direction continues in force as if it were issued under **section 238**.

9 Ministerial direction relating to programmes

- (1) This clause applies to the direction relating to a programme of study or training given by the Minister under section 223(2) of the 1989 Act and in force immediately before the commencement of this clause.
- (2) The direction continues in force as it were issued under **section 241**.

*Staff***10 Transitional provisions for employment of staff**

- (1) A person who was a member of the staff of an institution immediately before the commencement of this clause must, after that commencement, unless the employment of the person would, apart from this Act, have ended on that commencement, be, under this subclause, in the employment of the chief executive of the institution, on the same terms and conditions as those on which the person was employed immediately before that commencement, until the person's employment terminates or is terminated in accordance with those terms and conditions.
- (2) The terms and conditions of employment of a person to whom **subclause (1)** applies must remain in force until varied either individually or through a collective agreement.
- (3) This clause applies subject to the Employment Relations Act 2000 and the **State Sector Act 1988**.

Compare: 1989 No 80 s 198

~~Subpart 3—Provisions~~ Specific provisions for Part 4 (tertiary education and vocational education and training) ~~NZIST and work-based training~~

11AA Purpose

- (1) The purpose of this subpart is to re-enact the provisions set out in Part 10 of Schedule 1 of the 1989 Act relating to NZIST and workforce development councils that came into force on 1 April 2020 and are operative on and after that date in order to continue their legal effect.
- (2) Anything done under Part 10 of Schedule 1 of the 1989 Act before the commencement of this subpart is to be treated as having been done under this subpart.

11 Interpretation

In this subpart, unless the context otherwise requires,—

corresponding NZIST subsidiary, in relation to an existing polytechnic, means the Crown entity subsidiary specified in the second column of the table in **clause 12(3)** opposite the name of the existing polytechnic specified in the first column of the table

existing polytechnic or **polytechnic** means each polytechnic that is listed in the first column of the table in **clause 12(3)** and that was established or treated as having been established under **section 248** before 1 April 2020 and in existence immediately before that date.

Conversion of polytechnics to corresponding NZIST subsidiaries

12 Polytechnics converted to corresponding NZIST subsidiaries

- (1) On and after 1 April 2020, an existing polytechnic is a Crown entity subsidiary of NZIST and the following provisions apply for that purpose:
 - (a) the polytechnic is to be treated as a company registered under the Companies Act 1993 with the name specified in the second column of the table in **subclause (3)** opposite the name of the polytechnic specified in the first column of that table; and
 - (b) the Registrar of Companies must issue a certificate of incorporation for the company; and
 - (c) 100 shares must be treated as having been issued to NZIST.
- (2) The certificate of incorporation is conclusive evidence that the corresponding NZIST subsidiary was, on and after 1 April 2020, registered as a company under the Companies Act 1993.
- (3) For the purposes of **subclause (1)(a)**, the name of the corresponding NZIST subsidiary is:

Name of existing polytechnic	Name of corresponding NZIST subsidiary
Ara Institute of Canterbury	Ara Institute of Canterbury Limited
Eastern Institute of Technology (Te Aho a Māui)	Eastern Institute of Technology (Te Aho a Māui) Limited
Manukau Institute of Technology	Manukau Institute of Technology Limited
Nelson Marlborough Institute of Technology	Nelson Marlborough Institute of Technology Limited
Northland Polytechnic	Northland Polytechnic Limited
Otago Polytechnic	Otago Polytechnic Limited
Southern Institute of Technology	Southern Institute of Technology Limited
Tai Poutini Polytechnic	Tai Poutini Polytechnic Limited
The Open Polytechnic of New Zealand	The Open Polytechnic of New Zealand Limited
Toi Ohomai Institute of Technology	Toi Ohomai Institute of Technology Limited
Unitec New Zealand Institute of Technology	Unitec New Zealand Limited
Universal College of Learning	Universal College of Learning Limited
Waikato Institute of Technology	Waikato Institute of Technology Limited
Wellington Institute of Technology	Wellington Institute of Technology Limited
Western Institute of Technology at Taranaki	Western Institute of Technology at Taranaki Limited
Whitireia Community Polytechnic	Whitireia Community Polytechnic Limited

Compare: 1989 No 80 Schedule 1 cl 29

*Duration of corresponding NZIST subsidiaries***12A Duration of corresponding NZIST subsidiaries**

- (1) Each corresponding NZIST subsidiary continues in existence until the close of **31 December 2022**.
- (2) However, the Governor-General may, by Order in Council made on the recommendation of the Minister, extend the period that any particular corresponding NZIST subsidiary may continue to exist to a date specified in the order.
- (3) Before making a recommendation under **subclause (2)**, the Minister must consult NZIST on the proposed extension and take into account NZIST's views.
- (4) The Minister must not recommend an extension under **subclause (2)** unless the Minister is satisfied on reasonable grounds that the extension is—
 - (a) consistent with NZIST's responsibilities under the charter set out in **Schedule 13**; and
 - (b) in the interests of the tertiary education system and the nation as a whole.

Compare: 1989 No 80 Schedule 1 cl 30

12B NZIST's council may dissolve corresponding NZIST subsidiary

NZIST's council may, by resolution, at any time before the date specified in **clause 12A(1)** or by Order in Council under **clause 12A(2)**, dissolve a corresponding NZIST subsidiary and transfer some or all of the rights, assets, and liabilities of that subsidiary to NZIST or another NZIST subsidiary (whether established under **clause 12(1)** or formed by NZIST under **section 319**).

Compare: 1989 No 80 Schedule 1 cl 31

*Consequences of conversion of polytechnics to corresponding NZIST subsidiaries***13 Directors of corresponding NZIST subsidiary**

- (1) The directors of each corresponding NZIST subsidiary must comprise at least 4, but not more than 8, directors.
- (2) In appointing directors under **subclause (1)**, NZIST must ensure that at least half of the initial directors reside in the region in which the corresponding NZIST subsidiary mainly operates.

Compare: 1989 No 80 Schedule 1 cl 32

14 Application of this Act to corresponding NZIST subsidiary

The provisions of this Act, as far as they relate to an NZIST subsidiary that provides education or training (or both) apply, with any necessary modifica-

tions, to each corresponding NZIST subsidiary during the period that the corresponding NZIST subsidiary exists in accordance with **clause 12A or 12B**.

Compare: 1989 No 80 Schedule 1 cl 33

15 Corresponding NZIST subsidiary is tertiary education organisation, provider, and institution for purposes of this Act

- (1) On and after 1 April 2020, each NZIST subsidiary is to be treated,—
- (a) until **31 December 2022**, as a tertiary education organisation within the meaning of **section 10(1)**, and the provisions of this Act relating to tertiary education organisation's apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (b) as a provider within the meaning of **section 10(1)**, and the provisions of this Act relating to providers apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (c) as a specified user within the meaning of **section 10(1)**, and the provisions of this Act or any regulations made under this Act relating to national student numbers apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (d) an institution within the meaning of **section 10(1)**, and the provisions referred to in **subclause (3)** apply to it accordingly as if—
 - (i) those provisions included a reference to the NZIST subsidiary; and
 - (ii) any reference in those provisions to the council of an institution were a reference to the board of the NZIST subsidiary.
- (2) For the purposes of **subclause (1)(a)**, TEC may consider a proposed plan of an NZIST subsidiary and fund that subsidiary for an academic year beginning on or after **1 January 2021** but only if requested by NZIST.
- (3) For the purposes of **subclause (1)(d)**, the provisions are—
- (a) **sections 264, 296, 297, 363, 495, and 496**;
 - (b) **subparts 1 and 2 of Part 4**;
 - (c) **subpart 2 of Part 5**;
 - (d) **clauses 1, 5, and 6 of Schedule 8**.

Compare: 1989 No 80 Schedule 1 cl 34

16 Members of existing polytechnic council cease to hold office

- (1) Every member of an existing polytechnic council holding office immediately before 1 April 2020 ceases to hold office on the close of the day before that date.

- (2) Neither the Crown nor any existing polytechnic council is liable to make a payment to, or otherwise compensate, a person referred to in **subclause (1)** in respect of the loss of office.

Compare: 1989 No 80 Schedule 1 cl 35

17 Rights, assets, and liabilities of existing polytechnics

- (1) This clause applies to all rights, assets, and liabilities that an existing polytechnic had immediately before 1 April 2020.
- (2) On and after 1 April 2020,—
- (a) the rights, assets, and liabilities of the existing polytechnic vest in the existing polytechnic's corresponding NZIST subsidiary; and
 - (b) unless the context otherwise requires, every reference to the existing polytechnic in any enactment (other than this Act), instrument, agreement, deed, lease, application, notice, or other document before that date must be read as a reference to the polytechnic's corresponding NZIST subsidiary.
- (3) In this clause, **assets**, **liabilities**, and **rights** have the same meanings as in **section 10(3)**.

Compare: 1989 No 80 Schedule 1 cl 36

17A Same person for purposes of Inland Revenue Acts

For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), a corresponding NZIST subsidiary must be treated as the same person as the existing polytechnic.

Compare: 1989 No 80 Schedule 1 cl 37

18 Employees of existing polytechnics

- (1) On and after 1 April 2020, every employee of an existing polytechnic becomes an employee of the polytechnic's corresponding NZIST subsidiary on the same terms and conditions that applied to the person immediately before they became an employee of the corresponding NZIST subsidiary.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of that employee,—
- (a) the employee's employment agreement of that employee is to be treated as unbroken; and
 - (b) the employee's period of service with the existing polytechnic, and every other period of service of the employee that is recognised by the polytechnic as continuous service, is to be treated as a period of service with the polytechnic's corresponding NZIST subsidiary.
- (3) To avoid doubt, the employment of an employee to whom this clause applies by a polytechnic's corresponding NZIST subsidiary does not constitute new

employment for the purposes of any service-related benefits, whether legislative or otherwise.

- (4) An employee to whom this clause applies is not entitled to receive any payment or benefit from an existing polytechnic or its corresponding NZIST subsidiary on the grounds that the person's position in the polytechnic has ceased to exist or the person has ceased to be an employee of the polytechnic as a result of the transfer to its corresponding NZIST subsidiary.
- (5) This clause overrides—
 - (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employment protection provision in any relevant employment agreement.

Compare: 1989 No 80 Schedule 1 cl 38

19 Government Superannuation Fund

- (1) This clause applies to a person who, immediately before becoming an employee of a corresponding NZIST subsidiary, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956.
- (2) For the purposes of the Government Superannuation Fund Act 1956, the person is treated as being employed in the Government service as long as the person continues to be an employee of the corresponding NZIST subsidiary.
- (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 corresponding NZIST subsidiary were Government service.
- (4) **Subclause (1)** does not entitle 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 corresponding NZIST subsidiary is the controlling authority.

Compare: 1989 No 80 Schedule 1 cl 39

20 Students of existing polytechnics

- (1) This clause applies to every student enrolled at an existing polytechnic immediately before 1 April 2020.
- (2) On and after 1 April 2020, the student must be treated as having been enrolled at the existing polytechnic's corresponding NZIST subsidiary.
- (3) A student who would, but for the conversion of the existing polytechnic into its corresponding NZIST subsidiary, have been entitled to be granted an award of the existing polytechnic is entitled to be granted a like award of the corresponding NZIST subsidiary.

Compare: 1989 No 80 Schedule 1 cl 40

20A Visas granted under Immigration Act 2009

- (1) This clause applies to a visa granted under the Immigration Act 2009 in respect of—
- (a) a student, for the purposes of enrolment at an existing polytechnic; or
 - (b) a staff member of an existing polytechnic.
- (2) On and after 1 April 2020, any reference to the existing polytechnic in a condition imposed on the visa must be read as a reference to the polytechnic's corresponding NZIST subsidiary.

Compare: 1989 No 80 Schedule 1 cl 41

21 Existing NZQA approvals, accreditations, and consents

- (1) This clause applies to the following granted to an existing polytechnic by NZQA under Part 20 of the 1989 Act before 1 April 2020 and in effect immediately before that date:
- (a) an approval of a programme under **section 410**;
 - (b) an accreditation to provide all or part of a programme under **section 412**;
 - (c) an approval to provide a training scheme under **section 416**;
 - (d) a consent to assess against the standards listed in the Directory of Assessment Standards under **section 420**;
 - (e) a consent to award a degree or a postgraduate qualification under **section 425**.
- (2) On and after 1 April 2020,—
- (a) except as provided in **subclause (3)**, the approval, accreditation, or consent (including any conditions imposed on an approval, an accreditation, or a consent) must be treated as if it were granted to the existing polytechnic's corresponding NZIST subsidiary; and
 - (b) unless the context otherwise requires, every reference to the existing polytechnic in the approval, accreditation, or consent must be read as a reference to the polytechnic's corresponding NZIST subsidiary.
- (3) On and after **1 January 2023**, the approval of a programme under **section 410** and the consent to award a degree or a postgraduate qualification under **section 425** must be treated as if they were granted to NZIST.

Compare: 1989 No 80 Schedule 1 cl 42

22 Existing funding paid by TEC under funding mechanism

- (1) This clause applies to funding (including any conditions imposed on the funding) payable by the Commission to an existing polytechnic—
- (a) in accordance with an approval granted under **section 397(2)**; or
 - (b) other than via a plan under **section 399**.

- (2) On and after 1 April 2020,—
- (a) the Commission must treat the funding as if it were payable to the polytechnic's corresponding NZIST subsidiary until the close of **31 December 2020**, unless that funding is earlier suspended, revoked, or withdrawn under **clause 24 or 34 of Schedule 17** or the subsidiary is earlier dissolved in accordance with **clause 12B**; and
 - (b) for the purposes of **paragraph (a)**, every reference to the existing polytechnic in an approval granted under **section 397(2)** must, unless the context otherwise requires, be read as a reference to the polytechnic's corresponding NZIST subsidiary.

Compare: 1989 No 80 Schedule 1 cl 43

22A Other references to existing polytechnics

On and after 1 April 2020, every reference to an existing polytechnic in any enactment (other than this Act) or document must, unless the context otherwise requires, be read as a reference to the polytechnic's corresponding NZIST subsidiary.

Compare: 1989 No 80 Schedule 1 cl 44

23 Existing proceedings and other matters

- (1) On and after 1 April 2020,—
- (a) any proceedings by or against an existing polytechnic may be continued or enforced by or against its corresponding NZIST subsidiary without amendment to the proceedings; and
 - (b) a matter or thing that would, but for this clause, have been completed by the existing polytechnic may be completed by its corresponding NZIST subsidiary; and
 - (c) anything done, or omitted to be done, or that is to be done, by or in relation to the existing polytechnic is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to its corresponding NZIST subsidiary.
- (2) In **subclause (1)(a), proceedings**—
- (a) means civil and criminal proceedings; and
 - (b) includes any enforcement or compliance action by TEC or NZQA.

Compare: 1989 No 80 Schedule 1 cl 45

24 Final report of existing polytechnics

- (1) Each corresponding NZIST subsidiary must provide a final report to the Minister in relation to the polytechnic from which the corresponding NZIST subsidiary was formed in accordance with **clause 12**.
- (1A) For the purposes of section 45L of the Public Finance Act 1989, an existing polytechnic that is converted into a corresponding NZIST subsidiary must be

treated as if it were disestablished and its operations were transferred to the corresponding NZIST subsidiary.

- (2) Despite subpart 1 of Part 5 of the Public Finance Act 1989, the Minister may specify the contents of the final report and the date or dates by which the contents of the report must be provided.
- (3) The Minister must present a copy of the final report to the House of Representatives as soon as practicable after receiving it.

Compare: 1989 No 80 Schedule 1 cl 46

NZIST

25 Validation of pre-commencement actions and processes relating to ministerial appointments to NZIST's council

- (1) This clause applies to any action or process undertaken by the Minister before 1 April 2020 when appointing members to NZIST's council.
- (2) An appointment is valid if the action or process substantially complies with this Act.

Compare: 1989 No 80 Schedule 1 cl 47

25A ~~Interim chief executive of NZIST~~

~~Despite anything in **Part 7B of the State Sector Act 1988**, NZIST's council may appoint a person, whether by way of an employment agreement or otherwise, as chief executive of NZIST during the period beginning on 1 April 2020 and ending on the close of **6 July 2020** on terms and conditions agreed with the State Services Commissioner.~~

~~Compare: 1989 No 80 Schedule 1 cl 48~~

25B Membership of NZIST's council reduced until all appointments made

- (1) The number of NZIST council members is proportionately reduced until the date on which each member referred to in **section 307(1)(a), (b), and (c)** is appointed to the council.
- (2) No action of NZIST's council is invalid merely because any member referred to in **subclause (1)** has not been appointed to NZIST's council on 1 April 2020.

Compare: 1989 No 80 Schedule 1 cl 49

25C NZIST must obtain ~~M~~ministerial approval before forming new subsidiary

- (1) NZIST must obtain ~~M~~ministerial approval before forming a subsidiary under **section 319(1)**.
- (2) The requirement in **subclause (1)** ceases to apply on the close of **31 December 2024**.

Compare: 1989 No 80 Schedule 1 cl 50

25D NZIST subsidiary is tertiary education organisation, provider, and institution

- (1) This clause applies to an NZIST subsidiary formed by NZIST on or after 1 April 2020 under **section 319** that provides education or training, or both.
- (2) The NZIST subsidiary must be treated as—
 - (a) a tertiary education organisation within the meaning of **section 10(1)**, and the provisions of this Act relating to tertiary education organisations apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (b) a provider within the meaning of **section 10(1)**, and the provisions of this Act relating to providers apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (c) a specified user within the meaning of **section 10(1)**, and the provisions of this Act or any regulations made under this Act relating to national student numbers apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (d) an institution within the meaning of **section 10(1)**, and the provisions referred to in **subclause (4)** apply to it accordingly as if—
 - (i) those provisions included a reference to the NZIST subsidiary; and
 - (ii) any reference in those provisions to the council of an institution were a reference to the board of the NZIST subsidiary.
- (3) For the purposes of **subclause (2)(a)**, the Commission may consider a proposed plan of the NZIST subsidiary and fund that subsidiary for an academic year beginning on or after **1 January 2021** but only if requested by NZIST.
- (4) For the purposes of **subclause (2)(d)**, the provisions are—
 - (a) **sections 264, 296, 297, 363, 495, and 496:**
 - (b) **subparts 1 and 2 of Part 4:**
 - (c) **subpart 2 of Part 5:**
 - (d) **clauses 1, 5, and 6 of Schedule 8.**

Compare: 1989 No 80 Schedule 1 cl 51

Work-based training

26 Interpretation

- (1) In **clauses 28 to 41**, unless the context otherwise requires,—

1992 Act means the Industry Training and Apprenticeships Act 1992

assets has the same meaning as in **section 10(3)**

former ITO means an industry training organisation listed in **clause 28(a)** that was recognised under Part 2 of the 1992 Act and whose recognition was in force immediately before that date

transition period means the period beginning on 1 April 2020 and ending ~~on~~ with the close of **31 December 2022**

transitional ITO means—

- (a) a former ITO:
- (b) a body corporate that is recognised by the Minister under **clause 28(b)**

workforce development council means a workforce development council established under **section 344**.

- (2) In **clauses 28 to 41**, unless the context otherwise requires, **provider**, **specified industries**, **trainee**, and **work-based training** have the same meanings as in **section 10(1)**.

Compare: 1989 No 80 Schedule 1 cl 52

27 Application of clauses 28 to 41

Clauses 28 to 41 apply during the transition period.

Compare: 1989 No 80 Schedule 1 cl 53

28 Recognition of transitional ITOs

The following are recognised as transitional ITOs for the purposes of **clauses 29 to 41**:

- (a) each of the following former ITOs:
 - (i) Boating Industries Association of New Zealand Incorporated:
 - (ii) Building and Construction Industry Training Organisation Incorporated:
 - (iii) Community Support Services ITO Limited:
 - (iv) Competenz Trust:
 - (v) Infrastructure Industry Training Organisation Incorporated:
 - (vi) MITO New Zealand Incorporated:
 - (vii) New Zealand Hair and Beauty Industry Training Organisation Incorporated:
 - (viii) Primary Industry Training Organisation Incorporated:
 - (ix) Service Skills Institute Incorporated:
 - (x) Skills Active Aotearoa Limited:
 - (xi) The Skills Organisation Incorporated:
- (b) any body corporate recognised by the Minister, by notice in the *Gazette*, as a transitional ITO for the purposes of **clauses 29 to 41**.

Compare: 1989 No 80 Schedule 1 cl 54

29 Effect of recognition

- (1) A transitional ITO recognised under **clause 28(a)**—
 - (a) is recognised for the 1 or more specified industries for which it was recognised under Part 2 of the 1992 Act immediately before 1 April 2020; and
 - (b) must carry out the 1 or more activities described in **subclause (3)** in relation to the specified industries for which it was previously recognised under the 1992 Act.
- (2) A transitional ITO recognised under **clause 28(b)**—
 - (a) is recognised for the 1 or more industries specified in the notice given by the Minister when recognising the transitional ITO; and
 - (b) must carry out the 1 or more activities described in **subclause (3)** and specified in the notice.
- (3) For the purposes of this clause, the activities are—
 - (a) developing, setting, and maintaining skill standards to be listed on the Directory of Assessment Standards; and
 - (b) developing and maintaining arrangements for the delivery of work-based training that enable trainees to achieve the relevant skill standards; and
 - (c) the apprenticeship training activities described in **section 354(2)**.

Compare: 1989 No 80 Schedule 1 cl 55

30 Minister may impose conditions on recognition of transitional ITO

- (1) The Minister may, by written notice to a transitional ITO, impose any conditions on that recognition that the Minister considers are reasonably necessary—
 - (a) to maintain the quality and effectiveness of vocational education and training in the transitional ITO's specified industries; and
 - (b) to ensure the success of the transfer of responsibility for the activities of the transitional ITO.
- (2) The Minister may amend or revoke a condition imposed under **subclause (1)** by written notice to the transitional ITO.
- (3) However, no condition may be imposed under **subclause (1)** that requires the assets of a transitional ITO to be allocated to a workforce development council under **clause 40**.

Compare: 1989 No 80 Schedule 1 cl 56

31 Minister may change specified industries or activities of transitional ITO

The Minister may, by notice in the *Gazette*, change—

- (a) the specified industries covered by a transitional ITO; or

- (b) the activities that must be carried out by the transitional ITO in relation to those industries.

Compare: 1989 No 80 Schedule 1 cl 57

32 Application of certain provisions of Industry Training and Apprenticeships Act 1992 to transitional ITO

- (1) Despite the repeal of the Industry Training and Apprenticeships Act 1992 (the **1992 Act**) by section 75 of the Education (Vocational Education and Training Reform) Amendment Act 2020, the provisions of the 1992 Act listed in **subclause (2)** continue in force, with any necessary modifications, and apply to a transitional ITO during the period that the transitional ITO remains in existence as if—

- (a) references in those provisions to an industry training organisation were references to the transitional ITO; and
- (b) references in those provisions to industry training were references to work-based training.

- (2) The provisions are—

- (a) section 10 (industry training organisation's proposed plan must identify activities for which it seeks funding):
- (b) section 10A (power to fund if employer switches industry training organisation):
- (c) section 11 (matters to which TEC must have regard in determining whether to give funding approval to proposed plan):
- (d) section 11B (obligations of industry training organisations):
- (e) section 11C (NZQA may issue quality assurance improvement notice):
- (f) section 11D (NZQA may issue compliance notice):
- (g) section 11E (industry training organisation not to operate registered private training establishments):
- (h) section 11F (annual fee):
- (i) section 13A (additional functions of NZQA):
- (j) section 13B (NZQA may prescribe quality assurance requirements):
- (k) Part 2A (apprenticeship training):
- (l) Part 5 and Schedule 4 (training levies).

- (3) Despite **subclause (1)**, section 11E of the 1992 Act (as applied by **subclause (2)(g)**) applies to a transitional ITO only while the transitional ITO continues to exercise any standard-setting powers for the specified industries covered by the transitional ITO.

Compare: 1989 No 80 Schedule 1 cl 58

33 Existing approvals and consents granted to former ITO

- (1) This clause applies to the following matters granted to a former ITO by NZQA under Part 20 of the 1989 Act before 1 April 2020 and in effect immediately before that date:
- (a) an approval of a programme under **section 410**;
 - (b) an approval to provide a training scheme under **section 416**;
 - (c) a consent to assess against the standards listed in the Directory of Assessment Standards under **section 420**.
- (2) On and after 1 April 2020,—
- (a) an approval or a consent (including any conditions imposed on the approval or consent) must be treated as if it were granted to the former ITO's corresponding transitional ITO; and
 - (b) unless the context otherwise requires, every reference in the approval or consent must be read as a reference to the corresponding transitional ITO.

Compare: 1989 No 80 Schedule 1 cl 59

34 Transitional ITO is tertiary education organisation

A transitional ITO is to be treated as a tertiary education organisation within the meaning of **section 10(1)**, and the provisions of this Act relating to tertiary education organisations apply to it accordingly.

Compare: 1989 No 80 Schedule 1 cl 60

35 Transitional ITO is approved standard-setting body

A transitional ITO is to be treated as an approved standard-setting body for the purposes of **section 409** in relation to the specified industries for which it is recognised under **clauses 28 to 41** until—

- (a) a notice is given under **clause 31** that removes the activity described in **clause 29(3)(a)** for a specified industry covered by the transitional ITO; or
- (b) the recognition of the transitional ITO is cancelled under **clause 38** or lapses under **clause 39**.

Compare: 1989 No 80 Schedule 1 cl 61

36 Transitional ITOs must develop transition plan

- (1) As soon as practicable after 1 April 2020, every transitional ITO must—
- (a) develop a transition plan for approval by TEC that provides for the transfer of—
 - (i) responsibility for the activity described in **clause 29(3)(a)** (or any part of ~~the~~ that activity), or the activity described in **clause**

- 29(3)(b)** to the extent that it relates to developing or maintaining qualifications, to any 1 or more workforce development councils:
- (ii) responsibility for the activities described in **clause 29(3)(b) and (c)** (or any part of those activities) to any 1 or more providers specified by TEC;
 - (iii) responsibility for any of the activities described in **clause 29(3)** (or any part of those activities) to another transitional ITO;
 - (iv) the assets of the transitional ITO to any 1 or more providers, workforce development councils, or other transitional ITO; and
- (b) implement and maintain that plan; and
 - (c) support providers specified by TEC when transferring the responsibility for the activities described in **clause 29(3)(b) and (c)**.
- (2) When approving a transition plan under **subclause (1)**, TEC—
- (a) may make any amendments to the plan that it considers necessary or desirable by giving written notice to the transitional ITO; but
 - (b) must not amend that part of the plan that relates to transfer of the assets to any 1 or more providers, workforce development councils, or other transitional ITOs.
- (3) If a transitional ITO fails or refuses to comply with **subclause (1)**, TEC may develop the transition plan for the transitional ITO and the transitional ITO must implement and maintain that plan.

Compare: 1989 No 80 Schedule 1 cl 62

36A TEC must issue guidance on transition plans

- (1) TEC must issue guidance to transitional ITOs on what must be contained in a transition plan required by **clause 36(1)**.
- (2) TEC must consult transitional ITOs when developing guidance under **subclause (1)**.

Compare: 1989 No 80 Schedule 1 cl 63

37 Minister may direct funding to provider for work-based training

Despite **section 396A(1)**, the Minister may direct that funding be provided to a provider to support work-based training on behalf of employers if the Minister believes it is reasonably necessary for facilitating or ensuring the successful transfer of responsibility for the activities referred to in **clause 29(3)(b) and (c)** of this schedule.

Compare: 1989 No 80 Schedule 1 cl 64

38 Cancellation of recognition of transitional ITO

- (1) The Minister may, by notice in the *Gazette*, cancel the recognition of a transitional ITO—

- (a) if it asks the Minister to cancel its recognition; or
 - (b) if the circumstances described in **subclause (2)** apply; or
 - (c) if it has breached the requirement set out in section 11E of the 1992 Act (as applied by **clause 32(2)(g)**); or
 - (d) if the Minister is satisfied that—
 - (i) the transitional ITO is no longer responsible for carrying out any of the activities referred to in **clause 29(3)**; or
 - (ii) the body corporate recognised as the transitional ITO no longer exists.
- (2) For the purpose of **subclause (1)(b)**, the circumstances are that—
- (a) the Minister has issued a notice to the transitional ITO stating that the Minister considers its performance is inadequate for any of the following reasons:
 - (i) it is not carrying out at least 1 of the activities for the specified industries for which it is recognised;
 - (ii) it is failing to comply with 1 or more conditions of its recognition;
 - (iii) it is failing to comply with a compliance notice issued by NZQA; and
 - (b) the period of time specified in the notice within which the transitional ITO must improve its performance has elapsed; and
 - (c) the Minister is satisfied that the transitional ITO's performance continues to be inadequate for the reason or reasons specified in the notice.
- (3) For the purpose of **subclause (2)(a)**, the notice must be in writing and state—
- (a) the areas in which the Minister considers the transitional ITO's performance to be inadequate; and
 - (b) what actions the transitional ITO should take to improve its performance; and
 - (c) the period (which must be a reasonable period) within which the transitional ITO must improve its performance; and
 - (d) the fact that the Minister may cancel the recognition of the transitional ITO under **subclause (1)** if it fails to improve its performance within that period.
- (4) If the recognition of a transitional ITO is cancelled under **subclause (1)**, any approval or consent associated with that recognition is withdrawn on the date on which the recognition is cancelled.
- (5) No notice is required to be given to a transitional ITO for a withdrawal under **subclause (4)**.

Compare: 1989 No 80 Schedule 1 cl 65

39 Recognition lapses at end of transition period

- (1) This clause applies to any transitional ITO in existence at the close of the day immediately before the end of the transition period.
- (2) The recognition of the transitional ITO lapses at the end of the transition period.
- (3) If the recognition of a transitional ITO lapses under **subclause (2)**, any approval or consent associated with that recognition is withdrawn on the date on which the recognition lapses.
- (4) No notice is required to be given to a transitional ITO for a withdrawal under **subclause (3)**.

Compare: 1989 No 80 Schedule 1 cl 66

40 Allocation of assets of transitional ITO

- (1) This clause applies to any assets of a transitional ITO during the transition period.
- (2) Despite any enactment to the contrary or anything in the transitional ITO's founding document, those assets may be allocated to 1 or more providers, workforce development councils, or other transitional ITOs to which the activities of the transitional ITO have been transferred in accordance with the transition plan.
- (3) In this clause, **founding document** means,—
 - (a) for a transitional ITO that is a company, the transitional ITO's constitution (if any):
 - (b) for a transitional ITO that is an incorporated society, the transitional ITO's rules:
 - (c) for a transitional ITO that is a charitable trust, the transitional ITO's trust deed.

Compare: 1989 No 80 Schedule 1 cl 67

41 Employment of transitional ITO employees by NZIST, NZIST subsidiary, wānanga, workforce development council, or other transitional ITO

- (1) This clause applies if the activities of a transitional ITO are transferred to NZIST, an NZIST subsidiary, a wānanga, a workforce development council, or another transitional ITO in accordance with a transition plan developed under **clause 36**.
- (2) The chief executive of NZIST or the NZIST subsidiary, wānanga, workforce development council, or other transitional ITO to which those activities are transferred must identify the employees of the transitional ITO—
 - (a) whose duties overall are required by NZIST or that NZIST subsidiary, wānanga, workforce development council, or other transitional ITO to carry out its functions; and

- (b) whose positions will cease to exist as a result of the transfer of responsibility of the transitional ITO's activities to NZIST or the NZIST subsidiary, wānanga, workforce development council, or other transitional ITO.
- (3) An employee who is identified under **subclause (2)** may be offered equivalent employment by NZIST or the NZIST subsidiary, wānanga, workforce development council, or other transitional ITO, being employment that is—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions (including any terms and conditions relating to redundancy and superannuation) that are no less favourable than those applying to the employee immediately before the date on which the offer of employment is made to the employee; and
 - (d) on terms that treat the period of service with the transitional ITO (and every other period of service recognised by the transitional ITO as continuous service) as if it were continuous service with NZIST or the NZIST subsidiary, wānanga, workforce development council, or other transitional ITO.
- (4) If the employee accepts an offer of employment under **subclause (3)**, the employee's employment by NZIST or the NZIST subsidiary, wānanga, workforce development council, or other transitional ITO is to be treated as continuous employment, including for the purpose of service-related entitlements, whether legislative or otherwise.
- (5) An employee of a transitional ITO that is offered employment under **subclause (3)** is not entitled to receive any payment or other benefit on the ground that the employee's position in the transitional ITO has ceased to exist, whether or not the employee accepts the offer.
- (6) This clause overrides—
 - (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employee protection provision in any relevant employment agreement.
- (7) In this clause, **transitional ITO** has the same meaning as in **clause 26**.

Compare: 1989 No 80 Schedule 1 cl 68

41A Employment of NZQA employees by workforce development council

- (1) This clause applies if the functions of NZQA in developing, setting, and maintaining skill standards in relation to 1 or more specified industries are to be transferred to a workforce development council that covers those industries in accordance with a transition plan developed by NZQA for the purpose of this clause.

- (2) The chief executive of the workforce development council to which the functions of NZQA are transferred must identify the employees of NZQA—
- (a) whose duties overall are required by the workforce development council to carry out its functions; and
 - (b) whose positions will cease to exist as a result of the transfer of responsibility of NZQA's functions to the workforce development council.
- (3) An employee who is identified under **subclause (2)** may be offered equivalent employment by the workforce development council, being employment that is—
- (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions (including any terms and conditions relating to redundancy and superannuation) that are no less favourable than those applying to the employee immediately before the date on which the offer of employment is made to the employee; and
 - (d) on terms that treat the period of service with NZQA (and every other period of service recognised by NZQA as continuous service) as if it were continuous service with the workforce development council.
- (4) If the employee accepts an offer of employment under **subclause (3)**, the employee's employment by the workforce development council is to be treated as continuous employment, including for the purpose of service-related entitlements, whether legislative or otherwise.
- (5) An employee of NZQA who is offered employment under **subclause (3)** is not entitled to receive any payment or other benefit on the ground that the employee's position in NZQA has ceased to exist, whether or not the employee accepts the offer.
- (6) This clause overrides—
- (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employee protection provision in any relevant employment agreement.

Compare: 1989 No 80 Schedule 1 cl 69

41B Provider must not charge fee for compulsory student services during specified period

- (1) A provider must not charge a trainee a compulsory student services fee during the specified period.
- (2) The Minister may, by notice published on an Internet site maintained by or on behalf of the Ministry, specify any class of trainees to whom **subclause (1)** does not apply.
- (3) In **subclause (1)**,—

compulsory student services fee means a fee determined under **section 237(1)(b)** or as defined in **section 341(6)**

specified period means the period beginning on 1 April 2020 and ending ~~on~~ with the close of **31 December 2021**.

Compare: 1989 No 80 Schedule 1 cl 70

41C Existing training contracts

- (1) This clause applies to a training contract between an employer and employee that is in force immediately before 1 April 2020.
- (2) On and after 1 April 2020, the training contract must be treated as if it were a training agreement for the purposes of **section 343**.

Compare: 1989 No 80 Schedule 1 cl 71

41D References to industry training organisation to be treated as references to transitional ITO

Despite the repeal of the 1989 Act, a reference to an industry training organisation in any enactment or document, as it read immediately before 1 April 2020, must, on and after that date, be read as a reference to a transitional ITO for the period that transitional ITOs remain in existence under this Act.

Compare: 1989 No 80 Schedule 1 cl 72

Subpart 4—Provisions for Part 5 (performance, funding, and support)

Superannuation

42 Superannuation relating to TEC

- (1) Any person who, immediately before becoming an employee of TEC, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is to be treated, for the purpose of that Act, as employed in the Government service as long as the person continues to be an employee of TEC.
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of TEC were Government service.
- (3) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of TEC is the controlling authority.

Compare: 1989 No 80 s 159KD

42A Superannuation relating to NZQA

Employment in the service of NZQA is Government service within the meaning of the Government Superannuation Fund Act 1956.

Compare: 1989 No 80 s 256E

43 Superannuation relating to Teaching Council

- (1) Any person who, immediately before becoming an employee of the Teaching Council, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 or to the State Sector Retirement Savings Scheme is to be treated, for the purpose of that Act, as being employed in the Government service as long as the person continues to be an employee of the Teaching Council.
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Teaching Council were government service.
- (3) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund or to the State Sector Retirement Savings Scheme if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Teaching Council is the controlling authority.

Compare: 1989 No 80 s 391

43A Superannuation relating to Education New Zealand

- (1) Any person who, immediately before becoming an employee of Education New Zealand, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is to be treated, for the purpose of that Act, as being employed in the Government service so long as the person continues to be an employee of Education New Zealand.
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of Education New Zealand were Government service.
- (3) **Subsection-Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of Education New Zealand is the controlling authority.

Compare: 1989 No 80 s 273B

Pastoral care

44 Transitional provision relating to code in respect of domestic tertiary students

- (1) This clause—
 - (a) applies to providers that enrol domestic tertiary students; and
 - (b) applies despite **subpart 7 of Part 5** of this Act.
- (2) A code in respect of domestic tertiary students issued under Part 18A of the 1989 Act, as it read immediately before the commencement of this clause, is to be treated as a code issued under **subpart 7 of Part 5**.
- (2A) Despite anything in Part 18A of the 1989 Act, as it read immediately before the commencement of this clause, or **subpart 7 of Part 5**, the Minister may make minor and technical amendments to an interim code, and doing so does not affect its status as the applicable code.
- (3) An interim code issued under Part 18A of the 1989 Act, as it read immediately before the commencement of this clause, expires on ~~1 January 2021~~ **January 2022**.
- (4) The DRS does not apply to an interim code in respect of domestic tertiary students issued under Part 18A of the 1989 Act, as it read immediately before the commencement of ~~this clause~~ clause, or as amended by the Minister under **subclause (2A)**.

45 Transitional provision relating to code in respect of international students

- (1) This clause—
 - (a) applies to signatory providers that enrol international students; and
 - (b) applies despite **subpart 7 of Part 5** of this Act.
- (2) **Subpart 7 of Part 5** applies to any code in respect of international students issued under Part 18A of the 1989 Act, as it read immediately before the commencement of this clause, as if the code were made under **subpart 7 of Part 5** of this Act.
- (3) Despite **subclause (2)**, Part 18A of the 1989 Act, as it read immediately before the commencement of this clause, continues to apply for the purposes of ~~concluding~~ completing any proceedings commenced before the commencement of this clause.

45A Transitional provision relating to export education levy

- (1) Despite anything in this Act or any other enactment, with respect to the period beginning on **1 January 2020** and ending with the close of **31 December 2021**, an export education levy—
 - (a) is not payable; and
 - (b) may not be imposed.

- (2) If an export education levy is paid in respect of all or part of the period specified in **subclause (1)**, it must be refunded.
- (3) This clause is repealed on **1 January 2022**.

Subpart 5—Provisions for Part 6 (administration of education system)

46 Criteria relating to appointment of principals

The requirement for a person to meet criteria issued by the Minister under **section 584** for appointment as a principal does not take effect until the day that is 6 months after the date on which the criteria are first issued.

47 National student numbers

- (1) This clause applies to a national student number assigned to a person under section 343 of the 1989 Act before the commencement of this clause.
- (2) The national student number continues to apply in respect of the person as if it were assigned under **clause 3 of Schedule 23**.

Compare: 1989 No 80 s 343(2)

Subpart 6—Transitional regulations

48 Transitional regulations

- (1) ~~The Governor-General may, by Order in Council made on recommendation of the Minister, make regulations prescribing transitional provisions, savings provisions, or both, for either or both of the following purposes:~~
- ~~(a) facilitating or ensuring the orderliness of the transition of the amendments made to this Act by the amendment Act;~~
 - ~~(b) ensuring that existing rights or obligations continue as part of, or despite, that transition.~~
- (2) ~~The Minister may not recommend the making of regulations under **subclause (1)** unless satisfied that those regulations—~~
- ~~(a) are reasonably necessary for either or both of the purposes in **subclause (1)(a) and (b)**; and~~
 - ~~(b) are consistent with the purposes of those amendments.~~
- (3) ~~The transitional provisions or savings provisions prescribed by regulations under **subclause (1)** may be provisions in addition to or instead of those set out in this subpart, and may—~~
- ~~(a) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions (including definitions) of those amendments to this Act do not apply, or apply with modifications or additions;~~
 - ~~(b) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions~~

~~repealed, amended, or revoked by those amendments to this Act continue to apply, or apply with modifications or additions, as if they had not been repealed, amended, or revoked:~~

- ~~(e) provide for any other matter necessary for either or both of the purposes in **subclause (1)(a) and (b)**.~~
- (4) ~~No regulations made under this clause may be made, or continue in force, after the close of **31 December 2022**.~~

~~Compare: 1989 No 80 Schedule 1 cl 73~~

Schedule 2
Special institutions

s 10(1), (6)

Blind and Low Vision Education Network NZ

Central Regional Health School

Halswell Residential College

Kimi Ora School

Ko Tāku Reo

Northern Health School

Salisbury School

Southern Health School

Westbridge Residential School

Compare: 1989 No 80 Schedule 5

Schedule 3
Teacher registration, practising certificates, and other matters

**ss 10(1), 92, 451(1)(d), (e), (l), 453(1),
458(1)(h), 471(6), 476(4), 478B(3),
581(3)**

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1 Applications for registration as teachers

Any person may apply to the Teaching Council for registration as a teacher.

Compare: 1989 No 80 s 352

2 Registration of applicants as teachers

The Teaching Council must register an applicant under **clause 1** if satisfied that the applicant—

- (a) is of good character; and
- (b) is fit to be a teacher; and
- (c) is satisfactorily trained to teach; and
- (d) meets the criteria for teacher registration established under **section 451(1)(e)**; and
- (e) either—
 - (i) has not been convicted of a specified offence as defined in section 23(1) of the Children’s Act 2014; or
 - (ii) has been granted an exemption under section 35 of the Children’s Act 2014 in respect of every conviction for a specified offence as defined in section 23(1) of that Act.

Compare: 1989 No 80 s 353

3 Determining whether training satisfactory

- (1) In determining whether a person is satisfactorily trained to teach, the Teaching Council may take into account any relevant matters.
- (2) In determining whether a person is satisfactorily trained to teach, the Teaching Council must take into account—
 - (a) the person’s qualifications; and
 - (b) whether the person has satisfactorily completed training recognised by the Teaching Council as suitable for people who want to teach.
- (3) **Subclause (2)** does not affect the generality of limit subclause (1).

Compare: 1989 No 80 s 354

4 Determining good character and fitness to be teacher

- (1) For the purpose of determining whether a person is of good character and fit to be a teacher, the Teaching Council must obtain a Police vet of the person.
- (2) **Subclause (1)** does not limit any other matters that the Teaching Council may take into account in determining character and fitness to be a teacher.

Compare: 1989 No 80 s 355

5 Appeals against decisions of Teaching Council

- (1) A person who is dissatisfied with all or any part of a decision of the Teaching Council under **clause 2, 6, or 10** (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Teaching Council or any longer period the court, on application made

before or after the end of the period, allows, appeal to the District Court against the decision.

- (2) The court must hear the appeal as soon as practicable, and may confirm, reverse, or modify the decision concerned, or may refer the matter back to the Teaching Council in accordance with rules of court, or may give any decision that the Teaching Council could have given.
- (3) Nothing in this clause gives the court power to review any part of the Teaching Council's decision that the appellant has not appealed against.
- (4) Subject to any order of the court, every decision of the Teaching Council continues in force and has effect pending the determination of an appeal against it.
- (5) On any appeal under this clause, the court may order the Teaching Council or the appellant to pay the costs incurred by the other party in respect of the appeal.
- (6) The Teaching Council or the appellant may, with the leave of the High Court or the Court of Appeal, appeal to the Court of Appeal on a question of law against any decision made by the District Court on an appeal under this clause.

Compare: 1989 No 80 s 356

6 Cancellation of registration as teacher

- (1) The Teaching Council must cancel a person's registration if—
 - (a) the Teaching Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for registration as a teacher (as set out in **clause 2**); or
 - (b) the Teaching Council is satisfied on reasonable grounds that the registration was granted by mistake or obtained by fraud; or
 - (c) the Disciplinary Tribunal has ordered, under **section 472**, that the registration be cancelled; or
 - (d) the Competence Authority has ordered, under **section 478A**, that the registration be cancelled.
- (2) The Teaching Council may not cancel a person's registration under **subclause (1)(a) or (b)** without first—
 - (a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and
 - (b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- (3) The fact that a person's registration has been cancelled does not prevent the person from again being registered.
- (4) The Teaching Council must take all reasonable steps to ensure that employers are informed of, and may make public on an Internet site maintained by or on

behalf of the Teaching Council, the name of every person whose registration is cancelled under this clause.

Compare: 1989 No 80 s 357

7 Voluntary deregistration

The Teaching Council must deregister a person if—

- (a) the Teaching Council receives a written request from the person seeking deregistration; and
- (b) the Teaching Council is satisfied that the person is not the subject of an investigation under **subpart 4 of Part 5**.

Compare: 1989 No 80 s 358

8 Teaching Council to keep register of people registered as teachers

- (1) The Teaching Council must keep a register of people who are registered as teachers.
- (2) If the Teaching Council is satisfied that any of the information contained in the register is incorrect, the Teaching Council must ensure that the information is corrected.
- (3) The Teaching Council may annotate the register following—
 - (a) an interim suspension under **section 470**; or
 - (b) an action by a disciplinary body under **section 469 or 472**; or
 - (c) an action by the Competence Authority under **section 478A**.
- (4) In the case where the register is annotated following an interim suspension, the annotation must be removed or corrected as soon as practicable after the matter is concluded (as specified in **section 471(6)**).

Compare: 1989 No 80 s 359

9 Matching of register information and information about payment of teacher salaries at payrolled schools

- (1) The purpose of this clause is to facilitate the exchange of information between the Ministry and the Teaching Council for the purposes of enabling—
 - (a) the Teaching Council, in relation to any person employed in a teaching position, to identify—
 - (i) the person's employer; and
 - (ii) the person's registration status; and
 - (iii) the status and currency of the person's practising certificate; and
 - (b) the Ministry, in relation to regular teachers and relieving teachers in receipt of salaries at payrolled schools, to identify their salary entitlement or eligibility (if any) for an allowance on the basis of their registration or practising certificate (if any).

- (2) For the purpose set out in **subclause (1)(a)**, the Teaching Council may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teaching Council,—
- (a) require the Secretary to supply any or all of the following information about any or all regular teachers and relieving teachers in receipt of salaries at payrolled schools:
 - (i) surname:
 - (ii) first name:
 - (iii) date of birth:
 - (iv) gender:
 - (v) address:
 - (vi) the school at which a teacher is employed:
 - (vii) payroll number:
 - (viii) registration number:
 - (ix) number of half-days employed in a teaching position in any calendar year; and
 - (b) compare the information supplied under **paragraph (a)** with the information contained in the register.
- (3) For the purpose set out in **subclause (1)(b)**, the Secretary may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Teaching Council,—
- (a) require the Teaching Council to supply any or all of the following information about any or all people registered as teachers:
 - (i) surname:
 - (ii) first name:
 - (iii) date of birth:
 - (iv) gender:
 - (v) address:
 - (vi) the school at which a teacher is employed:
 - (vii) registration number:
 - (viii) registration or practising certificate expiry date:
 - (ix) registration or practising certificate classification; and
 - (b) compare the information supplied under **paragraph (a)** with the information held by the Ministry about regular teachers and relieving teachers in receipt of salaries at payrolled schools.

Compare: 1989 No 80 s 360

10 Practising certificates

- (1) Any person may apply to the Teaching Council, on a form provided by the Teaching Council, for a practising certificate.
- (2) The Teaching Council must issue a practising certificate to every applicant who—
 - (a) is registered as a teacher; and
 - (b) has had a satisfactory Police vet within the past 3 years; and
 - (c) meets the standards and criteria for the issue of practising certificates maintained by the Teaching Council under **section 451(1)(j)**.
- (3) A teacher's practising certificate must show clearly that the teacher is registered.
- (4) Unless it is sooner cancelled or expires,—
 - (a) a practising certificate issued to a teacher who already holds a current practising certificate expires—
 - (i) on the third anniversary of the day on which the certificate already held expires; or
 - (ii) at any earlier time that the Teaching Council specifies, by notice in the *Gazette*, in respect of any or all kinds of practising certificate:
 - (b) a practising certificate issued to a teacher who does not already hold a current practising certificate expires—
 - (i) on the third anniversary of the day it is issued; or
 - (ii) at any earlier time that the Teaching Council decides in accordance with the standards and criteria maintained under **section 451(1)(j)**.
- (5) A practising certificate expires when its holder's registration is cancelled.
- (6) If a teacher applies to renew their practising certificate, the Teaching Council may issue a renewed practising certificate—
 - (a) if it is satisfied that the teacher—
 - (i) has satisfactory recent teaching experience; and
 - (ii) has had a satisfactory Police vet within the past 3 years; and
 - (iii) has completed satisfactory professional development during the past 3 years; and
 - (iv) meets the standards and criteria maintained under **section 451(1)(j)**; or
 - (b) if it is satisfied that the teacher—
 - (i) has met the requirements for a refresh process specified under rules made under **section 458**; and

- (ii) has had a satisfactory Police vet within the past 3 years; and
 - (iii) meets the standards and criteria maintained under **section 451(1)(j)**.
- (7) This subclause applies to a renewed practising certificate issued to a person if—
- (a) the practising certificate the person already holds when the renewed certificate is issued is suspended under **section 470**; or
 - (b) the person does not already hold a practising certificate when the renewed certificate is issued, but—
 - (i) the practising certificate the person last held was suspended under **section 470** when it expired; and
 - (ii) the suspension was not due to expire until a time after the issue of the renewed certificate.
- (8) A renewed practising certificate to which **subclause (7)** applies must be treated as being suspended under **section 470**, and its suspension expires when the suspension of the previous practising certificate held by its holder would have expired.
- (9) In this clause, **satisfactory recent teaching experience**, in relation to any person at any time, means either of the following, satisfactorily completed by the person during the 5 years before that time:
- (a) an uninterrupted period of employment of 2 years (or some shorter period or periods approved by the Teaching Council for the person) in a teaching position or teaching positions; or
 - (b) a period of employment of 2 years (or some shorter period or periods approved by the Teaching Council for the person) in a position (or positions) that (or each of which) in the Teaching Council's opinion was equivalent to a teaching position in an educational institution in New Zealand approved by the Teaching Council for the purposes of this schedule.

Compare: 1989 No 80 s 361

11 Cancellation of practising certificate

- (1) The Teaching Council must cancel a person's practising certificate if—
- (a) the Teaching Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for holding a practising certificate (as set out in **clause 10(2)**); or
 - (b) the Teaching Council is satisfied on reasonable grounds that the practising certificate was issued by mistake or obtained by fraud; or
 - (c) the Disciplinary Tribunal has ordered, under **section 472(1)(g)**, that the practising certificate be cancelled; or

- (d) the Competence Authority has ordered, under **section 478A**, that the practising certificate be cancelled.
- (2) The Teaching Council may not cancel a person's practising certificate under **subclause (1)(a) or (b)** without first—
 - (a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and
 - (b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- (3) The fact that a person's practising certificate has been cancelled does not prevent the person from again holding a practising certificate.
- (4) The Teaching Council must take all reasonable steps to ensure that employers are informed of, and may make public on an Internet site maintained by or on behalf of the Teaching Council, the name of every person whose practising certificate is cancelled under this clause.

Compare: 1989 No 80 s 362

12 Determining whether employment satisfactorily completed

- (1) In determining whether a period of employment was satisfactorily completed by a person, the Teaching Council may take into account any relevant matters.
- (2) In determining whether a period of employment at a school, early childhood service, or other educational institution in New Zealand was satisfactorily completed by a person, the Teaching Council may take into account—
 - (a) the views of the professional leader of the school, early childhood service, or other educational institution; or
 - (b) if the person was the professional leader of a school, early childhood service, or other educational institution, the views of the person's employer.
- (3) **Subclause (2)** does not limit **subclause (1)**.

Compare: 1989 No 80 s 363

13 Fees and costs for registration and practising certificates

- (1) The Teaching Council may, by notice in the *Gazette*, fix fees for registration as a teacher or for the issue of practising certificates, and different fees may be fixed—
 - (a) in respect of registration effected in different circumstances; and
 - (b) for practising certificates of different kinds.
- (2) A notice under **subclause (1)**—
 - (a) must be published on an Internet site maintained by or on behalf of the Teaching Council; and
 - (b) must state where printed copies of it are available free; and

- (c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (3) The Teaching Council must make printed copies of every notice under **subclause (1)** that is in force available free at the place stated in it.
- (4) Despite anything in this Act, the Teaching Council may refuse to register a person as a teacher or issue a practising certificate until the appropriate fee has been paid.
- (5) If the Teaching Council cancels a teacher's registration, it may, by written notice to the teacher, require the teacher to pay the Teaching Council any reasonable costs specified in the notice that were incurred by the Teaching Council in dealing with the proposal to cancel the registration or with the cancellation itself.
- (6) The Teaching Council may recover from a teacher as a debt due to it costs required under **subclause (5)** to be paid to the Teaching Council by the teacher.

Compare: 1989 No 80 s 364

Limited authority to teach

14 Purpose of limited authority to teach

The purpose of granting a limited authority to teach is to enable employers to have access to skills that are in short supply and to enable those with specialist skills but who may not have a teaching qualification to teach.

Compare: 1989 No 80 s 365

15 Applications for limited authority to teach

Any person may apply to the Teaching Council for a limited authority to teach.

Compare: 1989 No 80 s 366(1)

16 Limited authority to teach

- (1) The Teaching Council must grant a limited authority to teach if it considers that the applicant is of a suitable disposition and—
- (a) the applicant has the skills and experience appropriate to advance the learning of a student or group of students; or
- (b) the applicant has skills that are in short supply.
- (2) A person who has previously been authorised may be authorised again, whether before or after the expiry or cancellation of the previous authorisation.
- (3) In this clause, **suitable disposition**, in relation to an applicant, means the applicant—
- (a) is of good character and fit to hold a limited authority to teach; and
- (b) either—

- (i) has not been convicted of a specified offence as defined in section 23(1) of the Children’s Act 2014; or
- (ii) has been granted an exemption under section 35 of the Children’s Act 2014 in respect of every conviction for a specified offence as defined in section 23(1) of that Act.

Compare: 1989 No 80 s 366

17 Cancellation of limited authority to teach

- (1) The Teaching Council must cancel a person’s limited authority to teach if—
 - (a) the Teaching Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for holding a limited authority to teach (as set out in **clause 16(1)**); or
 - (b) the Teaching Council is satisfied on reasonable grounds that the authorisation was granted by mistake or obtained by fraud; or
 - (c) the Disciplinary Tribunal has ordered, under **section 472(1)(g)**, that the limited authority to teach be cancelled; or
 - (d) the Competence Authority has ordered, under **section 478A**, that the limited authority to teach be cancelled.
- (2) The Teaching Council may not cancel a person’s limited authority to teach under **subclause (1)(a) or (b)** without first—
 - (a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and
 - (b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- (3) The fact that a person’s limited authority to teach has been cancelled does not prevent the person from again being given a limited authority to teach.
- (4) The Teaching Council must take all reasonable steps to ensure that employers are informed of, and may make public on an Internet site maintained by or on behalf of the Teaching Council, the name of every person whose limited authority to teach is cancelled—
 - (a) under this clause; or
 - (b) as a result of the Teaching Council refusing to grant a limited authority to teach on the ground that the person is not of good character or is not fit to hold a limited authority to teach.

Compare: 1989 No 80 s 367

18 Determining character or fitness to hold limited authority to teach

- (1) In determining whether a person is of good character or is fit to hold a limited authority to teach, the Teaching Council—
 - (a) must take into account and give due weight to—

- (i) any relevant skills and experience of the applicant; and
 - (ii) any other relevant matters; and
 - (b) if the applicant is currently employed as the professional leader of a school, early childhood service, or other educational institution, must take into account and give due weight to the views of the applicant's employer; and
 - (c) if the applicant is currently employed at a school, early childhood service, or other educational institution, but not as its professional leader, must take into account and give due weight to the views of the professional leader of the school, service, or institution.
- (2) For the purpose of determining whether a person is of good character and fit to hold a limited authority to teach, the Teaching Council must obtain a Police vet of the person.
- (3) **Subclause (1)** does not limit any other matters that the Teaching Council may take into account in determining good character and fitness to hold a limited authority to teach.

Compare: 1989 No 80 s 368

19 Appeals ~~from~~ against decisions

- (1) Any person who is dissatisfied with all or any part of a decision of the Teaching Council under **clause 18** (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teaching Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court.
- (2) **Clause 5(2) to (6)** applies to every appeal under **subclause (1)** of this clause as if it were an appeal under **clause 5(1)**.

Compare: 1989 No 80 s 369

20 Period of authorisation

- (1) A person's authorisation expires after 3 years.
- (2) Despite **subclause (1)**, the Teaching Council may grant the authorisation for a period of less than 3 years.

Compare: 1989 No 80 s 370

21 Teaching Council to keep list of persons who have limited authority to teach

- (1) For the purposes of this schedule, the Teaching Council must keep a list of persons who have a limited authority to teach.
- (2) If the Teaching Council is satisfied that any of the information contained in the list is incorrect, the Teaching Council must ensure that the information is corrected.
- (3) The Teaching Council may annotate the list following—

- (a) an interim suspension under **section 470(2)**; or
 - (b) an action by a disciplinary body under **section 469 or 472**; or
 - (c) an action by the Competence Authority under **section 478A**.
- (4) In the case where the list is annotated following an interim suspension, the annotation must be removed or corrected as soon as practicable after the matter is concluded (as specified in **section 471(6)**).
- Compare: 1989 No 80 s 371

22 Fees and costs for granting limited authority to teach

- (1) The Teaching Council may, by notice in the *Gazette*, fix fees for the granting of a limited authority to teach.
- (2) A notice under **subclause (1)**—
- (a) must be published on an Internet site maintained by or on behalf of the Teaching Council; and
 - (b) must state where printed copies of it are available free; and
 - (c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (3) The Teaching Council must make printed copies of every notice under **subclause (1)** that is in force available free at the place stated in it.
- (4) Despite anything in this Act, the Teaching Council may refuse to grant any person a limited authority to teach until the appropriate fee has been paid.
- (5) If the Teaching Council cancels a limited authority to teach, it may, by written notice to the person concerned, require the person to pay the Teaching Council any reasonable costs specified in the notice that were incurred by the Teaching Council in dealing with the proposal to cancel the authorisation or with the cancellation itself.
- (6) The Teaching Council may recover from any person as a debt due to it costs required under **subclause (5)** to be paid to the Teaching Council by that person.

Compare: 1989 No 80 s 372

Miscellaneous provisions

23 Teaching Council may disclose certain information

If the management of an early childhood service that is not an early childhood education and care service asks the Teaching Council for information about a person who is a prospective employee, the Teaching Council may—

- (a) make any inquiry about the person that it might have made if the person had applied for registration as a teacher; and

- (b) disclose to the management any information it holds or has obtained about the person.

Compare: 1989 No 80 s 373

Schedule 4

Police vetting

ss 24,100

1 Police vetting of non-teaching and unregistered employees at licensed early childhood services

The service provider of a licensed early childhood service must obtain a Police vet of every person—

- (a) whom the service provider appoints, or intends to appoint, to a position at the early childhood service; and
- (b) who is to work at the service during normal opening hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

Compare: 1989 No 80 s 319D

2 Police vetting of contractors and their employees who work at licensed early childhood services

- (1) The service provider of a licensed early childhood service must obtain a Police vet of every contractor, or employee of a contractor, who has, or is likely to have, unsupervised access to children at the service during normal opening hours.
- (2) In this clause, **contractor** means a person who works at a licensed early childhood service under a contract for services.

Compare: 1989 No 80 s 319E

3 Police vet must be obtained before person has unsupervised access to children

- (1) A Police vet required under **clause 1 or 2** must be obtained before the person has, or is likely to have, unsupervised access to children at the service during normal opening hours.
- (2) The service provider of a licensed early childhood service that is required under **clause 1** to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the service.

Compare: 1989 No 80 s 319F

4 Procedures relating to Police vets under clause 1 or 2

The service provider of a licensed early childhood service that applies for a Police vet of a person under **clause 1 or 2**—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) may not take adverse action in relation to the person who is the subject of a Police vet until—
 - (i) the person has validated the information contained in the vet; or

- (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Compare: 1989 No 80 s 319FA

5 Police vetting of adult members of household where licensed home-based education and care service provided

- (1) The service provider of a licensed home-based education and care service must obtain a Police vet of every adult who lives in a home—
 - (a) where the service is being provided; and
 - (b) where at least 1 child to whom the service is being provided does not live in the home.
- (2) In this clause, **adult** means a person who is aged 17 years or over.

Compare: 1989 No 80 s 319FB

6 When Police vet under clause 5 must be obtained

- (1) A Police vet required under **clause 5** must be obtained,—
 - (a) in the case of a home that is to be used as a licensed home-based education and care service, before the home is used as a licensed home-based education and care service; and
 - (b) in the case of a home that is being used as a licensed home-based education and care service, before the adult begins to live in the home.
- (2) The Police vet must be obtained even if the person is unlikely to be present when the licensed home-based education and care service is provided.

Compare: 1989 No 80 s 319FC

7 Procedures relating to Police vets under clause 5

The service provider of a licensed home-based education and care service that applies for a Police vet of a person under **clause 5**—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) may not take adverse action in relation to the person who is the subject of a Police vet until—
 - (i) the person has validated the information contained in the vet; or
 - (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Compare: 1989 No 80 s 319FD

8 Further Police vets to be obtained every 3 years

- (1) The service provider of a licensed early childhood service must obtain a further Police vet of every person—
 - (a) on whom a Police vet has already been obtained under this schedule by that service provider; and

- (b) who still works at the service or lives in the home.
- (2) A further Police vet required under **subclause (1)** must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.
- (3) The requirement for a further Police vet under this clause does not apply to a person on whom a Police vet under **clause 1 or 2** would not be required if the person were about to be appointed to a position at the licensed early childhood service or to work at the service at the time that the further Police vet would otherwise be required.

Compare: 1989 No 80 s 319FE

Police vetting in respect of primary and secondary schools

9 Police vetting of non-teaching and unregistered employees at schools

The board of a State school, ~~or the management and the managers~~ of a private school, must obtain a Police vet of every person—

- (a) whom the board or the managers appoints, or intends to appoint, to a position at the school; and
- (b) who is to work at the school during normal school hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

Compare: 1989 No 80 s 78C

10 Police vetting of contractors and their employees who work at schools

- (1) The board of a State school ~~or the management and the managers~~ of a private school must obtain a Police vet of every contractor, or employee of a contractor, who has, or is likely to have, unsupervised access to students at the school during normal school hours.
- (2) In this clause, **contractor** means a person who works at a school under a contract for services.

Compare: 1989 No 80 s 78CA

11 Police vet must be obtained before person has unsupervised access to students

- (1) A Police vet required under **clause 9 or 10** must be obtained before the person has, or is likely to have, unsupervised access to students at the school during normal school hours.
- (2) The board of a State school or the ~~management managers~~ of a private school that is required under **clause 9** to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the school.

Compare: 1989 No 80 s 78CB

12 Further Police vets to be obtained every 3 years

- (1) The board of a State school ~~or the management~~ and the managers of a private school must obtain a further Police vet of every person on whom a Police vet has already been obtained under **clause 9 or 10** by that board or management and who still works at the school.
- (2) A further Police vet required under **subclause (1)** must be obtained on or about every third anniversary of any Police vet that has been previously conducted on the person.
- (3) The requirement for a further Police vet under this clause does not apply to a person on whom a Police vet under **clause 9 or 10** would not be required if the person were about to be appointed to a position at the school or to work at the school at the time that the further Police vet would otherwise be required.

Compare: 1989 No 80 s 78CC

13 Procedures relating to Police vets

The board of a State school or the ~~management~~ managers of a private school that applies for a Police vet of a person—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) may not take adverse action in relation to a person who is the subject of a Police vet until—
 - (i) the person has validated the information contained in the vet; or
 - (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Compare: 1989 No 80 s 78CD

Relationship with Children's Act 2014

14 Relationship with Children's Act 2014

Nothing in this schedule limits or affects Part 3 of the Children's Act 2014 or regulations made under that Act in relation to the safety checking of children's workers.

Schedule 5

Communities of learning for State schools

ss 112, 122(2)(d)

1 Community of learning approved by Minister

- (1) The Minister may approve a community of learning for the purpose of the community entering into an agreement under **clause 2**.
- (2) A community of learning must consist of a group of 2 or more State ~~or State integrated~~ schools but may also include 1 or more of the following:
 - (a) licensed early childhood services;
 - (b) certified playgroups;
 - (c) tertiary education organisations.
- (3) The Minister may approve a community of learning only if the Minister is satisfied that—
 - (a) the purpose of the group is to come together for the purpose of raising achievement of children and young people; and
 - (b) the membership of the group that is to form the community is appropriate, having regard to that purpose.

Compare: 1989 No 80 s 71C

2 Secretary may enter into agreement with community of learning

- (1) The Secretary and the members of a community of learning approved by the Minister may enter into a community of learning agreement.
- (2) The matters that a community of learning agreement may provide for include (without limitation) 1 or more of the following:
 - (a) the activities that the community of learning is to undertake;
 - (b) the commitments of individual members of the group in carrying out the activities;
 - (c) any resources that may be provided to carry out the activities;
 - (d) any data collection requirements related to the activities;
 - (e) the format and content of the plans and annual reports required under **clauses 3 and 4**.
- (3) Each member is jointly and severally liable for the obligations and responsibilities of the community of learning set out in the agreement.
- (4) A member that proposes to withdraw from a community of learning agreement must give the Secretary notice in writing of the withdrawal.
- (5) The Secretary must, by notice in the *Gazette*, list the members of each community of learning that have entered into a community of learning agreement with

the Secretary and update the list to record any changes to membership of the community.

Compare: 1989 No 80 s 72

3 Community of learning that has agreement with Secretary must also prepare plan

- (1) A community of learning that has a community of learning agreement with the Secretary must—
 - (a) prepare and maintain a plan to cover a period agreed to by the Secretary; and
 - (b) provide the Secretary with a copy of the plan.
- (2) The plan must have particular regard to any statement of national education and learning priorities issued under **section 5**.
- (3) A community of learning that changes a plan provided to the Secretary must provide the Secretary with a copy of the changed plan as soon as practicable.

Compare: 1989 No 80 s 73

4 Report to Secretary by community of learning

A community of learning that has a community of learning agreement with the Secretary must report annually to the Secretary regarding—

- (a) its performance and progress in relation to the activities it has agreed to undertake; and
- (b) the use of any resources provided to or by the community of learning in accordance with the agreement to carry out the activities.

Compare: 1989 No 80 s 74

5 Performance review of community of learning

The Chief Review Officer may review the performance of a community of learning.

Compare: 1989 No 80 s 75

Schedule 6

State integrated schools

**ss ~~2(1)~~, 10(1) and (5)(a), 150A(2)(b),
150B(5), 150C(6), 186(9), 197(2), 198**

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*Conditional integration***1 Preservation of special character of State integrated schools**

- (1) A State integrated school on integration continues to have the right to reflect, through its teaching and conduct, the education with a special character provided by it.
- (2) Integration must not jeopardise the special character of a State integrated school.
- (3) Subject to the integration agreement, the proprietor of a State integrated school—
 - (a) continues to have the responsibility of supervising the maintenance and preservation of the education with a special character provided by the school;
 - (b) continues to have the right to determine what is necessary to preserve and safeguard the special character of the education provided by the school and described in the integration agreement.
- (4) If, in the ~~proprietor's~~ opinion of a proprietor, the special character of the school as defined and described in the integration agreement has been or is likely to be jeopardised, or the education with a special character provided by the school as defined and described in the integration agreement is no longer preserved and safeguarded, the proprietor may invoke the powers conferred on the proprietor by this schedule.

Compare: 1989 No 80 s 416

*Procedure for establishing, disestablishing, merging, and closing State integrated schools***2 Application to negotiate integration**

- (1) If the Minister accepts an application to negotiate integration, the applicant and the Minister may enter into negotiations for an integration agreement under **clause 5**.
- (2) If the Minister declines the application, the applicant may make a fresh application.
- (3) Without limiting the factors that the Minister may consider, the Minister must, in considering an application, consider the nature, character, and capacity of the existing network of schools.
- (4) The Minister may, in the Minister's absolute discretion,—
 - (a) accept applications to enter into negotiations for integration under this schedule; and

- (b) after giving any notice to the public that the Minister thinks fit, decide not to consider applications from particular areas.

Compare: 1989 No 80 s 418

3 Applications relating to proposed schools

If a person who proposes to establish a school with the intention that it become a State integrated school makes an application under **clause 2**, this schedule applies to the application and to any subsequent negotiations and agreements before integration as if—

- (a) the applicant were a proprietor; and
- (b) the school were a private school.

Compare: 1989 No 80 s 419

4 Negotiation of integration agreements

- (1) The Minister and an applicant may begin negotiations for an integration agreement under **clause 5** after the Minister has accepted an application under **clause 2**.
- (2) During the negotiations, the Minister may consult any interested persons or groups that the Minister thinks fit.

Compare: 1989 No 80 s 420

5 Integration agreements

- (1) The Minister may approve the establishment of a private school as a State integrated school.
- (2) The Minister must signify their approval by entering into an integration agreement with the proprietor.
- (3) No proprietor is competent to execute an integration agreement unless the proprietor is constituted as a body corporate.
- (4) It is a condition of every integration agreement that no person employed at the school and paid for their services in whole or in part out of money appropriated by Parliament may be—
 - (a) paid by the proprietor or the proprietor's agents any remuneration additional to that provided for by this Act; or
 - (b) granted or permitted any condition of service more favourable than that permitted in the case of a person employed in a State school.
- (5) The Minister's power to enter into integration agreements may not be delegated.

Compare: 1989 No 80 s 421

6 Other matters that may be included in integration agreements

- (1) Without restricting the provisions that may be included in an integration agreement, an integration agreement may include provisions for 1 or more of the following matters:
 - (a) specifying the land and buildings that constitute the school to which the integration agreement refers:
 - (b) specifying any part of the land or buildings owned or leased by the proprietor and used by the school before integration that do not constitute part of the school:
 - (c) describing the education with a special character for which the school is or was originally established:
 - (d) prescribing the religious or philosophical instruction and observances that are to form part of the school programme after integration:
 - (e) providing for the determination of the maximum number of students who may be enrolled at the school:
 - (f) permitting limitation of the number of children not given preference of enrolment under **clause 26** who are required to be enrolled if places are available:
 - (g) any other particular matter that is relevant to the education with a special character for which the school was originally established:
 - (h) any other matter that is not contrary to this schedule.
- (2) Despite anything in **subclause (1)(e)**, when determining the basis of the limitation under **subclause (1)(f)**, regard must be had only to the necessity of preserving and safeguarding the education with a special character that the school provides.

Compare: 1989 No 80 s 422

7 Integration agreements: machinery matters

- (1) Any proprietor may enter into integration agreements for the integration of more than 1 school.
- (2) There must be a separate integration agreement for each school that is to become a State integrated school.
- (3) If the Minister and the proprietor agree, the terms of an integration agreement may be varied by a supplementary agreement.
- (4) Despite **clause 5(5)**, the Minister's power to enter into a supplementary agreement may be delegated under **section 28 of the State Sector Act 1988**.
- (5) An integration agreement is, for all purposes, a binding agreement between the proprietor and the Crown.

Compare: 1989 No 80 s 423

8 Effective date of integration agreement

- (1) Every integration agreement must specify an effective date.
- (2) A State integrated school's board must take office on the effective date.
- (3) If the requirements of this clause are not met, the Minister may give notice to the proprietor of a new effective date as the Minister thinks fit, and the integration agreement must be interpreted accordingly.

Compare: 1989 No 80 s 424

9 Notification of integration agreement

The Minister must give notice in the *Gazette* of an integration agreement, and the Secretary must retain a copy of every integration agreement and make it available for inspection without charge by any member of the public on an Internet site maintained by or on behalf of the Secretary.

Compare: 1989 No 80 s 425

10 Minister may require information to be provided

- (1) This clause applies if—
 - (a) a proprietor or a potential proprietor has applied to integrate a school; or
 - (b) the Minister holds reasonable concerns about the ability of a proprietor or potential proprietor to meet any obligation under an integration agreement or under this schedule; or
 - (c) a proprietor or potential proprietor has submitted a specific funding request to the Minister or the Secretary.
- (2) If this clause applies, the Minister may require the relevant proprietor or potential proprietor to provide 1 or more of the following:
 - (a) all of the information needed to assess the financial and managerial capacity of the proprietor or potential proprietor:
 - (b) any other information that the Minister considers relevant to assessing—
 - (i) an application to integrate a school; or
 - (ii) any concerns about the ability of a proprietor or potential proprietor to meet any obligation under an integration agreement or under this schedule; or
 - (iii) any funding request that a proprietor or potential proprietor has submitted.

Compare: 1989 No 80 s 426

11 Cancellation of integration agreement

- (1) An integration agreement may be cancelled—
 - (a) by the Minister, in which case **clause 12** applies; or
 - (b) by the proprietor, in which case **clause 13** applies; or

- (c) by agreement between the Minister and the proprietor, in which case **clause 14** applies.
- (2) On the cancellation of an integration agreement,—
- (a) the school ceases to be a State integrated school; and
 - (b) the respective rights and obligations of the parties that arise owing to the integration agreement ceasing to have effect; and
 - (c) in the absence of an agreement to the contrary, the school is to be treated as provisionally registered as a private school.

Compare: 1989 No 80 s 427

12 Cancellation by Minister

The Minister may cancel an integration agreement under **clause 11(1)(a)** if—

- (a) it appears to the Minister on reasonable grounds that the proprietor or the board of the State integrated school is not sufficiently carrying out its functions and obligations under this Act or under the integration agreement; and
- (b) the Minister has consulted the proprietor, the board, and other interested persons or groups as the Minister thinks fit.

Compare: 1989 No 80 s 428

13 Cancellation by proprietor

- (1) A proprietor may give notice to the Minister of an intention to cancel an integration agreement under **clause 11(1)(b)** if—
- (a) it appears to the proprietor on reasonable grounds that—
 - (i) the special character of the State integrated school has been or is likely to be jeopardised; or
 - (ii) the Minister or any board is not carrying out their functions and obligations under this Act or the integration agreement; and
 - (b) the proprietor has consulted the Minister, the board, and any other interested persons or groups as the proprietor thinks fit.

- (2) The notice of intention to cancel takes effect as a cancellation of the integration agreement under **clause 11(1)(b)** on the date that is 4 months after the date of the notice.

Compare: 1989 No 80 s 429

14 Cancellation by agreement between parties

The Minister and the proprietor may cancel an integration agreement under **clause 11(1)(c)** by mutual agreement, after consultation with other interested persons or groups as they think fit.

Compare: 1989 No 80 s 430

15 Mergers

- (1) A State integrated school may merge with another State integrated school (together, the **merging schools**) if—
 - (a) each school has the same proprietor; and
 - (b) each school has the same or a similar special character; and
 - (c) the proprietor has consulted the Minister; and
 - (d) the Minister determines that the schools may merge.
- (2) Before determining whether the State integrated schools may merge, the Minister must—
 - (a) be satisfied that—
 - (i) the proprietor has made reasonable efforts to consult its adult students or the parents of its full-time students (other than adult students) about the proposed merger; and
 - (ii) the consultation that has taken place for each school is adequate in the circumstances; and
 - (iii) the creation of a single school by the proposed merger (the **continuing school**) is appropriate in the circumstances; and
 - (b) consult the boards of all the other schools whose rolls might, in the Minister's opinion ~~of the Minister~~, be affected by the proposed merger.
- (3) If the Minister determines that the State integrated schools may merge, the proprietor must apply under **clause 2** to negotiate an integration agreement for the school that is to be created by the merger.
- (4) If an integration agreement is negotiated, the Minister must give notice of the merger in the *Gazette*.
- (5) The notice takes effect on a day specified in the notice and has effect as follows:
 - (a) the merging schools are part of the continuing school;
 - (b) if the continuing school and each merging school are not already administered by a single board,—
 - (i) the board of each merging school is dissolved; and
 - (ii) all rights, assets, liabilities, and debts of each merging school are vested in the board of the continuing school;
 - (c) the continuing school is a school of the classification specified in the notice and provides education for the student year levels specified in the notice.
- (6) The notice does not affect the name of the continuing school.
- (7) Before a notice given under **subclause (4)** takes effect, the Minister must give notice in the *Gazette* of whether,—

- (a) during the period between a date specified in the notice and the date on which new board members take office, the board of the continuing school is to be—
 - (i) the board of the continuing school plus at least 1 co-opted board member representing each of the merging schools; or
 - (ii) a board appointed by the Minister; or
 - (b) the board of the continuing school is to have an alternative constitution approved under **clause 4 of Schedule 21**.
- (8) The board of the continuing school must have no more than 4 members appointed by the proprietor.
- Compare: 1989 No 80 s 431

16 Closure of State integrated school

If it appears to the Minister that for the reason set out in **clause 12(a)** a State integrated school should be closed, the Minister may, after the consultation referred to in **clause 12(b)**, disestablish and close the school.

Compare: 1989 No 80 s 432

17 Notification of cancellation or of closing of State integrated school

When an integration agreement is cancelled under **clause 12 or 13**, or when a State integrated school is closed under **clause 16**, the Minister must give notice of the cancellation or closure in the *Gazette*.

Compare: 1989 No 80 s 433

18 Disposal of assets on cancellation of integration agreement or closing of State integrated school

- (1) This clause applies if capital expenditure or expenses appropriated by Parliament have been used to meet all or part of the cost of supplying a State integrated school with furniture, equipment, or other chattels and the integration agreement for that school is cancelled or the school is closed.
- (2) The Secretary may dispose of the furniture, equipment, or other chattels at the Secretary's sole discretion, whether by sale or otherwise, and the disposition has effect as if the Secretary were the owner.
- (3) However, any sale must be by way of public auction or public tender.

Compare: 1989 No 80 s 434

19 Repayment of moneys advanced

- (1) This clause applies if—
 - (a) capital expenditure or expenses appropriated by Parliament have been advanced otherwise than by way of loan to be used to meet all or part of the cost of erecting any building or supplying or installing any fixture as part of a State integrated school; and

- (b) the integration agreement for that school is cancelled, or the school is closed.
- (2) The current value of the contribution to the building or fixture from the money appropriated must be assessed by the Minister.
- (3) The amount assessed is to be treated as a debt due by the proprietor to the Crown and is a charge on the land of the State integrated school.
- (4) That charge may be registered without the payment of a fee against the land under any enactment.
- (5) However, the Minister may, with the agreement of the Minister of Finance, approve the writing off of all or part of the debt.
- (6) For the purposes of registration under any other enactment, the Secretary may sign the notice of the charge and the release of the charge.

Compare: 1989 No 80 s 435

20 Moneys to be paid into Crown Bank Account

- (1) In the case of any sale made under **clause 18(2)**, the money received must be paid into a Crown Bank Account.
- (2) In the event of the cancellation of an integration agreement, or the closing of a State integrated school, any unspent money granted to the school's board under this Act or regulations made under this Act or under any other Act must be paid into a Crown Bank Account.

Compare: 1989 No 80 s 436

21 Certain assets remain vested in proprietors

- (1) If an integration agreement is cancelled, or a State integrated school is closed, any land, buildings, chattels, and other interests relating to the school that are vested in the proprietor remain vested in the proprietor.
- (2) This clause is subject to **clauses 18 to 20**.

Compare: 1989 No 80 s 437

22 Restriction on cancellation of integration agreement or closure of State integrated schools

No integration agreement may be cancelled in accordance with **clause 11**, and (despite anything in **section 186**) no State integrated school may be closed under **clause 16**, solely on the ground that adequate capacity for the students exists in an adjacent State school.

Compare: 1989 No 80 s 438

23 Compensation

If an integration agreement is cancelled, or a State integrated school is closed, no compensation of any kind is due or payable to the proprietor.

Compare: 1989 No 80 s 439

*Administration***24 Administration of State integrated schools**

- (1) Except as provided in this schedule, this Act and every other enactment relating to the education of the people of New Zealand in State schools apply to a State integrated school.
- (2) Subject to **clauses 1 and 2**, when a private school is integrated it must be controlled and managed and operate in all respects as if it were a State school.
- (3) The powers of control and management of the board of a State integrated school are subject to **clauses 1 and 2**.
- (4) To give effect to **subclause (3)**, the board of a State integrated school must provide for adequate consultation between the board and the proprietor of that school.

Compare: 1989 No 80 s 440

25 Free education

Every student enrolled at a State integrated school must be given free education on the same terms and in accordance with the same conditions as students enrolled at a State school.

Compare: 1989 No 80 s 441

26 Preference of enrolment

The children of parents who have a particular or general philosophical or religious connection with a State integrated school must be preferred to other children for enrolment at the school.

Compare: 1989 No 80 s 442

27 Participation in general school programmes

By enrolling a student at a State integrated school, a parent is taken to have accepted as a condition of enrolment that the student is to participate in the general school programme that gives the school its special character.

Compare: 1989 No 80 s 443

28 Instruction of students

- (1) Each State integrated school must instruct its students in accordance with the curricula and syllabuses prescribed under this Act or any regulations made under this Act.
- (2) However, the general school programme must reflect the education with a special character provided by the State integrated school, and religious and other examples may be used to reinforce teaching throughout the school day.

Compare: 1989 No 80 s 444

*Enrolment, conditions of attendance, and instruction of students at State
integrated schools*

29 Religious instruction and observances

- (1) Subject to **clause 28**, if religious instruction and observances form part of the education with a special character provided by a State integrated school, these must continue to form part of the general school programme in accordance with the terms and conditions prescribed in the integration agreement relating to that school.
- (2) If religious instruction and observances form part of the education with a special character provided by a State integrated school, that school—
 - (a) must be responsive to the sensitivities of students and parents of different religious or philosophical affiliations; and
 - (b) may not require a student of a different religious or philosophical affiliation to participate in religious observances and religious instruction concerned with particular observances if a parent of the student states that they do not wish that student to participate.

Compare: 1989 No 80 s 445

30 Attendance dues

- (1) The proprietor of a State integrated school may, if the integration agreement for the school provides, enter into an agreement with the parents or other persons accepting responsibility for the education of a child that provides that the parents or other persons must pay attendance dues as a condition of the child's enrolment at the school.
- (2) The dues must be established for the State integrated school or group of State integrated schools at the rates, and subject to any conditions, approved by the Minister by notice in the *Gazette*.
- (3) Revenue received by the proprietor from attendance dues must be used solely for the following:
 - (a) paying, in respect of the school or group of schools in respect of which it is received, for improvements to the State integrated school or schools' buildings and associated facilities that are required by any integration agreement or integration agreements under **clause 39(2)(c)**;
 - (b) any capital works that may be required by the Minister under **clause 39(2)(d)**;
 - (c) meeting debts, mortgages, liens, or other charges associated with the land and the buildings that constitute the premises of the State integrated school or schools.
- (4) No revenue received by the proprietor from attendance dues may be used to provide or improve the State integrated school buildings and associated facil-

ities to a standard higher than that approved by the Secretary as appropriate for a comparable State school.

Compare: 1989 No 80 s 447

31 Withdrawal and reinstatement of right to charge attendance dues

- (1) Should any proprietor use any revenue from attendance dues for any purpose other than one permitted by **clause 30**, the Minister may, despite anything in the integration agreement, by notice in the *Gazette*, withdraw the right to charge attendance dues, and while the withdrawal continues, the board must permit the attendance of children without the payment of attendance dues.
- (2) The Minister may, by notice in the *Gazette*, cancel any withdrawal.

Compare: 1989 No 80 s 448

32 Failure to pay attendance dues

- (1) If a parent, or other person who has accepted the responsibility for the education of a child, has entered into an agreement to pay attendance dues and fails to make a payment, the payment is recoverable from the parent or other person in any court of competent jurisdiction as a debt due to the proprietor.
- (2) In addition, a failure to make payment constitutes grounds for the principal of the State integrated school to suspend the child from attendance at that school and to remove the child's name from the school register.
- (3) However, no child may be suspended and have their name removed from the school register until arrangements have been made to the satisfaction of the Secretary for the child to be enrolled at some other school.

Compare: 1989 No 80 s 449

33 Accounts for attendance dues

- (1) Each proprietor who is permitted to charge attendance dues must keep accounts in a manner approved by the Secretary showing—
 - (a) the total amount of attendance dues received; and
 - (b) how the attendance dues have been spent.
- (2) The accounts must be—
 - (a) balanced at a date each year approved by the Secretary; and
 - (b) audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).
- (3) The proprietor must send a copy of the accounts, together with the auditor's report on them, to the Secretary by a date to be approved by the Secretary.

Compare: 1989 No 80 s 450

34 Financial contributions

- (1) In addition to the power to collect attendance dues under **clause 30**, the proprietor of a State integrated school may—

- (a) conduct fund-raising activities within the school; and
 - (b) inform the parents of the financial obligations of the proprietor in the prospectus and in other ways; and
 - (c) request the parents of students attending the school to make regular financial contributions to the proprietor for the benefit of the proprietor in meeting any debt, mortgage, lien, or other charge associated with the land and buildings that constitute the school premises or are associated with the school.
- (2) Financial contributions other than attendance dues must be made on a voluntary basis, and no student may be refused enrolment because of the unwillingness of the parents to contribute in this way.

Compare: 1989 No 80 s 451

35 Restrictions on fund-raising

None of the following may take part during normal school hours in ~~any~~ school activity directed to raising funds for the benefit of the proprietor in meeting any debt, mortgage, lien, or other charge associated with the land and buildings that constitute the school premises or are associated with the school:

- (a) a board of ~~any~~ State integrated school;
- (b) the principal or a member of the staff (whether employed or retained as a teacher or in any other capacity);
- (c) a student of the school.

Compare: 1989 No 80 s 452

36 Accounts of money raised under clause 34

The proprietor must—

- (a) keep accounts of money raised by it and by a board, principal, staff member, or student under **clause 34**; and
- (b) have the accounts audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013) at least once in every period of 12 months; and
- (c) make a copy of the accounts and of the auditor's report on them available on request to the parents of students attending the State integrated school and to other contributors.

Compare: 1989 No 80 s 453

37 Fund-raising

- (1) The board, the principal, staff members, and students of a State integrated school may take part in fund-raising activities in the same manner and for the same purposes for the benefit of the students of the school that are permitted in the case of State schools.

- (2) This clause is subject to **clause 34**.

Compare: 1989 No 80 s 454

38 Use of school office

The school office of a State integrated school may be used for the purpose of communication between the proprietor of the school and the parents of students enrolled at the school, and for other purposes related to the benefit of the school and the students.

Compare: 1989 No 80 s 455

39 Powers and responsibilities of proprietors

- (1) The proprietor of a State integrated school must exercise its powers under an integration agreement in a manner that is consistent with **clause 1**.
- (2) Subject to **subclause (1)**, the proprietor of a State integrated school—
- (a) owns, holds upon trust, or leases the land and buildings that are specified in the integration agreement as constituting the school premises; and
 - (b) must accept and meet the liability for all mortgages, liens, and other charges upon the land and buildings; and
 - (c) must plan, pay for, and implement, over the period that may be specified in the integration agreement, the improvements to the school buildings and associated facilities that are required in accordance with the integration agreement to bring the buildings and associated facilities up to the minimum standard laid down by the Secretary for State schools; and
 - (d) must plan, implement, and pay for the capital works that are approved or required by the Minister, with a view to replacing, improving, or enlarging the school, its buildings, and its associated facilities to maintain the school, its buildings, and its associated facilities at the minimum standard laid down by the Secretary for comparable State schools; and
 - (e) may own, hold on trust, or lease and control, and may maintain, any land, buildings, and associated facilities that, although not part of the school in terms of the integration agreement, are regarded by the proprietor as appropriate to maintain the special character of the school; and
 - (f) may, in conjunction with the board, provide for the accommodation of students living away from home; and
 - (g) must insure all the buildings, chattels, and other assets owned, held on trust, or leased by the proprietor for the purposes of the school against risks normally insured against; and
 - (h) must arrange with its insurers that the benefit of the indemnity under the insurance policy extends to the Minister for the buildings, chattels, and other assets paid for in whole or in part by a loan or grant made out of money appropriated by Parliament; and

- (i) must, together with the proprietor's agents and licensees, have at all reasonable times access to the school to ensure that the special character of the school is being maintained.

Compare: 1989 No 80 s 456

40 Decision-making criteria for proprietors

- (1) When making a decision under this schedule, a proprietor must take into account—
 - (a) the ability of the proprietor's State integrated school or schools to continue to provide the level of education required; and
 - (b) the average per student cost of the continued operation of the proprietor's State integrated school or schools relative to the average per student cost for other State schools; and
 - (c) the extent to which the proprietor's State integrated school or schools provide for students whose needs are not met by other State schools; and
 - (d) the ability of the proprietor to meet any obligations regarding the proprietor's State integrated school or schools over the next 7 years.
- (2) A proprietor must assess the proprietor's compliance with **subclause (1)** at intervals of no more than 5 years.
- (3) However, the Secretary may direct a proprietor to carry out an assessment if the Secretary considers it appropriate in the circumstances.
- (4) The proprietor must, as soon as practicable,—
 - (a) complete any assessment begun under **subclause (2) or (3)**; and
 - (b) provide the Secretary with a copy of the assessment.

Compare: 1989 No 80 s 457

41 Consequences of failure to arrange insurance

Despite **clause 39(2)(h)**, if the proprietor has not arranged with the proprietor's insurers for the benefit of any insurance policy to extend to the Minister,—

- (a) no money appropriated by Parliament may be used to pay any part of the cost of repairing or replacing any buildings, chattels, or other assets that have been destroyed or damaged from any cause whatsoever; and
- (b) any additional charges by way of premium made by the insurer for the extension of the benefit of any insurance policy to the Minister may not be met out of money appropriated by Parliament.

Compare: 1989 No 80 s 458

42 Proprietors not to question curriculum or teaching methods

The right of access specified in **clause 39(2)(i)** does not give a proprietor the right to question the curriculum or the teaching methods adopted by the teach-

ers, both of which are, subject to this Act, controlled by the principal of the State integrated school.

Compare: 1989 No 80 s 459

43 Leases of land

- (1) The proprietor of a State integrated school must obtain the prior consent of the Minister before entering into a lease relating to land that is used, or to be used, for the school.
- (2) If the proprietor fails to obtain the prior consent of the Minister to a lease, the lease is not affected but the Minister may cancel the integration agreement under **clause 12**.

Compare: 1989 No 80 s 460

44 Assistance to proprietors

- (1) The Minister may, with the concurrence of the Minister of Finance, approve the granting of loans from capital expenditure that may be appropriated by Parliament for the purpose to the proprietor of ~~any~~ State integrated school.
- (2) The loans are to be made for the purposes and subject to the terms and conditions, including the writing off of any amount repayable, that the Minister, with the concurrence of the Minister of Finance, determines.

Compare: 1989 No 80 s 461

45 Proprietors unable to meet obligations

- (1) If the proprietor of a State integrated school is unable to meet its financial or other commitments under the integration agreement, the proprietor must notify the Minister.
- (2) If the Minister is notified, the Minister may, after any consultation with the proprietor that the Minister thinks necessary,—
 - (a) cancel the integration agreement in accordance with **clause 12**; or
 - (b) close the State integrated school under **clause 16**; or
 - (c) arrange for the acquisition by the Crown, in accordance with the Public Works Act 1981, of any land, buildings, and chattels relating to the State integrated school that are owned or leased by the proprietor and that the Minister thinks fit for the purpose of establishing a State school.
- (3) When the Minister acts in accordance with **subclause (2)(a) or (b)**, the provisions of this Act relating to the cancellation of an integration agreement or to the closure of a State integrated school apply.

Compare: 1989 No 80 s 462

Appointment and employment of teachers

46 Requirements in respect of appointments of teachers

- (1) The board of a State integrated school must appoint teachers in that school in accordance with the **State Sector Act 1988**.
- (2) When a board delegates to a committee the power to appoint a teacher or to recommend the appointment of a teacher, that committee must contain at least 1 of the persons appointed to the board by the proprietor.

Compare: 1989 No 80 s 463

47 Religious instruction: appointments to special positions relating to character of State integrated school

Where religious instruction forms part of the special character of a State integrated school,—

- (a) if provided for by the integration agreement, an advertisement for the position of principal of that school must state that a willingness and an ability to take part in religious instruction appropriate to that school are conditions of appointment:
- (b) if provided for by the integration agreement, the board must—
 - (i) designate a position at that school as director of religious studies; and
 - (ii) state in any advertisement for that position that a willingness and an ability to take part in religious instruction appropriate to that school are conditions of appointment (a director of religious studies must be a member of the normal staffing entitlement of the school, as established by regulations made under this Act):
 - (iii) ensure the carrying out of the teaching duties, if any, that may be provided for in the integration agreement:
- (c) the board must—
 - (i) designate any other proportion of teaching positions in that school that may be provided for in the integration agreement as positions of importance carrying a responsibility for religious instruction; and
 - (ii) state in advertisements for the positions that a willingness and an ability to take part in religious instruction appropriate to that school are conditions of appointment:
- (d) the board must state in any advertisement for a position at that school that a willingness and an ability to take part in religious instruction appropriate to that school are conditions of appointment if—
 - (i) that school is a primary school; and

- (ii) the person holding the position of deputy principal of that school or a position of assistant principal at that school has responsibility for supervising the junior classes at that school; and
- (iii) the terms of the integration agreement of that school specify those conditions of appointment.

Compare: 1989 No 80 s 464

48 Effect of religious instruction requirements in advertisements

If, in accordance with **clause 47**, an advertisement for a position states a requirement that a willingness and an ability to take part in religious instruction are conditions of appointment, any person appointed to that position must accept that requirement as a condition of appointment.

Compare: 1989 No 80 s 465

49 Restrictions on requirement for teacher to take part in religious instruction

- (1) The appointment of a teacher to a position in a State integrated school may not be conditional on the willingness and ability of that teacher to take part in religious instruction, and no appointed teacher may be required to take part.
- (2) **Subclause (1)** is subject to **clause 47**.

Compare: 1989 No 80 s 466

50 Other special positions

- (1) If an integration agreement records that any teaching position in the State integrated school concerned is a special position that requires particular capabilities on the part of the teacher holding it, an advertisement for that position must require an appointee to possess those capabilities as a condition of appointment.
- (2) Without limiting **subclause (1)**, if any integration agreement relating to a State integrated primary school requires the person holding a position as assistant principal at that school (being a position with responsibility for supervising senior classes at that school) to maintain programmes and activities that reflect the special character of that school, an advertisement for that position must require an appointee to maintain those programmes and activities as a condition of appointment.
- (3) If, in accordance with **subclause (1) or (2)**, an advertisement for a position makes any requirement a condition of appointment to that position, any person appointed to that position must accept that requirement as a condition of appointment.

Compare: 1989 No 80 s 467

51 Selection for appointment

In the case of a State integrated primary school, the person to be appointed to any position specified in **clause 47 or 50** must be selected in accordance with **clause 52**.

Compare: 1989 No 80 s 468

52 Requirements in respect of appointments

- (1) Before appointing any person to a position in a State integrated primary school specified in **clause 47 or 50**, the board must consult the proprietor, who must report to the board the names of those applicants (if any) who, in terms of the special character of the school or in terms of the advertisement calling for applicants with particular capabilities, are acceptable for appointment.
- (2) On receipt of the report under **subclause (1)**, the board may consider for appointment only those applicants who are stated in the report to be acceptable for appointment.

Compare: 1989 No 80 s 469

53 Employment for special purposes

- (1) With the consent of the board, ~~any~~ retired teacher may undertake, in ~~any~~ State integrated school, voluntary tasks relating to the beliefs and instruction that are the foundation of that school's special character.
- (2) If religious instruction forms part of the education with a special character provided by a State integrated school, the proprietor of that school may employ any person, whether as a chaplain or otherwise, for duties relating to that instruction.
- (3) The salary of a person employed under **subclause (2)** may not be paid by the board or be in any way a charge on money appropriated by Parliament.
- (4) The proprietor must notify the board of the name of any person employed under **subclause (2)**.

Compare: 1989 No 80 s 470

54 Appointment of teachers on integration

- (1) If an integration agreement is implemented in respect of ~~any~~ private school in accordance with **clauses 5 and 8**,—
 - (a) the contract of service of every teacher at that school is to be treated as being terminated from the effective date of integration; and
 - (b) each of those teachers, if the teacher so wishes, is to be treated as being in the employment of the board of the State integrated school until the teacher is formally appointed to a teaching position under **subclause (4)**, and **subclause (6)** applies accordingly from the effective date of integration; and

- (c) each teaching position at that school must, within 60 days after the effective date of integration, be advertised as required by the **State Sector Act 1988**.
- (2) The advertisement must state that the teacher appointed to the position as at the effective date of integration, if the teacher so wishes, has an absolute right of appointment to that position irrespective of the qualifications of any other applicant.
- (3) The teacher previously appointed to the position advertised under **subclause (1)** must, if the teacher wishes to continue in that appointment, apply in the manner prescribed by the **State Sector Act 1988** for appointment to that position.
- (4) A teacher who applies must be appointed to the position.
- (5) A teacher who does not so apply is to be treated as having relinquished the position.
- (6) A teacher who is appointed to a teaching position must—
- (a) be paid out of expenses appropriated by Parliament for the purpose the same salary that a teacher with comparable service and qualifications would be paid for a comparable teaching position in a State school; and
 - (b) continue to be paid no less than the same salary, and to be accorded the same status, as the teacher received or was accorded on the day before the effective date of integration.

Compare: 1989 No 80 s 471

55 Other employees

- (1) The contract of service of every person employed in a State integrated school other than as a teacher is to be treated as being terminated from the effective date of integration.
- (2) If the position in which that person was employed has a parallel or close parallel in a State school, that person may—
- (a) be re-employed by the board in a parallel position; and
 - (b) be paid out of expenses appropriated by Parliament for the purpose the same salary as that person would be paid for comparable service in a State school.

Compare: 1989 No 80 s 472

56 No compensation for termination of employment

When a contract of employment of a teacher is treated as being terminated under **clause 54(1)(a)**, or when the contract of employment of a person other than a teacher is treated as being terminated under **clause 55**, no compensa-

tion of any kind is payable to the teacher or to any person employed otherwise than as a teacher in respect of the termination of the contract of employment.

Compare: 1989 No 80 s 473

General provisions

57 Grants to private schools before integration

Any obligation or other commitment entered into by the managers of a private school before the integration of that school as a condition of a grant under this Act binds the proprietor of that school, whether or not the obligation or commitment is specified in the integration agreement.

Compare: 1989 No 80 s 474

58 Relationship between this schedule and other Parts of Act and other enactments

- (1) If this schedule deals with the same subject matter as, or similar subject matter to, any other provisions of this Act, the **State Sector Act 1988**, or any regulations made under ~~any either~~ of those Acts or under any enactment repealed by ~~any either~~ of those Acts,—
 - (a) express provisions in this schedule prevail in respect of State integrated schools; but
 - (b) this schedule must be interpreted in a way that is consistent with the provisions of this Act or any other enactments concerned whenever this construction is appropriate and reasonable.
- (2) Subject to **clauses 1 and 2**, if any matter concerning State integrated schools is not dealt with by express provision in this schedule, the appropriate provisions of this Act, the **State Sector Act 1988**, and any regulations made under any of those provisions or under any enactment repealed by this Act or the **State Sector Act 1988** apply.

Compare: 1989 No 80 s 475

Schedule 7

Private schools

s 200(3)

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1 Provisional and full registration of private schools

- (1) If the Secretary is satisfied that a school meets or is likely to meet the criteria for registration as a private school, the Secretary must provisionally register the school as a private school of the description or descriptions concerned.
- (2) Provisional registration of the school continues—
 - (a) for 12 months (unless it is revoked earlier); or
 - (b) until the expiry of any period specified by the Secretary under **sub-clause (3)**.

- (3) The Secretary may renew the provisional registration of the school only once, for a period specified by the Secretary, if satisfied that—
 - (a) exceptional circumstances exist in relation to the school; and
 - (b) the school is likely to meet the criteria for registration as a private school in that period.
- (4) The Secretary may request a further review, in addition to the review under **clause 9(2)**, of a school that has its provisional registration renewed under **subclause (3)**.
- (5) The Secretary must fully register a school as a private school of the description or descriptions concerned if the Secretary is satisfied, having considered any report under **clause 9(4)** in relation to a review under **clause 9(2) or (3)**, that a provisionally registered school meets the criteria for registration as a private school.

Compare: 1989 No 80 s 35A(2)–(6)

2 Criteria for registration as private school

The criteria for registration as a private school are that the school—

- (a) has premises that are suitable, as described in **clause 3**; and
- (b) usually provides tuition for 9 or more students aged 5 years or over but under 16 years; and
- (c) has staffing that is suitable to the age range and level of its students, the curriculum taught at the school, and the size of the school; and
- (d) has equipment that is suitable for the curriculum being delivered or to be delivered at the school; and
- (e) has a curriculum for teaching, learning, and assessment and makes details of the curriculum and its programme for delivery available for parents; and
- (f) has suitable tuition standards, as described in **clause 5**; and
- (g) has managers who are fit and proper persons (as described in **clause 6**) to be managers of a private school; and
- (h) is a physically and emotionally safe place for students.

Compare: 1989 No 80 s 35C

3 Suitable premises

- (1) Suitable premises for a private school are premises that are suitable for a school of its description and the number of students at the school.
- (2) **Subclause (1)** applies to all premises used by the private school for the regular delivery of courses, whether the managers of the school own or lease the premises for the school.

Compare: 1989 No 80 s 35D

4 Additional and substituted premises to be approved

- (1) The managers of a private school must, in the circumstances set out in **sub-clause (2)**, notify the Secretary and obtain the Secretary's approval before using new premises for the regular delivery of courses.
- (2) The circumstances are that the managers of the private school propose that the school is to occupy—
 - (a) premises that are in addition to its current premises; or
 - (b) different premises that are to replace the premises currently occupied by the school.
- (3) When considering whether to grant approval of premises under **subclause (1)**, the Secretary must consider whether the premises are suitable, as described in **clause 3**.

Compare: 1989 No 80 s 35E

5 Tuition standards

- (1) Tuition of a suitable standard at a private school must include giving students tuition of a standard no lower than that of the tuition given to students enrolled at State schools of the same year levels.
- (2) In assessing the standard of tuition, the mode of curriculum delivery and the regularity of instruction must be considered.

Compare: 1989 No 80 s 35F

6 Managers to be fit and proper persons

- (1) In assessing whether a person who is a manager of a private school is a fit and proper person to be a manager of the school, the Secretary must take the following matters into account:
 - (a) whether the person has been convicted of serious criminal activity;
 - (b) whether the person has any health problems that may affect their ability to comply with their obligations towards the school and its students;
 - (c) whether the person has been—
 - (i) ~~adjudged~~ adjudicated bankrupt under the Insolvency Act 2006 or the Insolvency Act 1967;
 - (ii) prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (A) a company under the Companies Act 1993; or
 - (B) any other body corporate;
 - (d) any previous cancellation under this Act of the registration of a school of which the person was a manager;
 - (e) any serious breach of the person's statutory duties as a manager of a private school;

- (f) whether the person has been convicted of an offence against **section 230**;
 - (g) all other relevant matters.
- (2) If the manager of a private school is—
- (a) a company, the assessment under **subclause (1)** applies to its directors;
 - (b) an incorporated society or an incorporated trust board, the assessment under **subclause (1)** applies to its members.
- (3) If the management of a private school changes in its entirety or is transferred to a new entity, the new managers must give notice to the Secretary and an assessment under **subclause (1)** must be made of the new managers of the school.

Compare: 1989 No 80 s 35G

7 Manager must have regard to statement of national education and learning priorities

The manager of a private school must,—

- (a) in operating the school, have regard to any statement of national education and learning priorities; and
- (b) ensure that, in developing and delivering the curriculum, the school's principal and staff have regard to any statement of national education and learning priorities.

Compare: 1989 No 80 s 35GA

Managers to advise Secretary of private school ceasing operation

8 Managers must advise Secretary of school ceasing operation

The managers of a private school that is about to cease to operate as a school must inform the Secretary of—

- (a) the fact that the school is to cease to operate as a school; and
- (b) the date on which the school is to cease to operate.

Compare: 1989 No 80 s 35H

Review of private schools

9 Review of private schools

- (1) As soon as practicable after provisionally registering an existing school or a proposed school under **clause 1(2)**, the Secretary must inform the Chief Review Officer of the provisional registration.
- (2) The Chief Review Officer must ensure that a review officer reviews ~~any~~ school that is provisionally registered under **clause 1(2)**—
 - (a) between 6 and 12 months after the provisional registration of the school; or

- (b) earlier, by agreement with its managers.
- (3) The Chief Review Officer must ensure that a review officer conducts a further review of a school that has had its provisional registration renewed under **clause 1(3)**, if the further review is requested by the Secretary under **clause 1(4)**.
- (4) The Chief Review Officer must ensure that a review officer who conducts a review under **subclause (2) or (3)** prepares a written report in relation to the review and gives copies of it to the Secretary and the school's manager.
- (5) The Chief Review Officer must ensure that a school, while registered under **clause 1(5)**, is reviewed in accordance with **subpart 3 of Part 5**.
- (6) The Chief Review Officer must also ensure that the review officer who conducts a review under **subclause (5)**—
 - (a) prepares a written report on the review; and
 - (b) gives copies of it to the Secretary and the school's principal (or other chief executive) and managers.
- (7) A review officer's written report on a review under this clause must also include—
 - (a) information about whether the school meets the criteria for registration as a private school; and
 - (b) information about the areas in which improvement is required, if the school does not meet the criteria.

Compare: 1989 No 80 s 35I

Actions by Secretary in relation to private schools

10 Secretary's actions in ~~regard~~ relation to private schools

- (1) The Secretary may take action in ~~regard~~ relation to a private school if—
 - (a) the Secretary considers that the school is not meeting any or all of the criteria for registration as a private school; or
 - (b) a review conducted under **clause 9** indicates that the school does not, or is not likely to, meet any or all of the criteria for registration as a private school; or
 - (c) the managers of the school have breached or are breaching their statutory duties in relation to the school under this or any other enactment; or
 - (d) the Secretary has reasonable grounds to believe that serious criminal activity is occurring in the school.
- (2) If the Secretary is satisfied that any 1 or more of the grounds set out in **subclause (1)** exist in relation to a private school, the Secretary may do any 1 or more of the following:
 - (a) issue the school's managers with a notice to comply:

- (b) require the managers of ~~a~~ the school to inform parents of the students at the school that the school is not meeting the criteria for registration as a private school;
 - (c) impose conditions on the school's registration;
 - (d) impose a requirement or requirements under any 1 or more of **paragraphs (a) to (c)** and suspend the school's registration;
 - (e) cancel the school's registration under **clause 12**.
- (3) Any action taken by the Secretary under **subclause (2)**—
- (a) must be proportionate to the seriousness of the private school's situation; and
 - (b) is in addition to any fine incurred or other penalty imposed under **section 230** or under any other enactment.

Compare: 1989 No 80 s 35J

11 Duration of suspension

Suspension under **clause 10(2)(d)** continues until the Secretary—

- (a) is satisfied that the managers of the private school have complied with all requirements imposed by the Secretary under any of **clause 10(2)(a) to (c)**; or
- (b) cancels the private school's registration under **clause 12**.

Compare: 1989 No 80 s 35L

12 Process for cancellation of registration

- (1) The Secretary may cancel the registration of a private school if, following an action by the Secretary taken under **clause 10(2)(a) to (d)**,—
- (a) the school—
 - (i) does not improve sufficiently to meet the criteria for registration as a private school; and
 - (ii) is not likely to do so, in the Secretary's opinion ~~of the Secretary~~, within a further reasonable time; or
 - (b) the managers of the school are continuing in breach of their statutory duties in relation to the school; or
 - (c) serious criminal activity continues to occur in the school.
- (2) Before cancelling a school's registration under **subclause (1)**, the Secretary must—
- (a) take reasonable steps to obtain and consider any relevant information, including any report by a review officer; and
 - (b) give written notice to the managers of the school that the Secretary is considering cancelling the school's registration, and give reasons; and

- (c) give the managers of the school a reasonable opportunity to respond to the notice.

Compare: 1989 No 80 s 35M

Grants for private schools

13 Grants for private schools

- (1) The Minister may make grants to the managers of private schools out of money appropriated by Parliament for the purpose.
- (2) The Minister must determine the amount of each grant made under **subclause (1)**.
- (3) A grant may be made unconditionally, or subject to conditions determined by the Minister.
- (4) The managers of a private school to which a grant is made subject to conditions must take all reasonable steps to ensure that the conditions are complied with.

Compare: 1989 No 80 s 35N

14 Record-keeping in relation to grants to private schools

- (1) The managers of a private school to which a grant has been made unconditionally under **clause 13** must ensure that records are kept—
- (a) in respect of the year in which the grant was made and the year after; and
- (b) in a manner approved by the Minister.
- (2) The records must—
- (a) show fully and fairly all the managers' financial transactions, assets, liabilities, and funds; and
- (b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- (3) The managers of a private school to which a grant under **clause 13** has been made subject to conditions must ensure that all necessary records are kept—
- (a) in respect of the year in which the grant was made and the year after; and
- (b) in a manner approved by the Minister.
- (4) The records must—
- (a) show fully and fairly—
- (i) any of the managers' financial transactions, assets, liabilities, and funds that relate to or are or were affected by the making of the grants; and
- (ii) that the conditions have been complied with; and

- (b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.
- (5) For the purposes of this clause and **clause 15**, the financial year of a school's managers ends—
 - (a) at the close of the day specified by the Minister for the purpose; or
 - (b) at the close of **30 June**, if the Minister has not specified a day for the purpose.

Compare: 1989 No 80 s 35O

15 Providing accounts to Secretary

As soon as practicable after the end of each financial year during which a school's managers are required by **clause 14** to keep records, they must—

- (a) have prepared an income and expenditure account that shows all financial transactions for the year for which records are required to be kept; and
- (b) have the account audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013); and
- (c) give the Secretary copies of the account and the audit report on it.

Compare: 1989 No 80 s 35P

Suspensions and expulsions from private schools

16 Suspensions and expulsions from private schools to be notified to Secretary

- (1) Immediately after a student has been suspended or expelled from a private school, the school's principal or head teacher must give the Secretary—
 - (a) written notice of—
 - (i) the student's name and last known address; and
 - (ii) the day on which the student was suspended or expelled or, if the student was first suspended and later expelled, the days on which the student was suspended and expelled, and the length of the suspension; and
 - (b) a written statement of the reasons for the student's suspension or expulsion.
- (2) Unless the student is within a reasonable time reinstated at the school or enrolled at some other registered school, the Secretary must (if the student is under the age of 16 years) and may (if the student is aged 16 years ~~of age~~ or over)—
 - (a) arrange for the student to be enrolled at some other reasonably convenient registered school that the student can attend; or
 - (b) direct the board of a State school that is not a State integrated school to enrol the student at the school, and, in that case, the board must do so; or

- (c) direct a parent of the student to have the student enrolled at a distance school.
- (3) The Secretary may not give a direction under **subclause (2)** unless the Secretary has also made all reasonable attempts to consult—
 - (a) the student; and
 - (b) a parent of the student; and
 - (c) the board; and
 - (d) any other person or organisation that, in the Secretary's opinion ~~of the Secretary~~, may be interested in, or able to advise on or help with, the student's education or welfare.
- (4) A direction under **subclause (2)(b)** overrides the requirements of enrolment schemes specified in this Act or in any regulations made under this Act.
- (5) To the extent that there is any inconsistency between this clause and a student's contract of enrolment at the school, this clause prevails.

Compare: 1989 No 80 s 35Q

Schedule 8 Secondary–tertiary programmes

ss 10(1), ~~44(5)~~, ~~41A(1)~~, 47(6)(a), 201

1 Provider group for secondary–tertiary programme

- (1) The Minister may, by notice in the *Gazette*, recognise as a provider group of secondary–tertiary programmes a group of organisations that consists of—
 - (a) any 1 or more of the following:
 - (i) a board of a secondary school, a composite school, or a specialist school that is a relevant school;
 - (ii) a body corporate that is the manager of a private school, other than a school registered only as a primary school; and
 - (b) any 1 or more of the following:
 - (i) a government training establishment;
 - (ii) an institution;
 - (iii) a registered establishment.
- (2) Each member of a provider group is jointly and severally liable with the other members of the group in respect of the group’s obligations and responsibilities.
- (3) Each member of a provider group must take all reasonable steps to work in a co-operative manner with the other members of the group.

Compare: 1989 No 80 s 31B

2 Secretary may enter into agreement with provider group

- (1) A provider group may co-ordinate a secondary–tertiary programme if the provider group has entered into a written agreement with the Secretary in relation to the programme.
- (2) The matters that an agreement under **subclause (1)** may provide for, in relation to a secondary–tertiary programme, include (without limitation) any 1 or more of the following:
 - (a) its organisation and operation;
 - (b) its curriculum, its courses, and any resulting qualification;
 - (c) selection of students to participate in it;
 - (d) clarification of responsibility for the welfare and educational performance of participating students;
 - (e) pastoral care and career guidance for participating students;
 - (f) its funding, and the responsibility of specific members of the provider group in relation to that funding;
 - (g) the maximum number of students that may participate in it.

- (3) The Secretary and the provider group may agree to cancel or vary an agreement under **subclause (1)**.
- (4) The Secretary or the provider group may cancel an agreement under **subclause (1)** by giving at least 6 months' notice in writing to the other party.

Compare: 1989 No 80 s 31C

3 Provider group plan for secondary–tertiary programme

- (1) A provider group must—
 - (a) prepare and maintain a plan that contains short-term and long-term goals for each secondary–tertiary programme that it co-ordinates; and
 - (b) provide the Secretary with a copy of the plan.
- (2) A provider group that alters any plan provided to the Secretary under **subclause (1)(b)** must provide the Secretary with a copy of the altered plan as soon as practicable.

Compare: 1989 No 80 s 31D

4 Report to Secretary by provider group

- (1) A provider group must report at least annually to the Secretary regarding its performance and progress.
- (2) The Secretary may, by notice in the *Gazette*, specify the format or content, or both, required for reports that are to be made under **subclause (1)**.

Compare: 1989 No 80 s 31E

5 Recognition as lead provider of secondary–tertiary programme

The Minister may, by notice in the *Gazette*, recognise as a lead provider of secondary–tertiary programmes any of the following:

- (a) a board of a secondary school, a composite school, or a specialist school that is a relevant school:
- (b) a body corporate that is the manager of a private school, other than a school registered only as a primary school:
- (c) a government training establishment:
- (d) an institution:
- (e) a registered establishment.

Compare: 1989 No 80 s 31F

6 Lead provider to co-ordinate secondary–tertiary programme

- (1) A lead provider may co-ordinate a secondary–tertiary programme if the lead provider has made an arrangement for the safety, welfare, and educational programmes of participating students that is—
 - (a) agreed to by the Secretary; or
 - (b) in a form approved by the Secretary.

- (2) Any of the following may provide a secondary component or a tertiary component of a secondary–tertiary programme, after making an arrangement as specified in **subclause (1)** with the lead provider of the programme:
- (a) a board of a secondary school, a composite school, or a specialist school that is a relevant school:
 - (b) the managers of a private school, other than a school registered only as a primary school:
 - (c) a government training establishment:
 - (d) an institution:
 - (e) a registered establishment:
 - (f) an employer providing work experience under the programme.
- (3) The Secretary may withdraw their agreement under **subclause (1)(a)** or approval under **subclause (1)(b)** by giving at least 6 months’ notice in writing to the lead provider.

Compare: 1989 No 80 s 31G

7 Government policies or priorities

- (1) The Minister may, by notice in the *Gazette*, publish government policies or priorities, or both, that apply in relation to any 1 or more of the following:
- (a) secondary–tertiary programmes:
 - (b) provider groups, or specified types of provider groups:
 - (c) lead providers, or specified types of lead providers.
- (2) The Minister may, by written notice to a provider group or lead provider, issue a government policy or priority that applies in relation to the group or provider.
- (3) A provider group or lead provider must take all reasonable steps to comply with any government policy or priority—
- (a) published under **subclause (1)**; or
 - (b) notified under **subclause (2)**.
- (4) In this section, **comply** means to give effect to the government policy or priority or to have regard to the government policy or priority, as the context requires.

Compare: 1989 No 80 s 31H

8 Entry into secondary–tertiary programme

- (1) A student who is enrolled at any of the following may apply to a provider group or lead provider for entry into a secondary–tertiary programme:
- (a) a secondary school:
 - (b) a composite school:
 - (c) a private school, other than a school registered only as a primary school:

- (d) a specialist school that is a relevant school.
- (2) Approval for a student's entry into a secondary–tertiary programme is at the discretion of the provider group or lead provider.

Compare: 1989 No 80 s 31I

9 Provider group or lead provider to notify student and parents about any school attendance requirement

The provider group or lead provider co-ordinating a participating student's secondary–tertiary programme must take all reasonable steps to notify the student and a parent of the student in writing about any portion of the programme during which the student's participation in the programme requires the student's attendance at school.

Compare: 1989 No 80 s 31J

10 Withdrawal from secondary–tertiary programme

- (1) A participating student may withdraw from their secondary–tertiary programme.
- (2) A provider group or lead provider may withdraw its approval for a student's participation in a secondary–tertiary programme after consulting the student.

Compare: 1989 No 80 s 31K

11 International students and secondary–tertiary programmes

A provider group or lead provider may not approve the entry of an international student into a secondary–tertiary programme if doing so would result in the provider excluding from entry to the programme any domestic student who has applied for entry into the programme and is otherwise eligible to participate in the programme.

Compare: 1989 No 80 s 31L

Schedule 9

Student allowances and administration of student loans

ss 240(1), (1A), 264(1)(c), (d), 363(1),
(2), 364(1), (2), 374(1), (2), (3)(c),
390(1), 608(1)

1 Interpretation

In this schedule, unless the context otherwise requires,—

allowance means—

- (a) a bursary, grant, or scholarship:
- (b) an allowance established by regulations made under **section 608**, or identified by *Gazette* notice under **clause 10**

allowance information means any information that the Ministry holds about a person who has applied for or has been granted an allowance

beneficiary means any person who is receiving, or has received, any benefit and includes an applicant for a benefit

beneficiary information means information held by MSD about a beneficiary

benefit means any of the following:

- (a) a jobseeker support under the Social Security Act 2018:
- (b) a benefit as defined in Schedule 2 of the Social Security Act 2018:
- (c) a funeral grant lump sum payable under section 90 of that Act:
- (d) any special assistance payable under a programme approved or established under section 100 or 101 of that Act

change in the recipient's circumstances includes a change in another person's circumstances that—

- (a) the recipient knows about; and
- (b) the recipient knows materially affects the recipient's entitlement to a statutory allowance or student loan, or a particular rate of statutory allowance or a particular amount of a student loan

chief executive has the same meaning as in Schedule 2 of the Social Security Act 2018

non-recipient, in relation to an allowance, means a person who is not a recipient and—

- (a) includes a person who is acting in their official capacity as an officer or employee of a department of State or public body; but
- (b) excludes a person who is acting in their capacity as an officer of a court

recipient, in relation to an allowance, means a person who holds, has held, or has applied for a statutory allowance or a student loan

social housing information means information collected under Part 9 of the Public and Community Housing Management Act 1992

specified period means any period specified in a notice under **clause 8 or 9**

statutory allowance means an allowance established by regulations made under **section 608**

student loan has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011

student loan information means information held by the Ministry for the purposes of the administration of the student loan scheme under the Student Loan Scheme Act 2011

student loan scheme has the same meaning as in section 4(1) of the Student Loan Scheme Act 2011

tax file number has the same meaning as in section YA 1 of the Income Tax Act 2007.

Compare: 1989 No 80 ss 226A, 235F, 302, 307

2 **Disclosure of enrolment information by secondary schools**

Clause 8 applies to a secondary school as if the school were an institution within the meaning of that section.

Compare: 1989 No 80 s 306A

3 **Recipients of allowances or student loans, and other persons, may be required to provide information**

- (1) The chief executive may, by written notice to any recipient, require the recipient to do 1 or more of the following:
 - (a) produce to the chief executive any papers, documents, records, or other things that are in the person's possession or under the person's control and that are relevant to the recipient's entitlement—
 - (i) to a statutory allowance or student loan; or
 - (ii) to be paid a statutory allowance at a particular rate or any amount of a student loan:
 - (b) allow copies of the papers, documents, or records to be made:
 - (c) give the chief executive any information or particulars that are required by the chief executive and that are relevant to the recipient's entitlement—
 - (i) to a statutory allowance or student loan; or
 - (ii) to be paid a statutory allowance at a particular rate or any amount of a student loan.
- (2) The chief executive may investigate the circumstances of any recipient so far as they may relate to the recipient's entitlement—

- (a) to a statutory allowance or student loan; or
 - (b) to be paid a statutory allowance at a particular rate or any amount of a student loan.
- (3) A recipient or non-recipient who is asked questions during an investigation must answer the questions.
- (4) A recipient must notify the chief executive, as soon as practicable, of any change in the recipient's circumstances that materially affects the recipient's entitlement—
- (a) to a statutory allowance or student loan; or
 - (b) to be paid a statutory allowance at a particular rate or a particular amount of a student loan.

Compare: 1989 No 80 s 307

4 Suspension or refusal for not providing information

- (1) This clause applies if the chief executive is satisfied that—
- (a) a recipient or non-recipient has, without reasonable cause, failed or refused to comply with a requirement under **clause 3(3)** or to comply with **clause 3(1)**; or
 - (b) a recipient has been warned of the consequence of the failure or refusal and has been given the opportunity to show reasonable cause or answer the question.
- (2) If this clause applies, the chief executive may do whichever of the following the case requires:
- (a) suspend any statutory allowance held by the recipient, whether granted before or after the failure or refusal:
 - (b) refuse to grant any statutory allowance, or refuse to advance any student loan, to the recipient, whether or not the recipient may appear to be entitled to be granted the allowance or advanced the loan.
- (3) However, if the failure or refusal to comply is by a non-recipient, the recipient must be given an opportunity to provide the information sought before any action is taken against them.
- (4) Payments may not be made under a statutory allowance while it is suspended.

Compare: 1989 No 80 s 307AAA

5 Use of information held by MSD

MSD may use the following information as specified:

- (a) allowance information, beneficiary information, social housing information, and student loan information may be held on the same system or systems within that agency:

- (b) allowance information about any person and beneficiary information, social housing information, and student loan information about the same person may be held on the same file within that agency:
- (c) allowance information about any person may be used by that agency for the purposes of verifying—
 - (i) the entitlement or eligibility of any person to or for any benefit, student loan, or social housing subsidy; or
 - (ii) the amount of any benefit, any amount of a student loan, or any amount of social housing subsidy, to which any person is or was entitled or for which any person is or was eligible:
- (d) beneficiary information about any person may be used by that agency for the purposes of verifying—
 - (i) the entitlement or eligibility of any person to or for any allowance, student loan, or social housing subsidy; or
 - (ii) the amount of any allowance, student loan, or social housing subsidy to which any person is or was entitled or for which any person is or was eligible:
- (e) student loan information about any person may be used by that agency for the purposes of verifying—
 - (i) the entitlement or eligibility of any person to or for any ~~allowance or benefit~~ allowance, benefit, or social housing subsidy; or
 - (ii) the amount of any ~~allowance or benefit~~ allowance, benefit, or social housing subsidy to which any person is or was entitled or for which any person is or was eligible:
- (f) allowance information, beneficiary information, social housing information, and student loan information about any person may be used by that agency—
 - (i) for the purpose of recovering from that person any amount for which that person is indebted to the Crown; or
 - (ii) for the purpose of prosecuting that person for any offence; or
 - (iii) for the purpose of imposing any pecuniary penalty:
- (g) social housing information about any person may be used by that agency for the purposes of verifying—
 - (i) the entitlement or eligibility of any person to or for any benefit, student loan, or student allowance; or
 - (ii) the amount of any benefit, student loan, or student allowance to which any person is or was entitled or for which any person is or was eligible.

Compare: 1989 No 80 s 307A

6 Recovery of debts

- (1) This section applies to a person who is indebted to the Crown in relation to the payment to the person of—
 - (a) an allowance, or a rate of allowance, to which the person was not or is no longer entitled;
 - (b) an amount of a student loan or other money to which the person was not or is no longer entitled.
- (2) The chief executive is entitled to recover the amount of the debt,—
 - (a) in the case of an allowance debt, by deduction from—
 - (i) any allowance; or
 - (ii) any benefit to which the person may become subsequently entitled; or
 - (b) in the case of a student loan debt, by deduction from—
 - (i) any allowance (including any case where the living costs have already been paid under the loan for the period to which the debt relates); or
 - (ii) any benefit under the Social Security Act 2018 to which the person may become subsequently entitled; or
 - (c) in the case of a debt described in regulations made under section 444 of the Social Security Act 2018 (which includes a debt referred to in section 128 of the Public and Community Housing Management Act 1992), by deduction from any allowance; or
 - (d) at the suit of the chief executive; or
 - (e) by deduction notice under regulations made under section 444 of the Social Security Act 2018 (which apply with any necessary modifications).

Compare: 1989 No 80 s 307B

7 Details of academic performance

The Ministry may, on request by MSD, supply details of the academic performance of any person for the purpose of verifying—

- (a) the entitlement or eligibility of the person to or for any benefit, allowance, or student loan; or
- (b) the amount of any benefit, allowance, or student loan to which any person is or was entitled or for which any person is or was eligible.

Compare: 1989 No 80 s 307D

8 Disclosure of enrolment information by institutions

- (1) The purpose of this section is to enable institutions to disclose information to MSD to verify—

- (a) the entitlement or eligibility of any person to or for any benefit or allowance or student loan; or
 - (b) the amount of any benefit or allowance or student loan to which any person is or was entitled or for which any person is or was eligible.
- (2) For the purpose of this clause, the chief executive may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive and any institution or, if they are unable to agree, settled by the Privacy Commissioner, by notice in writing or electronically require the institution to supply any or all of the information set out in **subclause (6)** in respect of people—
- (a) who are (or were in any specified period) enrolled as students at the institution; or
 - (b) whose name and date of birth (being the name and date of birth of any person who is, or was during any specified period, receiving a benefit or allowance or student loan) is supplied to the institution by the chief executive, together with the notice.
- (3) A notice under **subclause (2)**—
- (a) may require the institution to supply the information specified in the notice either immediately or at specified times during the academic year (or both); and
 - (b) may require the institution to supply only the details of any changes to the information that the institution has previously supplied under this clause if supplied at specified times during the academic year.
- (4) A notice under **subclause (2)** may include—
- (a) an identification number assigned by the chief executive to any person who is referred to in the notice; or
 - (b) an identification number assigned by the institution to any person who is referred to in the notice; or
 - (c) both.
- (5) The information referred to in **subclause (3)** is—
- (a) their—
 - (i) full names and addresses; and
 - (ii) dates of birth;
 - (b) their identification numbers (being either or both of the identification numbers referred to in **subclause (4)**);
 - (c) details of the education or training in which they are enrolled, and details of the fees for that education or training;

- (d) if, during the specified period, they are enrolled for the education or training or ceased to be so enrolled or ceased to be enrolled as students, the details of each event and the dates on which each event occurred:
 - (e) details of their academic performance in the education or training:
 - (f) details of their citizenship or residency status in New Zealand:
 - (g) details of any allowances granted to the person by the institution on behalf of the Secretary in any academic year before the 1999 academic year:
 - (h) details reasonably required by the chief executive for the administration of the student loan scheme or for the determination or provision of an allowance or a benefit.
- (6) As soon as possible after the time or times specified in a requirement under **subclause (3)**, an institution must supply the information required to the chief executive or any employee or agent of MSD authorised by the chief executive to receive the information.
- (7) Information supplied by an institution under **subclause (6)** must be in a form previously agreed between the institution and the chief executive, or, if they are unable to agree, settled by the Privacy Commissioner, and may include coded information.
- (8) Section 104 of the Privacy Act 1993 applies as if subsection (1) of that section also provided that, in relation to the information matching programme in this section, the Privacy Commissioner, before seeking a report on any of the matters in section 104(2)(a), (d), or (e) of the Privacy Act 1993 from a ~~tertiary~~ an institution, must first seek a report on the matter from MSD.

Compare: 1989 No 80 s 226A

9 Disclosure of enrolment information by private training establishments

- (1) The purpose of this section is to enable governing bodies of private training establishments to disclose information to MSD to verify—
- (a) the entitlement or eligibility of any person to or for any benefit or allowance or student loan; or
 - (b) the amount of any benefit or allowance or student loan to which any person is or was entitled or for which any person is or was eligible.
- (2) For the purpose of this clause, the chief executive may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the chief executive and any institution or, if they are unable to agree, settled by the Privacy Commissioner, by notice in writing or electronically require the private training establishment to supply any or all of the information set out in **subclause (3)** in respect of people—
- (a) who are (or were in any specified period) enrolled as students at the private training establishment; or

- (b) whose name and date of birth (being the name and date of birth of any person who is, or was during any specified period, receiving a benefit or allowance or student loan) is supplied to the private training establishment by the chief executive, together with the notice.
- (3) A notice under **subclause (2)**—
 - (a) may require the private training establishment to supply the information specified in the notice either immediately or at specified times during the academic year (or both); and
 - (b) may require the private training establishment to supply only the details of any changes to the information that the private training establishment has previously supplied under this clause if supplied at specified times during the academic year.
- (4) A notice under **subclause (2)** may include an identification number assigned by—
 - (a) the chief executive to a person who is referred to in the notice; or
 - (b) the private training establishment to a person who is referred to in the notice; or
 - (c) both.
- (5) The information referred to in **subclause (2)** is—
 - (a) their—
 - (i) full names and addresses; and
 - (ii) dates of birth:
 - (b) their identification numbers (being either or both of the identification numbers referred to in **subclause (4)**):
 - (c) details of the education or training in which they are enrolled, and details of the fees for that education or training:
 - (d) if, during the specified period, they enrolled for any education or training or ceased to be so enrolled or ceased to be enrolled as a student, the details of each event and the dates on which each event occurred:
 - (e) details of their academic performance in any education or training:
 - (f) details of their citizenship or residency status in New Zealand:
 - (g) details of any allowances granted to them by the private training establishment on behalf of the Secretary in any academic year before the 1999 academic year:
 - (h) details reasonably required by the chief executive for the administration of the student loan scheme or for the provision or determination of a benefit or allowance.
- (6) As soon as possible after the time or times specified in a requirement under **subclause (2)**, a private training establishment must supply the information

required to the chief executive or any employee or agent of MSD authorised by the chief executive to receive the information.

- (7) Information supplied by a private training establishment under **subclause (6)** must be in a form previously agreed between the private training establishment and the chief executive or, if they are unable to agree, settled by the Privacy Commissioner, and may include coded information.
- (8) Section 104 of the Privacy Act 1993 applies as if subsection (1) of that section also provided that, in relation to the information matching programme in **clause 8**, the Privacy Commissioner, before seeking a report on any of the matters in section 104(2)(a), (d), and (e) of the Privacy Act 1993 from a private training establishment, must first seek a report on the matter from MSD.

Compare: 1989 No 80 s 235F

10 Allowances identified by *Gazette* notice

- (1) The Minister may, by notice in the *Gazette*, identify either or both of the following as an allowance to which this clause applies:
 - (a) any allowance paid to students otherwise than under an enactment:
 - (b) any money paid under any agreement entered into under **section 583** (which relates to bonds for trainee teachers).
- (2) This section applies whether the allowance or money first became payable before or after **17 May 2006**.

Compare: 1989 No 80 s 307AB

11 Bonded scholarships

- (1) The Minister may, by notice in the *Gazette*, declare that any allowance to which **clause 10** applies is a bonded scholarship.
- (2) The effect of declaring an allowance to be a bonded scholarship is that, under section 7 of the Student Loan Scheme Act 2011, that Act applies to enable the recovery of money in accordance with the terms of the scholarship.

Compare: 1989 No 80 s 307AC

Schedule 10

Composition and operation of Student Allowance Appeal Authorities

~~ss 240(2), (2A), 240(3), 609(1), (2)(b), 619, Schedule 9, cl 4~~

1 Student Allowance Appeal Authorities

- (1) The Minister may—
 - (a) appoint 1 or more Student Allowance Appeal Authorities;
 - (b) give the Authorities distinctive designations;
 - (c) change any designation.
- (2) The function of a Student Allowance Appeal Authority is to hear appeals in accordance with **clause 5**.
- (3) A Student Allowance Appeal Authority comprises a person appointed by the Minister for a term of up to 5 years from the date of the person's appointment, and the person may be reappointed.
- (4) A Student Allowance Appeal Authority continues in office despite the expiry of the Authority's term of office until—
 - (a) the Authority is reappointed; or
 - (b) the Authority's successor is appointed; or
 - (c) the Authority is notified that a replacement Authority is not to be appointed; or
 - (d) the Authority vacates or is removed from office.
- (5) A Student Allowance Appeal Authority who continues in office for any period under **subclause (4)**, unless the Authority is removed from office, may act as an Authority during that period for the purpose of—
 - (a) completing any appeal partly or wholly heard by the Authority before the expiry of the Authority's term of office;
 - (b) hearing any other appeal.
- (6) A Student Allowance Appeal Authority who resigns, or whose successor is appointed or who is not to be replaced, may (unless the Authority is removed from office) continue in office for the purpose of completing any appeal that is partly or wholly heard.

Compare: 1989 No 80 s 304

2 Other provisions relating to Student Allowance Appeal Authorities

- (1) A Student Allowance Appeal Authority may—

- (a) be removed from office by the Minister by notice in the *Gazette* for inability to adequately perform the duties of office, bankruptcy, neglect of duty, or misconduct, proved to the Minister's satisfaction; and
 - (b) resign by written notice to the Minister.
- (2) A Student Allowance Appeal Authority is a **statutory Board** within the meaning of the Fees and Travelling Allowances Act 1951.
- (3) A person is entitled to receive—
- (a) remuneration by way of fees, salary, or allowances, for the person's services as a Student Allowance Appeal Authority:
 - (b) payment of travelling allowances or expenses in respect of time spent travelling, or in connection with the person's function, as a Student Allowance Appeal Authority.
- (4) A Student Allowance Appeal Authority is not personally liable for any act done or omitted to be done by the Authority—
- (a) in good faith; and
 - (b) in the performance or exercise, or intended performance or exercise, of the Authority's functions, duties, or powers under this Act.

Compare: 1989 No 80 s 304A

3 Appointment of temporary acting Student Allowance Appeal Authority

- (1) If a Student Allowance Appeal Authority becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if an Authority considers it is not proper or not desirable that the Authority should adjudicate on a specified matter, the Minister may appoint an acting Student Allowance Appeal Authority for the period or purpose stated in the appointment.
- (2) The acting Student Allowance Appeal Authority must be eligible for appointment as a Student Allowance Appeal Authority.
- (3) An acting Student Allowance Appeal Authority is, while acting in the position, to be treated as a Student Allowance Appeal Authority.
- (4) No appointment of an acting Student Allowance Appeal Authority and no act done by an acting Student Allowance Appeal Authority may be questioned in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

Compare: 1989 No 80 s 304B

4 Orderly and efficient operation

A Student Allowance Appeal Authority is responsible for making any arrangements that are practicable to ensure that the Authority performs the Authority's functions—

- (a) in an orderly and efficient manner; and

(b) in a way that achieves the purposes of this Act.

Compare: 1989 No 80 s 304C

5 Appeals

- (1) This clause applies to every decision under this Act—
- (a) fixing the amount of an allowance; or
 - (b) declining to award an allowance to a person; or
 - (c) approving as a full-time programme for a person in any year a specified part of a course of study; or
 - (d) refusing to approve as a full-time programme in any year a part of a course of study for a person; or
 - (e) refusing to extend the period for which a person may receive payments under an allowance; or
 - (f) refusing to recognise the amount of work passed in any year by a person as being sufficient to entitle the person to the reinstatement of an allowance; or
 - (g) refusing to recognise any qualification or amount of work gained or passed by a person as being equivalent to any other qualification or amount of work.
- (2) If this clause applies and a delegate of the chief executive of MSD made the decision,—
- (a) a person aggrieved by the decision may apply to the chief executive to review the decision if the person is enrolled or intending to enrol at a secondary school or a ~~tertiary~~ an institution; and
 - (b) if an application is made, the chief executive must—
 - (i) review the decision; and
 - (ii) confirm it or substitute for it any other decision that the person or body may have made.
- (3) An application to review a decision must be lodged—
- (a) within 3 months after the person receives notice of the decision; or
 - (b) if the chief executive of MSD considers there is a good reason for the delay, within a further period that the chief executive allows on application made either before or after the expiry of the period specified in **paragraph (a)**.
- (4) A person aggrieved by a decision of the chief executive of MSD may appeal to a Student Allowance Appeal Authority, and the Authority must—
- (a) review the decision; and
 - (b) confirm it or substitute for it any other decision that the chief executive may have made.

- (5) A Student Allowance Appeal Authority may strike out, in whole or in part, an appeal if satisfied that it—
 - (a) discloses no reasonable cause of action; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.
- (6) Every decision of a Student Allowance Appeal Authority must be accompanied by written reasons for it.
- (7) When substituting a decision of the chief executive of MSD, a Student Allowance Appeal Authority may (if it thinks that in the circumstances it would be appropriate) require the chief executive to pay all or part of the costs incurred by the Authority in hearing the appeal to the chief executive of the Ministry of Justice.
- (8) A Student Allowance Appeal Authority may order that any part of the evidence given or the name of any witness not be published.
- (9) An order may be made subject to any conditions that the Tribunal thinks fit.
Compare: 1989 No 80 s 305

6 Practice notes

- (1) All Student Allowance Appeal Authorities acting together may issue practice notes, to apply to all of them, as they think fit.
- (2) The practice notes must not be inconsistent with this Act or any regulations made under it and are for the guidance of a Student Allowance Appeal Authority, officers of an Authority, and parties before an Authority.
Compare: 1989 No 80 s 306AA

7 Online publication of information about procedures, time frames, and progress of decisions

The following information must be published on an Internet site maintained by or on behalf of the chief executive of the Ministry of Justice:

- (a) information about the purpose of the Authorities and how to commence an appeal:
- (b) any requirements that must be met for an appeal:
- (c) guidelines on how and when parties may obtain information on the progress of their case and when a decision may be expected.

Compare: 1989 No 80 s 306AB

8 Online publication of written decisions

- (1) Every written decision of an Authority must be published on an Internet site as soon as practicable unless there is good reason not to publish it.

- (2) A written decision may be published in part if there is good reason for not publishing the full decision.
- (3) **Subclauses (1) and (2)** are subject to **clause 5(8)**.
- (4) Good reason not to publish a decision, or part of it, includes the following:
- (a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:
 - (b) the decision falls into a category of decisions that are of limited public value:
 - (c) taking into account the presumption in **subclause (1)** in favour of publication, an Authority nevertheless determines that the decision or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.
- (5) In this clause, **written decision** means a written decision that determines, or substantially determines, the outcome of proceedings in an Authority.

Compare: 1989 No 80 s 306AC

Schedule 11 Councils

ss 251(5), 265(5)

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1 Constitutions of councils of new institutions

- (1) The Minister must appoint a committee consisting of 3 persons (an **establishment committee**) for the purpose of advising the Minister regarding the constitution for the council of a body that is, or is to be, established under **section 248(1)**.
- (2) The establishment committee must recommend to the Minister a constitution for the council that is, in the committee's opinion ~~of that committee~~, appropriate for the institution and complies with the requirements of **section 256**.
- (3) When the establishment committee has recommended a constitution for the council in accordance with **subclause (2)**, the Minister must, by notice published in the *Gazette*, determine the constitution of the council in accordance with the recommendation.
- (4) This section does not apply to the membership of NZIST's council.

Compare: 1989 No 80 s 169

2 Amendment of constitution

- (1) If, after the constitution of a council has been determined, the council recommends to the Minister that the constitution be amended in a manner that complies with the requirements of **section 256**, the Minister must, by notice published in the *Gazette*, amend the constitution in accordance with the recommendation.
- (2) **Subclause (1)** does not apply to the membership of NZIST's council (for which **section 307** provides).

Compare: 1989 No 80 s 170

3 Limit on number of occasions on which people may be appointed as council members

- (1) A council's constitution must contain a provision limiting the number of occasions on which a person may be appointed as a council member.
- (2) A person may not be appointed as a council member if the person has previously been appointed as a council member on the number of occasions, or more than the number of occasions, stated in the provision described in **subclause (1)**.
- (3) Except as provided in **subclause (2)**, a person is not ineligible for appointment as a council member just because the person has previously been a council member.
- (4) For the purposes of **subclause (2)**, **appointed** means—
 - (a) appointed, elected, or co-opted before **13 February 2015** (otherwise than to fill a casual vacancy); or
 - (b) appointed on or after that commencement.
- (5) This clause does not apply to NZIST's council.

Compare: 1989 No 80 s 171D

4 Membership of more than 1 council

A person who is a council member of an institution may be appointed as a council member of another institution (whether or not they are institutions of the same kind).

Compare: 1989 No 80 s 171E

5 Certain acts and proceedings not invalidated by defects

- (1) No act or proceeding of an institution's council or any council committee is invalidated by—
 - (a) a defect in the appointment of a council member or the committee; or
 - (b) a defect in the nomination of a council member or committee for appointment as a council member; or

- (c) a defect in the election of a council member or committee for appointment as a council member; or
 - (d) a disqualification of a council member or committee; or
 - (e) a vacancy in the membership of the council or committee; or
 - (f) a defect in the convening of any meeting.
- (2) This clause does not apply to NZIST's council (for which **section 307(3)** provides).

Compare: 1989 No 80 s 171F

6 Term of office

- (1) When appointing a council member, the Minister or council—
- (a) may appoint the member for a period not exceeding 4 years; and
 - (b) must state in the notice or resolution appointing the member—
 - (i) the day on which the member's appointment takes effect; and
 - (ii) the term for which the member is appointed.
- (2) If a council member's term of office expires before their successor is appointed, the member continues in office until their successor's appointment takes effect.
- (3) This clause does not apply to appointments to NZIST's council (for which **section 310** provides).

Compare: 1989 No 80 s 173

7 Vacation of office

- (1) A council member may resign by giving written notice signed by the member to the chief executive.
- (2) **Subclause (1)** does not apply to the chief executive of an institution who has been appointed by its council under a statute requiring it to appoint the chief executive as a council member.
- (3) The council may, by resolution, dismiss a council member (other than the chief executive) if the member—
- (a) has, after **13 February 2015**, been removed as a council member of some other institution; or
 - (b) is ~~declared~~ adjudicated bankrupt; or
 - (c) becomes subject to a property order under the Protection of Personal and Property Rights Act 1988 (other than an order under section 30 of that Act); or
 - (d) becomes subject to a personal order under that Act that reflects adversely on their—

- (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or
 - (e) fails to attend 3 consecutive meetings of the council without having given to the chief executive prior notice of the member's inability to attend the meeting concerned; or
 - (f) without reasonable excuse, fails to comply with **clause 8**.
- (4) The council may, by resolution, suspend a council member (other than the chief executive) if the member becomes subject to a property order made under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders).
- (5) If a council member is suspended under **subclause (4)**,—
- (a) the suspension has effect as if the member had been granted leave of absence; and
 - (b) the member is not capable of acting as a member during the period of suspension; and
 - (c) the suspension continues until the property order made under section 30 of the Protection of Personal and Property Rights Act 1988 ceases to be in force (but this does not affect any powers of the council under **subclause (3)** in respect of the member).
- (6) The chief executive must send the council member a letter setting out the terms of the resolution dismissing or suspending the member.
- (7) This clause does not apply to a member of NZIST's council.

Compare: 1989 No 80 s 174

8 Disclosure of interest

- (1) A council member or a council committee member who has an interest in a matter being considered or about to be considered by the council or the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council or the committee.
- (2) A disclosure under **subclause (1)** must be recorded in the minutes of the meeting of the council or committee, and the member may not, unless the council decides otherwise,—
- (a) be present during any deliberation of the council or the committee with respect to that matter; or
 - (b) take part in any decision of the council or the committee with respect to that matter.

- (3) For the purposes of this clause, a person **has an interest in a matter** if, and only if, the matter relates to the conditions of service of the person as the chief executive or a member of the staff of the institution concerned or the person has any other direct or indirect pecuniary interest in the matter.

Compare: 1989 No 80 s 175

9 Casual vacancies

- (1) If the office of a council member of an institution becomes vacant before the end of the member's term of office, another person must be appointed to the office by the procedure by which the council member became a member.
- (2) However, if the procedure is no longer available or applicable to the vacant position, the council must consider whether it is necessary to appoint another person under its constitution and, if so,—
- (a) determine the appropriate procedure for appointment of another person; and
- (b) appoint another person using it.
- (3) If the office becomes vacant within 6 months before the end of the member's term of office, the Minister or council may decide that the vacancy does not need to be filled under this section.
- (4) **Clauses 6 and 7** apply to an appointment under this section.
- (5) This clause does not apply to appointments to NZIST's council.

Compare: 1989 No 80 s 176

10 Individual duties of council members

- (1) A council member, when acting as a council member in any circumstances,—
- (a) must—
- (i) act with honesty and integrity; and
- (ii) act in the interests of the institution as a whole; and
- (iii) act in a manner that promotes the performance of the functions characteristic of an institution of the kind to which the member belongs, and the duties of the council; and
- (iv) act in good faith, and not pursue the member's own interests at the expense of the council's interests; and
- (b) must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account—
- (i) the nature of the institution; and
- (ii) the nature of the action; and
- (iii) the position of the person as a council member, and the nature of the responsibilities undertaken by the council member; and

- (c) may not disclose any information to which **subclause (3)** applies to any person, or make use of, or act on, that information, except—
 - (i) in the performance of the council’s functions; or
 - (ii) as required or permitted by law; or
 - (iii) if the member has earlier been authorised to do so by the council; or
 - (iv) if disclosing, making use of, or acting on it does not, or is unlikely to, prejudice the council or the institution; or
 - (v) in complying with requirements for members to disclose interests.
- (2) The fact that a council member was appointed by the council in accordance with a statute providing for the appointment of a member (or 2 or more members) to represent the interests of a stated institution or of people or institutions of a stated description does not limit or affect the council member’s duty under **subclause (1)(a)(ii)** to act in the interests of the institution as a whole.
- (3) This subclause applies to information that—
 - (a) a council member has in their capacity as a council member; and
 - (b) would not otherwise be available to the member.
- (4) This clause does not apply to a member of NZIST’s council.

Compare: 1989 No 80 s 176A

11 Accountability for individual duties

- (1) The individual duties of a council member under **clause 10** are owed to the Minister and the council.
- (2) A council member who does not comply with their individual duties may be removed from office under **clause 12**.
- (3) An institution’s council may bring an action against a council member for breach of any individual duty.
- (4) Except as provided in **subclauses (2) and (3)**, a council member is not liable for a breach of an individual duty.
- (5) However, **subclause (4)** does not limit or affect—
 - (a) anything for which a council member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach concerned; or
 - (b) anything for which a council member who is the chief executive of the institution concerned may, as chief executive, be liable under this Act or any other Act or rule of law, arising from the act or omission that constitutes the breach concerned.
- (6) This clause does not affect any other ground for removing a council member from office.

- (7) This clause does not apply to a member of NZIST's council.

Compare: 1989 No 80 s 176B

12 Removal of members

- (1) If an institution's council believes that the actions of a council member may justify the member's removal from office, it must give the Minister a written report stating—

- (a) its reasons for believing that the actions may justify the council member's removal; and
- (b) the information or grounds in support of those reasons; and
- (c) its recommendation as to whether the council member should be removed from office.

- (2) After considering the report, the Minister may, if satisfied that there is just cause to do so, remove the council member from office.

- (3) The removal must be made by written notice to the council member (with a copy to the council).

- (4) The notice must state—

- (a) the day on which the removal takes effect, which must be no earlier than the day on which the notice is received; and
- (b) the reasons for the removal.

- (5) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice.

- (6) This clause does not limit or affect **clause 7**.

- (7) In this clause, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the council or the individual duties of members (depending on the seriousness of the breach).

- (8) This clause does not apply to the removal from office of a member of NZIST's council.

Compare: 1989 No 80 s 176C

13 Process for removal

The Minister may remove a council member under **clause 12** with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the principles of natural justice; and
- (b) a proper consideration of the matter; and
- (c) the requirements of that clause.

Compare: 1989 No 80 s 176D

14 Application of Local Authorities (Members' Interests) Act 1968

To avoid doubt, an institution's council is not a local authority for the purposes of the Local Authorities (Members' Interests) Act 1968.

Compare: 1989 No 80 s 176E

15 Chairperson and deputy chairperson

- (1) At the first meeting of an institution's council, the council must elect one of its members to be the chairperson of the council and another of its members to be the deputy chairperson of the council.
- (2) Whenever a vacancy subsequently occurs in the office of chairperson or deputy chairperson of the council, the council must elect one of its members to fill the vacant office.
- (3) The election of a member to fill the vacant office of chairperson or deputy chairperson of the council must be for a stated period (not exceeding the term of the member's current term as a council member).
- (4) A council member who is the chief executive of the institution, a member of the staff of the institution, or a student enrolled at the institution is not eligible for election as the chairperson or deputy chairperson of the council.
- (5) The chairperson or deputy chairperson of a council—
 - (a) holds office for the period for which the chairperson or deputy chairperson is elected; but
 - (b) is eligible for re-election.
- (6) If the term of office of the chairperson or deputy chairperson of a council expires before a successor is elected, the chairperson or deputy chairperson continues in office until a successor is elected.
- (7) **Subclause (6) overrides subclause (5).**
- (8) The chairperson or deputy chairperson of a council—
 - (a) may resign as chairperson or deputy chairperson by giving written notice signed by them to the chief executive; and
 - (b) ceases to hold office as chairperson or deputy chairperson if—
 - (i) they cease to be a council member; or
 - (ii) they become the chief executive or a member of the staff or a student of the institution; or
 - (iii) the council passes a resolution to the effect that it has no confidence in the chairperson or deputy chairperson.
- (9) **Subclause (8) overrides subclauses (5) and (6).**
- (10) The chairperson of the council of a university may be referred to as the Chancellor or by any other title that the council determines, and the chairperson of the institution's council other than a university may be referred to by any title

(other than Chancellor or another title that includes the word Chancellor) that the council determines.

- (11) The deputy chairperson of the council of a university may be referred to as the Pro-Chancellor or by any other title that the council determines, and the deputy chairperson of a council other than a university may be referred to by any title (other than Pro-Chancellor or another title that includes the word Chancellor) that the council determines.
- (12) This clause does not apply to the chairperson or deputy chairperson of NZIST's council (for which **section 309** provides).

Compare: 1989 No 80 s 177

16 Meetings of councils

- (1) The chairperson of a council may convene meetings to be held at the places and times that the chairperson determines.
- (2) It is the duty of the chairperson of a council to convene the meetings that the chairperson thinks necessary for the efficient performance of the functions of the council.
- (3) If requested by written notice by not fewer than 3 council members, the chairperson of the council must convene a meeting.
- (4) If there is no chairperson of a council or for any reason the chairperson is not available, the deputy chairperson of the council has the powers and duties of the chairperson under **subclauses (1) to (3)**, and references in those subclauses to the chairperson must be treated as references to the deputy chairperson.
- (5) Meetings may be held by means of audio, audio and visual, or electronic communication if—
 - (a) each member who wishes to participate in the meeting has access to the technology needed to participate in the meeting; and
 - (b) a quorum of members can simultaneously communicate with each other throughout the meeting.
- (6) If a meeting is held in accordance with **subclause (5)**, each member who participates in the meeting by means of audio, audio and visual, or electronic communication is present at the meeting for the purposes of **subclauses (7) to (11)**.
- (7) No business may be transacted at a meeting unless a majority of the members then holding office are present.
- (8) The chairperson must preside at all meetings at which the chairperson is present.
- (9) If the chairperson is not present at a meeting but the deputy chairperson is present, the deputy chairperson must preside.
- (10) If neither the chairperson nor the deputy chairperson is present at a meeting, the members present must appoint one of their number to preside.

- (11) Every question before a meeting must be decided by a majority of the votes cast on it by the members present.
- (12) At a meeting the member presiding has a deliberative vote on every question and also has a casting vote on any question where the deliberative votes for and against are equal.
- (13) ~~Except as provided by~~ Subject to this clause, a council may determine its own procedures.

Compare: 1989 No 80 s 178

17 Fees and allowances

- (1) A council member (other than the chief executive) may be paid fees at the rates, not exceeding maximum rates fixed by the Minister in accordance with the fees framework, that the council determines.
- (2) A council member is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the entity, for actual and reasonable travelling and other expenses incurred in carrying out the member's office as a member.
- (3) In this clause, **fees framework** means the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest, including statutory entities and their subsidiaries and institutions.
- (4) This clause does not apply to a member of NZIST's council.

Compare: 1989 No 80 s 179

18 Determination of policy

- (1) In determining the policy of an institution with respect to any matter relating to the institution, the institutions's council must consult any board, committee, or other body established within the institution that has responsibility for giving advice in relation to, or for giving effect to, the policy of the institution with respect to that matter.
- (2) For the purposes of **subclause (1)**, the institution's council must establish an academic committee consisting of its chief executive and members of the staff and students of the institution to—
 - (a) advise the council on matters relating to courses of study or training, awards, and other academic matters; and
 - (b) exercise powers delegated to it by the council.
- (3) The academic committee is, for the purposes of **section 265**, to be treated as a committee appointed by the council under **section 263(2)(j)**.
- (4) Without limiting **subclause (1)**, the institution's council may not make any decision or statute in respect of any academic matter referred to in **subclause (2)** unless it has requested the advice of the academic committee and considered any advice given by the academic committee.

-
- (5) However, a decision or statute made by the institutions's council is not invalid merely because of a failure of the council to comply with **subclause (1) or (4)**.
- (6) This clause does not apply to NZIST (for which **section 311** provides).
Compare: 1989 No 80 s 182

19 Personal liability of council members

A council member is not personally liable for any act done or omitted by the council member or by the council—

- (a) in good faith; and
- (b) in performance or intended performance of the functions of the institution or of the council.

Compare: 1989 No 80 s 183

20 Trust property

Despite anything to the contrary in this Act or any other enactment relating to the institution (including NZIST and its subsidiaries), any real or personal property held by the institution upon trust must be dealt with in accordance with the powers and duties of the institution as trustee.

Compare: 1989 No 80 s 195

Schedule 12**Administrative provisions applying to Vice-Chancellors Committee****s 298(6)****1 Meetings of Vice-Chancellors Committee**

- (1) The Vice-Chancellors Committee may meet as and when the Vice-Chancellors think fit.
- (2) If the Vice-Chancellor of a university is unable to attend a meeting, a person nominated by that Vice-Chancellor may attend in place of that Vice-Chancellor and, when so attending, is to be treated as the Vice-Chancellor of that university.
- (3) The Vice-Chancellors Committee must appoint a member to be the chairperson of the Committee.
- (4) Subject to this clause, the chairperson holds office for the period that the Vice-Chancellors Committee determines.
- (5) The chairperson ceases to hold office if the chairperson—
 - (a) ceases to be a member; or
 - (b) tells the members at a meeting of the Vice-Chancellors Committee or otherwise that the chairperson resigns from office as chairperson.
- (6) The chairperson must preside at all meetings at which the chairperson is present.
- (7) If the chairperson is not present at a meeting, the members present must appoint one of their number to preside at that meeting.
- (8) Subject to this clause, the Vice-Chancellors Committee may determine its own procedures.

Compare: 1989 No 80 Schedule 14 cl 1

2 Staff and expenses

The councils of the universities are responsible for providing a secretary and other staff to assist the Vice-Chancellors Committee in the performance of its functions and for paying the remuneration and allowances of those staff and meeting any other costs and expenses of the Committee.

Compare: 1989 No 80 Schedule 14 cl 2

3 Affixing of Vice-Chancellors Committee's common seal

- (1) The Vice-Chancellors Committee may, in writing under its common seal, authorise any member or members, or any member or members of the staff of the Committee, to execute documents, or documents of a specified class or description, or specified documents, on the Committee's behalf.

- (2) Subject to **subclause (6)**, an authority under **subclause (1)** may be given unconditionally, or subject to any conditions the Vice-Chancellors Committee thinks fit.
- (3) The Vice-Chancellors Committee's common seal may not be affixed to any document except—
 - (a) in accordance with a resolution of the Committee; or
 - (b) owing to, and in accordance with, an authority under **subclause (1)**.
- (4) The affixing of the Vice-Chancellors Committee's common seal in accordance with a resolution of the Committee must be countersigned by at least 2 members.
- (5) The affixing of the Vice-Chancellors Committee's common seal owing to an authority under **subclause (1)** must be countersigned in accordance with the authority.
- (6) An authority under **subclause (1)** must provide for the affixing of the Vice-Chancellors Committee's common seal to be countersigned by at least 2 people.
- (7) The affixing of the Vice-Chancellors Committee's common seal on a document is conclusive proof of the authority of the people who affixed it to do so.

Compare: 1989 No 80 Schedule 14 cl 3

4 Personal liability of members or staff

A member, or member of the staff, of the Vice-Chancellors Committee is not personally liable for any act done or omitted by the member, or members of the staff, or by the Committee—

- (a) in good faith; and
- (b) in performance or intended performance of the Committee's functions.

Compare: 1989 No 80 Schedule 14 cl 4

5 Vice-Chancellors Committee may establish subcommittees

- (1) The Vice-Chancellors Committee may establish and abolish subcommittees.
- (2) A subcommittee may include people who are members of the Vice-Chancellors Committee, people who are not members of Vice-Chancellors Committee, or both.
- (3) A subcommittee must appoint a person to preside at its meetings (**a presiding officer**).
- (4) If the presiding officer is not present at a meeting of the subcommittee, the members of the subcommittee present must appoint 1 of their number to preside at that meeting.
- (5) Subject to this clause, a subcommittee may determine its own procedures.

Compare: 1989 No 80 Schedule 14 cl 5

6 Delegations

- (1) The Vice-Chancellors Committee may, either generally or specifically, delegate any of its powers under this Act or any other enactment to any of its subcommittees or members, or any member of its staff.
- (2) A delegation—
 - (a) must be writing; and
 - (b) is revocable at will in writing; and
 - (c) may be made subject to instructions or conditions.
- (3) A subcommittee or person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of that delegation.
- (4) A delegation does not affect or prevent the Vice-Chancellors Committee from exercising any power or affect the Vice-Chancellors Committee's responsibility for the actions of any subcommittee or person acting under it.
- (5) A delegation continues in force until revoked.

Compare: 1989 No 80 Schedule 14 cl 6

7 Power to borrow money

The Vice-Chancellors Committee may borrow money only for the purposes ~~only~~ of any trust of which the Committee is a board member of the trust.

Compare: 1989 No 80 Schedule 14 cl 7

8 Bank accounts

- (1) The Vice-Chancellors Committee may establish, maintain, and operate bank accounts at a registered bank.
- (2) As soon as practicable after receiving any money, the Vice-Chancellors Committee must pay it into one of its bank accounts.
- (3) The Vice-Chancellors Committee must properly authorise every withdrawal and payment of money from any of its bank accounts.

Compare: 1989 No 80 Schedule 14 cl 8

9 Investment

Subject to any other enactment, the Vice-Chancellors Committee may invest any of its money in any manner in which the Treasury may invest public money under section 65I(1) and (2) of the Public Finance Act 1989.

Compare: 1989 No 80 Schedule 14 cl 9

10 Annual report

- (1) As soon as practicable after the end of a financial year, the Vice-Chancellors Committee must give to the Minister a report on its operations for the year.

- (2) The Vice-Chancellors Committee must include in every annual report of the Committee the financial statements and statement of service performance prepared by the Vice-Chancellors Committee, in accordance with sections 153 to 156 of the Crown Entities Act 2004, in respect of the financial year to which the report relates, together with the audit report and the statement of responsibility under section 155 of that Act relating to those financial statements.
- (3) The Minister must present a copy of the report to the House of Representatives in accordance with section 150 of the Crown Entities Act 2004.

Compare: 1989 No 80 Schedule 14 cl 10

Schedule 13

NZIST's charter

ss 9(1)(g), 303(1), ~~Sch 1, cl 12A(4)(a)~~

- 1 The New Zealand Institute of Skills and Technology (**NZIST**) exists to perform the functions set out in **section 302**.
- 2 NZIST is to be responsive to the needs of all regions of New Zealand and their learners, industries, employers, and communities.
- 3 To meet the needs of regions throughout New Zealand, NZIST must—
 - (a) offer in each region a mix of education and training, including on-the-job, face-to-face, and distance delivery that is accessible to the learners of that region and meets the needs of its learners, industries, and communities; and
 - (b) operate in a manner that ensures its regional representatives are empowered to make decisions about delivery and operations that are informed by local relationships and to make decisions that meet the needs of their communities; and
 - (c) ensure that international learners are attracted to train and study in regions throughout New Zealand; and
 - (d) ensure that there is collaboration across its national network; and
 - (e) maintain a high-quality, coherent network of infrastructure that meets regional skills needs.
- 4 NZIST must operate in a way that allows it to—
 - (a) empower students and staff on academic, non-academic, and well-being matters and matters relating to the organisation's practices and services; and
 - (b) develop meaningful partnerships with—
 - (i) industry across the country, including Māori and Pacific employers, smaller employers, and those operating in niche sectors; and
 - (ii) communities at a local level, including hapū and iwi, and Pacific communities; and
 - (c) use the insights gained through partnerships to—
 - (i) develop and provide vocational education and training that meets short-term and long-term skills needs; and
 - (ia) expand industry training into smaller employers and niche sectors; and
 - (ii) align education and training delivery to support the unique social and economic goals of local communities; and
 - (iii) work towards equity for learners and staff of different genders, ethnicities, cultures, and abilities; and

- (d) reflect Māori-Crown partnerships in order to—
 - (i) ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi; and
 - (ii) recognise that Māori are key actors in regional social, environmental, and economic development; and
 - (iii) respond to the needs of and improve outcomes for Māori learners, whānau, hapū and iwi, and employers; and
 - (e) hold inclusivity and equity as core principles, recognising and valuing the diversity of all of its learners, and providing the unique types of support different learners need to succeed; and
 - (f) meet the needs of all of its learners, in particular those who are underserved by the education system, including (without limitation) Māori, Pacific, and disabled learners; and
 - (fa) promote equitable access to learning opportunities for learners across all regions; and
 - (g) have culturally responsive delivery approaches, whether on campus, in the workplace, online, or otherwise; and
 - (h) work collaboratively with schools, wānanga, and other tertiary education organisations (including workforce development councils) to improve the outcomes of the education system as a whole, including the transition of learners into employment.
- 5 In giving effect to **clause 4**, NZIST must ensure that—
- (a) students and employers can transition seamlessly between delivery sites and educational modes, including between workplaces and other forms and places of learning; and
 - (b) programmes of study and qualifications are portable and consistent, yet flexible enough to meet local needs; and
 - (ba) the academic integrity of the education and training programmes it delivers is protected; and
 - (c) New Zealand’s reputation as a quality study destination for international learners is sustained; and
 - (d) the range of education and training options available to learners and employers is appropriately broad and current; and
 - (e) future skill needs are anticipated and quickly responded to; and
 - (f) teaching and learning is supported by research, evidence, and best practice; and
 - (g) learning pathways provide learners with a range of opportunities to progress to higher levels of education and training, and also into employment; and

(h) the needs of adult and second-chance learners are afforded high priority.

Compare: 1989 No 80 Schedule 22

Schedule 14
Provisions applying on dissolution of NZIST subsidiary

s 322

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1 Interpretation

In this schedule, unless the context otherwise requires,—

dissolution date means,—

- (a) in relation to a corresponding NZIST subsidiary established under **clause 12(1) of Schedule 1**,—
- (i) the date specified in **clause 12A(1)** of that schedule:
 - (ii) the date specified by Order in Council under **clause 12A(2)** of that schedule:
 - (iii) the date on which the subsidiary is dissolved in accordance with a resolution of NZIST's council under **clause 12B** of that schedule:
- (b) in relation to a subsidiary formed by NZIST under **section 319**, the date on which the subsidiary is dissolved in accordance with a resolution of NZIST's council

NZIST means the New Zealand Institute of Skills and Technology continued by **section 301**

NZIST subsidiary means—

- (a) a Crown entity subsidiary of NZIST listed in the second column of the table in **clause 12(3) of Schedule 1**;
- (b) a subsidiary formed by NZIST under **section 319(1)**.

Dissolution

2 Dissolution of NZIST subsidiary

- (1) An NZIST subsidiary is dissolved on the dissolution date.
- (2) As soon as practicable after the dissolution date, the Registrar of Companies must remove the NZIST subsidiary from the New Zealand register of companies kept under the Companies Act 1993.

Consequences of dissolution

3 Members of NZIST subsidiary board cease to hold office

- (1) Every member of an NZIST subsidiary's board who holds office immediately before the dissolution date ceases to hold office on the close of the day before that date.
- (2) Neither the Crown, NZIST, nor the NZIST subsidiary is liable to make a payment to, or otherwise compensate, a person referred to in **subclause (1)** for the loss of office.

4 Transfer of rights, assets, and liabilities to NZIST

- (1) This clause applies to all rights, assets, and liabilities that an NZIST subsidiary had immediately before the dissolution date.
- (2) On and after the dissolution date,—
 - (a) all rights, assets, and liabilities of the NZIST subsidiary vest in NZIST; and
 - (b) unless the context otherwise requires, every reference to the NZIST subsidiary in any enactment or any instrument, register, agreement, deed, lease, application, notice, or other document before the dissolution date must be read as a reference to NZIST.

5 Employment of NZIST subsidiary employees by NZIST

- (1) The chief executive of NZIST must identify the employees of the NZIST subsidiary—
 - (a) whose duties overall are required by NZIST to carry out its functions; and

- (b) whose positions are to cease to exist as a result of the dissolution of the NZIST subsidiary.
- (2) An employee who is identified under **subclause (1)** must be offered equivalent employment by NZIST, being employment that is—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions (including any terms and conditions relating to redundancy and superannuation) that are no less favourable than those applying to the employee immediately before the date on which the offer of employment is made to the employee; and
 - (d) on terms that treat the period of service with the NZIST subsidiary (and every other period of service recognised by the NZIST subsidiary as continuous service) as if it were continuous service with NZIST.
- (3) If the employee of the NZIST subsidiary accepts an offer of employment under **subclause (2)**, the employee's employment by NZIST is to be treated as continuous employment, including for the purpose of service-related entitlements, whether legislative or otherwise.
- (4) An employee of an NZIST subsidiary who is offered employment under **subclause (2)** is not entitled to receive any payment or other benefit on the ground that the employee's position in the NZIST subsidiary has ceased to exist whether or not the employee accepts the offer.
- (5) This clause overrides—
 - (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employee protection provision in any relevant employment agreement.

6 Government Superannuation Fund

- (1) This clause applies to a person who, immediately before becoming an employee of NZIST, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956.
- (2) For the purposes of the Government Superannuation Fund Act 1956, the person is treated as being employed in the Government service as long as the person continues to be an employee of NZIST.
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of NZIST were Government service.
- (4) **Subclause (1)** does not entitle 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 NZIST is the controlling authority.

7 Students of NZIST subsidiary

- (1) This clause applies to every student enrolled at an NZIST subsidiary immediately before the dissolution date.
- (2) On and after the dissolution date, the student must be treated as having been enrolled at NZIST.
- (3) A student who would, but for the dissolution of the NZIST subsidiary, have been entitled to be granted an award of the NZIST subsidiary is entitled to be granted a like award of NZIST.

7A Visas granted under Immigration Act 2009

- (1) This clause applies to a visa granted under the Immigration Act 2009 in respect of—
 - (a) a student, for the purposes of enrolment at an NZIST subsidiary; or
 - (b) a staff member of an NZIST subsidiary.
- (2) On and after the dissolution date, any reference to the NZIST subsidiary in a condition imposed on the visa must be read as a reference to NZIST.

8 Existing approvals, accreditations, and consents

- (1) This clause applies to the following matters granted to an NZIST subsidiary or treated as having been granted to the subsidiary by NZQA under **subpart 2 of Part 5** before the dissolution date and in effect immediately before that date:
 - (a) an approval of a programme under **section 410**;
 - (b) an accreditation to provide all or part of a programme under **section 412**;
 - (c) an approval to provide a training scheme under **section 416**;
 - (d) a consent to assess against the standards listed on the Directory of Assessment Standards under **section 420**;
 - (e) a consent to award a degree or a postgraduate qualification under **section 425**.
- (2) On and after the dissolution date,—
 - (a) the approval, accreditation, or consent (including any conditions imposed on an approval or accreditation) continues to apply and must be treated as if it were granted to NZIST; and
 - (b) unless the context otherwise requires, every reference in the approval, accreditation, or consent must be read as a reference to NZIST.

9 Existing funding paid by TEC under funding mechanism

- (1) This clause applies to funding (including any conditions imposed on the funding) payable by TEC to an NZIST subsidiary or that is treated as being payable to the subsidiary under **clause 43 of Schedule 1**—

- (a) in accordance with an approval granted under **section 397(2)**; or
 - (b) other than via a plan under **section 399**.
- (2) On and after the dissolution date,—
- (a) TEC must treat the funding, unless it is earlier suspended, revoked, or withdrawn under **clause 24 or 34 of Schedule 17**, as if it were payable to NZIST; and
 - (b) for the purposes of **paragraph (a)**, every reference to the NZIST subsidiary in an approval granted under **section 397(2)** must, unless the context otherwise requires, be read as a reference to NZIST.

10 Existing proceedings and other matters

- (1) On and after the dissolution date,—
- (a) proceedings continued or enforced by or against an NZIST subsidiary may instead be continued or enforced by or against NZIST without amendment to the proceedings; and
 - (b) a matter or thing that would, but for this clause, have been completed by the NZIST subsidiary may instead be completed by NZIST; and
 - (c) anything done, or omitted to be done, or that is to be done, by or in relation to the NZIST subsidiary is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to NZIST.
- (2) In **subclause (1)(a), proceedings**—
- (a) means civil and criminal proceedings; and
 - (b) includes any enforcement or compliance activities by TEC or NZQA.

11 Final report of dissolved NZIST subsidiary

- (1) As soon as practicable after the dissolution date, NZIST must prepare and forward to the Minister a final report on the dissolved NZIST subsidiary's operations.
- (2) The final report must be for the period (the **report period**)—
- (a) commencing at the start of the financial year in which the NZIST subsidiary was dissolved; and
 - (b) ending with the close of the day immediately before the date on which the subsidiary was dissolved.
- (3) The final report must include audited financial statements for the report period.
- (4) The Minister must present a copy of the final report to the House of Representatives as soon as practicable after receiving it.

12 Transfer of contracts does not give rise to claims

No person may claim against NZIST or an NZIST subsidiary for breach of contract on the ground that the contract, or any benefit of the contract, is vested in NZIST, whether or not the vesting involves NZIST and its employees gaining access to any information, data, programme, intellectual property right, knowledge, chattel, equipment, transmission device, or facility of the claimant or any other person.

13 Provisions that apply if corresponding NZIST subsidiary dissolved and assets, etc, transferred to another NZIST subsidiary

- (1) This clause applies if NZIST's council dissolves a corresponding NZIST subsidiary under **clause 12B of Schedule 1** and transfers some or all of the rights, assets, and liabilities of that subsidiary to another NZIST subsidiary under that clause.
- (2) **Clauses 4 to 10 and 12** of this schedule apply, with any necessary modifications, as if a reference in those provisions to NZIST were a reference to the other NZIST subsidiary to which those rights, assets, and liabilities are transferred.

Compare: 1989 No 80 Schedule 23

Schedule 14A
Further provisions of Act that apply and do not apply to NZIST
subsidiaries

ss 319(1A), 322

The following provisions of this Act apply, with all necessary modifications, to an NZIST subsidiary that provides education or training, or both:

- (a) **section 286** (how institutions may use income and capital):
- (b) **section 287** (gifts):
- (c) **section 288** (council may establish common fund):
- (d) **section 289** (investment of funds held in common fund):
- (e) **section 291** (application of money):
- (f) **section 293** (annual report):
- (g) **section 295** (annual report to be available for inspection):
- (h) **section 536** (resumption of land on recommendations of Waitangi Tribunal):
- (i) **section 537** (resumption of land to be acquired under Public Works Act 1981):
- (j) **section 538** (resumption of wahi tapu).

The following provisions of this Act do not apply to an NZIST subsidiary that provides education or training, or both:

- (a) **section 281** (duties of chief executive):
- (b) **sections 282 and 283** (delegation by chief executive):
- (c) **section 284** (bank accounts):
- (d) **section 285** (proper accounts to be kept).

Compare: 1989 No 80 Schedule 25

Schedule 15

Provisions relating to training levy

ss 10(1), 359, 361(1)(a), 362

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1 Matters to be specified in levy orders

A levy order must specify the matters set out in **Schedule 16**.

Compare: 1989 No 80 s 503; 1992 No 55 s 28

2 Purposes for which levy may be required

- (1) A levy order must specify the purposes for which levy funds are to be used.
- (2) A levy order may also specify any purpose or purposes for which no amount of levy may be used.

- (3) In specifying how levy funds are to be used, a levy order may specify 1 or more purposes that benefit the levy group as a whole and that are related to meeting the costs of the relevant workforce development council performing its functions under **section 347**.
- (4) No levy order may specify a purpose for which levy funds may be used that is related to—
- (a) meeting the costs of arranging delivery of work-based training; or
 - (b) undertaking any commercial or trading activity; or
 - (c) any matter that directly benefits 1 or more individual members of the levy group, as opposed to generally benefiting the relevant industry as a whole.
- (5) **Subsection—Subclause (4)(b)** does not prevent a workforce development council from—
- (a) using any part of a levy to publish or sell any educational, informative, or promotional material (whether or not at a profit); or
 - (b) investing any part of a levy pending its expenditure.

Compare: 1989 No 80 s 504; 1992 No 55 s 29

3 Levy order may require provision of information

A levy order may require qualifying members of the levy group to provide information to the workforce development council, or some other person or body, for the purpose of enabling or assisting the determination of the amount of levy payable.

Compare: 1989 No 80 s 505; 1992 No 55 s 30

5 Expiry of levy orders

- (1) A levy order expires 5 years after the day on which it was made unless it is sooner—
- (a) revoked; or
 - (b) disallowed under Part 3 of the Legislation Act 2012.
- (2) A levy order is revoked if the workforce development council responsible for administering the levy is disestablished under **section 345**.

Compare: 1989 No 80 s 507; 1992 No 55 s 52

6 Independent returning officer must conduct ballot

A ballot must be conducted by an independent returning officer appointed by the workforce development council and approved by the Minister.

Compare: 1989 No 80 s 508; 1992 No 55 s 31

7 Workforce development council must identify potential members of levy group

- (1) A workforce development council that proposes to impose a levy must take reasonable steps to ensure that it identifies all potential members of the levy group, including—
 - (a) obtaining from that council's records, and from records that may be available from other workforce development councils, information that can be used to identify potential members; and
 - (b) giving notice of the ballot in public newspapers and industry-specific publications or on an Internet site maintained by or on behalf of the council and inviting members of the relevant industry to register to receive information about the ballot and ballot papers.
- (2) After satisfying the requirements of **subclause (1)**, the workforce development council must provide to the independent returning officer who is administering the ballot a list of all potential members of the levy group of whom it is aware.

Compare: 1989 No 80 s 509; 1992 No 55 s 32

8 Returning officer must notify potential members of levy group

- (1) The returning officer must give notice of the ballot to—
 - (a) every person named on the list of potential members of the levy group provided by the workforce development council under **clause 7(2)**; and
 - (b) any other person who the independent returning officer considers may be a member of the levy group.
- (2) The notice under **subclause (1)** must advise the person about the ballot and must—
 - (a) describe the industry that is intended to be covered by the proposed levy order; and
 - (b) state that the returning officer considers that the person is or may be a member of that industry; and
 - (c) state that membership of the industry means that the person—
 - (i) is entitled to participate in the ballot; and
 - (ii) is required to pay the levy if there is sufficient support for it in the ballot and the levy order is made; and
 - (d) state that the person must notify the returning officer if the person disputes that the person is a member of the industry intended to be covered by the proposed levy order (a **coverage dispute**); and
 - (e) state the date by which that notification of a coverage dispute must be received.

Compare: 1989 No 80 s 510; 1992 No 55 s 33

9 TEC must resolve coverage disputes

If the returning officer receives a notice under **clause 8(2)(d)** that a person wishes to raise a coverage dispute, the returning officer must refer that issue to TEC for determination in accordance with **clause 23**.

Compare: 1989 No 80 s 511; 1992 No 55 s 34

10 Population to be balloted

As soon as practicable after all coverage disputes have been finally determined (including any appeals under **clause 24(2)**), the returning officer must send a ballot paper to each person in the levy group.

Compare: 1989 No 80 s 512; 1992 No 55 s 35

11 Requirements of ballot papers

A ballot paper must state—

- (a) the address to which ballot papers must be returned; and
- (b) the date by which ballot papers must be returned; and
- (c) full information on the nature of the levy power being sought, including all the matters listed in **Schedule 16**.

Compare: 1989 No 80 s 513; 1992 No 55 s 36

12 Returning officer must count votes

The returning officer must collect all validly completed ballot papers received by the returning officer at the closing date and calculate—

- (a) the proportion of the total number of ballot papers sent by the returning officer under **clause 10** that have been validly completed and received by them at the closing date; and
- (b) the proportion of the validly completed ballot papers received by the returning officer at the closing date that are in favour of the proposal to impose the levy; and
- (c) the proportion of the validly completed ballot papers received by the returning officer at the closing date that are in favour of the proposal to impose the levy if the votes are weighted according to the size of the member of the industry that returned the ballot paper (calculated at the date on which the ballot closed and on the same basis as the levy is proposed to be charged as set out in the ballot paper).

Compare: 1989 No 80 s 514; 1992 No 55 s 37

13 Returning officer must keep ballot papers, etc

The returning officer must take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with a ballot

conducted under this Part are preserved and kept for a period of 1 year after the completion of the ballot.

Compare: 1989 No 80 s 515; 1992 No 55 s 38

14 Levy is payable by qualifying members to workforce development council

If a levy order is made, the levy specified in the order is payable by every qualifying member of the levy group to the workforce development council named in the levy order.

Compare: 1989 No 80 s 516; 1992 No 55 s 39

15 Certificate of exemption

- (1) The chief executive of TEC may issue a certificate of exemption from payment of a levy to a member of the relevant industry who—
 - (a) was a member of the industry at the time the ballot was held in relation to that levy; and
 - (b) was, through no fault or neglect on that person's part, not included in the ballot.
- (2) The chief executive may revoke a certificate of exemption if—
 - (a) the person to whom it has been issued agrees; or
 - (b) it was issued in error.

Compare: 1989 No 80 s 517; 1992 No 55 s 40

16 Method of collecting levy

- (1) A workforce development council may collect levies directly from qualifying members of the levy group or by using a collection agent specified in the levy order in accordance with **clause 17**.
- (2) A workforce development council may recover levies due from any qualifying member of the levy group—
 - (a) by deducting the amount due from any amount the workforce development council owes that qualifying member; or
 - (b) as a debt due to the workforce development council in any court of competent jurisdiction.

Compare: 1989 No 80 s 518; 1992 No 55 s 41

17 Levy order may provide for collection by agent

- (1) A levy order may specify persons, other than the persons who are primarily responsible for paying the levy, who must collect levy money due from qualifying members and pay it to the workforce development council.
- (2) If a levy order specifies a person who must act as a collection agent under **sub-clause (1)**, the levy order must also specify an amount from, or a percentage

of, the levy money collected that the person may retain as a fee for providing the collection service.

Compare: 1989 No 80 s 519; 1992 No 55 s 42

18 Levy funds must be kept in separate bank accounts and used only for authorised purposes

- (1) A workforce development council that receives a levy under a levy order must open 1 or more bank accounts for the purpose of the levy and must use the account or those accounts for only the following purposes:
 - (a) depositing amounts of levy paid or recovered; and
 - (b) making payments out of levy funds.
- (2) Only people expressly authorised by the workforce development council may operate the account or those accounts.
- (3) No money may be paid out of the account or those accounts except for a purpose authorised in the levy order.

Compare: 1989 No 80 s 520; 1992 No 55 s 44

19 Duty to keep records

A workforce development council that receives a levy must ensure that accurate and up-to-date records are kept of—

- (a) the names of all members of the levy group from whom the levy has been collected or recovered; and
- (b) the amount of the levy collected or recovered from those members; and
- (c) the names of all members of the levy group who are or may be liable to pay the levy but have not done so; and
- (d) the use to which the levy funds have been put.

Compare: 1989 No 80 s 521; 1992 No 55 s 45

20 Duty to provide annual report

- (1) As soon as practicable after the end of a financial year during which a levy has been paid to a workforce development council under a levy order, the workforce development council—
 - (a) must prepare, in respect of that year, financial statements in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013); and
 - (b) must include in the financial statements required by **paragraph (a)** all the necessary information to explain—
 - (i) the balance of the levy fund; and
 - (ii) the movements in the levy fund over the course of the year, including receipts of money collected and payments of money made under the levy order; and

- (iii) the use of assets acquired or built up with or out of money received under the levy order.
- (2) The workforce development council must ensure that the financial statements prepared under **subclause (1)** are audited within 90 days of the end of that financial year.
- (3) Financial statements prepared under **subclause (1)** must be included in the workforce development council's annual report for that year.
- (4) A workforce development council that is required by **subclause (3)** to include financial statements in its annual report must, as soon as that report has been completed, give a copy to the Minister, and the Minister must present a copy to the House of Representatives not later than 6 sitting days after receiving it.
- (5) Despite **subclause (4)**, if an enactment other than this Act requires a workforce development council to give a Minister a copy of its annual report and requires the Minister to present a copy to the House of Representatives, that organisation must, to the extent that the enactment and **subclause (4)** impose different requirements, comply with the enactment instead of **subclause (4)**.
- (6) A workforce development council that is required by **subclause (3)** to include financial statements in its annual report must take all reasonable steps to ensure that every person primarily liable for paying the levy that is reflected in those financial statements receives a copy of the annual report as soon as practicable after the report has been completed.

Compare: 1989 No 80 s 522; 1992 No 55 s 46

21 Duty to protect commercially sensitive information

A person who receives commercially sensitive information for the purposes of carrying out a function or an activity under this schedule, or under a levy order, must take reasonable steps to protect that information.

Compare: 1989 No 80 s 523; 1992 No 55 s 47

22 Arbitration or mediation system must be established

- (1) A workforce development council that receives a levy under a levy order must establish a method of arbitration or mediation in the case of disputes regarding—
- whether a person was included in the ballot relating to that levy; and
 - whether a person has paid the levy; and
 - the amount of levy payable; and
 - any other matter relating to the levy, except disputes about whether a person is within the levy group.
- (2) Details of the arbitration or mediation system must be specified in the levy order, including—
- the method of appointment of arbitrators or mediators; and

- (b) the procedures to be followed by arbitrators or mediators; and
- (c) the remuneration of arbitrators or mediators; and
- (d) the payment of costs in relation to arbitration or mediation; and
- (e) any other matters relating to the resolution of disputes.

Compare: 1989 No 80 s 524; 1992 No 55 s 48

23 Disputes about coverage

- (1) If a returning officer refers a dispute to TEC under **clause 9**, TEC must determine the matter.
- (2) The workforce development council that is proposing to impose a levy or, if a levy order has been made, that is responsible for administering the levy must pay the reasonable costs of TEC for determining the dispute.

Compare: 1989 No 80 s 525; 1992 No 55 s 49

24 Appeals to District Court

- (1) If a dispute is unresolved after arbitration or mediation in accordance with the method specified in the levy order, or if a party wishes to appeal against a decision of an arbitrator or mediator, the dispute may be referred, or the decision may be appealed, to the District Court.
- (2) A determination by TEC under **clause 23** may be appealed against on grounds of procedural error only.
- (3) An appeal under **subclause (2)** may be made to the District Court by the person disputing membership of the levy group or by the workforce development council that is proposing to impose, or is responsible for administering, the levy.

Compare: 1989 No 80 s 526; 1992 No 55 s 50

Schedule 16

Matters to be specified in levy orders

**Schedule 15, cl 11(e)ss 10(1), 359,
361(1)(a), 362**

To whom levy is payable and who pays

- 1 The name of the workforce development council that is to receive the levy.
- 2 A description of the industry whose members are to be primarily liable to pay the levy.

Amount of levy

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

Application of levy

- 9 Either—
 - (a) how the workforce development council is to spend the levy; or
 - (b) the means by which the organisation is to consult qualifying members of the levy group as to how the workforce development council is to spend it.
- 10 Whether the levy must be spent by the workforce development council or may be paid to, and spent by, branches or subsidiaries of the workforce development council.

Payment of levy

- 11 When and how the levy is to be payable, including—
 - (a) the period to which the levy applies (the **levy period**); and
 - (b) how often levy payments are required to be made; and

-
- (c) the methods of payment of the levy that is to be available to qualifying members of the levy group.
- 12 How the amount of the levy payable is to be calculated when a person becomes a qualifying member of the levy group part way through a levy period.
- 13 How refunds of the levy are to be calculated, and when they are to be paid, if a qualifying member ceases to be a qualifying member of the levy group part way through a levy period.
- 14 What exemptions from payment of the levy are available.
- 15 The circumstances (if any) in which, and the conditions subject to which, qualifying members of the levy group may be allowed extensions of time for the payment of any amount of levy.
- 16 The enforcement mechanisms that the workforce development council receiving the levy may use to collect the levy.

Collection of levy by agent

- 17 The persons (if any), other than the industry members primarily responsible for paying the levy, who are responsible for collecting the levy in accordance with **clause 17 of Schedule 15**.
- 18 The amount of, or percentage of, the levy money collected that a collection agent may retain as a fee for providing the collection service.

Other matters

- 19 The records to be kept by—
- (a) the workforce development council receiving the levy; and
 - (b) persons collecting the levy; and
 - (c) persons who are, or may be, liable to pay the levy.
- 20 The details of the method of arbitration or mediation to apply in the case of disputes, as required by **clause 22 of Schedule 15**.

Compare: 1989 No 80 Schedule 24

Schedule 17

TEC

**ss 10(1), 353C(3), 379(5), 387(2)(a),
396D(5)(b), 397(2)(a), (c), 398A(1), (2)**

1 Statement of intent

- (1) TEC must include the following information in its statement of intent:
 - (a) a general description of the things that TEC proposes to do, achieve, or work towards during the period covered by the statement of intent, which—
 - (i) must be consistent with the tertiary education strategy and TEC’s functions; and
 - (ii) must include a summary of the nature and scope of TEC’s proposed operations; and
 - (iii) may cover both financial and non-financial matters; and
 - (b) a general description of TEC’s proposed strategies and activities for giving effect to, or achieving, the things referred to in **paragraph (a)**, including a list of the intended principal activities of TEC and how they relate to the things referred to in **paragraph (a)**; and
 - (c) a general description of the manner in which TEC 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 them; and
 - (ii) what capability it needs to do its work, and how it is to develop that capability; and
 - (iii) how it proposes to manage its risks.
- (2) TEC need not include in its statement of intent the information required in section 141(1) and (2)(a) to (c) of the Crown Entities Act 2004.
- (3) The Minister may, in relation to TEC, exercise the Minister’s powers under section 147(1) of the Crown Entities Act 2004 as if that section included a reference to **subclause (1)(a)**, and that section applies accordingly.

Compare: 1989 No 80 s 159KE

2 Statement of performance expectations

- (1) The statement of performance expectations that TEC is required to provide to its responsible Minister under section 149I of the Crown Entities Act 2004—
 - (a) must be consistent with the tertiary education strategy; and
 - (b) may relate to more than 1 financial year.

- (2) The grouping of outputs in the statement of performance expectations 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.

Compare: 1989 No 80 s 159KEA

3 Annual report

- (1) TEC must include in its annual report a description of how it is monitoring, and how it is to report on, progress in giving effect to the tertiary education strategy.
- (2) This clause does not limit section 151 of the Crown Entities Act 2004.

Compare: 1989 No 80 s 159KF

Requirements for, and content of, proposed plans

10 Requirements for proposed plans

A proposed plan must—

- (a) describe how an organisation is to give effect to the Government's current and medium-term priorities as described in the tertiary education strategy; and
- (b) describe how an organisation is to address the needs of interested persons or bodies (including, without limitation, students enrolled at the organisation); and
- (c) describe an organisation's mission and role for the term of the plan; and
- (d) set out a description of all—
- (i) tertiary education programmes run by the organisation for which the organisation is seeking funding under **section 397** and specify the amount of funding sought in relation to those programmes; and
 - (ii) activities (including, without limitation, programmes and initiatives that are to be undertaken by the organisation in order to build its capability) for which the organisation is seeking funding under **section 397** and specify the amount of funding sought in relation to those activities; and
- (e) describe an organisation's proposed outcomes (including, without limitation, in relation to the tertiary education programmes and activities described in **paragraph (d)(i) and (ii)** in relation to which funding is sought) and the performance indicators that the organisation is to use to measure whether those outcomes have been achieved; and
- (f) set out a description of all tertiary education programmes run by the organisation other than those in relation to which funding is sought.

Compare: 1989 No 80 s 159P

11 Exemption from certain requirements for proposed plans

- (1) TEC may, by notice in writing, exempt an organisation from having to comply with **clause 10(f)**.
- (2) TEC may not exercise the power in **subclause (1)** in relation to an institution.
- (3) Before exempting an organisation under **subclause (1)**, TEC must consider—
 - (a) the amount of funding sought by the organisation; and
 - (b) the amount of funding already received by the organisation; and
 - (c) the type and size of the organisation; and
 - (d) the effective operation of the tertiary education system; and
 - (e) the Government's current and medium-term priorities as described in the tertiary education strategy; and
 - (f) any other matters TEC considers relevant.

Compare: 1989 No 80 s 159Q

12 Content of, and processes for submitting, proposed plans prescribed by TEC

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

Compare: 1989 No 80 s 159R

13 TEC may exempt organisation from complying with certain matters

TEC may, by notice in writing, exempt an organisation from complying with any of the matters it has prescribed under **clause 12(1)**.

Compare: 1989 No 80 s 159S

Submitting proposed plan

14 Who must submit proposed plan

- (1) An organisation that is seeking funding from TEC under a funding mechanism that provides for funding via plans must submit a proposed plan.
- (2) **Subclause (1)** does not apply to an organisation that is exempt under **clause 15**.

Compare: 1989 No 80 s 159T

15 Exemption from requirement to submit proposed plan

- (1) TEC may, by notice in writing, exempt an organisation, a type of organisation, or a group of organisations that is seeking funding under a funding mechanism that provides for funding via plans from the requirement to submit a proposed plan under **clause 14(1)**.
- (2) TEC may not exercise the power in **subclause (1)** in relation to an institution.
- (3) TEC may exempt an organisation, a type of organisation, or a group of organisations under **subclause (1)** for a specified period that TEC thinks fit.
- (4) If TEC exempts an organisation under **subclause (1)**, TEC may fund that organisation under **section 399** as if it were an organisation for which a funding mechanism provides for funding other than via plans.

Compare: 1989 No 80 s 159U

16 Frequency of submitting proposed plans

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

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

Compare: 1989 No 80 s 159V

17 Submitting combined proposed plan

TEC may permit more than 1 organisation to prepare and submit a combined proposed plan if TEC considers it appropriate.

Compare: 1989 No 80 s 159W

Preparing and consulting on proposed plans

18 Preparing and consulting on proposed plans

- (1) An organisation that is required to submit a proposed plan must prepare the proposed plan in accordance with this schedule (including, unless it is exempt under **clause 13**, complying with the matters prescribed by TEC under **clause 12**).
- (2) A proposed plan must be prepared in consultation with—

- (a) the persons or bodies that the organisation thinks fit to consult; and
 - (b) any other person or group of persons that TEC stipulates.
- (3) An organisation must develop the content of its proposed plan in collaboration with TEC, including collaborating with TEC about ways in which the organisation can implement the matters prescribed by TEC under **section 396E**.
- (4) After completing the requirements in **subclauses (1) to (3)**, an organisation must submit its proposed plan to TEC.

Compare: 1989 No 80 s 159X

Funding via plans

21 Accountability for funding received under section 397

- (1) An organisation that receives funding under **section 397** must ensure that—
- (a) it keeps records, in a form consistent with that required by TEC, 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 funding approval was given have been complied with; and
 - (b) the records are available for inspection by TEC 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 397**, the organisation must provide TEC with—
- (a) a financial report of the organisation for that year, including—
 - (i) a statement of financial performance; and
 - (ii) a statement of financial position; and
 - (iii) a statement of movements in equity; and
 - (iv) a statement of cash flows; and
 - (v) a statement of service performance that compares the performance of the organisation with the outcomes specified in the organisation's plan as measured by the performance indicators specified in the organisation's plan; and
 - (b) any financial reports, or statistical or other information, required by TEC; and
 - (c) any information necessary to demonstrate compliance with any condition attached to the funding.
- (3) A report required under **subclause (2)(a)** must be prepared in accordance with generally accepted accounting practice and must be audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).

- (4) TEC may exempt any organisation, group of organisations, or types of organisation from complying with 1 or more of the requirements set out in **subclauses (2) and (3)**.
- (5) In exercising the powers conferred on it by **subclause (4)**, TEC must have regard to—
 - (a) the amount of funding sought by the organisation; and
 - (b) the amount of funding received by the organisation; and
 - (c) the type and size of the organisation; and
 - (d) any other matters that TEC considers relevant.
- (6) **Section 292** sets out the accountability requirements for institutions.
Compare: 1989 No 80 s 159YD

Expiry of funding approval

22 Expiry of funding approval

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

Compare: 1989 No 80 s 159YE

23 Effect of expiry of funding approval

The effect of the expiry of funding approval is that—

- (a) the plan to which funding approval relates expires; and
- (b) TEC must cease payment, or cease any or all further payments, of funding under **section 397** in respect of that plan.

Compare: 1989 No 80 s 159YF

*Suspension or revocation of funding given under **section 397*****24 TEC may suspend, revoke, or withdraw funding given under section 397**

- (1) TEC may suspend or revoke some or all funding given under **section 397** if it is satisfied on reasonable grounds that—
 - (a) an organisation has not complied, or is not complying, with a condition on which funding has been given under **section 397**; or
 - (b) when measured against performance indicators, the organisation has not achieved, or is not achieving, an outcome anticipated in its plan for a tertiary education programme or activity in relation to which funding has been given under **section 397**; or
 - (c) the organisation has not provided, or is not providing, adequate and timely information required by TEC or the Ministry under **section 398**.
- (2) Before deciding whether to suspend or revoke some or all funding given under **section 397**, TEC must—
 - (a) notify the organisation of the specific matters of concern; and
 - (b) give the organisation a reasonable opportunity to be heard.
- (3) TEC must give its reasons to an organisation if it decides to suspend or revoke some or all funding given under **section 397**.
- (4) TEC must advise an organisation of the following matters if it decides to suspend some or all funding given under **section 397**:
 - (a) the date on which the suspension is to end and, as a consequence, some or all funding is to be revoked; and
 - (b) what action the organisation must take in order to have the suspension lifted and avoid some or all funding being revoked.
- (5) A suspension must be for a period that TEC considers reasonable, having considered—
 - (a) the specific matters referred to in **subclause (2)(a)**; and
 - (b) the action referred to in **subclause (4)(b)**.
- (6) TEC may withdraw some or all funding given under **section 397** at the written request of the organisation to which the funding has been given.
- (7) If TEC withdraws some or all funding under **subclause (6)**, it must advise the organisation of the date on which the funding is to be withdrawn.

Compare: 1989 No 80 s 159YG

25 Extending suspension of funding

- (1) TEC may extend the date on which a suspension ends under **clause 24(4)(a)**.
- (2) TEC must advise an organisation of the following matters if it decides to extend the date on which a suspension is to end:

- (a) the date on which the extended suspension is to end and, as a consequence, some or all funding for all or part of the plan is to be revoked; and
 - (b) what action the organisation must take in order to have the extended suspension lifted and avoid some or all funding for all or part of the plan being revoked.
- (3) An extension of a suspension must be for a period that TEC considers reasonable, having considered—
- (a) the specific matters referred to in **clause 24(2)(a)**; and
 - (b) the action referred to in **clause 24(4)(b)**.

Compare: 1989 No 80 s 159YH

26 Effect of suspending, revoking, or withdrawing funding given under section 397

- (1) The effect of suspending funding given under **section 397** is that TEC must cease payment, or cease any or all further payments, of funding given under **section 397** in respect of the plan or part of the plan in relation to which funding has been suspended.
- (2) The effect of revoking or withdrawing funding given under **section 397** is that—
- (a) the plan or part of the plan to which the funding relates is revoked; and
 - (b) TEC must cease payment, or cease any or all further payments, of funding under **section 397** in respect of the plan or part of the plan in relation to which funding has been revoked or withdrawn.

Compare: 1989 No 80 s 159YI

27 Review of decision by delegate to suspend or revoke funding

- (1) **Subclause (2)** applies to an organisation in relation to which a person has exercised 1 or more of the following powers under a delegation from TEC under section 73 of the Crown Entities Act 2004:
- (a) suspending or revoking funding under **clause 24**;
 - (b) extending the suspension of funding under **clause 25**.
- (2) An organisation to which this clause applies may ask TEC to review the decision of the delegate.

Compare: 1989 No 80 s 159YJ

Amending or replacing plans

28 Organisation may seek approval for significant amendment, or replacement, of plan

- (1) In this clause and **clauses 29 to 31**, **significant amendment** means an amendment to a plan that relates to—

-
- (a) a tertiary education programme or an activity in relation to which funding has been given under **section 397**; or
 - (b) any of the performance indicators that an organisation uses to measure whether proposed outcomes for tertiary education programmes or activities in relation to which funding has been given under **section 397** are being or have been achieved.
 - (2) An organisation may ask TEC to approve a significant amendment to, or the replacement of, a plan if the organisation considers that the criteria for significant amendment to a plan or the criteria for replacement of a plan are satisfied.
 - (3) TEC must—
 - (a) set the criteria for significant amendment to a plan; and
 - (b) set the criteria for replacement of a plan; and
 - (c) publish those criteria in the *Gazette*.
 - (4) An organisation that proposes to make a significant amendment to, or to replace, a plan must consult—
 - (a) the persons or bodies that the organisation thinks fit to consult; and
 - (b) any other person or group that TEC stipulates.
 - (5) An organisation that proposes a significant amendment to, or replacement of, a plan must prepare the significant amendment or replacement in collaboration with TEC, including collaborating with TEC about ways in which the organisation can implement the matters prescribed by TEC under **subclause (6)**.
 - (6) TEC may prescribe the requirements for the following in relation to a significant amendment to, or a replacement of, a plan:
 - (a) the content of the significant amendment or replacement (which may be the same as the matters prescribed by TEC under **clause 12**):
 - (b) criteria for assessing the significant amendment or replacement (which may be the same as those prescribed by TEC under **section 396E**).
 - (7) In applying the requirements in **subclause (6)** in order to determine whether or not to approve a significant amendment to, or replacement of, a plan, TEC must take into account—
 - (a) the extent of the significant amendment or replacement; and
 - (b) the impact of the significant amendment or replacement on the needs of the interested persons or bodies and any other persons consulted by the organisation under **subclause (4)**.
 - (8) TEC may require an organisation to review a plan with a view to amending or replacing it if TEC considers that the criteria for significant amendment to a plan or the criteria for replacement of a plan are satisfied.

- (9) Nothing in this clause prohibits an organisation from making an amendment to a plan that is not a significant amendment.

Compare: 1989 No 80 s 159YK

29 Effect of significant amendment or replacement of plan under clause 28

- (1) If TEC approves a significant amendment to a plan, the significant amendment—
- (a) forms part of the plan it amends; and
 - (b) takes effect on the date specified by TEC.
- (2) If TEC approves a replacement plan under **clause 28**, the replacement plan—
- (a) takes effect on the date specified by TEC; and
 - (b) is treated as revoking the plan it replaces.

Compare: 1989 No 80 s 159YL

30 TEC may make significant amendment to plan

- (1) TEC may propose a significant amendment to an organisation's plan if it is satisfied that the significant amendment is reasonably necessary to ensure accountability for public funding.
- (2) If TEC proposes a significant amendment to an organisation's plan under **sub-clause (1)**, it must prepare it in collaboration with the organisation (including giving the organisation a reasonable period to consult the persons or bodies it thinks fit to consult).
- (3) After collaborating with the organisation on the proposed significant amendment, TEC must, if it decides to proceed with the significant amendment, determine the content of the significant amendment and give the organisation a reasonable opportunity to make submissions on it.
- (4) After considering any submissions made by the organisation, TEC may—
- (a) approve the proposed significant amendment (with further amendment if necessary); or
 - (b) abandon the proposed significant amendment.

Compare: 1989 No 80 s 159YM

31 Effect of significant amendment made to plan under clause 30

A significant amendment made to a plan under **clause 30**—

- (a) forms part of the plan it amends; and
- (b) takes effect on the date specified by TEC.

Compare: 1989 No 80 s 159YN

*Plan summary***32 Summary of plans**

- (1) TEC must prescribe and give public notice of the matters that an organisation that has a plan must include in a plan summary.
- (2) An organisation that has a plan must ensure that—
 - (a) a plan summary is available for inspection by the public; and
 - (b) copies of that plan summary may be obtained either at no cost or no more than a reasonable cost; and
 - (c) the plan summary contains the matters prescribed.

Compare: 1989 No 80 s 159YO

*Funding other than via plans***33 Accountability for funding received under section 399**

- (1) An organisation that receives funding under **section 399** must ensure that—
 - (a) it keeps records, in a form consistent with that required by TEC, 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 TEC 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 399**, the organisation must provide TEC with—
 - (a) a financial report of the organisation for that year, including—
 - (i) a statement of financial performance; and
 - (ii) a statement of financial position; and
 - (iii) a statement of movements in equity; and
 - (iv) a statement of cash flows; and
 - (v) a statement of service performance that compares the performance of the organisation with the outcomes agreed with TEC as measured by any performance indicators agreed with TEC; and
 - (b) any financial reports, or statistical or other information, required by TEC; and
 - (c) any information necessary to demonstrate compliance with any condition attached to the funding.

- (3) A report required under **subclause (2)(a)** must be prepared in accordance with generally accepted accounting practice and must be audited by a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).
- (4) TEC may exempt any organisation, group of organisations, or type of organisation from complying with 1 or more of the requirements set out in **subclauses (2) and (3)**.
- (5) In exercising the powers conferred on it by **subclause (4)**, TEC must have regard to—
 - (a) the amount of funding sought by the organisation; and
 - (b) the amount of funding received by the organisation; and
 - (c) the type and size of the organisation; and
 - (d) any other matters that TEC considers relevant.
- (6) **Section 292** sets out the accountability requirements for institutions.

Compare: 1989 No 80 s 159ZE

34 TEC may suspend, revoke, or withdraw funding given under section 399

- (1) TEC may suspend or revoke payment, or any or all further payments, of any funding given to an organisation under **section 399** if TEC is satisfied on reasonable grounds that the organisation—
 - (a) has not complied, or is not complying, with a condition on which the funding was given; or
 - (b) is not providing, or has not provided, adequate and timely information required by TEC or the Ministry under **section 399**.
- (2) Before deciding whether to suspend or revoke payment under **subclause (1)**, TEC must—
 - (a) notify the organisation of the specific matters of concern; and
 - (b) give the organisation a reasonable opportunity to be heard.
- (3) TEC must give its reasons to an organisation if it decides to suspend or revoke the organisation's funding.
- (4) TEC must specify the following matters if it decides to suspend funding under **subclause (1)**:
 - (a) the date on which the suspension is to end and, as a consequence, the funding is to be revoked; and
 - (b) what action the organisation must take in order to have the suspension lifted and avoid funding being revoked.
- (5) TEC may, at the written request of an organisation, withdraw some or all payment, or any or all further payments, of any funding given to the organisation under **section 399**.

- (6) If TEC withdraws funding under **subclause (5)**, it must advise the organisation of the date on which the funding is to be withdrawn.

Compare: 1989 No 80 s 159ZF

35 Extending suspension of funding

- (1) TEC may extend the date on which a suspension ends under **clause 34(4)(a)**.
- (2) TEC must advise an organisation of the following matters if it decides to extend the date on which a suspension is to end:
- (a) the date on which the extended suspension is to end and, as a consequence, funding is to be revoked; and
 - (b) what action the organisation must take in order to have the extended suspension lifted and avoid funding being revoked.
- (3) An extension of a suspension must be for a period that TEC considers reasonable having considered—
- (a) the specific matters referred to in **clause 34(2)(a)**; and
 - (b) the action referred to in **clause 34(4)(b)**.

Compare: 1989 No 80 s 159ZG

36 Review of decision made by delegate to suspend or revoke funding given under section 399

- (1) **Subclause (2)** applies to an organisation in relation to which a person has exercised any of the following powers under a delegation from TEC under section 73 of the Crown Entities Act 2004:
- (a) suspending the organisation's funding under **clause 34**; or
 - (b) revoking the organisation's funding under **clause 34**; or
 - (c) extending the suspension of the organisation's funding under **clause 35**.
- (2) An organisation to which this subclause applies may ask TEC to review the decision of the delegate.

Compare: 1989 No 80 s 159ZH

Schedule 18 Teaching Council

ss ~~265(5)~~, ~~447(3)~~, ~~581(3)~~

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1 Term of office

- (1) The term of office of every member of the Teaching Council is 3 years and—
 - (a) an appointed member may be reappointed for 2 more terms; and
 - (b) an elected member may be re-elected for 2 more terms.
- (2) The term of office of all members of the Teaching Council—
 - (a) begins at the same time (when the term of office of their immediate predecessors expires); and
 - (b) ends at the same time (when their term of office expires).

Compare: 1989 No 80 s 380A

2 Removal of members

- (1) The Minister may remove an appointed member of the Teaching Council under **clause 1(1)**.
- (2) The Minister may remove an elected member of the Teaching Council under **clause 1(2)**.

Compare: 1989 No 80 s 380B

3 Removal from office

- (1) The Minister may revoke the appointment of a member of the Teaching Council for just cause.
- (2) The Minister may, after consulting the Teaching Council, remove an elected member of the Teaching Council for just cause.
- (3) The revocation or removal must be made by written notice to the member with a copy to the Teaching Council.
- (4) The written notice must state—
 - (a) the date on which the removal takes effect, which must be no earlier than the date on which the notice is received; and
 - (b) the reasons for the removal.
- (5) In this clause, **just cause**—
 - (a) includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the Teaching Council or the individual duties of members (depending on the seriousness of the breach); and
 - (b) in the case of a member who held a practising certificate under **clause 10 of Schedule 3** when appointed, includes—
 - (i) ceasing to hold the certificate; and
 - (ii) the suspension of the certificate.
- (6) The Minister may remove a member with as little formality and technicality, and as much expedition, as is permitted by—
 - (a) the principles of natural justice; and
 - (b) a proper consideration of the matter.
- (7) A Judge may be removed as a member in accordance with the removal provisions of this Act for a breach of the Teaching Council's collective duties, but only if all of the other members are being removed for the same breach at the same time (and the removal does not affect the Judge's tenure as a Judge).
- (8) A member of the Teaching Council is not entitled to any compensation or other payment or benefit relating to the member ceasing, for any reason, to hold office as a member.

Compare: 1989 No 80 Schedule 21 cl 3

4 Continuation in office

- (1) Each member of the Teaching Council continues in office (unless the member ceases to hold office under **subclause (4)**) until a successor is appointed or elected.
- (2) A member may resign from office by written notice to the Minister (with a copy to the Teaching Council) signed by the member.

- (3) The resignation is effective on receipt by the Minister of the notice or at any later time specified in the notice.
- (4) A member of the Teaching Council ceases to hold office if the member—
 - (a) resigns; or
 - (b) is removed from office; or
 - (c) becomes disqualified from being a member.

Compare: 1989 No 80 Schedule 21 cl 4

5 Extraordinary vacancies

- (1) An extraordinary vacancy occurs when a member dies or ceases to hold office.
- (2) If an extraordinary vacancy occurs within 6 months of the expiry of the vacating member's term,—
 - (a) the Minister, in the case of an appointed member, may—
 - (i) appoint a replacement; or
 - (ii) leave the vacancy open;
 - (b) the Teaching Council, in the case of an elected member, may—
 - (i) appoint a replacement; or
 - (ii) leave the vacancy open.
- (3) If an extraordinary vacancy occurs more than 6 months before the expiry of the vacating member's term,—
 - (a) the Minister, in the case of an appointed member, must appoint a replacement;
 - (b) the Teaching Council, in the case of an elected member, must—
 - (i) appoint a replacement; or
 - (ii) hold an election for a replacement.

- (4) A person appointed or elected to fill an extraordinary vacancy holds office only for the remainder of the vacating member's term.

Compare: 1989 No 80 Schedule 21 cl 4A

6 Chairperson

- (1) The Minister must appoint one of the members as chairperson by notice in writing stating the date on which the appointment takes effect.
- (2) The chairperson holds that office until—
 - (a) the chairperson resigns from that office; or
 - (b) the chairperson is removed from it by the Minister; or
 - (c) the chairperson ceases to hold office as a member; or
 - (d) the term of office specified on appointment expires.
- (3) A person may be reappointed as chairperson for a further term.

- (4) The chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Teaching Council).
- (5) The notice of resignation must state the date on which the resignation takes effect.
- (6) The Minister may, after consultation with the person concerned, remove a chairperson of the Teaching Council from that office by written notice to the person (with a copy to the Teaching Council).
- (7) The notice of removal must state the date on which the removal takes effect.

Compare: 1989 No 80 Schedule 21 cl 5

7 Deputy chairperson

- (1) The Minister may appoint one of the members as deputy chairperson by notice in writing stating the date on which the appointment takes effect.
- (2) If the chairperson is absent, the deputy chairperson may exercise the powers of the chairperson.
- (3) The deputy chairperson holds that office until—
 - (a) the deputy chairperson resigns from that office; or
 - (b) the deputy chairperson is removed from it by the Minister; or
 - (c) the deputy chairperson ceases to hold office as a member; or
 - (d) the term of office specified on appointment expires.
- (4) A person may be reappointed as deputy chairperson for a further term.
- (5) The deputy chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Teaching Council).
- (6) The notice of resignation must state the date on which the resignation takes effect.
- (7) The Minister may, after consultation with the person concerned, remove a chairperson of the Teaching Council from that office by written notice to the person (with a copy to the Teaching Council).
- (8) The notice of removal must state the date on which the removal takes effect.

Compare: 1989 No 80 Schedule 21 cl 5

8 Administrative provisions

- (1) The powers of the Teaching Council are not affected by any vacancy in its members.
- (2) The Teaching Council may appoint committees to advise it on any matters relating to the Teaching Council's functions and powers.
- (3) All questions arising at any meeting must be decided by a majority of those members present with the chairperson having a casting vote or, if the chairperson is absent, with the deputy chairperson having a casting vote.

- (4) Except as otherwise provided under this or another Act, the members may regulate their own procedure.

Compare: 1989 No 80 Schedule 21 cl 6

9 Collective duties

- (1) The Teaching Council must act in a manner consistent with its functions, duties, and powers.
- (2) The Teaching Council must ensure that it performs or exercises its functions, duties, and powers efficiently and effectively.
- (3) The Teaching Council must ensure that it operates in a financially responsible manner and, for this purpose, that it prudently manages its assets and liabilities.

Compare: 1989 No 80 Schedule 21 cl 7

10 Individual duties

- (1) A member of the Teaching Council may not contravene, or cause the contravention of, or agree to the Teaching Council contravening, this Act.
- (2) A member of the Teaching Council must, when acting as a member, act with honesty and integrity.
- (3) A member of the Teaching Council must, when acting as a member, act in good faith and not pursue the member's own interests at the expense of the Teaching Council's interests.
- (4) A member of the Teaching Council must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
- (a) the nature of the Teaching Council; and
 - (b) the nature of the action; and
 - (c) the position of the member and the nature of the responsibilities undertaken by the member.
- (5) A member of the Teaching Council who has information in the member's capacity as a member that would not otherwise be available to the member may not disclose that information to any person, or make use of, or act on, that information, except—
- (a) in the performance of the Teaching Council's functions; or
 - (b) as required or permitted by law; or
 - (c) when the member is first authorised to do so by the Teaching Council and the disclosure, use, or act in question does not, or is unlikely to, prejudice the Teaching Council.

Compare: 1989 No 80 Schedule 21 cl 8

11 Personal liability of members

A member of the Teaching Council is not personally liable for any act done or omitted to be done by the Teaching Council or any loss to the Teaching Council arising out of any act done or omitted to be done by the member if the act or omission was (so far as the member's involvement is concerned)—

- (a) in good faith; and
- (b) in performance or intended performance of the functions of the Teaching Council.

Compare: 1989 No 80 Schedule 21 cl 9

12 Conflicts of interest

- (1) A person is interested in a matter if the person—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board or council or committee member of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) is otherwise directly or indirectly interested in the matter.
- (2) A member who is interested in a matter relating to the Teaching Council must disclose to the Teaching Council details of the interest as soon as practicable after the member becomes aware that the member is interested.
- (3) The details that must be disclosed 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).
- (4) A member who is interested in a matter—
 - (a) may not vote or take part in any discussion or decision of the Teaching Council or any of its committees relating to the matter, or otherwise participate in any activity of the Teaching Council that relates to the matter; and
 - (b) may not sign any document relating to the entry into a transaction or the initiation of the matter.
- (5) In this clause, **matter** means—
 - (a) the Teaching Council's performance of its functions or exercise of its powers; or

- (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Teaching Council.

Compare: 1989 No 80 Schedule 21 cl 10

Police vetting

13 Teaching Council must co-ordinate Police vetting

- (1) The Teaching Council must establish a system for co-ordinating Police vetting for—
- (a) teacher registration and the issue of practising certificates; and
 - (b) the granting of authorities to teach.
- (2) A copy of the result of the Police vet of a person must be given to the person or body that requested it and the person who is the subject of the vet.
- (3) The Teaching Council must establish internal procedures for dealing with Police vets requested for its own purposes and those procedures must—
- (a) identify the person or office holder within the Teaching Council to whom the results of the Police vet must be sent; and
 - (b) ensure that strict confidentiality is observed for the Police vet.

Compare: 1989 No 80 s 413

Schedule 19

Enrolment schemes

ss ~~69A(2), 71(2)(b), (3)~~, 191(9)

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1 Secretary must define school home zones

- (1) The Secretary must define a State school's home zone by geographic boundaries, which must be described so that a given address is either within or outside the home zone.
- (2) A school's home zone—
 - (a) must be an area for which the school is a reasonably convenient school for a student living in that area to attend; and
 - (b) may exclude any area for which another school is also a reasonably convenient school for a student living in that area to attend; and
 - (c) may exclude any area that it is desirable to exclude for the purpose of allowing the Secretary to make best use of the existing network of State schools in the area.

Compare: 1989 No 80 s 11E

2 How to select applicants who live outside home zone

- (1) The order of priority in which applicants who live outside a school's home zone are to be offered places at the school is as follows:
 - (a) first priority must be given to any applicant who is accepted for enrolment in a special programme run by the school:
 - (b) second priority must be given to any applicant who is the sibling of a current student of the school:
 - (c) third priority must be given to any student who is the sibling of a former student of the school:
 - (d) fourth priority must be given to any applicant who is a child of a former student of the school:
 - (e) fifth priority must be given to any applicant who is a child of an employee of the school's board or a child of a member of the school's board:
 - (f) sixth priority must be given to all other applicants.
- (2) If there are more applicants in the second, third, fourth, fifth, or sixth priority groups than there are places available, selection within the priority group must be by ballot conducted in accordance with instructions issued by the Secretary under **clause 3**.
- (3) For the purposes of this clause, child A is the **sibling** of child B if—
 - (a) both children share a common parent; or
 - (b) a parent of child A is married to, or in a civil union with, a parent of child B; or
 - (c) a parent of child A was married to, or in a civil union with, a parent of child B at the time when child B's parent died; or
 - (d) a parent of child A is the de facto partner of a parent of child B; or
 - (e) both children live in the same household and, in recognition of family obligations, are treated by the adults of that household as if they were siblings; or
 - (f) the Secretary, by written notice to the school, advises that child A is to be treated as the sibling of child B.
- (4) If 2 or more siblings apply for places at a school at the same level, the applications of those siblings must be dealt with as a single application for the purpose of the ballot.
- (5) An application for enrolment at a school with an enrolment scheme must be processed by the school in accordance with the enrolment scheme, and may not be declined on technical grounds or on any other ground that would be inconsistent with the purpose and principles set out in **section 69**.

Compare: 1989 No 80 s 11F

3 Instructions and guidelines on operation of enrolment schemes

- (1) The Secretary may issue instructions to State schools that have enrolment schemes about the following matters:
 - (a) the procedures for holding ballots;
 - (b) the dates on which ballots are to be held;
 - (c) the establishment and maintenance of waiting lists;
 - (d) the information to be given to applicants who live outside the school's home zone;
 - (e) any other matter that the Secretary considers necessary for ensuring the fair, transparent, and efficient operation of enrolment schemes.
- (2) Instructions issued under **subclause (1)**—
 - (a) must be complied with by schools; and
 - (b) may apply to all or specified schools or classes of school; and
 - (c) must be notified in the *Gazette*, either in full, or by a notice outlining the content of the instructions and stating where a copy can be obtained, along with the date on which the instructions take effect; and
 - (d) may be amended or revoked, in which case notice of the amendment or revocation must be given in the *Gazette*, as described in **paragraph (c)**.
- (3) The Secretary may issue guidelines to State schools about either or both of the following matters:
 - (a) the basis on which the Secretary's powers in relation to enrolment schemes may be exercised (including, in particular, the power in **clause 14(2)(a)** relating to the determination of whether an applicant lives within a home zone or outside it);
 - (b) the manner in which schools must conduct reviews under **clause 13** (which relates to the review of a student's enrolment).

Compare: 1989 No 80 s 11G

4 Process for establishing enrolment scheme

- (1) ~~If overcrowding occurs or is likely to occur at a State school, the Secretary must develop an enrolment scheme for the school.~~
- (2) When developing a proposed enrolment scheme, the Secretary must—
 - (a) consult the school's board on the development of the proposed scheme; and
 - (b) take reasonable steps to understand the views of the school's community.
- (4) After the Secretary has developed a proposed enrolment scheme, the Secretary must—

- (a) consult the persons and organisations the Secretary thinks fit and, in particular, must take all reasonable steps to discover and consider the views of—
 - (i) the parents of students at the school;
 - (ii) the people living in the area for which the school is a reasonably convenient school;
 - (iii) the students and prospective students of the school (depending on their age and maturity);
 - (iv) the boards of other schools that could be affected by the proposed enrolment scheme;
 - (v) in the case of a Kura Kaupapa Māori, the persons and organisations that the Secretary believes have an interest in fostering the school's adherence to Te Aho Matua and any special characteristics set out in its school charter;
 - (vi) in the case of the board of a designated character school, the persons and organisations that the Secretary believes have an interest in fostering the aims, purposes, and objectives that constitute the school's different character;
 - (vii) in the case of a State integrated school, the school's proprietors; and
- (b) consult the school's board.
- (5) If the Secretary has complied with **subclause (4)** and is satisfied that the proposed enrolment scheme meets the requirements of **clause 5**, the Secretary may finalise the enrolment scheme and provide it to the board.
- (6) The school's board must implement the finalised enrolment scheme as soon as practicable.

Compare: 1989 No 80 s 11H

5 Requirements relating to proposed enrolment schemes

An enrolment scheme for a State school—

- (a) must comply with the purpose and principles of enrolment schemes set out in **section 69**; and
- (b) must define the school's home zone in the enrolment scheme in a way that ensures that students can attend a reasonably convenient school; and
- (c) may have boundaries for its school's home zone that overlap or are contiguous with the boundaries of the home zone of any adjacent State school that has an enrolment scheme; and
- (d) must promote the best use of the network of State schools in the area.

Compare: 1989 No 80 s 11I

6 Information about school's enrolment scheme

- (1) This clause applies if the board of a State school implements an enrolment scheme under **clause 4(6)**.
- (2) The board must give notice that it has implemented an enrolment scheme, which must include—
 - (a) a general description of the school's home zone; and
 - (b) information about where copies of the enrolment scheme may be viewed and obtained.
- (3) Each year, the board of a school that has an enrolment scheme must give notice of—
 - (a) the likely number of out-of-zone places; and
 - (b) the significant pre-enrolment dates and procedures; and
 - (c) the date or dates on which any ballot is to be held.
- (4) The following must be available for inspection at the school at all reasonable times:
 - (a) a copy of the school's current enrolment scheme;
 - (b) a copy of the results of the most recent ballot for places at the school;
 - (c) a copy of the waiting list for places at the school;
 - (d) if it is available, information about the matters listed in **subclause (3)**;
 - (e) a copy of any instructions issued under **clause 3(1)**.
- (5) For the purposes of **subclauses (2) and (3)**, a board must give notice to its school community and any affected parties in the wider local community.

Compare: 1989 No 80 s 11J

7 Commencement of enrolment scheme

- (1) An enrolment scheme for a primary school commences 3 months after the day of its implementation, or on a later date specified in the scheme by the Secretary.
- (2) An enrolment scheme for a secondary or composite school commences on **1 January** in the year following the year in which it was implemented, or on a later date specified in the scheme by the Secretary.
- (3) However, the Secretary may specify a commencement date for an enrolment scheme that is earlier than a commencement date determined under **subclause (1) or (2)** if the Secretary considers that an early commencement is appropriate.

Compare: 1989 No 80 s 11K

8 End of enrolment scheme

- (1) The Secretary may abandon an enrolment scheme if satisfied that overcrowding at the school is unlikely to result if the scheme is abandoned.
- (2) If the Secretary decides to abandon an enrolment scheme,—
 - (a) the Secretary must give written notice to the school's board; and
 - (b) the school's board must abandon the scheme as soon as practicable unless the Secretary has specified a date on which the scheme is to be abandoned in the notice given under **paragraph (a)**.
- (3) A board may not abandon an enrolment scheme unless it has received written notice from the Secretary to do so.

Compare: 1989 No 80 s 11L

9 Amendment of enrolment schemes

- (1) The Secretary may amend an enrolment scheme if satisfied that amendment is needed to avoid overcrowding, or the likelihood of overcrowding, at a State school.
- (2) If the board of a State school (**school A**) implements an enrolment scheme, the Secretary may amend the enrolment scheme of any nearby State school to take into account the effect of school A's amended enrolment scheme.
- (3) **Section 69 and clauses 2 to 8** apply to an amendment or a proposed amendment to an enrolment scheme as if it were an enrolment scheme or a proposed enrolment scheme.

Compare: 1989 No 80 s 11M

10 Minor amendments to enrolment schemes

- (1) The Secretary may make minor amendments to an enrolment scheme using the procedure set out in **subclause (2)** instead of going through the process set out in **clauses 4 to 6**.
- (2) In order to make the amendment, the Secretary must—
 - (a) be satisfied that the proposed amendment is minor; and
 - (b) give notice of the proposed amendment; and
 - (c) consider any written comments or queries received from the relevant school regarding the proposed amendment.
- (3) The board must implement any minor amendments as soon as practicable after the Secretary gives notice in writing of the Secretary's final decision (which decision may not be made final until at least 1 month after notice of the proposed amendment was given).

Compare: 1989 No 80 s 11MA

11 Pre-enrolment at schools with enrolment schemes

- (1) The board of a State school may comply with the instructions and guidelines issued under **clause 3** even if an enrolment scheme has not yet commenced.
- (2) For applicants who are subject to a ballot, the board must notify each applicant, in writing, of—
 - (a) when and how the ballot is to be held; and
 - (b) when and how applicants are to be advised of the results of the ballot; and
 - (c) the rights and responsibilities of applicants after the ballot.
- (3) The board must give written notice to every applicant whose application is declined of—
 - (a) the reason why the application has been declined; and
 - (b) the Secretary's powers under **clause 14**.
- (4) The board must give written notice to every applicant whose name was included in a ballot of the outcome of the ballot as it relates to the applicant.

Compare: 1989 No 80 s 11N

12 Enrolment may be annulled if based on false information or temporary residence

- (1) The board of a State school that has an enrolment scheme may annul the enrolment of a student if the board believes on reasonable grounds that the student's enrolment or pre-enrolment form falsely claimed, for the purpose of securing enrolment, that—
 - (a) the student was living in the school's home zone when the student enrolled at the school; or
 - (b) the student was entitled to a particular priority in the ballot for places (for example, by falsely claiming the applicant is the sibling (as defined in **clause 2(3)**) of an existing student).
- (2) The board of a State school that has an enrolment scheme may annul the enrolment of a student if, following a review under **clause 13**, the board determines that the student has used a temporary residence for the purpose of gaining enrolment at the school.
- (3) The address given in a student's pre-enrolment form as the address where the student lives is taken to be the address at which the student is living on enrolment, unless the board is notified otherwise.
- (4) The board may annul the enrolment of any student, or may refuse an application for enrolment by any person, who claimed or claims priority in a ballot as a sibling of a student whose enrolment has been annulled under this clause.

- (5) If the board annuls an enrolment under any of **subclauses (1), (2), and (4)**, the annulment takes effect 1 month after the date on which the board decides to annul the enrolment.
- (6) A board that annuls the enrolment of a student must immediately—
 - (a) advise a parent of the student, in writing, of the date of annulment and the date on which it takes effect; and
 - (b) advise the Secretary of the name of the student and the date of annulment.

Compare: 1989 No 80 s 110

13 Review of student's enrolment

- (1) The board of a State school that has an enrolment scheme may issue a parent of a student enrolled at the school with a review notice under this clause if—
 - (a) the student was enrolled at the school on the grounds that they lived in the school's home zone; and
 - (b) the student has, since enrolling at the school, moved out of the school's home zone; and
 - (c) the board believes on reasonable grounds that the student has used a temporary residence within the school's home zone for the purpose of gaining enrolment at the school.
- (2) On receipt of a review notice, a parent who wishes to rebut the board's view may make submissions to the board in whatever manner the parent thinks fit, and the board must, in accordance with any guidelines issued under **clause 3(3)(b)**, give the parent every reasonable opportunity to explain the situation.
- (3) The board may exercise its power under **clause 12(2)** to annul the student's enrolment if, no earlier than 10 school days after the date on which the review notice was sent, the board determines that the student has used a temporary residence within the school's home zone for the purpose of gaining enrolment at the school.
- (4) A review notice must—
 - (a) be in writing; and
 - (b) be sent by post or email to a parent of the student; and
 - (c) advise the parent of the effect of the notice, and explain what the parent may do next.

Compare: 1989 No 80 s 110A

14 Secretary may direct board to enrol applicant

- (1) The Secretary may direct the board of ~~any~~ State school (including the board of the school at which the student was enrolled) to enrol a student whose enrolment has been annulled under **clause 13**.

- (2) The Secretary may direct the board of a State school to enrol an applicant whose application for enrolment it has declined if the Secretary is satisfied that—
- (a) the board has declined the application on the ground that the applicant is not living in the school's home zone, but in fact the applicant is living in the zone; or
 - (b) not giving a direction would be so disadvantageous to the applicant that overriding the enrolment scheme is justified.
- (3) The power in **subclause (2)(b)** may only be exercised in exceptional circumstances.
- (4) The Secretary may not give a direction about a person under **subclause (1) or (2)(b)** unless the Secretary has taken all reasonable steps to consult a parent of the person, the board of the proposed school, and (if appropriate, having regard to the age and maturity of the person) the person.
- (5) The Secretary may not direct the board of a Kura Kaupapa Māori, a designated character school, or a State integrated school to enrol a person under this clause unless a parent of the person agrees and accepts the special character of that school.
- (6) A board must comply with a direction under this clause, and the direction overrides any enrolment scheme the school may have in place.

Compare: 1989 No 80 s 11P

15 Review of enrolment scheme

The Secretary must, at least once every 3 years after the date on which an enrolment scheme is implemented by a State school,—

- (a) review the operation of the enrolment scheme, having regard to the purpose and principles of enrolment schemes set out in **section 69**; and
- (b) reach a view about the continuing need for a scheme to prevent overcrowding, or the likelihood of overcrowding, at the school.

Compare: 1989 No 80 s 11PA

16 Enrolment schemes of certain State schools

- (1) **Section 69 and clauses 2 to 15** apply to Kura Kaupapa Māori, designated character schools, State integrated schools, and specialist schools, and to their enrolment schemes, with the following modifications:
- (a) all references to overcrowding or the likelihood of overcrowding must be read as if they were references to there being, or being likely to be, more applicants for enrolment at the school than there are places available; and
 - (b) the enrolment scheme need not define a home zone for the school, nor provide for balloting of applicants who live outside any home zone, but

must accord priority to applicants for whom the school is a reasonably convenient school; and

- (c) **clause 6** is modified as follows:
 - (i) **subclause (2)** applies as if **paragraph (a)** read “a general description of the enrolment scheme”; and
 - (ii) **subclause (3)** applies as if **paragraphs (a) to (c)** were replaced with the words “the likely number of places available and the significant pre-enrolment dates and procedures that apply”; and
 - (iii) **subclause (4)(b)** does not apply; and
 - (d) in the case of a Kura Kaupapa Māori, the application of **section 69 and clauses 2 to 15** must not result in inconsistency with **section 191**; and
 - (e) in the case of a designated character school, the application of **section 69 and clauses 2 to 15** must not result in inconsistency with its school charter or **section 191**; and
 - (f) in the case of a State integrated school, the application of **section 69 and clauses 2 to 15** must not result in inconsistency with the school’s integration agreement or **Schedule 6**.
- (2) **Clauses 1 to 15** do not apply to any State school of a type specified by the Secretary by notice in the *Gazette*.

Compare: 1989 No 80 s 11PB

17 Obligation to report to Parliament on enrolment schemes

- (1) The annual report on the schools sector that is presented to the House of Representatives by the Minister of Education in accordance with **section 587** must include a statement signed by the Secretary that—
 - (a) lists the schools that have an enrolment scheme in place; and
 - (b) states the period for which each scheme has been in place; and
 - (c) notes the schools near schools that have schemes in place; and
 - (d) outlines any plans included in the Ministry’s property development programme or other programmes to address the pressures on capacity in areas where a number of adjacent schools have enrolment schemes in place, including development plans to manage school population changes to maximise (to the extent it is reasonable and practicable to do so) the opportunity for students to attend a reasonably convenient State school.
- (2) For the purpose of this clause, an enrolment scheme is **in place** once it has been notified in accordance with **clause 6**.

Compare: 1989 No 80 s 11Q

Schedule 20

When State schools must be open

~~s-444~~ss 111, 612l(1), (2)

1 Length of school year

- (1) The Minister may, before **1 July** in any year, specify the number of half-days on which schools must be open during the next year.
- (2) For the purposes of **subclause (1)**, different numbers may be fixed for schools of different classes or descriptions.
- (3) Except as provided in this Act, a board must ensure that each school it administers is open for instruction on the number of half-days specified under **subclause (1)**.
- (4) If, because of a strike or lockout, a school is not open for instruction on any half-day, the school is, for the purposes of **subclause (2)**, treated as having been open for instruction on that half-day.
- (5) If the Minister fails to specify the number of half-days on which schools must be open in any year, the number specified for the previous year applies for that year.

Compare: 1989 No 80 s 65A

2 Terms

- (1) The Minister may, before **1 July** in any year, specify (by reference to specific dates, specified days, the number of half-days determined under **clause 1**, or any 2 or more of those means)—
 - (a) the terms that schools must observe during the next year; or
 - (b) a means for ascertaining or determining those terms.
- (2) A board must ensure that each school it administers is open for instruction for 1 half-day that finishes at or before noon and 1 half-day that starts at or after noon on every day during the terms specified, ascertained, or determined under **subclause (1)**.
- (3) However, a board may vary the time at which any 1 or more half-days take place (for example, by starting a second half-day before noon) if the board—
 - (a) has adequately consulted parents, staff, the local community, and any other person who the board considers may be affected about the proposed variation and it is generally acceptable; and
 - (b) is satisfied that the adoption of the proposal would not result in the students of the school spending less time in school than other students in comparable schools and other local schools; and
 - (c) has taken all reasonable steps to notify students and parents in writing of the board's final decision on the proposed variation.

- (4) A board may also vary the time at which any 1 or more half-days take place without satisfying the requirements in **subclause (3)(a)** if—
 - (a) the variation is made for operational reasons; and
 - (b) the variation applies for no more than 2 days; and
 - (c) the board has not made a variation under this subclause during the previous 6 weeks.
- (5) A student enrolled at a State school must comply with **section 35** even if the school's board varies the time of any 1 or more half-days.
- (6) On any day, a school is not open for instruction at all if it is open for less than 1 half-day.
- (7) To avoid doubt, if a school opens on any day for only 1 half-day, that half-day may be counted towards the number of half-days fixed by the Minister under **clause 1(1)**.
- (8) If the Minister fails to specify terms, or a means of ascertaining or determining them, in any year, the terms specified for the previous year apply for that year.

Compare: 1989 No 80 s 65B

3 Holidays

- (1) A board must ensure that each school it administers is closed on—
 - (a) Saturdays, Sundays, New Year's Day, 2 January, Waitangi Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, the Sovereign's birthday, Labour Day, Christmas Day, and Boxing Day; and
 - (b) the day observed as anniversary day in the locality in which the school is situated; and
 - (c) if 1 January falls on a Friday, the following Monday; and
 - (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
 - (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.
- (2) However, the Minister may specify the circumstances in which boards may open the schools they administer or any of them on Saturdays or Sundays, and if the Minister does so, the schools may open.
- (3) The Minister may, before **1 July** in any year, specify days during the next year (in addition to those specified in **subclause (1)**) on which boards may close the schools they administer or any of them, and, if the Minister does so, schools may be closed accordingly.
- (4) If the Minister fails to specify days on which schools may be closed for any year, the days on which the schools may be closed are the days specified for the previous year.

- (5) The Minister may specify the circumstances in which boards may close the schools they administer or any of them, and, if the Minister does so, subject to **clause 1**, the schools may be closed accordingly.

Compare: 1989 No 80 s 65C

4 Exceptions in particular cases

- (1) The Minister may authorise a board to open any particular school it administers for fewer half-days in any year than required by **clause 1(3)** and, if the Minister does so, the school may be closed accordingly.
- (2) The Minister may authorise a board to open and close any particular school it administers in accordance with terms and holidays (specified by the Minister) that differ from those otherwise required by this Act to be observed, and, subject to any terms and conditions specified by the Minister when giving the authority, the school may be open and closed accordingly.

Compare: 1989 No 80 s 65D

5 Multiple timetable arrangements

- (1) The Minister may authorise a board to run a multiple timetable arrangement for a specified period at a specified school if the Minister—
- (a) is satisfied that the board has adequately consulted parents, staff, and the local community about the proposed multiple timetable arrangement; and
 - (b) considers that the proposed multiple timetable arrangement is appropriate in the circumstances.
- (2) An authorisation under **subclause (1)** may be given unconditionally or subject to any conditions the Minister thinks fit.
- (3) A board must take all reasonable steps to notify every affected student and a parent of the student in writing of—
- (a) a multiple timetable arrangement authorised under **subclause (1)**; and
 - (b) the time periods for each day during which the affected student's timetable runs.

Compare: 1989 No 80 s 65DA

6 Emergencies

- ~~(1) Despite anything else in this schedule, a board may close a school it administers because of an epidemic, a flood, a fire, or another emergency.~~
- ~~(2) The Secretary may, by written notice to the board, reduce the number of half-days for which a school would otherwise be required by **clause 1** to be open for instruction if satisfied that its closure for instruction was necessary because of an epidemic, flood, fire, or other emergency.~~

Compare: 1989 No 80 s 65E

7 Application of provisions

- (1) The powers conferred on the Minister by **clauses 1 to 6** may be exercised in respect of all schools, schools of a particular classification or description, or specified schools.
- (2) **Clauses 1 to 6** have effect as if specialist schools and special services were State schools.

Compare: 1989 No 80 s 65F

8 Minister to act by means of instructions

- (1) The Minister's powers under **clauses 1 to 7** may be exercised only by written instruction signed by the Minister.
- (2) However, the Minister may delegate their powers under **clause 4(2)** to the Secretary and, if the Minister does so,—
 - (a) the Secretary must exercise the powers in respect of individual schools only; and
 - (b) the delegation does not limit or affect the exercise of the powers by the Minister.

Compare: 1989 No 80 s 65G

Schedule 21

Constitution of boards of State schools

ss 119(a), 177(6), 193(5)(b)

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1 Parent representatives

- (1) The parent representatives on the lone board of an intermediate school must be elected by people who are—
 - (a) parents of students (other than adult students)—
 - (i) enrolled full-time at the school when the roll for the election (or, if there is a supplementary roll, the supplementary roll) closes; or
 - (ii) likely to be enrolled full-time at the school in the year after the year the election is held; or
 - (b) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at the school when the roll for the election (or, if there is a supplementary roll, the supplementary roll) closes.
- (2) The parent representatives on the lone board of any other State school must be elected by people who are—
 - (a) parents of students (other than adult students) enrolled full-time at the school when the roll for the election (or, if there is a supplementary roll, the supplementary roll) closes; or

- (b) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at the school when the roll for the election (or, if there is a supplementary roll, the supplementary roll) closes.
- (3) The parent representatives on the combined board of 2 or more State schools must be elected by people who are—
 - (a) parents of students (other than adult students) enrolled full-time at a school that the board administers when the roll for the election (or, if there is a supplementary roll, the supplementary roll) closes; or
 - (b) parents of students (other than adult students) likely to be enrolled full-time at an intermediate school that the board administers in the year after the year the election is held; or
 - (c) adult students (other than adult students who are also parents of students so enrolled) enrolled full-time at a school administered by the board when the roll for the election closes.

Compare: 1989 No 80 s 96

2 Staff and student representatives

- (1) A staff representative on a board must be a person (other than the principal) who, on the day on which the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes, is a member of the board staff, and who is elected by people (other than principals) who are members of the board staff on that day.
- (2) A student representative on a board must be a person who, on the day on which the roll for the election (or, where there is a supplementary roll, the supplementary roll) closes, is a student (other than an adult student) who is enrolled full-time in year 9 or above at a school or a special institution administered by the board, and who is elected by students (other than adult students) enrolled full-time in year 9 or above at a school or special institution administered by the board.

Compare: 1989 No 80 s 97

3 Boards of newly established schools

- (1) Despite **clause 1**, the board members of the board of a newly established State school are,—
 - (a) at the option of the Minister,—
 - (i) 5 people appointed by the Minister; or
 - (ii) 5 people elected by the parents of students (other than adult students) likely to be enrolled at the school in the year it opens or the next year; and
 - (b) the principal or principal designate (if any); and
 - (c) not more than 4 people co-opted by the board.

- (2) **Subclause (1)** continues to apply to the membership of the board until the board members go out of office under **subclause (3)**.
- (3) A board member appointed, elected, or co-opted under **subclause (1)** goes out of office—
 - (a) at the close of the day before the date on which the board members who have been elected under **clause 3 of Schedule 22** or any regulations made under this Act take office under **clause 8 of Schedule 22** or any regulations made under this Act; or
 - (b) at the close of the day before the date on which the board members who have been elected, appointed, or co-opted take office in accordance with a notice issued under **clause 4** or any regulations made under this Act.
- (4) A board member appointed, elected, or co-opted under **subclause (1)** is eligible to be appointed, elected, or co-opted as a board member unless they are ineligible to be a board member under this Act or any regulations made under this Act.

Compare: 1989 No 80 s 98

4 Minister may approve alternative constitution in certain cases

- (1) The Minister may, by notice in the *Gazette*, approve an alternative constitution under this clause for the board of a State school or a combined board of State schools.
- (2) The Minister may not approve an alternative constitution for a board unless the Minister has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the board.
- (3) The Minister may not approve an alternative constitution unless—
 - (a) one of the following applies:
 - (i) the Chief Review Officer, in a written report, recommends that the Minister consider devising an alternative constitution; or
 - (ii) 20% or more of the parents of children enrolled at the school or schools have requested an alternative constitution; or
 - (iii) the board (or if a board has been replaced by a commissioner, that commissioner) has requested an alternative constitution; or
 - (iv) the Minister has required the board to have an alternative constitution under **clause 7(5) or 8(3)**; and
 - (b) the Minister has consulted any persons or organisations as the Minister thinks fit.
- (4) **Subclause (3)** does not apply if—
 - (a) the alternative constitution is the successor constitution for a board that was appointed or elected under **clause 3(1)**; or

- (b) the alternative constitution is approved for a combined board before the date specified in a notice under **clause 7(1)**; or
 - (c) the alternative constitution is for the board of a continuing school and the Minister has given notice under **section 193(5)(b)**.
- (5) In the case of a State integrated school, the Minister must consult the proprietor of the school when conducting the consultation required under **subclause (3)(b)**.
- (6) A constitution approved under this clause applies instead of a constitution under **section 115**.

Compare: 1989 No 80 s 98A

5 Consequences of approval of alternative constitution

- (1) If an alternative constitution is approved under **clause 4(1)**, the notice made under that clause must establish a board comprising 1 or more persons who are to be elected or appointed as board members in the manner specified in the notice, and the notice may (without limitation)—
- (a) set out a procedure for any election, appointment, or co-optation of board members;
 - (b) set out the manner in which vacancies are to be filled;
 - (c) provide for the appointment of returning officers and set out their functions;
 - (d) set out other formal and procedural provisions for the purposes of any election, appointment, or co-optation of board members.
- (2) While a notice under **clause 4(1)** that approves an alternative constitution is in force, **clauses 1 to 4, and 6** of this schedule and **clauses 1, 3, 8, 12, and 13 of Schedule 22** do not apply in respect of the board concerned and the schools governed by it.
- (3) In their application to a board that has an alternative constitution under **clause 4**, the other clauses and any schedules of this Act relating to boards must be read subject to (and subject also to all modifications necessary to give effect to) **clause 4** and to this clause.

Compare: 1989 No 80 s 98B

6 Actions of boards not affected by informality in membership

The powers of a board are not affected by—

- (a) any vacancy in its membership; or
- (b) the discovery of any error or defect in the election, appointment, or co-optation of any board member; or
- (c) the fact that any elected, appointed, or co-opted board member acted as a board member while the board member was a person who may not

(under this Act or regulations made under this Act) become an elected, appointed, or co-opted board member; or

- (d) the fact that a person continued acting as a board member after the person's office as a board member became vacant or (in the case of a person whose election as a board member has been declared invalid under **section 157** or by a court) before the person's election was declared invalid.

Compare: 1989 No 80 s 98C

Combining and splitting boards

7 Boards may combine

- (1) The Minister may, by notice in the *Gazette*, establish a single board (a **combined board**) to administer a number of schools or special institutions, with effect from a date specified in the notice.
- (2) The Minister may establish a combined board if the restrictions in **clause 9** are met and the Minister—
- (a) is satisfied of the matters in **subclause (3)**; or
- (b) has reasonable cause to believe the circumstances in **subclause (4)** exist and has consulted—
- (i) the boards concerned; and
- (ii) for a State integrated school, the proprietor of that school.
- (3) For the purposes of **subclause (2)(a)**, the matters are that—
- (a) each of the boards concerned has made reasonable efforts to consult the parents of students (other than adult students) enrolled full-time at its schools or special institutions about combining with the other boards; and
- (b) the consultation that has taken place has been adequate in all the circumstances; and
- (c) the proposed combined board is appropriate in all the circumstances.
- (4) For the purposes of **subclause (2)(b)**, the circumstances are that the Minister must have reasonable cause to believe that—
- (a) there are serious problems with the governance of 1 or more of the schools or special institutions concerned; and
- (b) those problems could be addressed by the combined board.
- (5) When establishing a combined board for 4 or more schools, the Minister may require the combined board to have an alternative constitution.
- (6) Subject to **subclause (7)**, this Act applies to a combined board as if—
- (a) it had been in existence immediately before the day on which the notice establishing it was published; and

- (b) every board member had resigned on that day.
- (7) Until the day specified in the notice establishing a combined board,—
 - (a) the combined board has no powers, functions, duties, or rights; and
 - (b) the existing boards continue in existence as if the combined board had not been established.
- (8) On the day specified in the notice establishing a combined board, all rights, assets, liabilities, and debts of the existing boards become rights, assets, liabilities, and debts of the combined board.

Compare: 1989 No 80 s 110

8 Minister may combine boards at establishment

- (1) A Minister may, by notice in the *Gazette*, establish a combined board for 2 or more schools that are newly established under **section 177**.
- (2) The combined board is the board of a newly established school for the purposes of **clause 3**.
- (3) When establishing a combined board of 4 or more schools, the Minister may require the combined board to have an alternative constitution.

Compare: 1989 No 80 s 110A

9 Restrictions on combining

- (1) No board that administers a special institution may combine with a board that does not.
- (2) No board that administers a State integrated school may combine with a board that does not.
- (3) No board that administers a State integrated school may combine with any other board unless all the schools they administer have the same proprietors.
- (4) A board of a designated character school may only combine with a board of another designated character school and only if both schools have substantially the same aims, purposes, and objectives.
- (5) A board of a Kura Kaupapa Māori may only combine with another board of a Kura Kaupapa Māori.

Compare: 1989 No 80 s 111

10 Minister may split combined board

- (1) If satisfied, after consulting the Education Review Office and the board concerned, that in all the circumstances it is appropriate for a combined board to be split, the Minister may, by notice in the *Gazette*, establish 2 or more boards for the schools or special institutions the combined board administers, with effect on a date specified in the notice.

- (2) If any of the boards established by a notice under **subclause (1)** is a combined board, the notice must specify the schools or special institutions it is to administer.
- (3) Subject to **subclause (4)** and **clause 11**, this Act applies to a board established by a notice under **subclause (1)** as if—
 - (a) the board had been in existence immediately before the day on which the notice was published; and
 - (b) every board member had resigned on the day.
- (4) Until the day specified in a notice under **subclause (1)** establishing 2 or more boards,—
 - (a) the boards established have no powers, functions, duties, or rights; and
 - (b) the combined board they replace continues in existence as if they had not been established.

Compare: 1989 No 80 s 112

11 Splitting boards that were combined at establishment

- (1) A Minister who, under **clause 10(1)**, is splitting a board that was combined under **clause 8** at establishment for 2 or more schools may designate 1 of the boards established under **clause 10(1)** as being identical to the board that was established under **clause 8**, except that it need not be a combined board.
- (2) A board that is designated under **subclause (1)** is to be treated, for the purposes of **clause 3**, as if it were the board of a newly established school.
- (3) This clause overrides **clause 10(3)(b) and (4)(a)**.

Compare: 1989 No 80 s 112A

12 Property held in trust

- (1) If any property is, on the day a notice under **clause 10(1)** is published, held in trust by the combined board of the schools or special institutions to which the notice relates, the following provisions apply:
 - (a) the board must, within 28 days of the day specified in the notice, notify Public Trust of the existence and nature of the trust and Public Trust must as soon as practicable notify the Secretary:
 - (b) Public Trust must take all reasonable steps to consult the board, within 70 days of the day specified in the notice, regarding—
 - (i) how the property should vest; and
 - (ii) the extent (if any) to which the trust should otherwise be modified:
 - (c) on the 70th day after the day specified in the notice the property vests in Public Trust:

- (d) as soon as practicable after becoming aware that the property has vested, Public Trust, after consulting the boards established by the notice, regarding how the property should vest and the extent (if any) to which the trust concerned should otherwise be modified, must devise and send to the Solicitor-General a scheme to modify the trust.
- (2) If any property is, on the day a notice under **clause 10(1)** is published, held in trust for the combined board of the schools or special institutions to which the notice relates (otherwise than by the board), the following provisions apply:
- (a) the person who holds the property must, within 28 days of the day specified in the notice, notify Public Trust of the existence and nature of the trust and Public Trust must as soon as practicable notify the Secretary:
- (b) Public Trust must take all reasonable steps to consult the person, within 70 days of the day specified in the notice, regarding—
- (i) which of the boards established by the notice the property (or any part of it) should be held for, and, if for more than 1, how; and
- (ii) the extent (if any) to which the trust should otherwise be modified:
- (c) on the 70th day after the day specified in the notice the property vests in Public Trust:
- (d) as soon as practicable after becoming aware that the property has vested, Public Trust, after consulting the boards established by the notice, regarding—
- (i) whether any or all of the property should be held for them and if so which of it, which of them, and in what proportions; and
- (ii) the extent (if any) to which the trust should otherwise be modified,—
- must devise and send to the Solicitor-General a scheme to modify the trust.
- (3) If, on the day a notice under **clause 10(1)** is published, any trust (being a trust established by an enactment, instrument, or will, that requires or requests the board members to consult, notify, or act only with the approval or concurrence of a combined board of the schools or special institutions to which a notice under **clause 10(1)** relates) exists, the following provisions apply:
- (a) the board members may apply to Public Trust for directions as to which boards established by the notice should act (jointly or severally) in place of the combined board and, if an application is received, Public Trust must devise and send to the Solicitor-General draft directions to the board members; and
- (b) the board members may not take any action for which consultation, notification, approval, or concurrence is required or requested except in accordance with—

- (i) directions approved under this clause; or
 - (ii) directions given by the Solicitor-General in circumstances that appear to constitute an emergency; or
 - (iii) the Charitable Trusts Act 1957.
- (4) Within 90 days (or any longer period the Solicitor-General and Public Trust in any case, before the expiration of that period, agree) of being notified of a scheme or draft directions under this clause, the Solicitor-General may, by written notice to Public Trust,—
- (a) approve the scheme or directions (as originally notified by Public Trust, or with amendments agreed by Public Trust); or
 - (b) suggest amendments to the scheme or directions; or
 - (c) direct that the scheme should not proceed, or that the directions should not be given and the matter should be dealt with under the Charitable Trusts Act 1957.
- (5) If within 90 days (or any longer period agreed under **subclause (4)**) of being notified of a scheme or draft directions under this section, the Solicitor-General does not under that subclause approve the scheme or directions, or direct that the scheme or directions should not proceed, the Solicitor-General is to be treated as having approved the scheme or directions.
- (6) If the Solicitor-General approves a scheme under this section, Public Trust must, in accordance with it,—
- (a) by notice in the *Gazette*, modify the trust concerned; and
 - (b) take all steps necessary to effect any necessary transfers of the property concerned.
- (7) If the Solicitor-General approves any draft directions under this clause,—
- (a) Public Trust must give them to the board members concerned; and
 - (b) the directions have effect according to their terms.
- (8) Every scheme, draft direction, and suggested and agreed amendment under this clause must be in the form that, in the opinion of Public Trust or the Solicitor-General,—
- (a) best gives effect to the intentions of the testator, settlor, or other person or body by whom or which the trust concerned was established; and
 - (b) subject to **paragraph (a)**, effects the minimum change necessary to enable the trust concerned to operate satisfactorily in the light of—
 - (i) the splitting of the former combined board; and
 - (ii) the establishment of the new boards concerned; and
 - (iii) any transfers of property effected or to be effected.

- (9) The reasonable costs of Public Trust in acting under this clause must be paid out of money appropriated by Parliament for the purpose.

Compare: 1989 No 80 s 113

13 Allocation of employees after combined board split

A notice under **clause 8(1)** must specify one of the boards it establishes as the residual employer of the employees of the combined board to which it relates, and—

- (a) subject to **paragraph (b)**, the people who were, immediately before the day specified in the notice, employees of the combined board on that day become employees of the board specified, and their service in the employment of the combined board is to be treated for all purposes as service in the employment of the board specified; and
- (b) before that day, the Secretary may, by written notice to any employee of the combined board, specify one of the boards as the board by which the employee is to become employed, and in that case, if the employee is still employed by the combined board immediately before that day,—
- (i) the employee on that day becomes an employee of the board specified; and
- (ii) the employee's service in the employment of the combined board is to be treated for all purposes as service in the employment of the board specified.

Compare: 1989 No 80 s 114

14 Transfer of assets of split combined board

- (1) Subject to **clauses 12 and 13**,—
- (a) all rights, assets, liabilities and debts that a combined board split by a notice under **clause 12** had immediately before the day specified in the notice are to be treated as having become the rights, assets, liabilities, and debts of the boards established by the notice; and
- (b) any property that, immediately before it became an asset of a board under this section, was subject to a trust, vests in the board subject to the trust.
- (2) If any dispute arises as to whether any right, asset, liability, or debt has, under **subclause (1)**, become a right, asset, liability, or debt of one board or another, the dispute must be referred to the Secretary, and—
- (a) the Secretary must attempt by mediation to bring the parties to the dispute to an agreement; and
- (b) if, in the Secretary's opinion, further mediation is unlikely to achieve agreement, the Secretary must determine the dispute, and the determination is to be final.

Compare: 1989 No 80 s 115

15 Each school must be represented on combined board

In an election for parent representatives on a combined board,—

- (a) each candidate must be nominated in respect of 1 school or special institution the board administers; and
- (b) the highest polling candidate nominated in respect of each school or special institution becomes a board member, regardless of the votes cast for the other candidates.

Compare: 1989 No 80 s 116

Schedule 22
**Electing and co-opting board members to boards of State schools,
term of office of board members, and eligibility**

ss 119(b), 183(3), 185(6)

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1 Criteria for selecting co-opted and appointed board members

- (1) For the purposes of **subclause (2)**, it is desirable, as far as is reasonably practicable,—
- (a) that every board should reflect—
- (i) the ethnic and socio-economic diversity of the student body of the school or special institution; and
 - (ii) the fact that approximately half the population of New Zealand is male and half female; and
 - (iii) the character of the school or schools, or special institution, it administers; and

- (iv) the character of the community (whether geographical or otherwise) served by the school or schools, or special institution, it administers; and
- (b) that every board should have available from within its membership expertise and experience in management.
- (2) A board or person, when co-opting or appointing board members, must have regard to **subclause (1)**.

Compare: 1989 No 80 s 99

2 Limits on co-optation and appointment of board members

- (1) A board may not co-opt a board member if the effect of the co-optation would be that the total number of board members co-opted by the board or appointed was equal to or greater than the total number of parent representatives.
- (2) A board may not exercise its powers under **section 117(1)(c) or (d)** if doing so could result in the board having a number of parent representatives that was not greater than the total number of board members co-opted by the board or appointed.
- (3) No more than 1 non-permanently appointed member of the board staff may be co-opted to the board at any one time.

Compare: 1989 No 80 s 100

Elections of board members

3 Elections of board members

- (1) Before **1 September** in every year, the board of a State school or of a special institution that is required to have a student representative must fix a day in **September** in that year for the holding of an election for a student representative.
- (2) The board or institution to which **subclause (1)** applies must hold an election of any student representative on the day fixed for that purpose under **subclause (1)**.
- (3) In every election year, a board must hold 1 or more elections of other elected board members.
- (4) Elections under **subclause (3)** must be held,—
 - (a) for a school that is not a distance school,—
 - (i) on a date fixed by the board that is within the range of dates for those elections in that election year that is specified by the Minister by notice in the *Gazette*; or
 - (ii) if the Minister has not, by notice in the *Gazette* published on or by **31 October** in any year, specified a range of dates for those elections in that election year, on a date fixed by the board that is

- within the range of dates for those elections in the previous election year; and
- (b) for a distance school, on the second Tuesday in **July**, unless the board, before **1 April** in that year, fixes an earlier date for the election (being a date after **1 April**).
- (5) The notice referred to in **subclause (4)(a)** may specify different ranges of dates, for elections under **subclause (3)**, for boards that have, and for schools that have not, adopted staggered election cycles under **clause 4**.
 - (6) Despite **subclause (3)**, a board may not hold an election (or another election) under that subclause in the election year if—
 - (a) the first elections of board members for the board of a school established or integrated after the commencement of this clause are held after **30 April** in the year before an election year and before **31 December** in the election year; or
 - (b) elections under **section 171** are held after **30 April** in the year before an election year and before **31 December** in the election year.
 - (7) Despite **sections 115 to 118 and clauses 1 to 3 of Schedule 21**, no person may both stand or vote in one of the elections and stand or vote in the other if there are to be held (under **subclause (3)** or **section 171**, or in respect of a newly established or integrated school or institution)—
 - (a) an election of 1 or more parent representatives on a board; and
 - (b) an election of 1 or more staff representatives on the board.
 - (8) The first elections for and first meetings of boards of schools and institutions established or integrated after the commencement of this Act must be held on days fixed by the Minister by notice in the *Gazette*.
 - (10) If the Minister approves an alternative constitution for a newly established school under **clause 4 of Schedule 21, subclause (8)** does not apply and the first elections (if any) for, and the first meeting of, the school's board must be held in accordance with a notice under that clause.
 - (11) The first elections (if any) for, and first meeting of, the board of a special institution (being a special institution that was established before the commencement of this clause but that had not had a first election or meeting before that commencement) must be held on a day or days specified by the Minister by notice in the *Gazette*.
 - (12) This clause is subject to **clause 4** (which provides for the election of some parent representatives at the mid-point of an election cycle under this clause) and to **clause 5** (which provides that elections are not to be held when a school is under notice of closure).

Compare: 1989 No 80 s 101

4 Staggered elections for parent representatives

- (1) This clause and **clause 6** apply to the election of board members who are parent representatives.
- (2) A board may decide, in accordance with this clause, to adopt a staggered election cycle in which half the number of its parent representatives are elected at an election held at a mid-term election, and the remainder are elected at an election held in an election year.
- (3) A board that has decided to adopt a staggered election cycle must—
 - (a) hold a mid-term election in the month that is 18 months after the month in which the election in the preceding election year was held; and
 - (b) conduct every mid-term election in accordance with this schedule and any regulations under this Act relating to the election of board members (modified as necessary to give effect to this clause and **clause 6**).
- (4) If the board's decision under **subclause (2)** is made at a time when the next election due to be held is in an election year, the board must ensure that at that election the nomination forms and voting papers indicate which nominees are standing for 18 months and which are standing for 3 years.
- (5) If the board's decision under **subclause (2)** is made within 18 months after an election in an election year, the board must decide which of its parent representatives is to stand down at the mid-term election; and that decision must be by consensus of the parent representatives or, if consensus cannot be reached, by ballot of all the parent representatives.
- (6) A parent representative who, in accordance with **subclause (5)**, is to stand down at a mid-term election goes out of office at the close of the day before the day on which the successor takes office following the election.
- (7) A board that has a staggered election cycle may decide to revert to holding elections only in election years. In that case, at the next election held in an election year, all the parent representatives go out of office in accordance with **clause 8(7)**.
- (8) For the purposes of **subclause (2)**, if there is an odd number of parent representatives on the board, **half the number of its parent representatives** means the highest whole number less than half the total number of parent representatives.

Compare: 1989 No 80 s 101A

5 Election not to be held when school under notice of closure

Nothing in this Act requires or permits a board or a special institution to hold an election for a student representative or other elected board member if the date for the election calculated in accordance with **clause 3 or 4** is after the

date of any notice in the *Gazette* that, in accordance with **section 186(3)**, specifies a day for the school's closure.

Compare: 1989 No 80 s 101AB

6 Consultation requirements for staggered elections of parent representatives

- (1) Every decision under **clause 4(2)** must be made by the board by resolution passed at a meeting of the board open to all parents of students enrolled at the school or schools administered by the board.
- (2) Before making a decision under **clause 4(2)**, a board must take reasonable steps to ensure that the parents of students enrolled at the school or schools administered by the board have reasonable notice of—
 - (a) the time, day, and place of the meeting of the board at which the decision is to be made; and
 - (b) the nature of the decision; and
 - (c) the fact that they have a right to attend the meeting.

Compare: 1989 No 80 s 101B

7 Provisions relating to board with staggered election cycle where commissioner appointed

- (1) This clause applies if a commissioner has been appointed in place of a board that has, or has decided to have, a staggered election cycle, and the commissioner has appointed a date under **section 171** for the holding of elections of board members for a new board.
- (2) Despite **clause 8**, the nomination forms and voting forms for the election must show which nominees are standing only until the next election, and which are standing until the election after the next election.
- (3) Despite **clause 8**, board members who are elected only until the next election go out of office at the close of the day before the day on which the successor takes office following the election.
- (4) If the date that the commissioner has appointed under **section 171** is a date that is within 6 months before the date on which an election is due to be held, the board does not have to hold an election on that date and this clause applies as if that election were not due to be held.

Compare: 1989 No 80 s 101C

Term of office of board members

8 Term of office

- (1) Except as provided in this clause, elected board members take office 7 days after their election.

- (2) Board members elected for a board replacing a commissioner take office when the commissioner's appointment ends.
- (3) A board member may not be co-opted until the board has a vacancy for a co-opted board member; and a co-opted board member takes office when co-opted.
- (4) A board member appointed when the board has a vacancy for a board member appointed by the body or person concerned takes office on appointment.
- (5) Within 6 months before an appointed board member's term of office expires, the person or body by whom or which the board member was appointed (or the successor to that person or body) may appoint a board member to succeed that board member (or reappoint that board member), but—
 - (a) the newly appointed board member may not take office until the day on which elected board members take office under **subclause (1)**; and
 - (b) if, on that day, the person or body concerned is no longer entitled to appoint a successor to the board member holding office when the newly appointed board member was appointed, the newly appointed board member's appointment is treated as void.
- (6) A board member elected under **clause 3(2)** goes out of office 7 days after the day on which a further election under **clause 3(2)** is held at the school or schools concerned.
- (7) All elected board members (other than a board member elected under **clause 3(2)**) holding office at the close of the day before the day on which board members take office under **subclause (1)** go out of office.
- (8) The appointment or co-optation of a board member may be for a term not exceeding 3 years.
- (9) If the first elections of board members for a board or elections under **section 171** are held in an election year before **1 May**, no board member goes out of office under **subclause (6) or (7)** in the election year.
- (10) A board may, when co-opting a board member, specify a term of office for the board member, and if the board does so,—
 - (a) if the term expires before the board member goes out of office under **subclause (7)**, the board member then goes out of office; but
 - (b) otherwise the board member goes out of office under that subclause.
- (11) This clause is subject to **clauses 4 and 12**.

Compare: 1989 No 80 s 102

9 Certain persons ineligible to be board members

- (1) The following persons may not become an elected, an appointed, or a co-opted board member:
 - (a) a person who is an undischarged bankrupt:

- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:
 - (c) a person who is not capable of being a board member under **clause 10(1)**:
 - (d) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
 - (e) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's—
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare:
 - (f) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person:
 - (g) a person who is not a New Zealand citizen and—
 - (i) to whom section 15 or 16 of the Immigration Act 2009 applies; or
 - (ii) who is obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time (being a time that, when specified, was less than 12 months); or
 - (iii) who is treated for the purposes of that Act as being unlawfully in New Zealand.
- (2) Any permanently appointed member of the board staff may, if otherwise eligible for election, be elected as a staff representative, but no permanently appointed member of the board staff may be otherwise elected to the board or be appointed or co-opted onto the board.
- (3) A non-permanently appointed member of the board staff may, if otherwise eligible, be elected, appointed, or co-opted onto the board.
- (4) A person who has been appointed returning officer for an election of board members is not eligible to be nominated as a candidate in the election.

Compare: 1989 No 80 s 103

10 Financial interests that disqualify persons from being board members

- (1) A person is not capable of being a board member or a member of a committee of a board if the total of all payments made or to be made by or on behalf of the

board in respect of all contracts made by it in which that person is concerned or interested exceeds in any financial year—

- (a) the amount determined for the purpose by the Secretary, in consultation with the Auditor-General, by notice in the *Gazette*; or
 - (b) in the absence of an amount determined under **paragraph (a)**, \$25,000.
- (2) For the purposes of **subclause (1)**, a board member or a member of a committee of a board is to be treated as being concerned or interested in a contract made by a board with a company if—
- (a) the board member owns, whether directly or through a nominee, 10% or more of the issued capital of the company or of any other company controlling that company; or
 - (b) the board member is the managing director or the general manager (by whatever names they are called) of the company.
- (3) For the purposes of this clause, a company is to be treated as controlling another company if it owns 50% or more of the issued capital of that other company or is able to control the exercise of 50% or more of the total voting powers exercisable by all the members of that other company.
- (4) Despite anything in this clause,—
- (a) a person is not disqualified under this clause if the Secretary approves the contract at the request of the board, whether or not the contract is already entered into; and
 - (b) the Secretary may, by notice in the *Gazette*, issue guidelines setting out the basis on which applications for approval under **paragraph (a)** are to be considered.
- (5) In this clause,—

contract, in relation to a board,—

- (a) means a contract made by any person directly with the board; and
- (b) includes any relationship with the board that is intended to constitute a contract but is not an enforceable contract; but
- (c) does not include any contract of service for the employment of any person as an officer or employee of the board

company means a company incorporated under the Companies Act 1993 or any former Companies Act or a society incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act

subcontract, in relation to any contract made by a board,—

- (a) means a subcontract made with the contractor under that contract, or with another subcontractor, to do any act to which the head contract relates; and

- (b) includes any subsidiary transaction relating to the contract or subcontract.

Compare: 1989 No 80 s 103A

11 Requirements before appointment

Before a person is elected, co-opted, or appointed as a board member, the person must confirm to the board that the person is, to the best of their knowledge, eligible to be a board member, having regard to the grounds of ineligibility in **clauses 9 and 10**.

Compare: 1989 No 80 s 103B

Casual vacancies

12 When casual vacancies arise

- (1) A board member's office becomes vacant when an elected, appointed, or co-opted board member—
- (a) dies; or
 - (b) resigns by written notice to the board; or
 - (c) is absent from 3 consecutive board meetings without the prior leave of the board; or
 - (d) becomes a person who (in terms of **clause 9(1)**) may not become an elected, appointed, or co-opted board member.
- (2) If a property order is made in respect of a board member under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders),—
- (a) **subclause (1)(d)** does not apply to the board member owing only to the making of that order; but
 - (b) while the order remains in force, the board member is to be treated as having been granted leave of absence by the board and is not capable of acting as a board member during that period.
- (3) When a board member elected by the board staff ceases to be a member of the board staff, the board member's office becomes vacant.
- (4) A second board member's office becomes vacant on any day when—
- (a) already 1 co-opted board member is a member of the board staff; and
 - (b) another co-opted board member becomes a member of the board staff.
- (5) When the board of a State integrated school receives a written notice from the school's proprietors dismissing any board member appointed by them, the board member's office becomes vacant.
- (6) When a board member elected by students ceases to be enrolled full-time at the school or special institution, the board member's office becomes vacant.

- (7) An unfilled vacancy is a casual vacancy and is to be treated as having arisen on the day on which the elected board members take office if—
- (a) at any election of board members fewer persons are elected than there are vacancies to be filled; and
 - (b) the board is not then dissolved.

Compare: 1989 No 80 s 104

13 Filling casual vacancies of elected board members

- (1) A casual vacancy for an elected board member must be filled by the election of a board member, in the same manner as that in which the vacating board member was elected, for the remainder of the vacating board member's term.
- (2) If no nominations are received for the election of a board member by students, or no board member is elected at the election, the vacancy may not be filled until the next election required to be held by **clause 3(2) or section 171**.
- (3) Where a casual vacancy for an elected board member occurs during any period of 6 months commencing on **1 October** in a year before an election year, a board may, not later than 28 days after it occurs, resolve not to fill it, and if it does so, the vacancy may not be filled.
- (4) If a casual vacancy for an elected board member occurs at any other time, the board must resolve, within 8 weeks of the vacancy occurring, whether to—
 - (a) hold an election to fill the vacancy; or
 - (b) fill the vacancy by selection.
- (5) If the board resolves to fill the vacancy by selection, it must, within 14 days of the resolution, give notice of the vacancy and of its proposal to fill the vacancy to its school community and the wider local community in the manner that best meets the needs of the school community and the wider community.
- (6) A board may not resolve to fill a casual vacancy by selection if the effect would be that the number of elected parent representatives on the board is less than, or equal to, the number of parent representatives on the board who have not been elected.
- (7) Despite resolving to fill a vacancy by selection, the board must hold an election to fill the vacancy if, within 28 days of the publication of the notice referred to in **subclause (5)**, a total of at least 10% of the people entitled to vote in an election for board members advises the board, in writing, that they wish the vacancy to be filled by an election.
- (8) An election to fill a casual vacancy for an elected board member must be held,—
 - (a) if the board resolved under **subclause (4)(a)** to hold an election, on the 15th Friday after the date on which the vacancy occurred, or on any earlier date fixed by the board at least 6 weeks before the election date; or

- (b) if the board holds an election as a result of a request under **subclause (7)**, on the tenth Friday after receiving the request, or on any earlier date fixed by the board at least 6 weeks before the election date.
- (9) If the board resolved under **subclause (4)(b)** to fill a casual vacancy by selection and no request has been received under **subclause (7)** by the last date for lodging a request, the board must select a person within 6 weeks of that date, and the person selected takes office on the day of selection by the board.
- (10) This Act applies to a board member selected under this clause to fill a casual vacancy of an elected board member as if the person had been elected, and every reference to an elected board member (except in **subclause (6)**) includes a reference to a board member so selected.

Compare: 1989 No 80 s 105

14 Election or appointment of boards of continuing schools

- (1) If a notice under **section 193(5)** provides that the board of the continuing school is to be a continuing board,—
 - (a) the board of the continuing school must, within 28 days after the date of that notice, co-opt at least 1 board member in respect of each of the merging schools so that each merging school is represented on the continuing board; and
 - (b) each of those co-opted board members holds office until the end of the interim period (unless replaced earlier); and
 - (c) **clause 2** (which limits the co-optation and appointment of board members) does not apply to board members co-opted for an interim period.
- (2) If a notice under **section 193(5)** provides that the board of the continuing school is to be an appointed board,—
 - (a) the notice must specify the constitution of the appointed board during the interim period, including how many board members (if any) the board may co-opt; and
 - (b) the Minister is not bound by **section 115** in determining the constitution of the appointed board.
- (3) When a board is appointed by the Minister,—
 - (a) the board members of the continuing school go out of office at the close of the day before the start of the interim period; and
 - (b) the board members of the appointed board take office on the date of the start of the interim period.
- (4) A continuing board or an appointed board may make decisions and exercise powers during the interim period both for the purposes of the continuing school before the merger and for the purpose of providing and preparing for the continuing school after the merger has taken effect.

- (5) Unless the board of the continuing school was (immediately before the merger took effect) a combined board established under **clause 7 of Schedule 21**, an appointed board or a continuing board that replaces it must hold elections for a new board on a day that is not later than 3 months after the date the merger takes effect.
- (6) If an appointed board or a continuing board is required by **subclause (5)** to hold elections for a new board, all its elected, appointed, and co-opted board members holding office immediately before the election day go out of office on the close of the day before the date on which the newly elected board members are to take office.
- (7) If the merger takes effect after **31 October** in the year before an election year and before **31 December** in that election year, a board that is required to hold an election under **subclause (5)** does not have to hold the election until the next election year.

Compare: 1989 No 80 s 156AB

15 Alternative constitutions for continuing schools

- (1) If a notice under **section 193(5)** provides that the board of the continuing school is to have an alternative constitution approved under **clause 4 of Schedule 21**, the notice must specify the date on which the alternative constitution is to take effect.
- (2) The date in **subclause (1)** must be before the date that the notice under **section 193(1)** takes effect.
- (3) The board members of the continuing school go out of office at the close of the day before the date specified under **subclause (1)**.
- (4) A board established under **clause 4 of Schedule 21** may make decisions and exercise powers both for the purposes of the continuing school before the merger and for the purpose of providing and preparing for the continuing school after the merger has taken effect.

Compare: 1989 No 80 s 156AC

Schedule 23

National student numbers

s 588

1 Interpretation

In this schedule, unless the context otherwise requires, **education provider** means—

- (a) an early childhood service; and
- (b) a registered school; and
- (c) a tertiary education organisation.

2 Purpose

The purpose of this schedule is to authorise the use by specified users of national student numbers for specific purposes, in order to facilitate the accurate use and transfer, by specified users, of information relating to individual students.

Compare: 1989 No 80 s 341

3 Assigning national student numbers

The Secretary may cause to be assigned a national student number to—

- (a) any student who—
 - (i) is enrolled with an education provider; or
 - (ii) has been granted an exemption under **section 37 or 38**;
- (b) any child aged under 6 years if the Secretary has reasonable grounds to believe that the child—
 - (i) is unlikely to attend an early childhood service; and
 - (ii) is likely to benefit from attending the early childhood service.

Compare: 1989 No 80 s 343(1), (1A)

4 Use of national student numbers

(1) The Secretary—

- (a) may authorise or require a specified user to use national student numbers; and
- (b) may subject an authorisation or requirement to any conditions that the Secretary thinks fit; and
- (c) must restrict the use of national student numbers to 1 or more of the following purposes:
 - (i) monitoring and ensuring student enrolment and attendance:
 - (ii) encouraging attendance at early childhood services:

- (iii) ensuring education providers and students receive appropriate resourcing;
 - ~~(iv) carrying out research or statistical analysis or both:~~
 - (iv) statistical purposes:
 - (iva) research purposes:
 - (v) ensuring that student educational records are accurately maintained;
 - (vi) establishing and maintaining student identities to support online learning; and
- (d) must give notice of each authorisation, requirement, condition, and restriction in the *Gazette*.
- (2) The notice must specify when an authorisation, requirement, condition, or restriction takes effect, which must be a date on or after the date the notice is gazetted.
- (3) An authorisation, requirement, restriction, or condition may be made generally (by reference to a class of specified user) or specifically (by reference to a named specified user).
- (4) A specified user must use national student numbers in accordance with the restrictions and conditions that apply.

Compare: 1989 No 80 s 344

5 Person may use or disclose own national student number

Despite anything in this schedule, a person may use or disclose their own national student number for any purpose.

Compare: 1989 No 80 s 345

Schedule 23A

Directions relating to COVID-19

s 612Cs 612D(3)

1 Application and purpose of schedule

- (1) This schedule applies while an epidemic notice is in force for COVID-19 under section 5 of the Epidemic Preparedness Act 2006.
- (2) The purpose of this schedule is to provide a response to the outbreak of COVID-19, and a recovery from it, that—
 - (a) avoids, remedies, or mitigates the actual or potential adverse effects of the outbreak; and
 - (b) facilitates co-ordinated processes and planning.

Compare: 1989 No 80 s 476A

2 Interpretation

In this schedule, unless the context otherwise requires,—

education entity means—

- (a) a registered school:
- (b) a service provider:
- (c) a hostel:
- (d) a private training establishment:
- (e) an institution:
- (f) an educational body

educational body—

- (a) means a body corporate that is recognised by the Minister as a body that provides any educational or developmental service or facility; and
- (b) includes a tertiary education organisation

governing authority body, in relation to an education entity, means the body that is primarily responsible for the governance of the education entity.

Compare: 1989 No 80 s 476B

3 Power for Secretary to direct ~~institutions~~ education entities in relation to COVID-19 measures

The Secretary may, for the purpose of this schedule, direct the governing authority body of an education entity (or the governing authorities bodies of a class of education entities) to comply with any specified requirements—

- (a) to close or open the education entity or any part of it (including in relation to all students or any specified category, class, or year group of students):

- (b) for the operation, control, or management of the education entity:
- (c) to provide education or instruction through the education entity in any specified ways (for example, through distance or online learning).

Compare: 1989 No 80 s 476C

4 Effect of directions

- (1) Every education entity to which a direction applies must give effect to the direction on the date on which the direction is given or on any later date that is specified in the direction.
- (2) A direction overrides every other provision of this Act (apart from the provisions in this schedule).

Compare: 1989 No 80 s 476D

5 Publication and review of directions

- (1) As soon as practicable after a direction is given, the Secretary must ensure that it is published in the *Gazette* and on an Internet site maintained by or on behalf of the Ministry.
- (2) A direction expires on the earlier of—
 - (a) its expiry date:
 - (b) the end of the period for which the epidemic notice for COVID-19 is in force.

Compare: 1989 No 80 s 476E

6 Academic freedom unaffected

Nothing in this schedule limits the academic freedom of—

- (a) an institution other than NZIST as set out in **section 247**:
- (b) NZIST as set out in **section 305**.

Compare: 1989 No 80 s 476F

Schedule 24 Consequential amendments and revocations

ss ~~620(3)~~, ~~620A~~, ~~621(4)~~

Part 1

Amendments to Acts that come into force on Royal assent

Accident Compensation Act 2001 (2001 No 49)

In section 6(1), definition of **place of education**, replace paragraph (a) with:

- (a) means—
 - (i) a composite school or a secondary school as defined by **section 10(1) of the Education and Training Act 2019** or a private school registered under **section 200** of that Act; and
 - (ii) an institution as defined by **section 10(1)** of that Act; and
 - (iii) a registered establishment as defined by **section 10(1)** of that Act; and

In section 11(1)(b), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section 281(1)(d), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In Schedule 1, clause 12, replace the definition of **educational participation** with:

- educational participation** means participation within the claimant’s school day or period of attendance at an early childhood service by a claimant who is—
- (a) entitled to free enrolment and free education under the **Education and Training Act 2019** and is—
 - (i) enrolled at a registered school within the meaning of that Act; or
 - (ii) exempted under **section 37 or 40** of that Act from the requirement to be enrolled; or
 - (iii) exempted under **section 42** (but not **section 42(1)(c)**) of that Act from attending a school; or
 - (b) attending a licensed early childhood service within the meaning of **section 10(1)** of that Act; or
 - (c) enrolled at a State school or specialist school under an agreement to which **section 36** of that Act applies

Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)

Replace section 16(2)(c) with:

- (c) **sections 535 to 537** of the **Education and Training Act 2019**:

Building Act 2004 (2004 No 72)

Replace section 133AE(1)(d) with:

- (d) a building that is regularly occupied by at least 20 people and that is used as any of the following:
 - (i) an early childhood education and care centre licensed under **Part 2 of the Education and Training Act 2019**;
 - (ii) a registered school or an integrated school (within the meaning of the **Education and Training Act 2019**);
 - (iii) a private training establishment registered under **subpart 5 of Part 4 of the Education and Training Act 2019**;
 - (iv) an institution established under **section 248 of the Education and Training Act 2019**;

Care and Support Workers (Pay Equity) Settlement Act 2017 (2017 No 24)

In section 5, definition of **level 2 qualification**, paragraph (b), definition of **level 3 qualification**, paragraph (b), and definition of **level 4 qualification**, paragraph (b), replace “(as that term is defined in section 477 of the Education Act 1989)” with “(as defined in **section 10(1) of the Education and Training Act 2019**)”.

In section 5, definition of **NZQA**, replace “established under Part 20 of the Education Act 1989” with “continued by **section 401 of the Education and Training Act 2019**”.

Central North Island Forests Land Collective Settlement Act 2008 (2008 No 99)

Replace section 30(2)(c) with:

- (c) **sections 535 to 537** of the Education and Training Act 2019:

Child Support Act 1991 (1991 No 142)

In section 5(2)(a), replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Children’s Act 2014 (2014 No 40)

In section 5(1), definition of **children’s agencies**, paragraph (b), replace “Education Act 1989” with “**Education and Training Act 2019**”.

In section 15(1), replace the definition of **school board** with:

- school board** means a board or body that is, or 1 or more managers who are,—
- (a) a board as defined in **section 10(1) of the Education and Training Act 2019**; or
 - (b) the manager or managers of a private school that is registered under **section 200** of that Act.

In Schedule 1, items (25) and (31A), replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Children’s Act 2014 (2014 No 40)—*continued*

In Schedule 1, items (26) and (30), replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 1, item (29), replace “sections 20 and 25 of the Education Act 1989” with “**sections 34 and 35 of the Education and Training Act 2019**”.

Climate Change Response Act 2002 (2002 No 40)

In section 5ZW(8)(d), delete “of trustees”.

Contract and Commercial Law Act 2017 (2017 No 5)

In Schedule 5, Part 4, paragraph (q), replace “established under the Education Act 1989” with “appointed under the **Education and Training Act 2019**”.

Copyright Act 1994 (1994 No 143)

In section 2(1), replace the definition of **educational establishment** with:

educational establishment means—

- (a) a school to which the **Education and Training Act 2019** applies;
- (b) a specialist school or special service established under **section 184 of the Education and Training Act 2019**;
- (c) an early childhood service within the meaning of **section 10(1) of the Education and Training Act 2019**;
- (d) any of the following within the meaning of **section 10(1) of the Education and Training Act 2019** that is not conducted for profit:
 - (i) an institution;
 - (ii) a private training establishment;
 - (iii) a government training establishment;
- (e) any body, or class of body, that is not conducted for profit and that is approved by the Minister of Education as an educational establishment for the purposes of this Act by notice published in the *Gazette*

In section 117(4), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Corrections Act 2004 (2004 No 50)

In section 78(2)(a), replace “Education Act 1989” with “**Education and Training Act 2019**”.

In section 180(1)(c), replace “section 307B of the Education Act 1989” with “**clause 6 of Schedule 9 of the Education and Training Act 2019**”.

In section 180(2)(b), replace “Part 25 of the Education Act 1989, in relation to information requested for the purposes of the operation of section 307B of that Act,” with

Corrections Act 2004 (2004 No 50)—*continued*

“**Schedule 9 of the Education and Training Act 2019**, in relation to information requested for the purposes of **clause 6 of Schedule 9** of that Act.”.

In section 180C(2), definition of **allowance**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

Crimes Act 1961 (1961 No 43)

In section 99, definition of **official**, replace “the State Sector Act 1988” with “**section 10(4) of the Education and Training Act 2019**”.

In section 307A(2)(c), delete “of trustees”.

Crown Entities Act 2004 (2004 No 115)

Replace section 5 with:

5 Application of this Act to school boards

- (1) Schedule 3 applies to school boards and their Crown entity subsidiaries.
- (2) Otherwise this Act does not apply to school boards and their Crown entity subsidiaries.

In section 6(1), delete “of this Act and Schedule 13A of the Education Act 1989”.

In section 6(1A), delete “of this Act and Part 2 of Schedule 13A of the Education Act 1989”.

Replace section 7(1)(d) and (e) with:

(d) school boards:

What are they?

These are boards that are bodies corporate constituted under the **Education and Training Act 2019** (including distance schools)

Definition

A body that is a board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019** and includes a board of a school designated as a distance school by the Minister of Education under **section 183** of that Act

(e) tertiary education institutions:

What are they?

These are tertiary institutions (for example, universities, New Zealand Institute of Skills and Technology, or wānanga) that are bodies corporate established or continued under the **Education and Training Act 2019**

Definition

An institution established or continued under **subparts 3 or 4 of Part 4** of the **Education and Training Act 2019**

In section 8(a) and 9(2), delete “of trustees”.

In section 10(1), definition of **board**, paragraph (e), delete “of trustees”.

In section 10(1), definition of **entity’s Act**, replace paragraph (d) with:

- (d) in relation to a school board or a tertiary education institution, the **Education and Training Act 2019**

Crown Entities Act 2004 (2004 No 115)—*continued*

In section 10(1), definition of **member**, replace paragraph (e) with:

(e) means, in relation to a school board, a member of the board; and

In section 10(1), replace the definition of **school board of trustees** with:

school board has the meaning set out in **section 7(1)(d)**

In sections 12(6), 107(2), and 135(1)(a)(iii), delete “of trustees”.

In section 136(1), definition of **financial year**, replace paragraph (a) with:

(a) in relation to a school board or a tertiary education institution, an academic year as defined in **section 10(1) of the Education and Training Act 2019**; and

In the heading to section 157, delete “of trustees”.

In section 157(1), delete “of trustees”.

In the heading to Schedule 3, delete “of trustees”.

In Schedule 4, item relating to section 154, replace “, as amended by the Education Act 1989 section 220(2)–(2B)” with “, as modified by the **Education and Training Act 2019, section 293(2)–(5)**”.

In Schedule 4, item relating to section 155, replace “Education Act 1989, section 220(2AA)(a)” with “**Education and Training Act 2019, section 293(3)(a)**”.

In Schedule 4, item relating to section 156, replace “Education Act 1989, section 220(2B)” with “**Education and Training Act 2019, section 293(5)**”.

In Schedule 4, item relating to section 156A, replace “Education Act 1989, section 220(2AA)(b)” with “**Education and Training Act 2019, section 293(3)(b)**”.

In Schedule 4, items relating to section 220, replace “Section 220 Education Act 1989” with “**Section 293 Education and Training Act 2019**”.

Customs and Excise Act 2018 (2018 No 4)

In section 308(6), definition of **benefit**, paragraph (d), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section 314(5), definition of **benefit**, paragraph (d), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

Dilworth Trustees Empowering Act 1983 (1983 No 3 (P))

In section 3, replace “Education Act 1964” with “**Education and Training Act 2019**”.

Electoral Act 1993 (1993 No 87)

In section 3(1), definition of **public servant**, paragraph (b)(i), replace “Education service as defined in the State Sector Act 1988” with “education service as defined in **section 10(4) of the Education and Training Act 2019**”.

In section 52(5), replace “staff of a university or a university college, or the New Zealand Institute of Skills and Technology (NZIST) or an NZIST subsidiary that provides education or training (or both), or a wananga, community college, or teachers college may continue to teach or supervise the studies of students at that university, or university college, NZIST, an NZIST subsidiary, a wananga, a community college, or a teachers college” with “staff of an institution (as defined in the **Education and Training Act 2019**) may continue to teach or supervise the studies of students at that institution”.

Employment Relations Act 2000 (2000 No 24)

In section 69L(2), replace “section 77HA of the State Sector Act 1988” with “**section 572 of the Education and Training Act 2019**”.

In section 86A(4)(c), replace “section 74AC of the State Sector Act 1988” with “**section 556 of the Education and Training Act 2019**”.

In section 137(1)(a)(v), replace “, 58, 77A, and 77D” with “and 58”.

In section 137(1)(a)(vi), replace “Parts 6 and 7” with “Part 6”.

After section 137(1)(a)(x), insert:

(xi) **Part 3 and sections 556 and 567 of the Education and Training Act 2019**; or

In section 194(1), replace “Parts 5, 6, 7, or 7A of the State Sector Act 1988” with “**Parts 5 and 6 of the State Sector Act 1988** or **subpart 4 of Part 6 of the Education and Training Act 2019**”.

In section 194(3), after “**State Sector Act 1988**”, insert “or the **Education and Training Act 2019**”.

Equal Pay Act 1972 (1972 No 118)

In section 2(1), definition of **employee**, repeal paragraph (e).

Estate and Gift Duties Act 1968 (1968 No 35)

In section 73(2)(jb), replace “board of trustees that is constituted under Part 9 of the Education Act 1989” with “board that is constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**”.

In section 73(2)(jc), replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

Family Violence Act 2018 (2018 No 46)

In section 19, definition of **licensed early childhood service**, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 19, replace the definition of **school board** with:

school board means a board or body that is, or 1 or more managers who are,—

- (a) a board as defined in **section 10(1) of the Education and Training Act 2019**; or
- (b) the manager or managers of a private school that is registered under **section 200** of that Act

In section 19, definition of **social services practitioner**, paragraph (a), replace “Education Act 1989” with “**Education and Training Act 2019**”.

Finance Act (No 2) 1992 (1992 No 127)

In section 5(1), definition of **the training Minister**, replace “Part 21 of the Education Act 1989” with “**subpart 5 of Part 5 of the Education and Training Act 2019**”.

In section 5(7), replace “Part 21 of the Education Act 1989” with “**subpart 5 of Part 5 of the Education and Training Act 2019**”.

Financial Advisers Act 2008 (2008 No 91)

In section 5, repeal the definition of **college of education**.

In section 5, repeal the definition of **general education system**.

In section 5, replace the definition of **lecturer** with:

lecturer means a person who is employed by a university, the New Zealand Institute of Skills and Technology (NZIST), or an NZIST subsidiary to teach or instruct students of the university, NZIST, or NZIST subsidiary

In section 5, definition of **teaching position**, replace “section 120 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 5, definition of **NZIST**, replace “established by section 222A of the Education Act 1989” with “continued by **section 301 of the Education and Training Act 2019**”.

In section 5, definition of **university**, replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Fire and Emergency New Zealand Act 2017 (2017 No 17)

In section 75(3), replace “section 310 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Food Act 2014 (2014 No 32)

In section 368(3)(g), replace “Education Act 1989” with “**Education and Training Act 2019**”.

Goods and Services Tax Act 1985 (1985 No 141)

In section 78B(2A)(aa)(ia) and (b)(i), replace “section 236 of the Education Act 1989” with “**section 364 of the Education and Training Act 2019**”.

In section 78B(2B)(a), replace “section 236 of the Education Act 1989” with “**section 364 of the Education and Training Act 2019**”.

Government Superannuation Fund Act 1956 (1956 No 47)

In section 2(1), definition of **controlling authority**, paragraph (ca), replace “established under Part 20 of the Education Act 1989” with “continued by **section 401 of the Education and Training Act 2019**”.

In section 2(1), definition of **controlling authority**, paragraph (cc), replace “established under Part 13A of the Education Act 1989” with “continued by **section 379 of the Education and Training Act 2019**”.

In section 2(1), definition of **education service**, replace “section 2 of the State Sector Act 1988” with “**section 10(4) of the Education and Training Act 2019**”.

Harmful Digital Communications Act 2015 (2015 No 63)

In section 4, definition of **professional leader**, replace “section 120 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 4, definition of **registered school**, replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Health Act 1956 (1956 No 65)

In section 2(1), definition of **educational institution**, paragraph (b), replace “section 310(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Replace section 125(1) with:

- (1) In this section,—
- early childhood education and care centre** and **State school** have the meanings given in **section 10(1) of the Education and Training Act 2019**
- private school** means a school registered under **section 200 of the Education and Training Act 2019**.

In section 125(2), replace “public school” with “State school”.

Health and Safety at Work Act 2015 (2015 No 70)

Replace section 52(2)(d) with:

Health and Safety at Work Act 2015 (2015 No 70)—continued

- (d) a member of a school board appointed or elected under the **Education and Training Act 2019**.

In section 52(3), replace the definition of **board** and **trustee** with:

board, in relation to a school, has the same meaning as in **section 10(1)** of the **Education and Training Act 2019**

Heretaunga Tamatea Claims Settlement Act 2018 (2018 No 14)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 105(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Hineuru Claims Settlement Act 2016 (2016 No 33)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 115(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Human Rights Act 1993 (1993 No 82)

In section 28(2)(a) and (b), replace “section 464 of the Education Act 1989” with “**clause 47 of Schedule 6 of the Education and Training Act 2019**”.

Immigration Act 2009 (2009 No 51)

In section 4, definition of **compulsory education**, replace paragraph (a) with:

- (a) provided at any primary school, intermediate school, composite school, secondary school, or specialist school (within the meaning of the **Education and Training Act 2019**), whether at a State school, a private school, or an integrated school (within the meaning of **section 10(1)** of that Act); and

In section 4, definition of **course of study**, replace paragraph (a)(i) with:

- (i) any course of tuition or instruction for people entitled to free enrolment and education under **section 32 of the Education and Training Act 2019**, conducted by any primary school, intermediate school, composite school, secondary school, or specialist school, whether at a State school, a private school, or an integrated school (within the meaning of **section 10(1)** of that Act); and

In section 4, definition of **education provider**, replace paragraphs (a) and (b) with:

Immigration Act 2009 (2009 No 51)—*continued*

- (a) in relation to any institution controlled by a board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**, means that board:
- (b) in relation to any institution controlled by the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the **Education and Training Act 2019**, means that chief executive:

In section 21(b), replace “Education Act 1989” with “**Education and Training Act 2019**”.

Income Tax Act 2007 (2007 No 97)

In section CF 1(2), definition of **education grant**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section CW 36, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

~~In section CW 55BB(1)(b)(i), replace “Education Act 1964” with “**Education and Training Act 2019**”.~~

~~In section CW 55BB(1)(b)(iii), replace “Education Act 1964 and the Education Act 1989” with “**Education and Training Act 2019**”.~~

~~Replace section CW 55BB(1)(b) with:~~

- ~~(b) younger than 18, and attends a registered school as defined in **section 10(1) of the Education and Training Act 2019**.~~

In section LD 3(2)(bb), replace “Board of Trustees that is constituted under Part 9 of the Education Act 1989” with “board that is constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**”.

In section MA 8, definition of **social assistance payment**, paragraph (d), replace “section 193 of the Education Act 1964, section 303 of the Education Act 1989,” with “**section 608 of the Education and Training Act 2019**”.

~~Replace section MD 8(b) with:~~

- ~~(b) a basic grant and an independent circumstances grant made under regulations made under **section 608 of the Education and Training Act 2019** or an enactment substituted for that section; or~~

~~In section MX 2(c)(i), replace “Education Act 1989” with “**Education and Training Act 2019**”.~~

In section RD 5(6)(c), replace “section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections” with “**section 608 of the Education and Training Act 2019** or an enactment substituted for that section”.

Income Tax Act 2007 (2007 No 97)—continued

In section RD 11(3), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section YA 1, definition of **specified living allowance**, paragraph (d), replace “section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections” with “**section 608 of the Education and Training Act 2019** or an enactment substituted for that section”.

~~In section YA 1, definition of **tertiary education institution**, paragraph (a), replace “Part 14 or 15A, or subpart 1 of Part 10 of Schedule 1 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.~~

In section YA 1, definition of **tertiary education institution**, replace paragraph (a) with:

- (a) established or continued under **subpart 3 or 4 of Part 4 of the Education and Training Act 2019** and has not been disestablished under that Act; and

Intelligence and Security Act 2017 (2017 No 10)

In section 135(b), replace “section 343 of the Education Act 1989” with “**clause 3 of Schedule 23 of the Education and Training Act 2019**”.

Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (2018 No 28)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 105(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Kitchener Memorial Scholarship Trust Act 1941 (1941 No 20)

In section 4(1), replace “(established by section 240(1) of the Education Act 1989)” with “(continued by **section 298(1) of the Education and Training Act 2019**)”.

In section 7(3), replace “Education Act 1914” with “**Education and Training Act 2019**”.

Legislation Act 2012 (2012 No 119)

In section 36C(2), definition of **central government entity**, paragraph (b), delete “of trustees”.

In Schedule 2, replace the items relating to the Education Act 1989 with:

Education and Training Act 2019	40(6)10(2)
Education and Training Act 2019	40(6)
Education and Training Act 2019	360(1)

Legislation Act 2019 (2019 No 58)

In section 77, definition of **relevant central government entity**, paragraph (b), delete “of trustees”.

In Schedule 4, replace the items relating to the Education Act 1989 with:

Education and Training Act 2019	40(6)10(2)
Education and Training Act 2019	40(6)
Education and Training Act 2019	360(1)

Lincoln University Act 1961 (1961 No 52)

In section 2(1), definition of **assisted student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **exempt student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **foreign student**.

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(3), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

Local Authorities (Members’ Interests) Act 1968 (1968 No 147)

In Schedule 1, Part 1, repeal the items relating to education boards, governing bodies of community colleges, governing bodies of teachers’ colleges, and governing bodies of technical institutes.

In Schedule 1, Part 1, repeal the item relating to secondary schools councils.

In Schedule 1, Part 2, repeal the item relating to the University Grants Committee.

Local Government Act 2002 (2002 No 84)

In section 205(b), replace “Part 12 of the Education Act 1989” with “**subpart 6 of Part 3 of the Education and Training Act 2019**”.

In section 205(b)(i), delete “or section 70B of the Education Act 1989”.

Local Government Official Information and Meetings Act 1987 (1987 No 174)

Replace section 46(7) with:

- (7) Nothing in subsections (1) to (6) applies to a board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**, but every board must take all reasonable steps to ensure that parents (within the meaning of that Act) of students enrolled at schools that the board administers can readily find out, within a reasonable time before those meetings, where and when meetings of the board are to be held.

In Schedule 2, Part 1, replace the item relating to boards of trustees with:

Boards constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**

In Schedule 2, Part 1, item relating to councils of institutions, replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In Schedule 2, Part 2, item relating to New Zealand Institute of Skills and Technology, replace “established under Part 15A of the Education Act 1989” with “continued by **section 301 of the Education and Training Act 2019**”.

Local Government (Rating) Act 2002 (2002 No 6)

In section 26(c)(i), replace “Part 8 of the Education Act 1989” with “**Part 6 of the Education and Training Act 2019**”.

In Schedule 1, Part 1, replace clause 6 with:

- 6 Land owned or used by, and for the purposes of, any of the following as defined in **section 10(1) of the Education and Training Act 2019**:
- (a) a State school:
 - (b) a State integrated school:
 - (c) a specialist school:
 - (d) a special institution:
 - (e) ~~a licensed~~ an early childhood education and care centre, except an early childhood education and care centre that operates for profit:
 - (f) a private school, except a registered school that operates for profit:
 - (g) an institution.

Maori Fisheries Act 2004 (2004 No 78)

In section 5, replace the definition of **wananga** with:

wānanga has the same meaning as in **section 10(1) of the Education and Training Act 2019**

In section 83(b)(iii)(A) and (B) and (iv), replace “wananga,” with “wānanga,”.

Maori Soldiers Trust Act 1957 (1957 No 29)

In section 8(5), replace “Director of Education” with “Secretary for Education”.

Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)

Replace section 16(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

Massey University Act 1963 (1963 No 7)

In section 2(1), definition of **assisted student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **exempt student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **foreign student**.

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(4), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)

Replace section 16(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 129(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Methodist Charitable and Educational Trusts Act 1911 (1911 No 1 (L))

In section 32(1), replace “the curricula and syllabuses prescribed by the Education Act 1964 and regulations made thereunder” with “the foundation curriculum policy statements and the national curriculum statements issued under **section 86 of the Education and Training Act 2019**”.

Music Teachers Act 1981 (1981 No 3)

In section 2, definition of **Director-General**, replace “Education Act 1964” with “**Education and Training Act 2019**”.

In section 2, repeal the definition of **Director-General**.

In section 2, insert in its appropriate alphabetical order:

Secretary has the same meaning as in **section 10(1) of the Education and Training Act 2019**

In section 30, replace “Director-General” with “Secretary”.

New Zealand Superannuation and Veteran’s Pension Legislation Amendment Act 2020 (2020 No 00)

In **section 41(2)**, new **section RD 11(3B)** of the Income Tax Act 2007, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In **section 44**, new **section 24B(3B)** of the Tax Administration Act 1994, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)

Replace section 13(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

In section 117(2), definition of **tertiary education institution**, replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 117(2), replace the definition of **Unitec** with:

Unitec means Unitec New Zealand Limited.

In section 122(4)(a), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

In section 128(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāa Rauru Kiiitahi Claims Settlement Act 2005 (2005 No 84)

Replace section 17(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)

In section 8, definition of **memorials**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)—*continued*

In section 48(1), definition of **relevant land**, paragraph (c)(iii), replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 50(c)(i), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

In section 54(a), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

Replace section 463(d) with:

(d) **sections 535 to 537 of the Education and Training Act 2019:**

Ngāi Tai ki Tāmaki Claims Settlement Act 2018 (2018 No 18)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 118(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)

Replace section 15(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 94(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 161(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāruahine Claims Settlement Act 2016 (2016 No 93)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 106(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 120(5)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 120(5)(a), replace “Education Act 1989” with “**Education and Training Act 2019** in each place”.

Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)

Replace section 24(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

In section 169(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 182(4)(a), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)

Replace section 15(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Ngāti Awa Claims Settlement Act 2005 (2005 No 28)

Replace section 17(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 116(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (2014 No 20)

Replace section 27(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

In section 189(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 202(4)(a), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 113(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)

Replace section 17(2)(b) with:

Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)—*continued***(b) sections 535 to 537 of the Education and Training Act 2019:**

In section 26(2) and (3), delete “of trustees”.

In section 160(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)

Replace section 13(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

In section 103(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)

Replace section 15(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:**Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)**

Replace section 16(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

In section 120(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)

Replace section 17(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:**Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)**

Replace section 16(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

In section 103(2), replace “section 143(5) or 206 of the Education Act 1989” with “**sections 530 of the Education and Training Act 2019**”.

Ngāti Porou Claims Settlement Act 2012 (2012 No 31)

Replace section 15(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

In section 106(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)

Replace section 17(2)(b) with:

Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)—*continued*

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 95(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Rangī Claims Settlement Act 2019 (2019 No 40)

Replace section 17(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 156(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 171(5)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 171(5)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)

Replace section 18(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 70(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)

Replace section 18(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 113(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)

Replace section 17(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

Ngāti Tama Claims Settlement Act 2003 (2003 No 126)

Replace section 14(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:

Ngāti Tamaoho Claims Settlement Act 2018 (2018 No 19)

Replace section 17(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)

Replace section 18(2)(c) with:

Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)—*continued***(c) sections 535 to 537 of the Education and Training Act 2019:**

In section 191(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 206(4)(a), replace “section 207(4) of the Education Act 1989” with “**section 531(3) of the Education and Training Act 2019**”.

Ngāti Tūrangitukua Claims Settlement Act 1999 (1999 No 118)

Replace section 11(1)(d) with:

(d) sections 535 to 537 of the Education and Training Act 2019:**Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)**

Replace section 17(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:**Ngāti Tūwharetoa Claims Settlement Act 2018 (2018 No 55)**

Replace section 17(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 142(2)(c), replace “Wairiki Bay of Plenty Polytechnic Limited” with “Toi Ohomai Institute of Technology Limited”.

In section 142(4), definition of **Part No 2 playing fields/Wairiki Bay of Plenty Polytechnic Campus, Horomatangi Street, Taupo**, replace “Wairiki Bay of Plenty Polytechnic” with “Toi Ohomai Institute of Technology Limited”.

In section 149(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Ngāti Whare Claims Settlement Act 2012 (2012 No 28)

Replace section 15(2)(c) with:

(c) sections 535 to 537 of the Education and Training Act 2019:**Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)**

Replace section 16(2)(b) with:

(b) sections 535 to 537 of the Education and Training Act 2019:

In section 105(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 119(4)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 119(4)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)

Replace section 15(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Ngatikahu ki Whangaroa Claims Settlement Act 2017 (2017 No 41)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

Official Information Act 1982 (1982 No 156)

In Schedule 1, replace the item relating to board of trustees with:

Boards constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**

In Schedule 1, repeal the item relating to education authorities.

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, replace the item relating to boards of trustees with:

Boards constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**

In Schedule 1, Part 2, item relating to institutions, replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In Schedule 1, Part 2, repeal the item relating to a workforce development council.

In Schedule 1, Part 2, insert in their appropriate alphabetical order:

Dispute resolution panels established under **subpart 9 of Part 3 of the Education and Training Act 2019**

New Zealand Institute of Skills and Technology

Workforce development councils established under **section 344 of the Education and Training Act 2019**

Oranga Tamariki Act 1989 (1989 No 24)

In section 2(1), definition of **child welfare and protection agency**, paragraph (1), replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 66Q(5), replace “section 344(2) of the Education Act 1989” with “**clause 4(1)(c) of Schedule 23 of the Education and Training Act 2019**”.

Overseas Investment Act 2005 (2005 No 82)

In section 6(1), definition of **long-term accommodation facility**, paragraph (a)(ii), replace “section 2 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Parental Leave and Employment Protection Act 1987 (1987 No 129)

In section 2AC(1), replace “board of trustees” with “board”.

Replace section 2AC(2) with:

- (2) In subsection (1),—
- board** means a board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**
- integrated school** has the same meaning as State integrated school in **section 10(1) of the Education and Training Act 2019**
- State school** and **teacher** have the same meanings as in **section 10(1) of the Education and Training Act 2019**.

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)

In section 157(3), replace “section 479 of the Education Act 1989” with “**section 344 of the Education and Training Act 2019**”.

Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)

Replace section 12(2)(c) with:

- (c) **sections 535 to 537 of the Education and Training Act 2019:**

In section 102(b), replace “section 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Pouakani Claims Settlement Act 2000 (2000 No 90)

Replace section 14(2)(d) with:

- (d) **sections 535 to 537 of the Education and Training Act 2019:**

Privacy Act 1993 (1993 No 28)

In section 97, definition of **specified agency**, replace paragraph (j) with:

- (j) a tertiary education organisation, a secondary school, or a private training establishment (as those terms are defined in **section 10(1) of the Education and Training Act 2019**) to which **clause 8 of Schedule 9** of that Act applies, as ~~from time to time~~ notified to the Commissioner by the department for the time being responsible for the administration of the Social Security Act 2018:

In section 97, definition of **specified agency**, paragraph (l), replace “Part 32 of the Education Act 1989” with “**section 447 of the Education and Training Act 2019**”.

In Schedule 3, replace the item relating to the Education Act 1989 with:

Education and Training Act 2019

clauses 7 and 8 of Schedule 9

Privacy Act 2020 (2020 No 31)

In Schedule 5, replace the item relating to the Education Act 1989 with:

Education and Training Act 2019 **clause 9 of Schedule 3 and clauses 7, 8, and 9 of Schedule 9**

In Schedule 7, repeal the items relating to the Education Act 1989.

In Schedule 9, Part 1, repeal the items relating to the Education Act 1989.

Prohibition of Gang Insignia in Government Premises Act 2013 (2013 No 56)

In section 4, replace the definition of **integrated school** with:

integrated school has the same meaning as **State integrated school** in **section 10(1) of the Education and Training Act 2019**

In section 4, definition of **school**, paragraphs (d) and (e), replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 4, definition of **State school**, replace “section 145(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Public and Community Housing Management Act 1992 (1992 No 76)

In section 2(1), definition of **study grant**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section 66, definition of **benefit**, paragraph (d), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

Public Audit Act 2001 (2001 No 10)

In Schedule 1, item relating to educational bodies, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In Schedule 2, repeal the item relating to workforce development councils.

In Schedule 2, insert in its appropriate alphabetical order:

Workforce development councils established under **section 344 of the Education and Training Act 2019**

Public Bodies Contracts Act 1959 (1959 No 98)

In Schedule 1, Part 1, item relating to committees of management of secondary schools, replace “Education Act 1964 (1964 No 135)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to education boards, replace “Education Act 1914 (1914 No 56) (1931 Reprint, Vol 2, p 1007)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to governing bodies of community colleges, replace “Education Act 1964 (1964 No 135)” with “**Education and Training Act 2019**”.

Public Bodies Contracts Act 1959 (1959 No 98)—*continued*

In Schedule 1, Part 1, item relating to governing bodies of teachers colleges, replace “Education Act 1964 (1964 No 135)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to governing bodies of technical institutes, replace “Education Act 1964 (1964 No 135)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to secondary schools councils, replace “Education Act 1964 (1964 No 135)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to secondary schools governing bodies, replace “Education Act 1914 (1914 No 56) (1931 Reprint, Vol 2, p 1007)” with “**Education and Training Act 2019**”.

In Schedule 1, Part 1, item relating to secondary schools governing bodies, replace “Schedule 9” with “**Schedule 9**”.

Public Works Act 1981 (1981 No 35)

In section 2, definition of **local authority**, replace “any education authority within the meaning of the Education Act 1964, council of any university within the meaning of the Education Act 1989,” with “a board or a council of a university (as those terms are defined in **section 10(1) of the Education and Training Act 2019**),”.

In section 2, definition of **public work** and **work**, paragraph (b), replace “any education authority within the meaning of the Education Act 1964 and every use of land for any Government work or local work which such education authority” with “a board (as defined in **section 10(1) of the Education and Training Act 2019**) and every use of land for any government work or local work which such board”.

In section 2, definition of **public work** and **work**, paragraph (c), replace “any university within the meaning of the Education Act 1989” with “a university (as defined in **section 10(1) of the Education and Training Act 2019**)”.

Public Works Act 1981 (1981 No 35)

In section 2, replace the definition of **local authority** with:

local authority means—

- (a) any regional council, territorial authority, catchment authority or regional water board, harbour board, or electric power board:
- (b) any of the following as constituted, established, or continued by the **Education and Training Act 2019**:
 - (i) a board:
 - (ii) the council of a university:
 - (iii) a wānanga:
 - (iv) the New Zealand Institute of Skills and Technology or any of its subsidiaries that provide education or training (or both):
- (c) an airport authority:

Public Works Act 1981 (1981 No 35)—*continued*

- (d) any other person or body (however designated) having authority, under any Act, to undertake the construction or execution of any public work

In section 2, definitions of **public work** and **work**, replace paragraphs (b) and (c) with:

- (b) every Government work or local work constructed, undertaken, established, managed, operated, or maintained by any board (as defined in **section 10(1) of the Education and Training Act 2019**) and every use of land for any Government work or local work that the board constructs, undertakes, establishes, manages, operates, or maintains, and includes anything required (whether directly or indirectly) for any such Government work or local work or use:
- (c) any Government work or local work that is, or is required, for—
- (i) a university or wānanga as defined in **section 10(1) of the Education and Training Act 2019**; or
 - (ii) the New Zealand Institute of Skills and Technology (as continued by that Act) or any of its subsidiaries that provide education or training (or both)

Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 117(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017 (2017 No 38)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 106(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Raukawa Claims Settlement Act 2014 (2014 No 7)

Replace section 17(2)(b) with:

- (b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 113(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Real Estate Agents Act 2008 (2008 No 66)

In section 12(3), replace “section 479 of the Education Act 1989” with “**section 344 of the Education and Training Act 2019**”.

Reserves and Other Lands Disposal Act 1979 (1979 No 69)

In section 6(2), replace “Notwithstanding anything to the contrary in the Education Act 1964” with “Despite anything in the **Education and Training Act 2019**”.

Reserves and Other Lands Disposal Act 1993 (1993 No 1)

In section 2, delete “and college of education” in each place.

In section 10(5), replace “the provisions of section 202 of the Education Act 1964” with “**section 291 of the Education and Training Act 2019**”.

Reserves and Other Lands Disposal Act 1995 (1995 No 54)

In section 6(3)(c), (d), (e), (f), and (g), replace “Board of Trustees” with “Board”.

Reserves, Endowments, and Crown and Maori Lands Exchange, Sale, Disposal, and Enabling Act 1898 (1898 No 39)

In section 11(2), replace “The Education Act 1877” with “**the Education and Training Act 2019**”.

Residential Tenancies Act 1986 (1986 No 120)

In section 5(1)(h)(i), replace “section 2 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Replace section 5B(6) with:

(6) In this section, **tertiary education provider** has the same meaning as in **section 10(1) of the Education and Training Act 2019**.

In section 53A(1), replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Rongowhakaata Claims Settlement Act 2012 (2012 No 54)

Replace section 17(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

In section 76(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Rotorua High Schools Board Empowering Act 1979 (1979 No 19)

In the Preamble, replace “Education Act 1964” with “**Education and Training Act 2019**”.

Smoke-free Environments Act 1990 (1990 No 108)

In section 2(1), definition of **early childhood education and care centre**, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 2(1), definition of **registered school**, replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Social Security Act 2018 (2018 No 32)

In section 67(b)(i), replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section 133(2), replace “section 21, 22, or 22A of the Education Act 1989” with “**section 37, 38, or 40 of the Education and Training Act 2019**”.

In section 162(3), definition of **full-time course**, paragraph (b), replace “sections 303, 306, and 307 of the Education Act 1989” with “**sections 608 and 609 and clause 3 of Schedule 9 of the Education and Training Act 2019**”.

In section 163(3), replace “Education Act 1989” with “**Education and Training Act 2019**”.

In the heading to section 243, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In section 243(a), replace “section 24(1) or 29(1) of the Education Act 1989” with “**section 224(1) or 225(1) of the Education and Training Act 2019**”.

In Schedule 2, definition of **financially independent**, paragraph (b)(ii), replace “sections 303, 306, and 307 of the Education Act 1989” with “**sections 608 and 609 and clause 3 of Schedule 9 of the Education and Training Act 2019**”.

In Schedule 2, definition of **full-time student**, paragraph (a)(ii), replace “sections 303, 306, and 307 of the Education Act 1989” with “**sections 608 and 609 and clause 3 of Schedule 9 of the Education and Training Act 2019**”.

In Schedule 2, definition of **NCEA level 2**, replace “established under Part 20 of the Education Act 1989” with “continued by **section 401 of the Education and Training Act 2019**”.

In Schedule 2, definition of **student allowance**, replace “section 303” with “**section 608**”.

In Schedule 2, definition of **student allowance**, replace “sections 306 and 307) of the Education Act 1989” with “**section 609 and clause 3 of Schedule 9) of the Education and Training Act 2019**”.

In Schedule 6, clause 16(1)(a), replace “section 2 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 6, clause 16(1)(b), replace “section 159B(1)” with “**section 10(1)**”.

In Schedule 6, clause 16(3), replace “section 344(2) of the Education Act 1989” with “**clause 4(1)(c) of Schedule 23 of the Education Act 1989**”.

State Sector Act 1988 (1988 No 20)

In section 2, replace the definition of **education service** with:

education service means—

(a) service in the employment of—

State Sector Act 1988 (1988 No 20)—*continued*

- (i) a State school or a State integrated school (as those terms are defined in **section 10(1) of the Education and Training Act 2020**); or
 - (ii) a tertiary education institution; or
 - (iii) any other educational institution for which a separate employer for the purposes of this Act is designated by any enactment or by the Minister;
- (b) service as a teacher in the employment of any free kindergarten association that controls a free kindergarten (as those terms are defined in **section 10(1) of the Education and Training Act 2019**);
- (e) service as a teacher in the employment of the Secretary (as defined in **section 10(1) of the Education and Training Act 2019**)

In section 2, replace the definition of **education service** with:

education service has the same meaning as in **section 10(4) of the Education and Training Act 2019**

In section 2, repeal the definition of **employer**.

In section 2, replace the definition of **tertiary education institution** with:

tertiary education institution has the same meaning as **institution** in **section 10(1) of the Education and Training Act 2020 2019**

In section 84, definition of **employer**, replace paragraph (b) with:

- (b) means the chief executive of the Ministry (as defined in **section 10(1) of the Education and Training Act 2019**), for the duration of the application period in that section, in relation to—
- (i) a tertiary education institution; or
 - (i) a State school (as defined in **section 10(1) and (5)(b)** of that Act); or
 - (ia) a special institution (as defined in **section 10(1)** of that Act); or
 - (ii) a free kindergarten (as defined in **section 10(1)** of that Act); and

Student Loan Scheme Act 2011 (2011 No 62)

In section 7(3), replace “section 307AC of the Education Act 1989” with “**clause 11 of Schedule 9 of the Education and Training Act 2019**”.

In section 53, definition of **programme of study**, paragraph (a), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 53, definition of **programme of study**, paragraph (b), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Student Loan Scheme Act 2011 (2011 No 62)—*continued*

In Schedule 1, clause 1, definition of **ENZ**, replace “established under Part 21 of the Education Act 1989” with “continued by **section 479 of the Education and Training Act 2019**”.

In Schedule 1, clause 1, definition of **NZQA**, replace “under Part 20 of the Education Act 1989” with “by **section 401 of the Education and Training Act 2019**”.

In Schedule 1, clause 7(2), replace “section 253(1)(c) of the Education Act 1989” with “**section 423(1)(c) of the Education and Training Act 2019**”.

In Schedule 1, clause 8(1)(a)(iii), replace “section 253(1)(c) of the Education Act 1989” with “**section 423(1)(c) of the Education and Training Act 2019**”.

In Schedule 1, clause 9(a)(iii), replace “section 253(1)(c) of the Education Act 1989” with “**section 423(1)(c) of the Education and Training Act 2019**”.

Summary Offences Act 1981 (1981 No 113)

In section 14A(2)(a)(i), replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 14A(2)(a)(ii), replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Tapuika Claims Settlement Act 2014 (2014 No 15)

Replace section 17(3)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 156(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 126(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 140(5)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 140(5)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Taranaki Scholarships Trust Board Act 1957 (1957 No 108)

In section 12(4), replace “correspondence school” with “distance school”.

In section 12(5), replace “correspondence school” with “distance school”.

In section 12(6)(a), replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

Taranaki Scholarships Trust Board Act 1957 (1957 No 108)—*continued*

In section 12(6)(b), replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Tax Administration Act 1994 (1994 No 166)

In section 3(1), definition of **student allowance**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

In section 32E(2)(kb), replace “a Board of Trustees that is constituted under Part 9 of the Education Act 1989” with “a board that is constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**”.

In section 32E(2)(kc), replace “Part 14 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

Te Atiawa Claims Settlement Act 2016 (2016 No 94)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 95(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 109(6)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 109(6)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Te Aupouri Claims Settlement Act 2015 (2015 No 77)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 162(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)

Replace section 89(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)

Replace section 16(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 120(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

In section 135(5)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 135(5)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)—*continued*

In section 136(4)(a), replace “section 207(4)” with “**section 531(3)**”.

In section 136(4)(a), replace “Education Act 1989” with “**Education and Training Act 2019**” in each place.

Te Rarawa Claims Settlement Act 2015 (2015 No 79)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 30(2) and (3), delete “of trustees”.

In section 190(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

Te Roroa Claims Settlement Act 2008 (2008 No 100)

Replace section 15(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Te Urewera Act 2014 (2014 No 51)

Replace section 90(1)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)

Replace section 19(2)(c) with:

(c) **sections 535 to 537 of the Education and Training Act 2019:**

Thames Boys’ and Girls’ High School Act 1878 (1878 No 54)

In section 12, replace “Inspector appointed under the Education Act 1989” with “inspector appointed under the **Education and Training Act 2019**”.

Treaty of Waitangi Act 1975 (1975 No 114)

In section 5(1)(aa), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

In section 8A(1)(b), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 8A(1)(b), replace “section 207” with “**section 531**”.

In section 8A(1)(b), replace “section 215” with “**section 539**”.

In section 8A(2)(b), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

In section 8A(2)(c), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

Treaty of Waitangi Act 1975 (1975 No 114)—*continued*

In section 8A(3), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 8A(6)(b), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 8A(6)(b), replace “section 207” with “**section 531**”.

In section 8A(6)(b), replace “section 215” with “**section 539**”.

In section 8D(1), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

In section 8E(1), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

In section 8E(3)(b), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

In section 8G(3)(c)(ii), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In section 8G(3)(c)(ii), replace “section 207” with “**section 531**”.

In section 8G(3)(c)(ii), replace “section 215” with “**section 539**”.

In section 8G(3)(f), replace “section 212 of the Education Act 1989” with “**section 536 of the Education and Training Act 2019**”.

Trusts Act 2019 (2019 No 38)

In Schedule 4, Part 1, repeal the item relating to the Education Act 1989.

Tūhoe Claims Settlement Act 2014 (2014 No 50)

Replace section 17(2)(b) with:

(b) **sections 535 to 537 of the Education and Training Act 2019:**

In section 66(2), replace “section 143(5) or 206 of the Education Act 1989” with “**section 530 of the Education and Training Act 2019**”.

University of Auckland Act 1961 (1961 No 50)

In section 2(1), definition of **assisted student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **exempt student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **foreign student**.

University of Auckland Act 1961 (1961 No 50)—*continued*

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(6), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

University of Canterbury Act 1961 (1961 No 49)

In section 2(1), definition of **assisted student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **exempt student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **foreign student**.

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(5), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

University of Waikato Act 1963 (1963 No 8)

In section 2(1), definition of **assisted student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

University of Waikato Act 1963 (1963 No 8)—*continued*

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), definition of **exempt student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **foreign student**.

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(3), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

Veterans’ Support Act 2014 (2014 No 56)

In section 81(1)(b), replace “tertiary institution” with “tertiary education organisation”.

Replace section 81(5) with:

- (5) In this section, **secondary school** and **tertiary education organisation** have the same meanings as in **section 10(1) of the Education and Training Act 2019**.

Victoria University of Wellington Act 1961 (1961 No 51)

In section 2(1), repeal the definition of **assisted student**.

In section 2(1), definition of **the Council**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

In section 2(1), definition of **domestic student**, replace “a foreign student” with “an international student”.

In section 2(1), repeal the definition of **exempt student**.

In section 2(1), repeal the definition of **foreign student**.

In section 2(1), insert in its appropriate alphabetical order:

international student means a person who is not a New Zealand citizen and is—

- (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

Victoria University of Wellington Act 1961 (1961 No 51)—*continued*

- (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
- (c) treated for the purposes of that Act as being unlawfully in New Zealand

In section 4(5), replace “section 194 of the Education Act 1989” with “**section 264 of the Education and Training Act 2019**”.

Waikato Raupatu Claims Settlement Act 1995 (1995 No 58)

Replace section 14(1)(e) with:

- (e) **sections 535 to 537 of the Education and Training Act 2019:**

Waitaha Claims Settlement Act 2013 (2013 No 38)

Replace section 14(2)(c) with:

- (c) **sections 535 to 537 of the Education and Training Act 2019:**

Wanganui High School Act 1878 (1878 No 42 (L))

In section 2, replace “The Education Act 1877” with “**the Education and Training Act 2019**”.

Part 2

Amendments to Act that come into force on 1 January 2023

Crown Entities Act 2004 (2004 No 115)

In section 198(3)(a), replace “section 87(2)(ca)(iv) and (v) of the Education Act 1989” with “**section 129(2)(d)(iv) and (v) of the Education and Training Act 2019**”.

In Schedule 3, item relating to section 155, replace “section 87(4) of the Education Act 1989” with “**section 129(5) of the Education and Training Act 2019**”.

In Schedule 3, item relating to section 168(1) and (2), replace “section 87(3) of the Education Act 1989” with “**section 129(3) of the Education and Training Act 2019**”.

Part 3

Amendments to legislative instruments

Accident Compensation (Experience Rating) Regulations 2019 (LI 2019/38)

In Schedule 1, item 801, replace “Special-school” with “Specialist school”.

In Schedule 2, item 801, replace “Special-school” with “Specialist school”.

In Schedule 3, item 801, replace “Special-school” with “Specialist school”.

In Schedule 4, item 801, replace “Special-school” with “Specialist school”.

Accident Compensation (Work Account Levies) Regulations 2019 (LI 2019/37)

In Schedule 1, item relating to special-school education, replace “Special-school” with “Specialist school”.

In Schedule 2, item relating to special-school education, replace “Special-school” with “Specialist school”.

In Schedule 3, item relating to special-school education, replace “Special-school” with “Specialist school”.

In Schedule 4, item relating to special-school education, replace “Special-school” with “Specialist school”.

Accident Insurance (“Counsellor”) Regulations 1999 (SR 1999/166)

In regulation 2, definition of **course of education**, replace paragraph (a) with:

- (a) a university, the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries, or a wānanga; or

Building (Accreditation of Building Consent Authorities) Regulations 2006 (SR 2006/399)

In regulation 3, definition of **specified New Zealand qualification**, paragraph (o)(i), replace “established under Part 20 of the Education Act 1989” with “continued by **section 401 of the Education and Training Act 2019**”.

Courts Security Regulations 2019 (LI 2019/61)

In Schedule 2, item relating to Student Allowance Appeal Authorities, replace “Education Act 1989” with “**Education and Training Act 2019**”.

COVID-19 Public Health Response (Alert Level 2) Order 2020 (LI 2020/84)

In clause 21(4), definition of **education entity**, replace “section 476B of the Education Act 1989” with “**clause 2 of Schedule 23A of the Education and Training Act 2019**”.

Crown Entities (Financial Powers) Regulations 2005 (SR 2005/68)

In the heading to regulation 12, delete “~~of Trustees trustees~~”.

In regulation 12(1) and (2), delete “of trustees” in each place.

Education (2019 School Staffing) Order 2018 (LI 2018/129)

Revoke.

Education (2020 School Staffing) Order 2019 (LI 2019/180)

In clause 4(1), replace “section 91H” with “**section 549**”.

In clause 4(1), replace “section 91C” with “**section 546**”.

In clause 6(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Education (2020 School Staffing) Order 2019 (LI 2019/180)—continued

In clause 6(2), replace “section 2(1) or (2), 91A(1), or 145(1)” with “**section 10(1)**”.

In clause 25(2), replace “section 110” with “**clause 7 of Schedule 21**”.

Replace clause 63(a) and (b) with:

- (a) is of a kind exempted (under a notice under **section 492** of the Act) from paying all of the amount required to be paid by **section 491** of the Act; or
- (b) has been or is to be paid, by the Ministry of Foreign Affairs and Trade, all of the amount required to be paid by **section 491** of the Act.

In clause 71, replace “Part 7A” with “**subpart 5 of Part 3**”.

In clause 72, replace “section 91F(b)” with “**section 547**”.

Education (Early Childhood Services) Regulations 2008 (SR 2008/204)

In regulation 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 3, definition of **centre**, replace “section 310” with “**section 10(1)**”.

In regulation 3, definition of **early childhood service**, replace “section 309” with “**section 10(1)**”.

In regulation 3, revoke the definition of **existing service**.

In regulation 3, definition of **licensed early childhood service**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **licensed home-based education and care service**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **licensed hospital-based education and care service**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **Secretary**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **service provider**, replace “section 309” with “**section 10(1)**”.

Revoke regulation 4.

Revoke regulation 15(4).

Revoke regulation 19 and the cross-heading above regulation 19.

Revoke regulation 22(1)(d).

Revoke regulation 25(3).

Revoke regulation 32(4).

Revoke regulation 41(2).

In regulation 47(1)(c)(ii)(B), replace “Part 26” with “**Part 2**”.

Education (Education Review Office Authorised to Use National Student Numbers) Regulations 2019 (LI 2019/20)

In regulation 3, replace “an authorised user for the purposes of Part 30 of the Education Act 1989” with “a specified user for the purposes of **Schedule 23 of the Education and Training Act 2019**”.

Education (Export Education Levy) Regulations 2011 (SR 2011/383)

In regulation 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 3, definition of **provider**, replace “section 238D” with “**section 10(1)**”.

Education (Hostels) Regulations 2005 (SR 2005/332)

In regulation 3, replace “section 144B” with “**section 594**”.

In regulation 4, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

~~In regulation 4, definition of **authority**, replace “Parts 1 to 3 and 11” with “the Act”.~~

~~In regulation 4, definition of **authority**, delete “of Parts 1 to 3 and 11”.~~

In regulation 4, definition of **Board**, replace “section 2(1)” with “**section 10(1)**”.

In regulation 4, definition of **Chief Review Officer**, replace “section 2(1)” with “**section 10(1)**”.

In regulation 4, definition of **hostel**, replace “section 2(1)” with “**section 10(1)**” in each place.

~~In regulation 4, definition of **parent**, replace “section 2(1)” with “**section 10(1)**”.~~

~~In regulation 4, replace the definition of **parent** with:~~

~~**parent**, in relation to an individual, means the mother, father, or guardian of the individual~~

In regulation 60(c), replace “section 144E” with “**section 596**”.

In regulation 60(c), replace “section 144D” with “**section 595**”.

Education (Ministry of Social Development Authorised to Use National Student Numbers) Regulations 2012 (SR 2012/338)

In regulation 3, replace “an authorised user for the purposes of Part 30 of the Education Act 1989” with “a specified user for the purposes of **Schedule 23 of the Education and Training Act 2019**”.

Education (Payment of Relieving Teachers) Order 2012 (SR 2012/221)

In clause 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Education (Payment of Relieving Teachers) Order 2012 (SR 2012/221)—*continued*

In clause 3(1), definition of **staffing order**, replace “section 91H” with “**section 549**”.

Replace clause 3(2) with:

- (2) In this order, unless the context otherwise requires, terms defined in the Act and used, but not defined, in this order have the same meaning as in the Act.

In clause 4(1), replace “section 91G(2)” with “**section 548(3)**”.

Education (Playgroups) Regulations 2008 (SR 2008/205)

In regulation 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 3, replace the definition of **certificated playgroup** with:

certificated playgroup means a playgroup for which a current certificate is held

In regulation 3, definition of **playgroup**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **Secretary**, replace “section 309” with “**section 10(1)**”.

In regulation 3, definition of **service provider**, replace “section 309” with “**section 10(1)**”.

In regulations 11(1), 13(1), 15(2), 16(1) and (2), 18 and 18(a), 19, 20(1), 21, and 22(1), replace “certificated” with “certified”.

In regulation 22(2)(b), replace “Part 26” with “**Part 2**”.

Education (Refund Requirements for International Students) Notice 2012 (SR 2012/312)

In clause 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In clause 3(2), replace “section 159” with “**section 10(1)**”.

In clause 4(1), replace “section 235A” with “**section 499**”.

Education (Registration of Early Childhood Services Teachers) Regulations 2004 (SR 2004/236)

Replace regulation 3 with:

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the **Education and Training Act 2019**

declared early childhood service means an early childhood service (as defined in **section 10(1)** of the Act) that is declared by regulation 4(1) to be an early childhood education and care service for the purposes of the Act

Education (Registration of Early Childhood Services Teachers) Regulations 2004 (SR 2004/236)—*continued*

teaching position has, for the purposes of the transition plan set out in these regulations, the meaning given in regulation 6.

- (2) In these regulations, unless the context otherwise requires, terms defined in the Act and used, but not defined, in these regulations have the same meaning as in the Act.

Replace regulation 4(1) with:

- (1) Every early childhood service within the meaning of the Act (other than an early childhood service that is specified in subclause (2)) is declared to be an early childhood education and care service for the purposes of the Act.

In regulation 5, replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

Replace regulation 6 with:

6 Meaning of person employed in teaching position

For the purposes of these regulations, **teaching position**, as defined in **section 10(1)** of the Act, is modified to mean,—

- (a) in relation to an early childhood education and care centre, and to a licensed hospital-based education and care service, a person responsible (as defined in regulation 3 of the Education (Early Childhood Services) Regulations 2008); and
- (b) in relation to a licensed home-based education and care service, a person responsible (as defined in regulation 3 of the Education (Early Childhood Services) Regulations 2008).

In regulation 7(1)(a), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 7(1)(c), replace “Education Act 1989” with “the Act in each place”.

In regulation 7(1)(d), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 8(a), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 8(b), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 9(1)(c), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 10(1)(a), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

In regulation 10(1)(b), replace “Part 10 of the Education Act 1989” with “**Schedule 3** of the Act”.

Education (School Attendance) Regulations 1951 (SR 1951/181)

In regulation 2, replace the definition of **school** with:

school means a State primary school, an intermediate school, a secondary school, or a private school registered under the **Education and Training Act 2019**

In regulations 7 and 12, replace “Board of Trustees constituted under the School Trustees Act 1989 or any Act passed in substitution for that Act” with “board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**”.

Education (School Risk Management Scheme) Regulations 2003 (SR 2003/39)

In regulation 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 3, definitions of **Minister** and **Ministry**, delete “of Part 7”.

In regulation 3, replace the definition of **participating school Board** with:

participating school Board has the same meaning as **participating board** in **section 10(1)** of the Act

In regulation 3, replace the definition of **scheme** with:

scheme means a school risk management scheme as defined in **section 10(1)** of the Act

In regulation 5(3)(a), replace “section 78D(5)” with “**section 543(4)**”.

In regulation 5(4), replace “section 78D(5)” with “**section 543(4)**”.

In regulation 6(1), replace “section 78D(2)(a)” with “**section 543(1)(a)**”.

In regulation 6(2), replace “section 78D(3)” with “**section 543(2)**”.

Revoke regulation 6(3).

~~In the Schedule, clause 1.1, definition of **Commissioner**, replace “Education Act 1989” with “**Education and Training Act 2019**”.~~

~~In the Schedule, clause 1.1, revoke the definition of **Commissioner**.~~

In the Schedule, clause 1.1, replace the definition of **participating school Board** with:

participating school Board has the same meaning as **participating board** in **section 10(1) of the Education and Training Act 2019**

In the Schedule, clause 1.1, definition of **state school**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Education (School Trustee Elections) Regulations 2000 (SR 2000/195)

~~Replace regulation 1 with:~~

~~1 Title~~

~~These regulations are the (School Board Elections) Regulations 2000.~~

Education (School Trustee Elections) Regulations 2000 (SR 2000/195)—*continued*

In regulation 2(1) and (2), replace “trustee” with “board”.

In regulation 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Replace regulation 3(3) with:

- (3) In these regulations, unless the context otherwise requires, terms defined in the Act and used, but not defined, in these regulations have the same meaning as in the Act.

In regulation 4(2)(a), replace “correspondence school” with “distance school”.

In regulation 4(3), replace “correspondence school” with “distance school”.

In regulation 5(1), replace “trustee” with “board”.

In regulation 8(1), replace “section 101(6)” with “**clause 3(7) of Schedule 22**”.

In regulation 9(1), replace “correspondence schools” with “distance schools”.

In regulation 9(2), replace “correspondence schools” with “distance schools”.

In regulation 9(3), replace “correspondence school must call for nominations for the election of any trustee” with “distance school must call for nominations for the election of any board member”.

In regulation 9(4)(b), replace “trustee” with “board member”.

In regulation 13(1) and (2), replace “trustees” with “board members”.

In regulation 15(2)(a), replace “trustees” with “board members”.

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (SR 1999/202)

In rule 2(1), definition of **the Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In rule 2(1), definition of **Ministry**, replace “means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of Part 2” with “has the meaning given in **section 10(1)**”.

In rule 2(1), definition of **reconsideration meeting**, replace “section 15 or section 17” with “**section 77 or 79**”.

In rule 2(1), definition of **suspension meeting**, replace “section 17B” with “**section 81**”.

Replace rule 3 with:

3 Board

In these rules, **board** means a board constituted under **subpart 5 of Part 3** of the Act.

In rule 5(1), replace “sections 14 to 18” with “**sections 76 to 84**”.

Revoke rule 5(2) and the box below rule 5(2).

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (SR 1999/202)—*continued*

In rule 6(1), replace “sections 14 to 18” with “**sections 76 to 84**”.

In rule 6(1)(a), replace “sections 14, 17A(1), and 18(1)” with “**sections 76, 80(1), and 84(1)**”.

In rule 6(1)(b), replace “sections 14(1) and (3), 15(1) to (4), 17(1)(a) and (b), 17(2) to (4), 17A, 17B, 17C, and 18(2) and (3)” with “**sections 76(1) and (3), 77(1) to (5), 79(1)(a) and (b), 79(2) to (5), 80, 81, 82, and 84(2) and (3)**”.

In rule 6(1)(c), replace “sections 15(1)(c), (5) and (6), 16, 17C, 17D(1) and (2), and 18(3)” with “**sections 77(1)(c), (6) and (7), 78, 82, 83(1) and (2), and 84(3)**”.

In clause 6(1)(d), replace “sections 17(1)(c), 17C(2)(b), 17D, and 18(3)” with “**sections 79(1)(c), 82(2)(b), 83, and 84(3)**”.

In rule 7, replace “sections 14 to 18” with “**sections 76 to 84**”.

Revoke the boxes below rule 7.

In rule 8, replace “section 14(1)” with “**section 76(1)**”.

In rule 10, replace “section 18(1) or (2)” with “**section 84(1) or (2)**”.

In rule 12, replace “section 14(1)” with “**section 76(1)**”.

In rule 12(b), replace “section 18(1)” with “**section 84(1)**”.

In rule 13, replace “section 14(3)(a)” with “**section 76(3)(a)**”.

In rule 13, replace “sections 17A(2) and (3)” with “**sections 80(2) to (3)**”.

Revoke the box below rule 13.

Revoke the boxes below rule 17.

In the heading to rule 18, replace “sections 15(1)(b), 15(3), 17(1)(b), or 17(3)” with “**sections 77(1)(b), 77(3), 79(1)(b), or 79(3)**”.

In rule 18(1), replace “sections 15(1)(b), 15(3), 17(1)(b), or 17(3)” with “**sections 77(1)(b) or (3) or 79(1)(b) or (3)**”.

In rule 19(1), replace “section 15(3) or section 17(3)” with “**section 77(3) or 79(3)**”.

In rule 21, replace “section 15(3) or section 17(3)” with “**section 77(3) or 79(3)**”.

In rule 21, replace “section 18(3)” with “**section 84(3)**”.

Revoke the boxes below rule 21 and the headings above each box.

Education (Statistics New Zealand Authorised to Use National Student Numbers) Regulations 2008 (SR 2008/134)

In regulation 3, replace “an authorised user for the purposes of Part 30 of the Education Act 1989” with “a specified user for the purposes of **Schedule 23 of the Education and Training Act 2019**”.

Education (Surrender, Retention, and Search) Rules 2013 (SR 2013/469)

In rule 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In rule 3, definition of **authorised staff member**, replace “section 139AAA(9)” with “**section 101**”.

In rule 3, replace the definition of **board** with:

board means a board constituted under **subpart 5 of Part 3** of the Act or a delegate of that board

In rule 3, replace the definition of **item** with:

item means an item to which **section 102** of the Act applies or that is a harmful item as defined in **section 101(1)** of the Act

In rule 3, replace the definition of **taken under the Act** or **taken** with:

taken under the Act or **taken**, in relation to any item or device, means any item or device that has been surrendered under **section 102(2) or (3)** of the Act or seized under **section 103(4)** of the Act

In rule 3, revoke the definition of **teacher**.

In rule 4(a), replace “section 139AAI” with “**section 110**”.

In rule 5(1), replace “section 139AAA” with “**section 101**”.

In rule 5(2)(a), replace “section 139AAA” with “**section 102**”.

In rule 5(2)(b), replace “section 139AAB” with “**section 103**”.

In rule 5(2)(c), replace “sections 139AAA and 139AAB” with “**section 102 and section 103**”.

In rule 11(1), replace “section 139AAB” with “**section 103**”.

In rule 11(2)(d), replace “section 139AAC(2) and (3)” with “**section 104(2) and (3)**”.

Education (Tertiary Education—Criteria Permanent Residents Studying Overseas must Satisfy to be Domestic Students) Regulations 2016 (LI 2016/212)

In regulation 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 3(1), replace the definition of **organisation** with:

organisation has the same meaning as **tertiary education organisation** in **section 10(1)** of the Act

In regulation 3(2), replace “section 159B” with “**section 10(1)**”.

In regulation 5(1), replace “section 159(1)” with “**section 10(1)**”.

Electronic Identity Verification Regulations 2013 (SR 2013/9)

In regulation 4(1)(j), replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Electronic Identity Verification Regulations 2013 (SR 2013/9)—*continued*

Revoke regulation 4(1)(k).

Engine Drivers' Examination Regulations 1952 (SR 1952/149)

In regulation 2, definition of **prescribed fee**, replace “Part 15 of the Education Act 1989” with “**subpart 3 of Part 4 of the Education and Training Act 2019**”.

Health and Safety at Work (Adventure Activities) Regulations 2016 (LI 2016/19)

In regulation 4(6), definition of **registered school**, replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 4(6), definition of **tertiary education provider**, replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Health and Safety at Work (Hazardous Substances) Regulations 2017 (LI 2017/131)

In regulation 3(1), definition of **vulnerable facility**, paragraph (c), replace “(as defined in section 310 of the Education Act 1989), or school (as established under section 146 of the Education Act 1989)” with “(as defined in **section 10(1) of the Education and Training Act 2019**), or school (as established under **section 177** of that Act)”.

Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (LI 2016/17)

In regulation 50(3), replace “section 252 of the Education Act 1989” with “**section 420 of the Education and Training Act 2019**”.

Health Entitlement Cards Regulations 1993 (SR 1993/169)

In regulation 2(1), definition of **student**, paragraph (a)(i), replace “section 145(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 2(1), definition of **student**, paragraph (a)(ii), replace “Private Schools Conditional Integration Act 1975” with “**Education and Training Act 2019**”.

In regulation 2(1), definition of **student**, paragraph (a)(iii), replace “section 35A of the Education Act 1989” with “**section 200 of the Education and Training Act 2019**”.

In regulation 2(1), definition of **student**, paragraph (b), replace “section 145(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Health (Immunisation) Regulations 1995 (SR 1995/304)

In regulation 2(1), definition of **controlling authority**, replace paragraph (b) with:

(b) in relation to a primary school, means—

Health (Immunisation) Regulations 1995 (SR 1995/304)—*continued*

- (i) in the case of a primary school registered or deemed to be registered (including conditionally registered) under **section 200 of the Education and Training Act 2019**, the managers of that school:
- (ii) in the case of any other school, the board of that school constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**

In regulation 2(1), definition of **early childhood education and care centre** or **centre**, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 2(1), replace the definition of **primary school** or **school** with:

- primary school** or **school** means—
- (a) a school established or deemed to have been established under **section 177 of the Education and Training Act 2019** as a primary school:
 - (b) a school registered or deemed to be registered (including conditionally registered) under **section 200** of that Act as a primary school:
 - (c) a State integrated school as defined in **section 10(1)** of that Act

International Student Contract Dispute Resolution Scheme Rules 2016 (LI 2016/42)

In rule 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In rule 3(1), replace the definition of **code administrator** with:

code administrator means a person or agency appointed under regulations made under **section 611** of the Act

In rule 3(1), definition of **DRS operator**, replace “section 238J(4)(a)” with “**section 505(4)(a)**”.

In rule 3(1), definition of **international student**, replace “section 238D” with “**section 10(1)**”.

In rule 3(1), definition of **Minister**, replace “for Tertiary Education, Skills and Employment” with “of Education”.

In rule 3(1), definition of **provider**, replace “section 238D” with “**section 10(1)**”.

In rule 3(1), replace the definition of **scheme** with:

scheme means the student contract dispute resolution scheme established by **section 505** of the Act

In rule 20, replace “section 238L” with “**section 507**”.

Land Transport (Offences and Penalties) Regulations 1999 (SR 1999/99)

In Schedule 1, item relating to Traffic Control Devices 2004 (54002), clause 13.4, replace “Boards of Trustees” with “school boards”.

Lawyers and Conveyancers Act (Conveyancers: Registration and Practice) Regulations 2008 (SR 2008/189)

In regulation 3(1), definition of **tertiary education provider**, replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Legal Services Regulations 2011 (SR 2011/144)

In regulation 9B(3), definition of **residential special school**, replace “section 98(1) of the Education Act 1964” with “**section 184 of the Education and Training Act 2019**”.

In regulation 9B(3), definition of **specified agency**, replace paragraph (c) with:

- (c) a board constituted under **subpart 5 of Part 3 of the Education and Training Act 2019**; and

Minimum Wage Order 2020 (LI 2020/9)

In clause 3(1), definition of **industry training programme**, replace “section 246A of the Education Act 1989” with “**section 404 of the Education and Training Act 2019**”.

National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)

In the Schedule, clause 73(5)(c), delete “of trustees”.

Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (LI 2018/111)

In regulation 36(1)(a), replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 36(1)(b), replace “certificated” with “certified”.

In regulation 42(3)(e), replace “section 21 of the Education Act 1989” with “**section 37 of the Education and Training Act 2019**”.

Oranga Tamariki (Residential Care) Regulations 1996 (SR 1996/354)

In regulation 2, definition of **school age**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

Outer Space and High-altitude Activities (Definition of High-altitude Vehicle) Regulations 2017 (LI 2017/251)

In regulation 5(2)(a)(i), replace “section 146 of the Education Act 1989” with “**section 177 of the Education and Training Act 2019**”.

In regulation 5(2)(a)(i), replace “section 35A” with “**section 200**”.

Outer Space and High-altitude Activities (Definition of High-altitude Vehicle) Regulations 2017 (LI 2017/251)—*continued*

In regulation 5(2)(a)(ii), replace “section 159 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Privacy (Information Sharing Agreement between Inland Revenue and Ministry of Social Development) Order 2017 (LI 2017/176)

In clause 3(1), definition of **subsidies**, paragraph (d), replace “Education Act 1989” with “**Education and Training Act 2019**”.

Privacy (Information Sharing Agreement between Ministry of Social Development and New Zealand Customs Service) Order 2019 (LI 2019/75)

In clause 3(1), definition of **student allowance**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

Privacy (Information Sharing Agreement between New Zealand Gang Intelligence Centre Agencies) Order 2018 (LI 2018/247)

In clause 3, definition of **subsidies**, paragraph (d), replace “Education Act 1989” with “**Education and Training Act 2019**”.

Private Security Personnel and Private Investigators (Minimum Training) Regulations 2013 (SR 2013/321)

In clause 3, definition of **NZQA**, replace “established under Part 20 of the Education Act 1989” with “continued by **section 401 of the Education and Training Act 2019**”.

Social Security Regulations 2018 (LI 2018/202)

In regulation 20(1), definition of **approved early childhood education programme**, paragraph (a), replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 20(1), definition of **approved early childhood education programme**, paragraph (a)(ii), replace “certificated” with “certified”.

In regulation 20(1), definition of **cohort entry policy**, replace “section 5A of the Education Act 1989” with “**section 61 of the Education and Training Act 2019**”.

In regulation 20(1), definition of **tertiary educational institution**, replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 30(1)(b), replace “section 5B(2) of the Education Act 1989” with “**section 62(2) of the Education and Training Act 2019**”.

In regulation 33(f), replace “section 145(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Social Security Regulations 2018 (LI 2018/202)—*continued*

In regulation 40(d), replace “section 145(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 90, definition of **approved early childhood education programme**, paragraph (c), replace “section 152(1) of the Education Act 1989 as a correspondence school.” with “**section 183(1) of the Education and Training Act 2019** as a distance school”.

In regulation 90, definition of **registered school**, replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In regulation 102(2)(d)(i), replace “section 21 or 22 of the Education Act 1989” with “**section 37 or 38 of the Education and Training Act 2019**”.

In regulation 103(2)(b)(i), replace “section 21 or 22 of the Education Act 1989” with “**section 37 or 38 of the Education and Training Act 2019**”.

In regulation 104(2)(d), replace “section 253(1)(c) of the Education Act 1989” with “**section 423(1)(c) of the Education and Training Act 2019**”.

In regulation 273(3), definition of **registered school**, replace “section 2(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 7, replace the item relating to every organisation with:

Every tertiary education organisation within the meaning of **section 10(1) of the Education and Training Act 2019**

In Schedule 7, item relating to every private training establishment, replace “section 159(1) of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 7, item relating to every service provider, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 8, clause 17, definition of **home-based education and care service**, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

In Schedule 8, clause 17, definition of **service provider**, replace “section 309 of the Education Act 1989” with “**section 10(1) of the Education and Training Act 2019**”.

Social Security (Support for Children in Hardship—Transitional Subsidy) Regulations 2016 (LI 2016/52)

In regulation 5(1), definition of **CPI increase**, paragraph (b)(ii), replace “section 303(3B) of the Education Act 1989” with “**section 608(6) of the Education and Training Act 2019**”.

Social Security (Support for Children in Hardship—Transitional Subsidy) Regulations 2016 (LI 2016/52)—continued

In regulation 5(1), definition of **student allowance**, replace “section 303 of the Education Act 1989” with “**section 608 of the Education and Training Act 2019**”.

State Sector (Employees of Boards of Waihopai School and Ruru Special School) Order 2006 (SR 2006/307)

In the heading to clause 3, replace “**Boards of Trustees**” with “**Board**”.

In clause 3(a) and (b), replace “Board of Trustees” with “board”.

Student Allowances Regulations 1998 (SR 1998/277)

In regulation 2(1), definition of **the Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In regulation 2(1), definition of **appeal**, replace “section 305” with “**clause 5 of Schedule 10**”.

In regulation 2(1), replace the definition of **Authority** with:

Authority means a Student Allowance Appeal Authority appointed under **clause 1 of Schedule 10** of the Act

In regulation 2(1), replace the definition of **chief executive** with:

chief executive has the same meaning as in Schedule 2 of the Social Security Act 2018

In regulation 2(1), definition of **merit grant**, delete “, an A-Bursary, or a B-Bursary”.

In regulation 2(1), replace the definition of **recognised programme** with:

recognised programme means—

- (a) in relation to a tertiary provider, a programme approved by the Tertiary Education Commission, and approved—
 - (i) by the New Zealand Qualifications Authority under **section 410** of the Act; or
 - (ii) by the New Zealand Vice-Chancellors Committee under **section 424** of the Act; and
- (b) in relation to a secondary school, a programme determined by the chief executive of the Ministry of Education to be a full-time course of secondary instruction; and
- (c) in relation to any disabled student, a programme approved by the chief executive of the Ministry of Education

In regulation 2(1), replace the definition of **secondary school** with:

secondary school means—

- (a) a secondary school established under **Part 3** of the Act or registered under **section 200** of the Act; or

Student Allowances Regulations 1998 (SR 1998/277)—continued

- (b) a school that provides secondary instruction and is designated as a distance school under **section 183** of the Act; or
- (c) a specialist school established under **section 184** of the Act or a specified institution listed in **Schedule 2** of the Act

In regulation 2(1), definition of **tertiary provider**, replace “college of education, or wananga, a private training establishment continued by the Act,” with “a wānanga, a private training establishment.”

In regulation 2(2), replace “section 302” with “**clause 1 of Schedule 9**”.

In regulation 2A(4), replace “section 248 of the Education Act 1989” with “**section 407** of the Act”.

Revoke regulation 7(1A)(b)(i).

Teaching Council of Aotearoa New Zealand Election Rules 2018 (LI 2018/234)

In rule 3, definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In rule 3, definition of **currently authorised person**, replace “section 366” with “**clause 16 of Schedule 3**”.

In rule 4(1), replace “clause 11H(2) of Schedule 1” with “**clause 4(2) of Schedule 19**”.

In rule 5(1)(b), replace “clause 4A(3) of Schedule 21” with “**clause 5(3) of Schedule 18**”.

In rule 9(7), replace “section 402” with “**section 470**”.

In rule 16(2), replace “section 380” with “**section 448**”.

Teaching Council Rules 2016 (LI 2016/122)

In the enacting statement, replace “Education Council of Aotearoa New Zealand” with “Teaching Council of Aotearoa New Zealand”.

In rule 3(1), definition of **Act**, replace “Education Act 1989” with “**Education and Training Act 2019**”.

In rule 3(1), definition of **Code of Professional Responsibility**, replace “section 387” with “**section 457**”.

In rule 3(1), definition of **list of authorised persons**, replace “section 371” with “**clause 21 of Schedule 3**”.

In rule 3(1), definition of **register**, replace “section 359” with “**clause 8 of Schedule 3**”.

In rule 3(1), definition of **Registration Panel**, replace “section 389” with “**section 459**”.

In rule 3(1), replace the definition of **Teaching Council** with:

Teaching Council Rules 2016 (LI 2016/122)—*continued*

Teaching Council means the Teaching Council of Aotearoa New Zealand continued by **section 447** of the Act.

In rule 7(1)(a), replace “section 392” with “**section 461**”.

In rule 7(1)(b), replace “section 393” with “**section 462**”.

In rule 7(1)(c), replace “section 394” with “**section 463**”.

In rule 7(1)(d), replace “section 395” with “**section 464**”.

In rule 7(1)(e), replace “section 397” with “**section 465**”.

In rule 7(2)(a), replace “section 399” with “**section 467**”.

In rule 7(2)(b), replace “section 410” with “**section 477**”.

In rule 10(c), replace “section 400(2)” with “**section 468(2)**”.

In rule 10(d), replace “section 410(3)” with “**section 477(3)**”.

In rule 11(2), replace “section 400(2) and 410(3)” with “**sections 468(2) and 477(3)**”.

In rule 11(3), replace “section 400(2) and 410(3)” with “**sections 468(2) and 477(3)**”.

In rule 15(3), replace “section 400(4) and 401(6)” with “**sections 468(4) and 469(7)**”.

In rule 17(3), replace “section 401” with “**section 469**”.

In rule 29, replace “section 405(4)” with “**section 473(4)**”.

In rule 30(1), replace “section 405(6)” with “**section 473(6)**”.

In rule 34(2)(c), replace “section 405(6)” with “**section 473(6)**”.

In rule 34(4), replace “section 405(6)” with “**section 473(6)**”.

In rule 36, replace “section 402” with “**section 470**”.

In rule 40(2)(e), replace “section 411” with “**section 478**”.

In rule 41(3), replace “section 412” with “**section 478A**”.

In rule 48A(1)(a), replace “section 353(a)” with “**clause 2(a) of Schedule 3**”.

In rule 48A(1)(b), replace “section 353(b)” with “**clause 2(b) of Schedule 3**”.

In rule 48A(1)(d), replace “section 357” with “**clause 6 of Schedule 3**”.

In rule 48A(1)(e), replace “section 362” with “**clause 11 of Schedule 3**”.

In rule 48A(1)(f), replace “section 353” with “**clause 2 of Schedule 3**”.

In rule 48C(1), replace “section 353” with “**clause 2 of Schedule 3**”.

In rule 49(2), replace “section 398” with “**section 466**”.

In rule 53(2), replace “section 398” with “**section 466**”.

In rule 57(2), replace “section 410AA” with “**section 476A**”.

Teaching Council Rules 2016 (LI 2016/122)—*continued*

In rule 58(2), replace “section 410AA(3)” with “**section 476A(3)**”.

In rule 60B(1), replace “sections 352 to 355” with “**clause 1 to 4 of Schedule 3**”.

In Schedule 1, clause 3(1), replace “section 394” with “**section 463**”.

United World Colleges Scholarships Regulations 1980 (SR 1980/102)

In regulation 2, definition of **school**, replace “section 186 of the Education Act 1964” with “**section 200 of the Education and Training Act 2019**”.

Part 4
Revocations

Auckland Institute of Technology Disestablishment and Incorporation into Auckland University of Technology Order 1999 (SR 1999/333)

Central Institute of Technology Disestablishment and Incorporation into Wellington Institute of Technology Order 2001 (SR 2001/78)

Education Amendment Act 2015 Commencement Order 2015 (LI 2015/105)

Education Amendment Act 2015 Commencement Order 2016 (LI 2016/43)

Education (Date Members of Teaching Council Take Office) Order 2019 (LI 2019/142)

Education (Disestablishment of Auckland College of Education and Incorporation into University of Auckland) Order 2004 (SR 2004/222)

Education (Disestablishment of Christchurch College of Education and Incorporation into University of Canterbury) Order 2006 (SR 2006/214)

Education (Disestablishment of Dunedin College of Education and Incorporation into University of Otago) Order 2006 (SR 2006/215)

Education (Disestablishment of Telford Rural Polytechnic and Incorporation in Lincoln University) Order 2010 (SR 2010/428)

Education (Disestablishment of Wellington College of Education and Incorporation into Victoria University of Wellington) Order 2004 (SR 2004/407)

Education (Extension of Application Period) Order 2018 (LI 2018/128)

Wairarapa Community Polytechnic Disestablishment and Incorporation into Universal College of Learning Order 2000 (SR 2000/194)

Wanganui Regional Community Polytechnic Disestablishment and Incorporation into Universal College of Learning Order 2001 (SR 2001/406)