

House of Representatives

Supplementary Order Paper

Tuesday, 18 February 2020

Education (Vocational Education and Training Reform) Amendment
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 makes various changes to the Education (Vocational Education and Training Reform) Amendment Bill (the **Bill**), which amends the Education Act 1989 (the **Act**). Generally, these changes include minor and technical amendments to improve clarity, remove duplication, and promote consistency, and to update the numbering in *Schedule 1* of the Bill (which contains transitional and savings provisions to be inserted into the Act) following the passage of the Education (Pastoral Care) Amendment Act 2019.

The more significant changes, include—

- inserting *new clauses 21A and 21B* to amend sections 167 and 167A of the Act, which relate to the common seal and methods of contracting by tertiary education institutions, so that the provisions do not apply to NZIST and the corresponding provisions in the Crown Entities Act 2003 relating to these matters apply instead;
- amending *clause 49: new section 222K(2)* to allow staff and students of NZIST subsidiaries to be members of the academic board of NZIST;
- inserting *new clause 49A* to amend section 223(1) of the Act, which provides that the council of each institution may determine the programmes of study and training to be provided at the institution, so that the provision covers NZIST;
- amending *Schedule 1* to replace *new clause 37*, which provides that existing funding approvals granted by the Tertiary Education Commission (**TEC**) to an existing polytechnic before the commencement of the Bill continue in force as if they were granted to the polytechnic’s corresponding subsidiary with *new clause 43* to better align the provision with sections 159YA and 159ZC of the principal Act;
- amending *Schedule 1* to insert *new clause 48*, which authorises NZIST’s council to appoint an interim chief executive for NZIST for the period beginning on 1 April 2020 and ending on the close of 4 June 2020 (being the date on which the permanent chief executive takes up that position);
- amending *Schedule 1* to omit *new clauses 56 and 56C*, which restrict employees of a transitional ITO and the New Zealand Qualifications Authority from receiving compensation for technical redundancy, as the substance of these provisions is covered in *new clauses 68(5) and 69(5)*;
- amending *Schedule 1: new clause 67(2)*, which relates to the allocation of assets of a transitional ITO under its transition plan, to enable the assets to be transferred to a workforce development council or another transitional ITO if the activities of the transitional ITO have been transferred to the workforce development council or the other transitional ITO;
- amending *Schedule 1: new clause 68* which restricts employees of a transitional ITO from receiving compensation for technical redundancy if they are offered equivalent employment by NZIST, an NZIST subsidiary, a wananga, or

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a workforce development council, to also cover any employees who are offered equivalent employment by another transitional ITO:

- amending *Schedule 1* to insert *new clause 70*, which prevents providers from charging trainees a compulsory student services fee (as provided for under section 227 and 235D of the Act) during the period of 1 April 2020 to 31 December 2021:
- amending *Schedule 6*, which makes consequential amendments to other enactments, to update section 52(5) of the Electoral Act 1993 (which relates to the candidacy and election of State servants) and Schedule 2 of the Legislation Act 2012 and Schedule 4 of Legislation Act 2019 (which both contain a list of confirmable instruments) to reflect the changes made by the Bill.

Departmental disclosure statement

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

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

Hon Chris Hipkins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education (Vocational Education and Training Reform) Amendment Act **2019**.

2 Commencement

This Act comes into force on **1 April 2020**.

3 Principal Act

This Act amends the Education Act 1989 (the **principal Act**).

Part 1

Substantive amendments to principal Act

4 Section 2 amended (Interpretation)

- (1) In section 2(1), repeal the definition of **industry training organisation**.
- (2) In section 2(1), definition of **tertiary component**, replace “section 13C of the Industry Training and Apprenticeships Act 1992” with “**section 489**”.

5 Section 31B amended (Provider group for secondary-tertiary programme)

Repeal section 31B(1)(b)(ii).

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- 6 Section 31F amended (Recognition as lead provider of secondary-tertiary programme)**
Repeal section 31F(d).
- 7 Section 159 amended (Interpretation)**
- (1) In section 159(1), replace the definition of **council** with:
- council,—**
- (a) in relation to an institution other than NZIST, means the body that governs the institution in accordance with **section 165**;
- (b) in relation to NZIST, means NZIST’s council members appointed under **section 222G**
- (2) In section 159(1), replace the definition of **existing institution** with:
existing institution means a body specified in Part 1 or 2 of Schedule 13
- (3) In section 159(1), definition of **institution**, replace paragraph (b) with:
- (b) NZIST (including, as the case requires, its subsidiaries that provide education or training, or both); or
- (4) ~~In section 159(1), replace the definition of **record of achievement** with:~~
~~**record of achievement** means a record of a student’s educational outcomes maintained by the Qualifications Authority or a tertiary education provider~~
- (5) In section 159(1), replace the definition of **private training establishment** with:
private training establishment means an establishment, other than an institution, that provides post-school education or training, including vocational education and training
- (5A) In section 159(1), replace the definition of **record of achievement** with:
record of achievement means a record of a student’s educational outcomes maintained by the Qualifications Authority or a tertiary education provider
- (6) In section 159(1), definition of **tertiary education provider**, replace “following, but does not include an industry training organisation” with “following”.
- (7) In section 159(1), repeal the following definitions:
- (a) **combined council**;
- (b) **designated polytechnic**;
- (c) **industry training organisation**;
- (d) **polytechnic**;
- (e) **polytechnic council**;
- (f) **reconstitution day**.
- (8) In section 159(1), insert in their appropriate alphabetical order:

New Zealand Institute of Skills and Technology or **NZIST** means the New Zealand Institute of Skills and Technology established by **section 222A**

NZIST subsidiary means a Crown entity subsidiary of NZIST
trainee—

- (a) means an employee who has a training agreement; and
- (b) includes an apprentice as defined in **section 489**

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)

vocational education and training—

- (a) means education and training that leads to the achievement of industry-developed skill standards, qualifications, or other awards; and
- (b) includes work-based training

work-based training has the same meaning as in **section 477**

workforce development council means a workforce development council established under **section 479**

- (9) In section 159(3), delete “polytechnic,”.

8 Section 159B amended (Definition of organisation)

Replace section 159B(1)(b) with:

- (b) a workforce development council:

9 Section 159F amended (Functions of Commission)

- (1) After section 159F(1)(e), insert:

- (ea) to ensure the availability within industry of high-quality vocational education and training; and
- (eb) to promote the availability of vocational education and training to people of a kind or description specified in the Commission'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
- (ec) to develop and recommend to the Minister an apprenticeship training code for the purposes of **section 492**; and
- (ed) to make the apprenticeship training code available as required by **section 493**; and
- (ee) 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

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- (ef) to exercise the powers and perform the functions of the Commission under **subpart 3 of Part 34** (which relates to work-based training levies); and
- (2) In section 159F(1)(f), delete “, the Industry Training Act 1992, the Modern Apprenticeship Training Act 2000,”.

10 New sections 159FA to 159FC inserted

After section 159F, insert:

159FA Duties of Commission in relation to workforce development council

- (1) The Commission 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 159YA or when considering funding an organisation other than via a plan under section 159ZC 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 159YA(5).
- (2) The duty in **subsection (1)(b)** is subject to—
- (a) any funding limits set by the Minister under section 159L and the Commission under section 159O; and
- (b) any capacity or capability constraints of organisations to provide, arrange, and support the mix of vocational education and training.
- (3) The Commission 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)(b)** and advise the workforce development council about—
- (a) what specific actions the Commission 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 the Commission has not adequately responded to its advice about the mix of vocational education and training required to meet the needs of its specified industries.

159FB Power of Commission to require information from workforce development council

- (1) The chief executive of the Commission 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 159YA).

- (2) A workforce development council that receives a notice under **subsection (1)** must provide the chief executive of the Commission with the required information within the time period specified in the notice.
- (3) The chief executive of the Commission may, at any time, revoke or amend a notice given under **subsection (1)**.

159FC Power of Commission to audit workforce development council

- (1) For the purpose of ascertaining whether a workforce development council is complying, or has complied, with the provisions of this Act, the chief executive of the Commission may commission an independent audit of the workforce development council.
- (2) The audit may (without limitation) include an assessment of—
 - (a) the ~~conduct~~ performance of the workforce development council’s functions;
 - (b) the application of funding provided to the workforce development council by the Commission.

11 Section 159G amended (Principles guiding how Commission operates)

In section 159G(b) and (c), replace “industry training organisations” with “workforce development councils”.

12 New section 159KBB inserted (Additional requirement of NZIST’s council to provide information)

After section 159KBA, insert:

159KBB Additional requirement of NZIST’s council to provide information

- (1) The chief executive of the Commission 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 the Commission with the required information within the time period specified in the notice.
- (3) The chief executive of the Commission may revoke or amend any notice given under **subsection (1)**.

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- (4) For the purposes of **subsection (1), related entity**, in relation to NZIST, has the same meaning as in section 164A.

13 Section 159L amended (Minister determines design of funding mechanisms)

Replace section 159L(3)(d) with:

- (d) specify the conditions that the Commission must attach to funding that is provided under funding mechanisms, including (without limitation) conditions setting limits on fees that—
- (i) organisations may charge domestic students:
 - (ii) organisations may charge employers for supporting their employees' work-based training; and

14 Section 159M amended (Restrictions on design of funding mechanisms)

- (1) In section 159M(b), after “students”, insert “or that organisations may charge employers”.
- (2) In section 159M, insert as subsection (2):
- (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.

15 Section 159OA amended (Variation of determination of design of funding mechanisms)

In section 159OA(4), after “students”, insert “and that organisations may charge employers”.

16 Section 161 amended (Academic freedom)

- (1) In the heading to section 161, after “**freedom**”, insert “**and institutional autonomy of institutions (other than NZIST)**”.
- (2) In section 161(1), replace “institutions that academic freedom and the autonomy of institutions” with “universities, wananga, colleges of education, and specialist colleges that academic freedom and the autonomy of those institutions”.
- (3) After section 161(4), insert:
- (5) This section does not apply to NZIST (for which **section 222E** provides).

17 Section 162 amended (Establishment of institutions)

- (1) Repeal section 162(1)(c).
- (2) In section 162(2) and (4), delete “a polytechnic,”.
- (3) Repeal section 162(4)(b)(ii).
- (4) In section 162(5), delete “polytechnic,” in each place.

- (5) After section 162(9), insert:
- (10) Subsection (5) does not apply to NZIST (for which **section 222A(2)** provides).

18 Section 163 amended (Constitution of institutions)

In section 163(1), replace “paragraph (b) or paragraph (c) of section 162(1) shall consist” with “section 162(1)(b) consists”.

19 Section 164 amended (Disestablishment of institutions)

- (1) In section 164(4)(b), delete “(for example, a disestablished polytechnic may be incorporated in a university)”.
- (2) After section 164(6), insert:
- (7) To avoid doubt, nothing in this section applies to NZIST.

20 Section 165 replaced (Institutions to be governed by councils)

Replace section 165 with:

165 Institutions to be governed by councils

- (1) The governing body of NZIST is its council, the members of which are appointed under **section 222G**.
- (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 193(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.

21 Section 166 amended (Incorporation)

In section 166(1), replace “and each college of education, polytechnic,” with “NZIST, and each college of education,”.

21A Section 167 amended (Common seal)

After section 167(3), insert:

- (4) This section does not apply to NZIST or its subsidiaries.

21B Section 167A amended (Method of contracting)

After section 167A(5), insert:

- (6) This section does not apply to NZIST or its subsidiaries.

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22 Section 169 amended (Constitutions of councils of new institutions)

Replace section 169(4) with:

- (4) This section does not apply to the membership of NZIST's council.

23 Section 170 amended (Amendment of constitution)

Replace section 170(2) with:

- (2) Subsection (1) does not apply to NZIST's council.

24 Section 170A amended (Constitution to provide for membership of council)

Replace section 170A(2) with:

- (2) Subsection (1) does not apply to the membership of NZIST's council (for which **section 222G** provides).

25 Section 171 amended (Membership of council)

Replace section 171(2) with:

- (2) Subsection (1) does not apply to the membership of NZIST's council (for which **section 222G** provides).

26 Section 171A amended (Certain people disqualified from appointment)

Replace section 171A(2) with:

- (2) Subsection (1) does not apply to the membership of NZIST's council (for which **section 222G(2)** provides).

27 Section 171B amended (Matters to be considered when appointing members)

Replace section 171B(3) with:

- (3) This section does not apply to the membership of NZIST's council (for which **section 222H** provides).

28 Section 171C amended (Statutes relating to appointment of members by councils of institutions)

- (1) In section 171C(1), delete “(or, as the case requires, section 222AA(1)(b))”.

- (2) After section 171C(6), insert:

- (7) This section does not apply to the membership of NZIST's council.

29 Section 171D amended (Limitations on number of occasions on which people may be appointed as members of councils)

Replace section 171D(5) with:

- (5) This section does not apply to NZIST's council.

- 30 Section 171F amended (Certain acts and proceedings not invalidated by defects)**
Replace section 171F(2) with:
- (2) This section does not apply to NZIST’s council (for which **section 222G(3)** provides).
- 31 Section 173 amended (Term of office)**
After section 173(2), insert:
- (3) This section does not apply to appointments to NZIST’s council (for which **section 222J** provides).
- 31A Section 174 amended (Vacation of office)**
After section 174(4), insert:
- (5) This section does not apply to a member of NZIST’s council.
- 32 Section 176 amended (Casual vacancies)**
After section 176(3), insert:
- (4) This section does not apply to appointments to NZIST’s council.
- 33 Section 176A amended (Individual duties of members of councils)**
After section 176A(4), insert:
- (5) This section does not apply to a member of NZIST’s council.
- 34 Section 176B amended (Accountability for individual duties)**
- (1) In section 176B(2), delete “or 222AJ (as the case requires)”.
- (2) After section 176B(7), insert:
- (8) This section does not apply to a member of NZIST’s council.
- 35 Section 176C amended (Removal of members)**
Replace section 176C(8) with:
- (8) This section does not apply to the removal from office of a member of NZIST’s council.
- 36 Section 177 amended (Chairperson and deputy chairperson)**
Replace section 177(9) with:
- (9) This section does not apply to the chairperson or deputy chairperson of NZIST’s council (for which **section 222I** provides).
- 37 Section 179 amended (Fees and allowances)**
After section 179(3), insert:
- (4) This section does not apply to a member of NZIST’s council.

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38 Section 181 amended (Duties of councils)

In section 181, insert as subsection (2):

- (2) In addition, NZIST's council must comply with section 97 of the Crown Entities Act 2004 in respect of its subsidiaries.

39 Section 182 amended (Determination of policy)

After section 182(5), insert:

- (6) This section does not apply to NZIST (for which **section 222K** provides).

40 Section 193 amended (Powers of councils)

- (1) In section 193(2)(e), delete “(for example, the council of a polytechnic may agree to the disestablishment of the polytechnic and its incorporation in a university)”.
- (2) In section 193(2)(ea), delete “(for example, the council of a university may agree to the incorporation of a polytechnic in the university)”.
- (3) After section 193(2), insert:
- (2A) Subsection (2)(e) and (ea) does not apply to NZIST's council.

41 Section 194 amended (Statutes)

- (1) In section 194(1), after “institution”, insert “and the board of an NZIST subsidiary”.
- (2) After section 194(1), insert:
- (1A) Subsection (1)(ia) does not apply to NZIST's council or the board of an NZIST subsidiary.

42 Section 195 replaced (Trust property)

Replace section 195 with:

195 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.

43 Section 195A amended (Criteria for risk assessment of institutions)

- (1) In the heading to section 195A, after “institutions”, insert “(other than NZIST)”.
- (2) After section 195A(3), insert:
- (4) This section does not apply to NZIST's council (for which **section 222P** provides).

- 44 Section 195B amended (Institutions to provide information if required)**
After section 195B(5), insert:
- (6) This section does not apply to NZIST’s council (for which **section 222Q** provides).
- 45 Section 195C amended (Minister may appoint Crown observer)**
After section 195C(6), insert:
- (7) This section does not apply to NZIST or its subsidiaries (for which **section 222R** provides).
- 46 Section 195D amended (Minister may dissolve council and appoint commissioner)**
After section 195D(8), insert:
- (9) This section does not apply to NZIST or its subsidiaries (for which **section 222W** provides).
- 46A Section 200 amended (Bank accounts)**
After section 200(3), insert:
- (4) This section does not apply to NZIST’s council.
- 47 Section 203 amended (Institutions are Crown entities)**
- (1) In section 203(2), after “institutions,” insert “and their Crown entity subsidiaries”.
- (2) Replace section 203(3) with:
- (3) The provisions of the Crown Entities Act 2004 set out in **Part 1** of Schedule 4 of that Act and **Part 1** of Schedule 13A of this Act apply to all tertiary education institutions and their Crown entity subsidiaries (within the meaning of the Crown Entities Act 2004).
- 48 Section 222 amended (Delegation by council)**
After section 222(11), insert:
- (12) This section does not apply to NZIST’s council.
- 49 Part 15A replaced**
Replace Part 15A with:

Part 15A New Zealand Institute of Skills and Technology

222A NZIST established

- (1) This section establishes the New Zealand Institute of Skills and Technology (NZIST) as a tertiary education 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 a tertiary education institution merely because its name is changed under **subsection (2)**.

222B 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 other stakeholders:
- (f) to carry out any other functions consistent with its role as a tertiary education institution.

222C NZIST's charter

- (1) NZIST must give effect to its charter as set out in **Schedule 22**.
- (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.

222D 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 with.

222E Academic freedom of NZIST

- (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to NZIST that NZIST's academic freedom is to be preserved and enhanced.
- (1A) NZIST's academic freedom also applies in relation to every NZIST subsidiary that provides education or training, or both.
- (2) For the purposes of 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; and
 - (b) the freedom of academic staff and students to engage in research; and
 - (c) the freedom of NZIST and its staff to regulate the subject matter of its courses; and
 - (d) the freedom of NZIST and its staff to teach and assess students in the manner they consider best promotes learning; and
 - (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 so as 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 482(1)(b) to (e), and (g)**; and

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- (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)**.

222F 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 222L**;
 - (b) appointing directors to an NZIST subsidiary.
- (2) NZIST may make statutes for the purposes of **subsection (1)**.

NZIST's council

222G 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 must be a person who is a member of, and elected by, its staff committee; and
 - (b) 1 member must be a person who is a member of, and elected by, its students' committee; and
 - (c) 1 member must be a person 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 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 at any time been removed from office as a member of a council.
- (3) No act or proceeding of NZIST's council, or any member or any committee of NZIST's council, is 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 or vacancies in the membership of a 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).

222H Matters to be considered when Minister appoints members to NZIST's council

- (1) It is desirable in principle that, as far as possible, NZIST's council should reflect—
- (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 222G(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 222G(2)**.

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222I 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 must not dismiss the chairperson or deputy chairperson without first consulting them on 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.

222J 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 222G(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.

Additional provisions applying to NZIST's council and NZIST subsidiaries

222K 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 must 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)**.

222L 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 193(2)(i).
- (3) Without limiting **section 222K(1)**, NZIST's council must—
 - (a) consult each committee established under **subsection (1)** on significant matters relating to its 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)**.

222M 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 222F**; 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

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- (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 stakeholders, 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.

222N 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 201A (which relates to how institutions may use capital and income).

222O NZIST subsidiary must obtain consent before exercising powers under section 192(4)

Unless section 192(5) applies, An an NZIST subsidiary must not exercise any of the powers in section 192(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.

Interventions

222P Criteria for risk assessment of NZIST and related entities

- (1) For the purpose of exercising a power under any of **sections 222R to 222W**, 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*.
- (4) In this section and **sections 222Q to 222U, related entity**, in relation to NZIST, has the same meaning as in section 164A.

222Q NZIST or related entity must provide information if required

- (1) If the chief executive of the Commission 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 the Commission requires information under **subsection (1)**, the information required must be information that relates to the risks to NZIST or the related entity that the chief executive of the Commission is concerned about.
- (3) If NZIST's council receives a notice under **subsection (1)** it must provide the chief executive of the Commission with the required information within the period specified in the notice.
- (4) The chief executive of the Commission may revoke or amend any notice given under **subsection (1)**.

222R Minister may appoint Crown observer

- (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 must 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.

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- (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.

222S Specialist help

- (1) This section applies if the chief executive of the Commission 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 is reasonably 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 or organisation's reasonable fees and expenses.

222T Performance improvement plan

- (1) This section applies if the chief executive of the Commission 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 will 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 (as the case may be) any plan that complies with **subsection (3)** that the chief executive thinks appropriate.
- (7) The chief executive must 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.

222U Minister may appoint Crown manager

- (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

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- (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 must 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 a reasonable time 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 will have to 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) must 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 222E**.
- (9) NZIST's council must pay the Crown manager's reasonable fees and expenses.
- (10) If the Crown manager's appointment has not earlier been revoked, 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.

222V Protection of Crown manager

A Crown manager 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 their functions.

222VA Powers may be used concurrently

To the extent that it is possible in practice, powers given by 2 or more of **sections 222Q to 222U** may be exercised concurrently.

222W 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 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 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

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- (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 reduced to such an extent that it is appropriate that NZIST be administered by a council, a new council must be appointed in accordance with **sections 222G to 222J**.
- (7) A commissioner's appointment ends on the close of the day before a new council takes office.
- (8) Sections 195DA, 195E, and 195F apply, with any necessary modifications, as if a commissioner appointed under **subsection (1)** were appointed under section 195D.

222X NZIST's council may request intervention

If NZIST's council requests the Minister or the chief executive of the Commission (as the case may be) to act under any of **sections 222R to 222W**, the Minister or the chief executive—

- (a) must consider any argument or evidence supplied by NZIST's council; and
- (b) must consider whether or not 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.

Application of Crown Entities Act 2004 to NZIST's council

222Y Additional provisions of Crown Entities Act 2004 that apply to NZIST's council

- (1) The provisions of the Crown Entities Act 2004 specified in **Part 2** of Schedule 4 of that Act and **Part 2** of Schedule 13A of this Act apply to NZIST and NZIST's council.
- (2) NZIST must be treated as a statutory entity for the purpose of applying those provisions.

Further provisions relating to NZIST subsidiaries

222Z Formation of NZIST subsidiaries

- (1) NZIST may, with the written approval of the Minister, form 1 or more NZIST subsidiaries.
- (1A) **Schedule 25** specifies further 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 further provisions of this Act that apply to an NZIST subsidiary formed under **subsection (1)** that does not provide education or training, or both.

222ZC Application of Schedule 23

Schedule 23 applies to an NZIST subsidiary on its dissolution date (as defined in **clause 1** of that schedule).

49A Section 223 amended (Programmes)

In section 223(1), replace “subsection (2) and” with “subsection (2), **section 222E(6)**, and”.

50 Section 234A amended (Fees for domestic students must not exceed maximums set in conditions of funding)

- (1) In the heading to section 234A, after “**students**”, insert “**and employers**”.
- (2) In section 234A(2), after “students”, insert “or employers”.
- (3) In section 234A(3), after “student”, insert “or an employer”.

51 Section 246A amended (Functions of Authority)

After section 246A(1)(d), insert:

- (da) 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:
- (db) to monitor the quality and results of a workforce development council’s systems and procedures for its moderation activities:

52 Section 248B amended (Standard-setting bodies)

Replace section 248B(1)(a) with:

- (a) a workforce development council established ~~in accordance with~~ under **section 479**; and

53 Section 249 amended (Approval of programmes)

In section 249(1), delete “industry training organisation,”.

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54 Section 250 amended (Accreditation to provide approved programmes)

Repeal section 250(6)(b).

55 Section 251 amended (Application for training scheme approval)

- (1) In section 251(1), delete “industry training organisation,”.
- (2) Repeal section 251(3).
- (3) Repeal section 251(6)(b).

56 Section 252 amended (Consent to assess against standards)

In section 252(1), delete “industry training organisation,”.

57 Section 253 amended (Rules)

- (1) Replace section 253(1)(ga) and (gb) with:

- (ga) prescribing the amount of, or the method for determining, the annual fee payable by a workforce development council and when and how that fee is payable:
- (gb) prescribing quality assurance requirements for workforce development councils, including (without limitation) requirements relating to the performance of the relevant functions of workforce development councils:
- (gc) prescribing matters relating to training packages:

- (2) In section 253(1)(m), replace “workplace” with “work-based”.

58 Section 253C amended (Minister may consent to use of certain terms in name or description of registered establishment or wananga)

- (1) In section 253C(2) and (2A), replace “university, college of education, polytechnic, or institute of technology” with “university or college of education”.
- (2) Repeal section 253C(4).

59 Section 254 amended (Fees)

- (1) In section 254(1), replace “industry training organisation,” with “workforce development council,”.
- (2) In section 254(2)(c), delete “(including quality assurance activities undertaken in accordance with the Authority’s functions under the Industry Training and Apprenticeships Act 1992)”.
- (3) Repeal section 254(2)(d).

60 Section 254A amended (Power to obtain information)

In section 254A(1), replace “industry training organisation,” with “workforce development council,”.

61 Section 255 amended (Compliance notices)

- (1) In section 255(1), replace “industry training organisation,” with “workforce development council.”
- (2) In section 255(2)(d) and (7)(e), replace “workplace” with “work-based”.

62 Section 292 amended (Offences relating to use of certain terms)

Replace section 292(1)(c) and (d) with:

- (c) uses the term polytechnic to describe an educational establishment or facility unless the educational establishment or facility is NZIST or an NZIST subsidiary:
- (d) 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:

63 Section 299A repealed (Transitional and savings provisions relating to councils of tertiary institutions consequential on enactment of Education Amendment Act 2015)

Repeal section 299A.

64 Section 321 amended (Grant to educational bodies)

In section 321(2), replace “an industry training organisation” with “a workforce development council”.

65 New Part 34 inserted

After Part 33, insert:

**Part 34
Vocational education and training**

477 Interpretation

In this Part, unless the context otherwise requires,—

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

Commission has the same meaning as in section 159(1)

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

funding approval has the same meaning as in section 159(1)

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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

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

plan has the same meaning as in section 159(1)

programme has the same meaning as in section 159(1)

provider means—any of the following:

- (a) NZIST;
- (ab) an NZIST subsidiary that provides education or training, or both;
- (b) a government training establishment, a registered establishment, ~~and~~ or a wananga within the meaning of those terms in section 159(1);
- (c) a relevant school within the meaning of section 246

qualification means a qualification listed on the Qualifications Framework

Qualifications Authority has the same meaning as in section 159(1)

Qualifications Framework means the framework described in section 248

registered establishment has the same meaning as in section 159(1)

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

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

trainee—

- (a) means an employee who has a training agreement; and
- (b) includes an apprentice as defined in **section 489**

training agreement has the same meaning as in section 159(1)

training package, in relation to an industry-developed 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 has the same meaning as in section 159(1)

vocational education and training has the same meaning as in section 159(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).

478 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: 1992 No 55 s 3

Subpart 1—Workforce development councils

479 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 482(1)(m)**; and
 - (b) may—

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- (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 55 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 **subsection (1)** 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.

480 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 must 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.

481 Incorporation

Each workforce development council established under **section 479** 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.

482 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:

Setting standards and developing Developing and setting standards, capstone assessments, and qualifications

- (b) to develop, set, and maintain skill standards:

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- (c) to develop and maintain industry qualifications for listing on the Qualifications Framework and to maintain qualifications for which the council 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 for approval by the Qualifications Authority under section 249:
 - ~~(g) to develop, set, and maintain capstone assessments based on the needs of their specified industries:~~
 - (h) to carry out moderation activities, ~~including~~ 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 the Commission:
 - (j) to advise the Commission, as provided for in **section 159FA**,—
 - (i) about the Commission's 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 the Commission:
 - (l) to represent the interests of ~~their~~ the specified industries:
 - Other functions*
 - (m) to perform any other functions conferred on it by the Minister in relation to the specified industries.
- (2) The Minister must not confer any additional function on a workforce development council under **subsection (1)(m)** without first consulting the workforce development council.

483 Workforce development council's functions in relation to wananga

- (1) Subject to **subsection (2)**,—
 - (a) a workforce development council may endorse a programme developed by a wananga only if requested by the wananga:
 - (b) a capstone assessment developed by a workforce development council applies to a wananga only if requested by the wananga.

- (2) If a programme includes a component of work-based training, a workforce development council may perform its functions in **section 482** in relation to the programme.

484 Workforce development council must not operate registered establishment

- (1) A workforce development council must 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 the Qualifications Authority; or
 - (b) operate, or hold an interest in, any organisation that provides education and training approved by the Qualifications Authority.

485 Duties of workforce development councils

- (1) A workforce development council must comply with any prescribed quality assurance requirements set by the Qualifications Authority 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 159AA:
 - (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 482(1)(b) and (c)** and, in the case of wananga, ~~must respect the while respecting their~~ special character of ~~wananga~~ under section 162(4)(b)(iv):
 - (ii) other workforce development councils, particularly on matters of common interest:
 - (iii) the Qualifications Authority, 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:

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- (d) must, when performing its functions under **section 482(1)(i) to (l)**, take all reasonable steps to avoid any adverse impact on its relationship with a provider or providers.

486 Annual fee payable by workforce development council

- (1) A workforce development council must pay to the Qualifications Authority an annual fee prescribed by or determined under rules made under ~~section 253(1)(ga)~~ **section 253(1)(ga)**.
- (2) The annual fee may recover no more than the reasonable costs, excluding those costs that are recoverable through fees charged under section 254, incurred by the Qualifications Authority for—
 - (a) prescribing quality assurance requirements under **section 253(1)(gb)**; and
 - (b) monitoring compliance, and addressing non-compliance, with those requirements in accordance with its functions under **section 246A(1)(da)**; and
 - (c) issuing quality assurance improvement notices under **section 487**.
- (3) The fee is—
 - (a) payable by the due date prescribed in the rules; and
 - (b) recoverable as a debt due to the Qualifications Authority.

487 Qualifications Authority may issue quality assurance improvement notice

- (1) The Qualifications Authority may, if satisfied that such 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 the Qualifications Authority 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 the Qualifications Authority's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - (c) state that, if the Qualifications Authority's concerns are not addressed within the specified time, the Qualifications Authority may issue a compliance notice under **section 488**; and
 - (d) state the consequence of a failure to comply with a compliance notice.

488 Qualifications Authority may issue compliance notice

- (1) The Qualifications Authority 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 487** that were not addressed within the time specified in that notice.
- (2) Section 255(3) to (6) 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, the Qualifications Authority 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 487**.
- (5) Nothing in this section limits the power of the Qualifications Authority to issue a compliance notice to a workforce development council in accordance with section 255.

Audit

488A Application of Public Audit Act 2001

Each workforce development council established under **section 479** 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.

Validity of acts

488B Act in breach of statute invalid

- (1) An act of a workforce development council is invalid, unless **section 488C** applies, if it is—
- (a) ~~an act that~~ the act is contrary to, or outside the authority of, an Act; or
 - (b) ~~an act that~~ 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: 2004 No 115 s 19

488C Some natural person acts protected

- (1) **Section 488B**, 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 ~~had~~knew, or ought reasonably to have ~~had, knowledge~~ known,—
- (a) ~~of that~~ an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or

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- (b) that the act is 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 not reasonably to have had, the knowledge referred to in that subsection.
- (3) A workforce development council must report, in its financial report required by section 159YD(2), each transaction that the council has performed in the year to which the report relates that was invalid under **section 488B** but enforced in reliance on ~~this section~~ **subsection (1)**.
- (4) To avoid doubt, this section does not affect any person's other remedies (for example, remedies in contract) under the general law.

Compare: 2004 No 115 s 20

Subpart 2—Apprenticeships

489 Interpretation

In this subpart, unless the context otherwise requires,—

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 the Commission

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.

Compare: 1992 No 55 s 13C

490 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: 1992 No 55 s 13D

491 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 490(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

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- (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: 1992 No 55 s 13E

492 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 the Commission.
- (3) Before issuing an apprenticeship training code, the Minister may consult any persons or organisations as the Minister considers appropriate.
- (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 apprenticeship training code in full; or
 - (ii) give enough information to identify the code and state where copies of the code may be obtained.
- (5) Before issuing an apprenticeship training code under **subsection (1)**, the Minister must consult the relevant workforce development council that covers the 1 or more specified industries to which the code relates.

Compare: 1992 No 55 s 13F

493 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 the Commission.

Compare: 1992 No 55 s 13G

494 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: 1992 No 55 s 13H

495 Application of Legislation Act 2012 to apprenticeship training code

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: 1992 No 55 s 13I

Subpart 3—Training levy

496 Interpretation

For the purposes of this subpart,—

ballot means a ballot under **section 505**

closing date means the date, specified in the ballot paper under **section 510(b)**, by which ballot papers must be returned

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

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

qualifying member, in relation to a levy group, means a member who does not have a certificate of exemption under **section 514**

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

Compare: 1992 No 55 s 25

497 Purpose of levy

The purpose of this subpart is to enable the making of Orders in Council imposing 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: 1992 No 55 s 24

Imposition of levy

498 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 must not recommend the making of an Order in Council unless the Minister is satisfied on reasonable grounds of the matters in **section 499**.

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- (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: 1992 No 55 s 26

499 Restrictions on making of levy orders

- (1) The Minister must not recommend the making of a levy order unless satisfied on reasonable grounds that—
- (a) the workforce development council to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with **sections 505 to 512**, 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 will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
 - (g) all other relevant matters known to the Minister have been properly considered.

- (2) When considering the matters in **subsection (1)**, the Minister must consult the Commission and may consult any other persons that the Minister considers appropriate.

Compare: 1992 No 55 s 27

500 Matters to be specified in levy orders

A levy order must specify the matters set out in **Schedule 24**.

Compare: 1992 No 55 s 28

501 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 will 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 482**.
- (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 (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: 1992 No 55 s 29

502 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: 1992 No 55 s 30

503 Orders are confirmable instruments

- (1) The explanatory note of a levy order made under **section 498** must indicate that—

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- (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: 1992 No 55 s 51

504 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 480**.

Compare: 1992 No 55 s 52

Ballots

505 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: 1992 No 55 s 31

506 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 adequate notice of the ballot in public newspapers and industry-specific publications, and inviting members of the relevant industry to register to receive information about the ballot and ballot papers.
- (2) After satisfying the requirements of **subsection (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: 1992 No 55 s 32

507 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 **section 506(2)**; and
 - (b) any other person who the independent returning officer considers may be a member of the levy group.
- (2) The notice under **subsection (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) will be required to pay the levy if there is sufficient support for it in the ballot and the levy order is made; and
 - (d) 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: 1992 No 55 s 33

508 Commission must resolve coverage disputes

If the returning officer receives a notice under **section 507(2)(d)** that the person wishes to raise a coverage dispute, the returning officer must refer that issue to the Commission for determination in accordance with **section 522**.

Compare: 1992 No 55 s 34

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509 Population to be balloted

As soon as practicable after all coverage disputes have been finally determined (including any appeals under **section 523(2)**), the returning officer must send a ballot paper to each person in the levy group.

Compare: 1992 No 55 s 35

510 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 24**.

Compare: 1992 No 55 s 36

511 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 **section 509** 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 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: 1992 No 55 s 37

512 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: 1992 No 55 s 38

Collection of levy

513 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: 1992 No 55 s 39

514 Certificate of exemption

- (1) The chief executive of the Commission 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: 1992 No 55 s 40

515 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 **section 516**.
- (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: 1992 No 55 s 41

516 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 **subsection (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: 1992 No 55 s 42

Duties of workforce development councils and others in relation to levies

517 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: 1992 No 55 s 44

518 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: 1992 No 55 s 45

519 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 **subsection (1)** are audited within 90 days of the end of that financial year.
- (3) Financial statements prepared under **subsection (1)** must be included in the workforce development council's annual report for that year.
- (4) A workforce development council that is required by **subsection (3)** to include financial statements in its annual report must, as soon as that report has been completed, give a copy to the Minister, and the Minister must present a copy to the House of Representatives not later than 6 sitting days after receiving it.
- (5) Despite **subsection (4)**, if an enactment other than this Act requires 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 **subsection (4)** impose different requirements, comply with the enactment instead of **subsection (4)**.
- (6) A workforce development council that is required by **subsection (3)** to include financial statements in its annual report must take all reasonable steps to ensure that every person primarily liable for paying the levy that is reflected in those financial statements receives a copy of the annual report as soon as is reasonably practicable after the report has been completed.

Compare: 1992 No 55 s 46

520 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 Part, or under a levy order, must take reasonable steps to protect that information.

Compare: 1992 No 55 s 47

Disputes

521 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—
 - (a) whether a person was included in the ballot relating to that levy; and
 - (b) whether a person has paid the levy; and
 - (c) the amount of levy payable; and
 - (d) any other matter relating to the levy, except disputes about whether a person is within the levy group.

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- (2) Details of the arbitration or mediation system must be specified in the levy order, including—
- (a) 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: 1992 No 55 s 48

522 Disputes about coverage

- (1) If a returning officer refers a dispute to the Commission under **section 508**, the Commission 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 the Commission for determining the dispute.

Compare: 1992 No 55 s 49

523 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 the Commission under **section 522** may be appealed against on grounds of procedural error only.
- (3) An appeal under **subsection (2)** may be made to the District Court by the person disputing membership of the levy group or by the workforce development council that is proposing to impose, or responsible for administering, the levy.

Compare: 1992 No 55 s 50

66 Schedule 1 amended

- (1) In Schedule 1, repeal clause 17(3).
- (2) In Schedule 1, after Part 89, insert the **Part 910** set out in **Schedule 1** of this Act.

67 Schedule 13A amended

- (1) After the Schedule 13A heading, insert:

**Part 1
Provisions relating to all tertiary education institutions**

- (2) In Schedule 13A, after the last item, insert the **Part 2** set out in **Schedule 2** of this Act.

68 Schedule 19 repealed

Repeal Schedule 19.

69 New Schedules 22 to 25 inserted

- (1) After Schedule 21, insert the **Schedule 22** set out in **Schedule 3** of this Act.
- (2) After **Schedule 22** (as inserted by **subsection (1)**), insert the **Schedule 23** set out in **Schedule 4** of this Act.
- (3) After **Schedule 23** (as inserted by **subsection (2)**), insert the **Schedule 24** set out in **Schedule 5** of this Act.
- (4) After **Schedule 24** (as inserted by **subsection (3)**), insert the **Schedule 25** set out in **Schedule 5A** of this Act.

Part 2

Repeals, revocations, and other amendments

70 Repeal of Industry Training and Apprenticeships Act 1992

The Industry Training and Apprenticeships Act 1992 (1992 No 55) is repealed.

71 Repeal of Education (Polytechnics) Amendment Act 2009

The Education (Polytechnics) Amendment Act 2009 (2009 No 70) is repealed.

72 Orders revoked

The following orders are revoked:

- (a) Education (Disestablishment of Tairāwhiti Polytechnic and Incorporation in Eastern Institute of Technology) Order 2010 (SR 2010/449):
- (b) Education (Disestablishment of Aoraki Polytechnic and Incorporation in Christchurch Polytechnic Institute of Technology) Order 2015 (LI 2015/257):
- (c) Education (Disestablishment of Bay of Plenty Polytechnic and Waiariki Institute of Technology and Incorporation into Waiariki Bay of Plenty Polytechnic) Order 2016 (LI 2016/1).

73 Consequential amendments to other enactments

- (1) Amend the Acts specified in **Part 1 of Schedule 6** as set out in that Part.
- (2) Amend the legislative instruments specified in **Part 2 of Schedule 6** as set out in that Part.

Schedule 1
New Part 910 inserted into Schedule 1

s 66(2)

Part 9 10
Provisions relating to Education (Vocational Education and Training Reform) Amendment Act 2019

2628 Interpretation

In this Part, unless the context otherwise requires,—

amendment Act means the Education (Vocational Education and Training Reform) Amendment Act **2019**

commencement date means the date on which the amendment Act comes into force

Commission means the Tertiary Education Commission established under section 159C

corresponding NZIST subsidiary, in relation to an existing polytechnic, means the Crown entity subsidiary specified in the second column of the table in **clause 27(3)29(3)** opposite the name of the existing polytechnic specified in the first column of the table

existing polytechnic or **polytechnic** means each polytechnic listed in the first column of the table in **clause 27(3)29(3)** that was established or deemed to have been established under section 162 before the commencement date and in existence immediately before that date

NZIST means the New Zealand Institute of Skills and Technology established by **section 222A** (as inserted by **section 49** of the amendment Act)

Qualifications Authority means the New Zealand Qualifications Authority continued by section 256A.

Subpart 1—Transitional provisions relating to polytechnics

Conversion of polytechnics to corresponding NZIST subsidiaries

2729 Polytechnics converted to corresponding NZIST subsidiaries

- (1) On and after the commencement date, an existing polytechnic becomes 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

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- (b) the Registrar of Companies must, on the commencement date, 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 registration is conclusive evidence that the corresponding NZIST subsidiary was, on and after the commencement date, 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	Eastern Institute of Technology 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	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

Duration of corresponding NZIST subsidiaries

27A30 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—

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- (a) consistent with the NZIST's responsibilities under the charter set out in **Schedule 22** (as inserted by **section 69(2)** of the amendment Act); and
- (b) in the interests of the tertiary education system and the nation as a whole.

27B31 NZIST's council may dissolve corresponding NZIST subsidiary

NZIST's council may, by resolution, at any time before the date specified in **clause 27A(1)30(1)** or by Order in Council under **clause 27A(2)30(2)**, dissolve a corresponding NZIST subsidiary and transfer some or all of the rights, assets, or liabilities of that subsidiary to NZIST or another NZIST subsidiary (whether established under **clause 27(1)29(1)** or formed by NZIST under **section 222Z**).

Consequences of conversion of polytechnics to corresponding NZIST subsidiaries

2832 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 predominantly operates.

2933 Application of this Act to corresponding NZIST subsidiaries

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 modifications, to each corresponding NZIST subsidiary during the period that the corresponding NZIST subsidiary exists in accordance with **clause 27A or 27B 30 or 31**.

3034 Corresponding NZIST subsidiary is organisation, provider, and institution for purposes of this Act

- (1) Without limiting **clause 2933**, each corresponding NZIST subsidiary is to be treated, during the period that it exists in accordance with **clause 27A or clause 27B 30 or 31**, as—
 - (a) an organisation within the meaning of section 159B(1), and the provisions of this Act relating to an organisation apply to it accordingly as if those provisions included a reference to the corresponding NZIST subsidiary;
 - (b) a provider within the meaning of section 238D, and the provisions of this Act relating to providers apply to it accordingly as if those provisions included a reference to the corresponding NZIST subsidiary;

- (c) an institution within the meaning of section 159(1), and sections 31B, 31F, and 31G, and Parts 16, 16A, and 20 apply to it accordingly as if—
 - (i) those provisions included a reference to the corresponding NZIST subsidiary; and
 - (ii) any reference in those provisions to the council of an institution were a reference to the board of the corresponding NZIST subsidiary.
- (2) For the purposes of **subclause (1)(a)**, the Commission 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.

3135 Members of existing polytechnic council cease to hold office

- (1) Every member of an existing polytechnic council holding office immediately before the commencement date 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.

3236 Rights, assets, and liabilities of existing polytechnics

- (1) This clause applies to all rights, assets, and liabilities that an existing polytechnic had immediately before the commencement date.
- (2) On and after the commencement date,—
 - (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), or instrument, agreement, deed, lease, application, notice, or other document before the commencement 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 216(1).

32A37 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.

3338 Employees of existing polytechnics

- (1) On and after the commencement date, every employee of an existing polytechnic becomes an employee of the polytechnic's corresponding NZIST subsidiary

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- 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 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.

3439 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.

3540 Students of existing polytechnics

- (1) This clause applies to every student enrolled at an existing polytechnic immediately before the commencement date.
- (2) On and after the commencement date, 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.
- (4) In **subclause (3)**, **award** has the same meaning as in section 159(1).

35A 41 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 the commencement date, 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.

3642 Existing Qualifications Authority approvals, accreditations, and consents

- (1) This clause applies to the following matters granted to an existing polytechnic by the Qualifications Authority under Part 20 before the commencement date and in effect immediately before that date:
 - (a) an approval of a programme under section 249;
 - (b) an accreditation to provide all or part of a programme under section 250;
 - (c) an approval to provide a training scheme under section 251;
 - (d) a consent to assess against the standards listed on the Directory of Assessment Standards under section 252;
 - (e) a consent to award a degree or a post-graduate qualification under section 253B.
- (2) On and after the commencement date,—
 - (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.

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- (3) On and after **1 January 2023**, the approval of a programme under section 249 and the consent to award a degree or a post-graduate qualification under section 253B must be treated as if they were granted to NZIST.

37 Existing funding approvals granted by Commission

- (1) ~~This clause applies to an approval granted to an existing polytechnic by the Commission under section 159YA(2) or 159ZC before the commencement date and in effect immediately before that date.~~
- (2) ~~On and after the commencement date,—~~
- ~~(a) the approval (including any conditions imposed on it) must be treated as if it were granted to the polytechnic's corresponding NZIST subsidiary until the close of **31 December 2020** (unless the approval is earlier withdrawn or revoked or the subsidiary is earlier dissolved in accordance with **clause 27B**); and~~
- ~~(b) unless the context otherwise requires, every reference to the existing polytechnic in the approval must be read as a reference to the polytechnic's corresponding NZIST subsidiary.~~

43 Existing funding paid by Commission 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 159YA(2); or
- (b) other than via a plan under section 159ZC.
- (2) On and after the commencement date,—
- (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 section 159YG or 159ZF or the subsidiary is earlier dissolved in accordance with **clause 31**; and
- (b) for the purposes of **paragraph (a)**, every reference to the existing polytechnic in an approval granted under section 159YA(2) must, unless the context otherwise requires, be read as a reference to the polytechnic's corresponding NZIST subsidiary.

37A44 Other references to existing polytechnics

On and after the commencement date, 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.

3845 Existing proceedings and other matters

- (1) On and after the commencement date,—

- (a) the continuation or enforcement of any proceedings by or against an existing polytechnic may instead be continued or enforced by or against its corresponding NZIST subsidiary without amendment to the proceedings; and
 - (b) the completion of 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 the Commission or the Qualifications Authority.

3946 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 27 29**.
- (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 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 is reasonably practicable after receiving it.

40 ~~Validation of pre-commencement actions and processes regarding Ministerial appointments to NZIST's council~~

- ~~(1) This clause applies to any action or process undertaken by the Minister before the commencement date in appointing members to NZIST's council.~~
- ~~(2) An appointment is valid if the action or process substantially complies with the provisions of this Act (as amended by the amendment Act).~~

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Subpart ~~1A~~2—Transitional provisions relating to NZIST

47 Validation of pre-commencement actions and processes regarding Ministerial appointments to NZIST’s council

- (1) This clause applies to any action or process undertaken by the Minister before the commencement date in appointing members to NZIST’s council.
- (2) An appointment is valid if the action or process substantially complies with the provisions of this Act (as amended by the amendment Act).

48 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 the commencement date and ending on the close of **4 June 2020** on terms and conditions agreed with the State Services Commissioner.

40A49 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 222G(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 the commencement date.

40B50 Restriction on NZIST forming new subsidiaries

The requirement for NZIST to obtain Ministerial approval before forming a subsidiary under **section 222Z(1)** (as inserted by **section 49** of the amendment Act) ceases to apply on the close of **31 December 2024**.

40C51 NZIST subsidiary is organisation, provider, and institution

- (1) This clause applies to an NZIST subsidiary formed by NZIST on or after the commencement date under **section 222Z(1)** that provides education or training, or both.
- (2) The NZIST subsidiary must be treated as—
 - (a) an organisation within the meaning of section 159B(1), and the provisions of this Act relating to an organisation apply to it accordingly as if those provisions included a reference to the NZIST subsidiary;
 - (b) a provider within the meaning of section 238D, 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) an institution within the meaning of section 159(1), and sections 31B, 31F, and 31G, and Parts 16, 16A, and 20 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.

Subpart ~~23~~—Transitional arrangements for work-based training

~~41~~**52** Interpretation

- (1) In this subpart, unless the context otherwise requires,—
- 1992 Act** means the Industry Training and Apprenticeships Act 1992
- assets** has the same meaning as in section 216(1)
- former ITO** means an industry training organisation listed in **clause ~~43(a)~~**54(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 the commencement date and ending on 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 ~~43(b)~~**54(b)****
- ~~**transition period** means the period beginning on the commencement date and ending on the close of **31 December 2022**~~
- workforce development council** means a workforce development council established under **section 479** (as inserted by **section 65** of the amendment Act).
- (2) In this subpart, unless the context otherwise requires, **provider**, **specified industry**, **trainee**, and **work-based training** have the same meanings as in **section 477** (as inserted by **section 65** of the amendment Act).

~~42~~**53** Application of clauses ~~43 to 56~~ **54 to 67**

Clauses ~~43 to 56~~54 to 67**** apply during the transition period.

~~43~~**54** Recognition of transitional ITOs

The following are recognised as transitional ITOs for the purposes of this subpart:

- (a) each of the following former ITOs:
 - (i) Boating Industries Association of New Zealand Incorporated:

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- (ii) Building and Construction Industry Training Organisation Incorporated:
 - (iii) Community Support Services ITO Limited:
 - (iv) Kompetenz 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 this subpart.

4455 Effect of recognition

- (1) A transitional ITO recognised under **clause 43(a)54(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 the commencement date; 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 43(b)54(b)**—
- (a) is recognised for the 1 or more specified industries specified in the notice given by the Minister 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 will enable trainees to achieve the relevant skill standards; and
 - (c) the apprenticeship training activities described in **section 490(2)** (as inserted by **section 65** of the amendment Act).

4556 Minister may impose conditions on recognition of transitional ITO

- (1) The Minister may, by written notice to a transitional ITO, impose 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 5567**.

4657 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.

4758 Application of provisions of 1992 Act to transitional ITO

- (1) Despite the repeal of the 1992 Act, the provisions of the 1992 Act listed in **subclause (2)** continue in force, with any necessary modifications, and apply to a transitional ITO as if the amendment Act had not been passed and 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 Commission must have regard in determining whether to give funding approval to proposed plan):
 - (d) section 11B (obligations of industry training organisations):
 - (e) section 11C (Qualifications Authority may issue quality assurance improvement notice):
 - (f) section 11D (Qualifications Authority may issue compliance notice):
 - (g) section 11E (industry training organisation not to operate registered private training establishment):

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- (h) section 11F (annual fee):
 - (i) section 13A (additional functions of Qualifications Authority):
 - (j) section 13B (Qualifications Authority 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 **sub-clause (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.

4859 Existing approvals and consents granted to former ITO

- (1) This clause applies to the following matters granted to a former ITO by the Qualifications Authority under Part 20 before the commencement date and in effect immediately before that date:
- (a) an approval of a programme under section 249:
 - (b) an approval to provide a training scheme under section 251:
 - (c) a consent to assess against the standards listed on the Directory of Assessment Standards under section 252.
- (2) On and after the commencement date,—
- (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.

4960 Transitional ITO is organisation

A transitional ITO is to be treated as an organisation within the meaning of section 159B, and the provisions of this Act relating to an organisation apply to it accordingly.

5061 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 248B in relation to the specified industries for which it is recognised under this subpart until—

- (a) a notice is given under **clause 4657** that removes the activity described in **clause 44(3)(a)55(3)(a)** for a specified industry covered by the transitional ITO; or
- (b) the recognition of the transitional ITO is cancelled under **clause 5365** or lapses under **clause 5466**.

5162 Transitional ITOs must develop transition plan

- (1) As soon as practicable after the commencement date, every transitional ITO must—
 - (a) develop a transition plan for approval by the Commission that provides for the transfer of—
 - (i) responsibility for the activity described in **clause 44(3)(a)55(3)(a)** (or any part of the activity) to any 1 or more workforce development councils;
 - (ii) responsibility for the activities described in **clause 44(3)(b)55(3)(b) and (c)** (or any part of those activities) to any 1 or more providers specified by the Commission; and
 - (ia) responsibility for any of activities described in **clause 55(3)** (or any part of those activities) to another transitional ITO;
 - (iii) the assets of the transitional ITO to any 1 or more providers specified by the Commission; providers, workforce development councils, or other transitional ITO; and
 - (b) implement and maintain that plan; and
 - (c) support providers specified by the Commission in transferring the responsibility for the activities described in **clause 44(3)(b)55(3)(b) and (c)**.
- (2) ~~The Commission may, when approving a transition plan under **subclause (1)**, make any amendments to the plan that it considers necessary or desirable by giving written notice to the transitional ITO.~~
- (2) When approving a transition plan under **subclause (1)**, the Commission—
 - (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 ITO.
- (3) If a transitional ITO fails or refuses to comply with **subclause (1)**, the Commission may develop the transition plan for the transitional ITO and the transitional ITO must implement and maintain that plan.

51A63 Commission must issue guidance on transition plans

- (1) The Commission must issue guidance to transitional ITOs on what must be contained in a transition plan required by **clause 51(1)**.
- (2) The Commission must consult transitional ITOs when developing guidance under **subclause (1)**.

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5264 Minister may direct funding to provider for work-based training

Despite **section 159M(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 44(3)(b)55(3)(b) and (c)**.

5365 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 47(2)(g)**); or
 - (d) if the Minister is satisfied that ~~the transitional ITO~~—
 - (i) the transitional ITO is no longer responsible for carrying out any of the activities referred to in **clause 44(3)55(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 the Qualifications Authority; 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 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)**.

5466 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)**.

5567 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.~~
- (3) In this clause, **founding document** means,—
 - (a) for a transitional ITO that is a company, the transitional ITO's constitution (if any):

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- (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.~~

56 No compensation for technical redundancy of employees of transitional ITO

- (1) ~~An employee of a transitional ITO is not entitled to receive any payment or other benefit on the ground that the position held by the employee in the transitional ITO has ceased to exist if the position ceases to exist because the duties of the position are more closely connected with the functions of a workforce development council, a provider, or another transitional ITO and—~~
 - (a) ~~the employee is offered employment in an equivalent position in that workforce development council, provider, or other transitional ITO (whether or not the employee accepts the offer); or~~
 - (b) ~~the employee is offered and accepts that employment.~~
- (2) ~~In **subclause (1)(a)**, **employment in an equivalent position** means employment that is—~~
 - (a) ~~in substantially the same position; and~~
 - (b) ~~in the same general locality; and~~
 - (e) ~~on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that 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 the workforce development council, provider, or other transitional ITO (as the case may be).~~

Subpart 34—Other matters

56A68 Employment of transitional ITO employees by NZIST, NZIST subsidiary, wananga, or 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 wananga, or a workforce development council, or another transitional ITO in accordance with a transition plan developed under **clause 5162**.
- (2) The chief executive of NZIST or the NZIST subsidiary, wananga, or workforce development council, or other transitional ITO (as the case may be) to which those activities are transferred must identify the employees of the transitional ITO—

- (a) whose duties overall are required by NZIST or the NZIST subsidiary, wananga, ~~or~~ workforce development council, or other transitional ITO (as the case may be) 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, wananga, ~~or~~ 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, wananga, ~~or~~ workforce development council, or other transitional ITO (as the case may be), 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, wananga, ~~or~~ 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, wananga, ~~or~~ workforce development council, or other transitional ITO (as the case may be) 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~~ 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 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 52**.

56B69 Employment of Qualifications Authority employees by workforce development council

- (1) This clause applies if the functions of the Qualifications Authority in developing, setting, and maintaining skill standards in relation to 1 or more specified

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- industries are to be transferred to a workforce development council that covers those industries in accordance with a transition plan developed by the Qualifications Authority for the purpose of this clause.
- (2) The chief executive of the workforce development council to which the functions of the Qualifications Authority are transferred must identify the employees of the Qualifications Authority—
- (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 the Qualifications Authority'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 the Qualifications Authority (and every other period of service recognised by the Qualifications Authority 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 the Qualifications Authority ~~that~~ 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 the Qualifications Authority 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.

~~56C No compensation for technical redundancy~~

- (1) ~~An employee of the Qualifications Authority is not entitled to receive any payment or other benefit on the ground that the position held by the employee has ceased to exist if the position ceases to exist because the duties of the position~~

~~are more closely connected with the functions of a workforce development council and—~~

- ~~(a) the employee is offered employment in an equivalent position in that workforce development council (whether or not the employee accepts the offer); or~~
- ~~(b) the employee is offered and accepts that employment.~~

~~(2) In **subclause (1)(a)**, **employment in an equivalent position** means employment that is—~~

- ~~(a) in substantially the same position; and~~
- ~~(b) in the same general locality; and~~
- ~~(c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that employee; and~~
- ~~(d) on terms that treat the period of service with the Qualifications Authority (and every other period of service recognised by the Qualifications Authority as continuous service) as if it were continuous service with the workforce development council.~~

70 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 227(1B) or as defined in section 235D(6)

provider has the same meaning as in **section 477**

specified period means the period beginning on the commencement date and ending on the close of **31 December 2021**.

56D71 Existing training contracts

(1) This clause applies to a training contract between an employer and employee that is in force immediately before the commencement date.

(2) On and after the commencement date, the training contract must be treated as if it were a training agreement for the purposes of **section 478**.

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56E72 References to industry training organisation to be treated as references to transitional ITO

Despite the amendments made by the amendment Act, a reference to an industry training organisation in any enactment or document, as it read immediately before the commencement date, 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 the amendment Act.

5773 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 must 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 Part, 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:
 - (c) 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**.

Schedule 2
New Part 2 inserted into Schedule 13A

s 67(2)

Part 2	
Additional provisions of Crown Entities Act 2004 applying to NZIST	
Section	Brief description
Section 37	Removal of members of autonomous Crown entities
Section 38	Removal of elected members of Crown agents and autonomous Crown entities
Section 40	Definition of just cause
Section 41	Process for removal
Section 43	No compensation for loss of office
Sections 44 and 45	Resignation of members and members ceasing to hold office
Sections 47 and 48	Remuneration and expenses of members
Sections 49 to 52	Collective duties of board
Sections 53 to 57	Individual duties of members
Sections 58 to 61	Effect of non-compliance with duties and reliance on information and advice
Sections 73 to 76	Delegation
Section 77	Vacancies in membership of board
Sections 96 to 102	Crown entity subsidiaries
Sections 120 to 126	Liability of members, office holders, and employees
Sections 127 and 128 to 130	Method of contracting and seal <u>Dealings with third parties</u>
Sections 138 to 149A	Statement of intent
Sections 149B to 149M	Statement of performance expectations
Sections 150 to 156	Reporting: annual report
Section 158	Bank accounts of Crown entities

**Schedule 3
New Schedule 22 inserted**

s 69(1)

**Schedule 22
NZIST's charter**

s 222C(1)

- 1 The New Zealand Institute of Skills and Technology (**NZIST**) exists to perform the functions set out in **section 222B**.
- 2 NZIST will be responsive to the needs of all regions of New Zealand, 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, whanau, 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 under-served by the education system, including, but not limited to, 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, wananga, 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

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- (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.

Schedule 4
New Schedule 23 inserted

s 69(2)

Schedule 23
Provisions applying on dissolution of NZIST subsidiary

s 222ZC

1 Interpretation

In this schedule, unless the context otherwise requires,—

Commission means the Tertiary Education Commission established under section 159C

dissolution date—

- (a) means, in relation to a corresponding NZIST subsidiary established under **clause 27(1)29(1) of Schedule 1**,—
- (i) the date specified in **clause 27A(1)30(1)** of that schedule:
 - (ii) the date specified by Order in Council under **clause 27A(2)30(2)** of that schedule:
 - (iii) the date on which the subsidiary is dissolved in accordance with a resolution of NZIST's council under **clause 27B 31 of Schedule 1**:
- (b) means, in relation to a subsidiary formed by NZIST under **section 222Z(1)**, 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 established by **section 222A**

NZIST subsidiary means—

- (a) a corresponding NZIST subsidiary established under **clause 27(1)29(1) of Schedule 1**:
- (b) a subsidiary formed by NZIST under **section 222Z(1)**

Qualifications Authority means the New Zealand Qualifications Authority continued by section 256A.

Dissolution

2 Dissolution of NZIST subsidiary

- (1) An NZIST subsidiary is dissolved on the dissolution date.

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- (2) As soon as possible 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.
- (3) In this clause, **assets**, **liabilities**, and **rights** have the same meanings as in section 216(1).

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 will 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 ~~that~~ 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 ~~existing polytechnics~~ 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.

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(4) In **subclause (3)**, **award** has the same meaning as in section 159(1).

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 the Qualifications Authority under Part 20 before the dissolution date and in effect immediately before that date:

- (a) an approval of a programme under section 249;
- (b) an accreditation to provide all or part of a programme under section 250;
- (c) an approval to provide a training scheme under section 251;
- (d) a consent to assess against the standards listed on the Directory of Assessment Standards under section 252;
- (e) a consent to award a degree or a post-graduate qualification under section 253B.

(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 approvals

~~(1) This clause applies to an approval granted to an NZIST subsidiary or treated as having been granted to the subsidiary by the Commission under section 159YA(2) or 159ZC before the dissolution date and in effect immediately before that date.~~

~~(2) On and after the dissolution date,—~~

- ~~(a) the approval (including any conditions imposed on the approval) continues to apply and must be treated, unless it is earlier withdrawn or revoked, as if it were granted to NZIST; and~~
- ~~(b) unless the context otherwise requires, every reference in the approval to the NZIST subsidiary must be read as a reference to NZIST.~~

9 Existing funding paid by Commission under funding mechanism

- (1) This clause applies to funding (including any conditions imposed on the funding) payable by the Commission 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 159YA(2); or
 - (b) other than via a plan under section 159ZC.
- (2) On and after the dissolution date,—
- (a) the Commission must treat the funding, unless it is earlier suspended, revoked, or withdrawn under section 159YG or 159ZF, 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 159YA(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) the continuation or enforcement of any proceedings by or against an NZIST subsidiary may instead be continued or enforced by or against NZIST without amendment to the proceedings; and
 - (b) the completion of a matter or thing that would, but for this clause, have been completed by the NZIST subsidiary may 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 the Commission or the Qualifications Authority.

11 Final report of dissolved NZIST subsidiary

- (1) As soon as is reasonably 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.

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- (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 is reasonably practicable after receiving it.

12 Transfers 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 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 27B 31 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 to the other NZIST subsidiary to which those rights, assets, and liabilities are transferred.

Schedule 5
New Schedule 24 inserted

s 69(3)

Schedule 24
Matters to be specified in levy orders

ss 500, 510

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 will 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 will 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.

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Payment of levy

- 11 When and how the levy is to be payable, including—
- (a) the period to which the levy will apply (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 will 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 will be 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 **section 516**.
- 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 **section 521**.

Schedule 5A
New Schedule 25 inserted

s 69(4)

Schedule 25
**Further provisions of Act that apply and do not apply to NZIST
subsidiaries**

s 222Z(1A)

The following provisions of this Act apply, with all necessary modifications, to an NZIST subsidiary that provides education or training, or both:

- (a) section 201A (how institutions may use income and capital):
- (b) section 201B (gifts):
- (c) section 201C (council may establish common fund):
- (d) section 201D (investment of funds held in common fund):
- (e) section 202 (application of money):
- (f) section 212 (resumption of land on recommendations of Waitangi Tribunal):
- (g) section 213 (resumption of land to be effected under Public Works Act 1981):
- (h) section 214 (resumption of Wahi Tapu):
- (i) section 220 (annual report):
- (j) section 221 (annual report to be available for inspection).

The following provisions of this Act do not apply to an NZIST subsidiary that provides education or training, or both:

- (a) section 196 (duties of chief executive):
- (b) section 197 (delegation by chief executive):
- (c) section 200 (bank accounts):
- (d) section 201 (proper accounts to be kept).

Schedule 6 Consequential amendments to other enactments

s 73

Part 1 Amendments to Acts

Accident Compensation Act 2001 (2001 No 49)

In section 6(1), definition of **place of education**, paragraph (a)(ii), replace “a polytechnic,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

Building Act 2004 (2004 No 72)

In Schedule 2, paragraph (m), replace “polytechnics,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

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 “industry training organisation (within the meaning of that term in section 2 of the Industry Training and Apprenticeships Act 1992)” with “workforce development council (as that term is defined in **section 477** of the Education Act 1989)”.

Crown Entities Act 2004 (2004 No 115)

In section 6(1), replace “Schedule 4 of this Act and Schedule 13A of the Education Act 1989 apply to tertiary” with “**Part 1** of Schedule 4 of this Act and **Part 1** of Schedule 13A of the Education Act 1989 apply to all tertiary”.

After section 6(1), insert:

(1A) The provisions set out in **Part 2** of Schedule 4 of this Act and **Part 2** of Schedule 13A of the Education Act 1989 apply to the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries (as applicable) and its council in addition to the provisions referred to in subsection (1).

(1B) For the purpose of applying the provisions referred to in **subsection (1A)**, NZIST must be treated as a statutory entity.

In section 7(1)(e), replace “polytechnics” with “the New Zealand Institute of Skills and Technology”.

In Schedule 4, after the Schedule 4 heading, insert:

Part 1 Provisions relating to all tertiary education institutions

In Schedule 4, after the last item, insert:

Crown Entities Act 2004 (2004 No 115)—continued

Part 2	
Additional provisions that apply to New Zealand Institute of Skills and Technology	
Section	Brief description
Section 37	Removal of members of autonomous Crown entities
Section 38	Removal of elected members of Crown agents and autonomous Crown entities
Section 40	Definition of just cause
Section 41	Process for removal
Section 43	No compensation for loss of office
Sections 44 and 45	Resignation of members and members ceasing to hold office
Sections 47 and 48	Remuneration and expenses of members
Sections 49 to 52	Collective duties of board
Sections 53 to 57	Individual duties of members
Sections 58 to 61	Effect of non-compliance with duties and reliance on information and advice
Sections 73 to 76	Delegation
Section 77	Vacancies in membership of board
Sections 96 to 102	Crown entity subsidiaries
Sections 120 to 126	Liability of members, office holders, and employees
Sections 127 and 128 to 130	Method of contracting and seal <u>Dealings with third parties</u>
Sections 138 to 149A	Statement of intent
Sections 149B to 149M	Statement of performance expectations
Sections 150 to 156	Reporting: annual reports
Section 158	Bank accounts of Crown entities

Electoral Act 1993 (1993 No 87)

In section 52(5), replace “university college or a technical institute or a community college or a teachers college may continue to teach or supervise the studies of students at that university or university college or technical institute or community college or teachers college” with “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”.

Financial Advisers Act 2008 (2008 No 91)

In section 5, replace the definition of **lecturer** with:

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Financial Advisers Act 2008 (2008 No 91)—*continued*

lecturer means a person who is employed by a university, the New Zealand Institute of Skills and Technology and its subsidiaries, or a college of education to teach or instruct students of the university, New Zealand Institute of Skills and Technology and its subsidiaries, or college of education

In section 5, repeal the definition of **polytechnic**.

In section 5, insert in its appropriate alphabetical order:

NZIST means the New Zealand Institute of Skills and Technology established by **section 222A** of the Education Act 1989, and includes its Crown entity subsidiaries

Income Tax Act 2007 (2007 No 97)

In section YA 1, definition of **tertiary education institution**, paragraph (a), replace “Part 14” with “Part 14 or **15A**, or **subpart 1 of Part 9 of Schedule 1**”.

Legislation Act 2012 (2012 No 119)

In Schedule 2, insert in its appropriate alphabetical order:

Education Act 1989 **498(1)**

In Schedule 2, repeal the item relating to the Industry Training and Apprenticeships Act 1992.

Legislation Act 2019 (2019 No 58)

In Schedule 4, insert in its appropriate alphabetical order:

Education Act 1989 **498(1)**

In Schedule 4, repeal the item relating to the Industry Training and Apprenticeships Act 1992.

Local Government Official Information and Meetings Act 1987 (1987 No 174)

In Schedule 2, insert in its appropriate alphabetical order:

New Zealand Institute of Skills and Technology established under **Part 15A** of the Education Act 1989 and its subsidiaries

Ngāti Tūwharetoa Claims Settlement Act 2018 (2018 No 55)

In section 142(2)(c), after “Polytechnic”, insert “Limited”.

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

A workforce development council established under **section 479** of the Education Act 1989

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)

In the heading to section 157, replace “industry training organisation” with “workforce development council”.

In section 157(1) and (2), replace “industry training organisation” with “workforce development council”.

Replace section 157(3) with:

- (3) In this section, **workforce development council** means a workforce development council established under **section 479** of the Education Act 1989.

Public Audit Act 2001 (2001 No 10)

In Schedule 2, insert in its appropriate alphabetical order:

A workforce development council established under **section 479** of the Education Act 1989

Real Estate Agents Act 2008 (2008 No 66)

Replace section 12(3) with:

- (3) To avoid doubt, nothing in subsection (1) affects the role of a workforce development council established under **section 479** of the Education Act 1989 for the real estate industry.

Residential Tenancies Act 1986 (1986 No 120)

In section 5B(6), replace “polytechnics,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

Taratahi Agricultural Training Centre (Wairarapa) Act 1969 (1969 No 138)

Replace section 3(2)(d) with:

- (d) 1 member appointed on the nomination of the workforce development council whose specified industry coverage includes agriculture:

Part 2
Amendments to legislative instruments

Accident Insurance (“Counsellor”) Regulations 1999 (SR 1999/166)

In regulation 2, definition of **course of education**, paragraph (a), replace “a polytechnic,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

Electronic Identity Verification Regulations 2013 (SR 2013/9)

Revoke regulation 4(1)(k).

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Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures, and Evacuation Schemes) Regulations 2018 (LI 2018/96)

In Schedule 2, paragraph 13, replace “polytechnics,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (LI 2016/17)

In regulation 3(1), revoke the definition of **industry training organisation**.

In regulation 50(3), replace “registered with an industry training organisation” with “assessing under a consent to assess against standards granted under section 252 of the Education Act 1989”.

International Student Contract Dispute Resolution Scheme Rules 2016 (LI 2016/42)

In rule 28(2)(a), replace “institutes of technology and polytechnics,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)

In the Schedule, clause 102(2)(a), replace “polytechnics,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.

Real Estate Agents (Licensing) Regulations 2009 (SR 2009/282)

In regulation 3(1), revoke the definition of **industry training organisation**.

In regulation 3(1), insert in its appropriate alphabetical order:

workforce development council means the workforce development council for the real estate industry established under **section 479** of the Education Act 1989

In regulation 12(1)(a)(iii), (b)(iv), and (c)(iv), replace “industry training organisation” with “workforce development council”.

Sale and Supply of Alcohol Regulations 2013 (SR 2013/459)

Revoke regulation 23(1)(b) and (2)(b).

Student Allowances Regulations 1998 (SR 1998/277)

In regulation 2(1), definition of **tertiary provider**, replace “polytechnic,” with “the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries,”.