

**Reprint  
as at 1 July 2015**

## **Education Standards Act 2001**

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Commencement    see section 2

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

**This Act is administered by the Ministry of Education.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Education Standards Act 2001.
- (2) In this Act, the Education Act 1989 is called “the principal Act”.

**2 Commencement**

- (1) This Act, other than the sections listed in subsection (2), comes into force on the day after the date on which it receives the Royal assent.
- (2) The following sections come into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions:
  - (a) section 18:
  - (b) sections 25 to 37:
  - (c) section 60:
  - (d) sections 69 to 77:
  - (e) section 82(2):
  - (f) section 83.



## **Part 1** **Substantive amendments to principal Act**

### *Regulating school hostels*

#### **3 Interpretation**

Section 2(1) of the principal Act is amended by inserting, after the definition of **foreign student**, the following definition:

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

### *Human Rights Act 1993 compliance*

#### **4 Restriction on attendance at certain schools**

Section 3A of the principal Act is repealed.

### *Enrolment schemes*

#### **5 Effect of home zone**

Section 11D(2)(b) of the principal Act is amended by adding the word “; or” and by adding the following paragraph:

- (c) if—
  - (i) the student has been excluded or expelled from another school (**school A**); and
  - (ii) the principal of the school at which the student wishes to enrol agrees, by arrangement with the principal of school A, to enrol the student; and
  - (iii) the Secretary endorses the proposal.

#### **6 Instructions and guidelines on operation of enrolment schemes**

Section 11G of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- (3) The Secretary may issue guidelines to state schools about any or all of the following matters:
  - (a) the basis on which the Secretary’s powers in relation to enrolment schemes may be exercised (including, in particular, the power in section 11P(2)(a) relating to the determination of whether an applicant lives within a home zone or outside it);
  - (b) the kinds of amendments to enrolment schemes that are minor amendments for the purpose of section 11MA, or the criteria for deciding what is a minor amendment, or both:

- (c) the manner in which schools must conduct reviews under section 11OA (which relates to the review of a student's enrolment).

## 7 New section 11MA inserted

The principal Act is amended by inserting, after section 11M, the following section:

### 11MA Making minor amendments to enrolment schemes

- (1) A state school that wishes to make a minor amendment to its enrolment scheme may make it using the procedure set out in subsection (2) instead of going through the process set out in sections 11H to 11J.
- (2) In order to make a minor amendment to its enrolment scheme under this section, a school must—
  - (a) apply to the Secretary for confirmation that the proposed amendment is minor; and
  - (b) on receiving confirmation from the Secretary, give notice of the proposed amendment; and
  - (c) forward to the Secretary any written comments or queries received by the school regarding the proposed amendment; and
  - (d) adopt the amendment by resolution of the school's Board.
- (3) A school may not adopt an amendment under subsection (2)(d) unless—
  - (a) at least 1 month has passed since notice of the proposal was given; and
  - (b) the Secretary has, after that time, given approval for the amendment to be incorporated.
- (4) At any time before the amendment is incorporated into the enrolment scheme, the Secretary may advise the school that the proposed amendment is not minor, in which case the school may not adopt the amendment without going through the process set out in sections 11H to 11J.

## 8 Enrolment may be annulled if based on false information

- (1) The heading to section 11O of the principal Act is amended by adding the words “**or temporary residence**”.
- (2) Section 11O of the principal Act is amended by inserting, after subsection (1), the following subsection:
  - (1A) The Board of a state school that has an enrolment scheme may, subject to subsection (4), annul the enrolment of a student if, following a review under section 11OA, the Board determines that the student has used a temporary residence for the purpose of gaining enrolment at the school.
- (3) Section 11O of the principal Act is amended by repealing subsections (4) and (5), and substituting the following subsections:

- (4) If the Board annuls an enrolment under any of subsections (1), (1A), or (3), the annulment takes effect 1 month from the date on which the Board decides to annul the enrolment.
- (5) A Board that annuls the enrolment of a student must immediately—
  - (a) advise the student’s parents, in writing, of the date of annulment and the date on which it takes effect; and
  - (b) advise the Secretary of the name of the student and the date of annulment.

**9 New section 11OA inserted**

The principal Act is amended by inserting, after section 11O, the following section:

**11OA Review of student’s enrolment**

- (1) The Board of a state school that has an enrolment scheme may issue the parents of a student enrolled at the school with a review notice under this section if—
  - (a) the student was enrolled at the school on the grounds that he or she lived in the school’s home zone; and
  - (b) the student has, since enrolling at the school, moved out of the school’s home zone; and
  - (c) the Board believes on reasonable grounds that the student has used a temporary residence within the school’s home zone for the purpose of gaining enrolment at the school.
- (2) On receipt of a review notice, a parent who wishes to rebut the Board’s view may make submissions to the Board in whatever manner he or she considers appropriate, and the Board must, in accordance with any guidelines issued under section 11G(3)(c), give the parent every reasonable opportunity to explain the situation.
- (3) The Board may exercise its power under section 11O(1A) to annul the student’s enrolment if, no earlier than 10 school days after the date on which the review notice was sent, the Board determines that the student has used a temporary residence within the school’s home zone for the purpose of gaining enrolment at the school.
- (4) Every review notice must—
  - (a) be in writing; and
  - (b) be sent by any 1 or more of post, fax, or email to the student’s parents; and
  - (c) advise the parents of the effect of the notice, and explain what the parents may do next.

**10 Release from tuition on religious or cultural grounds**

- (1) Section 25A of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- (1) A student aged 16 and above, or the parent of a student aged under 16, may ask the principal to release the student from tuition in a particular class or subject.
  - (1A) A request under subsection (1) must be made in writing, and at least 24 hours before the start of the tuition.
  - (1B) This section applies only to students enrolled at a state school that is not an integrated school.
- (2) Section 25A(2)(a) of the principal Act is amended by inserting, after the word “parent”, the words “or student (as the case may be)”.
- (3) Section 25A of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- (3) Upon receiving a request from a parent under subsection (1), the principal must, before agreeing to release the student, take all reasonable steps to find out the student’s views on the matter.

**11 New section 25AA inserted**

- (1) The principal Act is amended by inserting, after section 25A, the following section:

**25AA Release from tuition in specified parts of health curriculum**

- (1) The parent of a student enrolled at any state school may ask the principal in writing to ensure that the student is excluded from tuition in specified parts of the health curriculum related to sexuality education and, on receipt of such a request, the principal must ensure that—
- (a) the student is excluded from the relevant tuition; and
  - (b) the student is supervised during that tuition.
- (2) Nothing in subsection (1) requires a principal to ensure that a student who is to be excluded from tuition in specified parts of the health curriculum related to sexuality education is excluded at any other time while a teacher deals with a question raised by another student that relates to the specified part of the curriculum.
- (2) Section 105D of the Education Act 1964 is consequentially repealed.

*School planning and reporting***12 National education guidelines**

- (1) Section 60A(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:
- (a) national education goals, which are—

- (i) statements of desirable achievements by the school system, or by an element of the school system; and
  - (ii) statements of government policy objectives for the school system:
- (2) Section 60A(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
  - (c) national administration guidelines, which are guidelines relating to school administration and which may (without limitation)—
    - (i) set out statements of desirable codes or principles of conduct or administration for specified kinds or descriptions of person or body:
    - (ii) set out requirements relating to planning and reporting including—
      - (A) scope and content areas, where appropriate:
      - (B) the timeframe for the annual update of the school charter:
      - (C) broad requirements relating to schools' consultation with parents, staff, school proprietors (in the case of integrated schools) and school communities, and the broad requirements to ensure that Boards take all reasonable steps to discover and consider the views and concerns of Maori communities living in the geographical area the school serves, in the development of a school charter:
      - (D) variations from the framework for school planning and reporting for certain schools or classes of schools, based on school performance:
    - (iii) communicate the Government's policy objectives:
    - (iv) set out transitional provisions for the purposes of national administration guidelines.

### *Health education*

#### **13 New section 60B inserted**

- (1) The principal Act is amended by inserting, after section 60A, the following section:

#### **60B Consultation about treatment of health curriculum**

- (1) The Board of every state school must, at least once in every 2 years, and after consultation with the school community, adopt a statement on the delivery of the health curriculum.
- (2) In this section,—
  - school community** means,—
    - (a) in the case of an integrated school, the parents of students enrolled at the school, and the school's proprietors:

- (b) in the case of any other state school, the parents of students enrolled at the school;
  - (c) in every case, any other person whom the Board considers is part of the school community for the purpose of this section
- statement on the delivery of the health curriculum** means a written statement of how the school will implement the health education components of the relevant national curriculum statements.
- (3) The purpose of the consultation required by subsection (1) is to—
    - (a) inform the school community about the content of the health curriculum; and
    - (b) ascertain the wishes of the school community regarding the way in which the health curriculum should be implemented, given the views, beliefs, and customs of the members of that community; and
    - (c) determine, in broad terms, the health education needs of the students at the school.
  - (4) A Board may adopt any method of consultation that it considers will best achieve the purpose set out in subsection (3), but it may not adopt a statement on the delivery of the health curriculum until it has—
    - (a) prepared the statement in draft; and
    - (b) given members of the school community an adequate opportunity to comment on the draft statement; and
    - (c) considered any comments received.
- (2) Section 105C of the Education Act 1964 is consequentially repealed.

### *School planning and reporting*

#### **14 New sections 61 to 63B substituted**

The principal Act is amended by repealing sections 61 to 64, and substituting the following sections:

#### **61 School charter**

- (1) Every Board must, for each school it administers, prepare and maintain a school charter.
- (2) The purpose of a school charter is to establish the mission, aims, objectives, directions, and targets of the Board that will give effect to the Government's national education guidelines and the Board's priorities.
- (3) A school charter must contain the following sections:
  - (a) a section that includes—

- (i) the aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Maori culture; and
      - (ii) the aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it:
    - (b) a long-term strategic planning section that—
      - (i) establishes the Board's aims and purposes; and
      - (ii) establishes for the next 3 to 5 years the Board's aims, objectives, directions, and priorities for intended student outcomes, the school's performance, and use of resources; and
      - (iii) includes any aims or objectives that designate the school's special characteristics or its special character (within the meaning of this Act):
    - (c) an annually updated section that—
      - (i) establishes for the relevant year the Board's aims, directions, objectives, priorities, and targets relating to intended student outcomes, the school's performance, and use of resources; and
      - (ii) sets targets for the key activities and achievement of objectives for the year.
  - (4) A school charter must include the Board's aims, objectives, directions, priorities, and targets in the following categories:
    - (a) student achievement:
    - (b) the Board's activities aimed at meeting both general government policy objectives for all schools, being policy objectives set out or referred to in national education guidelines, and specific policy objectives applying to that school:
    - (c) the management of the school's and Board's capability, resources, assets, and liabilities, including its human resources, finances, property, and other ownership matters:
    - (d) other matters of interest to the public that the Minister may determine.
  - (5) A school charter must—
    - (a) contain all annual or long-term plans the Board is required to have or has prepared for its own purposes; or
    - (b) contain a summary of each plan or a reference to it.
- 62 Procedural requirements of preparing or updating school charter**
- (1) The Board must provide the Secretary with a copy of its first school charter and every updated school charter.

- (2) A school charter must be prepared and updated in accordance with national administration guidelines.

**63 Effect of school charter**

A school charter has effect as an undertaking by the Board to the Minister to take all reasonable steps (not inconsistent with any enactment, or the general law of New Zealand) to ensure that—

- (a) the school is managed, organised, conducted, and administered for the purposes set out or deemed to be contained in the school charter; and
- (b) the school, and its students and community, achieve the aims and objectives set out in the school charter.

**63A When school charter or updated charter takes effect**

- (1) When the Secretary receives a school charter or updated school charter, the Secretary must consider whether the charter has been developed or updated in accordance with the requirements of this Act and the national administration guidelines.
- (2) Unless it takes effect on a different date under subsection (5), a new or updated school charter takes effect on the 25th working day after the date that the Secretary receives it.
- (3) If, before the first or updated school charter takes effect, the Secretary determines that it was not developed or updated in accordance with the Act or is inconsistent with the Act or the national administration guidelines, the Secretary must notify the Board of the matters in the school charter to be resolved.
- (4) The Secretary must then negotiate with the Board to resolve the matters concerned and, if the Board and the Secretary are unable to reach agreement about the content of the school charter or updated school charter, the Secretary may require the Board to amend the charter or updated charter.
- (5) If the Secretary issues a notice under subsection (3), the school charter or updated charter takes effect—
  - (a) on the date agreed by the Secretary and the Board; or
  - (b) on the date the Secretary determines to be the commencement date for his or her amendments.

**63B Board must make copies of school charter available**

Once a school charter or updated school charter takes effect, the Board must make the charter available.



*Disqualifying interests of school trustees*

**15 Certain persons ineligible to be trustees**

Section 103(1) of the principal Act is amended by inserting, after paragraph (da), the following paragraph:

(db) has been declared by the Secretary to be disqualified under section 103A; or

**16 New section 103A inserted**

The principal Act is amended by inserting, after section 103, the following section:

**103A Financial interests that disqualify persons from being trustees**

(1) In this section,—

**contract**, in relation to a Board,—

- (a) means a contract made by any person directly with the Board; and
- (b) includes any relationship with the Board that is intended to constitute a contract but is not an enforceable contract; but
- (c) does not include any contract for the employment of any person as an officer or employee of the Board

**company** means a company incorporated under the Companies Act 1993 or any former Companies Act or a society incorporated under the Industrial and Provident Societies Act 1908 or any former Industrial and Provident Societies Act

**subcontract**, in relation to any contract made by a Board,—

- (a) means a subcontract made with the contractor under that contract, or with another subcontractor, to do any work or perform any service or supply any goods or do any other act to which the head contract relates; and
- (b) includes any subsidiary transaction relating to any such contract or subcontract.

(2) A person is not capable of being a trustee of a Board or a member of a committee of a Board, if the total of all payments made or to be made by or on behalf of the Board in respect of all contracts made by it in which that person is concerned or interested exceeds in any financial year—

- (a) the amount determined for the purpose by the Secretary, in consultation with the Auditor-General, by notice in the *Gazette*; or
- (b) in the absence of an amount determined under paragraph (a), \$25,000.

(3) For the purposes of subsection (2), a trustee or a member of a committee of a Board is deemed to be concerned or interested in a contract made by a Board with a company, if—

- (a) the trustee owns, whether directly or through a nominee, 10% or more of the issued capital of the company or of any other company controlling that company; or
  - (b) the trustee is the managing director or the general manager (by whatever names they are called) of the company.
- (4) For the purposes of this section, a company is deemed to control another company if it owns 50% or more of the issued capital of that other company or is able to control the exercise of 50% or more of the total voting powers exercisable by all the members of that other company.
- (5) Despite anything in this section,—
- (a) a person is not disqualified under this section if the Secretary approves the contract at the request of the Board, whether or not the contract is already entered into; and
  - (b) the Secretary may, by notice in the *Gazette*, issue guidelines setting out the basis on which applications for approval under paragraph (a) will be considered.

#### **17 Local Authorities (Members' Interests) Act 1968 amended**

Part 1 of Schedule 1 of the Local Authorities (Members' Interests) Act 1968 is consequentially amended by repealing the item relating to Boards of Trustees of schools.

#### *Police vetting*

#### **18 New sections 78C to 78CB inserted**

The principal Act is amended by inserting, after section 78B, the following sections:

#### **78C Police vetting of non-teaching and unregistered employees at schools**

- (1) Before appointing a person who is not a registered teacher or holder of a limited authority to teach to a position at a school, the Board of the school, or (in the case of a school registered under section 35A) the management of the school, must obtain a police vet of the person from the New Zealand Teachers Council.
- (2) The Board of every state school, and the management of every school registered under section 35A, must apply to the New Zealand Teachers Council for a police vet of every person who is employed by the Board or management but is not a registered teacher or holder of a limited authority to teach—
  - (a) within 2 weeks of first employing the person on a casual or temporary basis at the school;
  - (b) in the case of a person employed at the school when this section comes into force, as required by the Teachers Council:

- (c) in the case of a person on whom a police vet has been conducted within the last 3 years, on or about the third anniversary of the previous police vet.
- (3) Despite subsections (1) and (2), no Board of a state school, or management of a school registered under section 35A, is obliged to seek a police vet of a person employed solely to provide classes that are usually held outside normal school hours and that are open to people not enrolled full-time at the school.

#### **78CA Police vetting of contractors and their employees who work at schools**

- (1) The Board of every state school, and the management of every school registered under section 35A, must apply to the New Zealand Teachers Council for a police vet of every contractor who regularly works at the school during school hours—
  - (a) within 2 weeks of the contractor first starting to work at the school;
  - (b) in the case of a contractor working at the school when this section comes into force, as required by the Teachers Council;
  - (c) in the case of a contractor on whom a police vet has been conducted within the last 3 years, on or about the third anniversary of the previous police vet.
- (2) In this section, **contractor** means both—
  - (a) a person who, under contract (other than an employment contract), works at a school; and
  - (b) a person employed by a person referred to in paragraph (a) who, in the course of that employment, works at a school.

#### **78CB Internal procedures relating to police vets**

- (1) In this section, **requester** means the Board of a state school or the management of a school registered under section 35A that has applied to the Teachers Council for a police vet of a person.
- (2) Every requester must establish internal procedures for dealing with police vets that are received as a result of a request under section 78C or section 78CA, which must, in particular,—
  - (a) identify the person or office-holder within the requester to whom police vets must be sent by the Teachers Council; and
  - (b) ensure that strict confidentiality is observed for police vets.
- (3) A requester may not take adverse action in relation to a person who is the subject of a police vet until—
  - (a) the person has validated the information contained in the vet; or
  - (b) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

*School risk management scheme***19 New sections 78D to 78G inserted**

The principal Act is amended by inserting, after section 78CB, the following sections:

**78D School risk management scheme**

(1) In this section, and in sections 78E and 78F,—

**participating school Board—**

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

**school risk management scheme** means the school risk management scheme for the time being having effect under this section.

(2) The Minister may, in accordance with this section, establish a school risk management scheme for the purpose of indemnifying participating school Boards—

- (a) against accidental loss or damage to property of the Board;
- (b) for any other purpose authorised by regulations made under section 78F.

(3) An indemnity under the school risk management scheme must be given in a form and contain terms and conditions authorised by regulations made under this Act.

(4) A participating school Board is liable to pay to the Crown the annual fee set under section 78E.

(5) The Minister may at any time, on giving reasonable notice to all participating school Boards, discontinue a school risk management scheme and direct the Secretary to wind up the scheme.

(6) Until a school risk management scheme is established under subsection (2), the deed signed by the Minister on 24 December 1999 entitled *Ministry of Education—Risk Management Scheme for School Contents* constitutes the school risk management scheme.

**78E School risk management scheme fees**

(1) In respect of each year in which a school risk management scheme has effect, the Minister must, by notice in the *Gazette*, set the amount of the annual fee payable by a participating school Board or the rate at which the amount is to be assessed.

- (2) The purpose of the annual fee is to recover the administration, insurance, and claims costs of the scheme.
- (3) The Secretary must deduct the fee from grants made to the Board under section 79.
- (4) The Secretary must establish a separate bank account for the purposes of this section, and—
  - (a) all fees deducted under subsection (3) must be paid into the account; and
  - (b) the Secretary may authorise payments to be made from the account for the purposes of administering the scheme.
- (5) If the school risk management scheme is discontinued, the money held in the separate account after the scheme has been wound up must be paid into the Crown Bank Account in accordance with any directions of the Secretary to the Treasury.

**78F Regulations relating to school risk management scheme**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) providing for the form of legal instrument by which a school risk management scheme may be established:
- (b) defining **accidental loss or damage** and other terms for the purposes of the regulations and the legal instrument:
- (c) setting out the scope of the indemnity that may be given by the Crown, including any exclusions:
- (d) setting out the procedure for lodging claims and their determination:
- (e) listing the kinds of costs that the Crown may deduct from money payable under the scheme to a participating school Board:
- (f) providing for the manner in which the parties may withdraw from the scheme:
- (g) providing for the manner in which the legal instrument may be varied, replaced, or terminated.

**78G Former school risk management schemes**

- (1) The scheme referred to in section 78D(6), and all former schemes established for similar purposes by or on behalf of the Minister in 1991 or subsequent years, must be treated as if they were authorised by this section when executed.
- (2) All levies collected from school Boards for the purposes of a scheme to which this section applies, and payments made from those fees, must be treated as having been collected or paid under the authority of this section.

*Interventions in poorly performing schools***20 New Part 7A inserted**

The principal Act is amended by inserting, after section 78G, the following Part:

**Part 7A**  
**Interventions in schools**

**78H Purpose of Part**

The purpose of this Part is to provide for a range of interventions that may be used to address risks to the operation of individual schools or to the welfare or educational performance of their students.

**78I Application of interventions**

- (1) The interventions in schools that are available are as follows:
  - (a) a requirement by the Secretary for information:
  - (b) a requirement by the Secretary for a Board to engage specialist help:
  - (c) a requirement by the Secretary for a Board to prepare and carry out an action plan:
  - (d) the appointment by the Secretary, at the direction of the Minister, of a limited statutory manager:
  - (e) the dissolution of a Board by the Minister, and the appointment of a commissioner:
  - (f) the dissolution of a Board by the Secretary, and the appointment of a commissioner.
- (2) The Minister or Secretary (as the case may be) may apply any of the interventions described in subsection (1)(b) to (e) to a school if he or she has reasonable grounds to believe that there is a risk to the operation of the school, or to the welfare or educational performance of its students.
- (3) The Minister or Secretary (as the case may be) may apply any of the interventions described in subsection (1) to a school if either of the following requests an intervention:
  - (a) the Board of the school:
  - (b) in the case of an integrated school, the school's proprietors.
- (4) When applying an intervention, the Minister or Secretary (as the case may be) must apply whichever intervention he or she considers is reasonable to deal with the risk without intervening more than necessary in the affairs of the school.

- (5) The application of any 1 intervention does not preclude the application of any other intervention, either simultaneously or at any other time.

**78J Requirement to provide information**

- (1) The Secretary may, by written notice to the Board of a school, require the Board to provide specified information—
- (a) as at a given time; or
  - (b) at specified intervals; or
  - (c) both.
- (2) The Secretary may give a notice under subsection (1) only if he or she has reasonable grounds for concern about the operation of the school, or the welfare or educational performance of its students.
- (3) A Board that receives a notice under subsection (1) must provide the Secretary with the information required—
- (a) within or at the time or times specified in the notice; and
  - (b) in the form (if any) specified by the Secretary.
- (4) The Secretary may at any time amend or revoke a notice under subsection (1), and the amendment or revocation takes effect on the date specified in the notice.

**78K Specialist help**

- (1) The Secretary may, by written notice to the Board of a school, require the Board to engage specified specialist help.
- (2) A notice given under subsection (1) must identify particular persons or organisations, or types of persons or organisations, whom the Board must engage.
- (3) A Board that receives a notice under subsection (1) must comply with the notice as soon as practicable, and must pay the fees and reasonable expenses of any person or organisations engaged to provide specialist help.
- (4) The Secretary may at any time amend or revoke a notice under subsection (1), and the amendment or revocation takes effect on the date specified in the notice.

**78L Action plans**

- (1) The Secretary may, by written notice to the Board of a school, require the Board to prepare and carry out an action plan, and every such notice must specify—
- (a) the matters that the action plan must address; and
  - (b) the outcomes sought; and
  - (c) the time within which a draft action plan must be prepared.

- (2) A Board that receives a notice under subsection (1) must comply with it by preparing a draft action plan within the time specified in the notice and presenting it to the Secretary for approval.
- (3) The Secretary may negotiate with the Board over the draft action plan in order to reach an agreed plan but, if after a reasonable period the Board and Secretary have not reached agreement over the content of the action plan, the Secretary may give notice to the Board that he or she will approve a particular version of the plan.
- (4) When the Secretary has approved an action plan, the Board—
  - (a) must implement it in accordance with its terms, unless or until the Secretary directs otherwise; and
  - (b) must make the plan available as if it were part of the school's charter.

#### **78M Limited statutory manager**

- (1) The Minister may, by notice in the *Gazette*, direct the Secretary to appoint a limited statutory manager for the Board of a school.
- (2) A notice under subsection (1) must specify—
  - (a) any functions, powers, and duties of the Board (whether statutory or otherwise) that are to be vested in the limited statutory manager; and
  - (b) any matters on which the limited statutory manager may or must advise the Board; and
  - (c) any conditions attaching to the exercise of the powers by the Board or by the limited statutory manager.
- (3) Upon publication of the *Gazette* notice, the Secretary must, by notice to the Board,—
  - (a) appoint a person to be the limited statutory manager for the Board; and
  - (b) state the date on which the appointment takes effect.
- (4) On and from the date on which his or her appointment takes effect,—
  - (a) any functions, powers, or duties of the Board specified in a notice under subsection (1) vest in the limited statutory manager; and
  - (b) the Board must take into consideration advice given by the limited statutory manager on any matter on which he or she is obliged to give advice; and
  - (c) any conditions specified in the notice apply.
- (5) The Board must pay the fees and expenses of a limited statutory manager appointed for it.
- (6) The Minister may at any time, by notice in the *Gazette*, amend a notice under subsection (1), and the amendment takes effect on and from the date given in the notice.



- (7) When the Minister is satisfied that the appointment of the limited statutory manager is no longer required, he or she must revoke the notice under subsection (1), in which case the appointment terminates from the date of the revocation.

**78N Dissolution of Board and appointment of commissioner**

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

**78O Commissioners**

- (1) A commissioner appointed under section 78N has all the functions, powers, and duties of the Board that he or she is appointed to replace.
- (2) Anything that, if done by or on behalf of the Board, must be done by affixing the Board's seal, or by the signature of 2 or more trustees, or both, may be done by the signature of the commissioner.
- (3) The remuneration of the commissioner must be determined by the Secretary and paid for out of funds of the Board.

**78P Commissioner sets date for election of trustees**

- (1) In the case of a commissioner appointed under section 78N(2), when the Secretary is satisfied that a commissioner is no longer required for the school, the commissioner must appoint a date for the election of trustees.
- (2) In the case of a commissioner appointed under section 78N(3), when the Secretary is satisfied that an election of trustees will produce a functioning Board, the commissioner must appoint a date for the election of trustees.
- (3) A commissioner's appointment ends 7 days after the date that he or she has set for the election of trustees.

**78Q Protection of limited statutory managers and commissioners**

No limited statutory manager, and no commissioner, is personally liable for any act done or omitted by him or her, or for any loss arising out of any act done or omitted by him or her, if the act or omission was in good faith and occurred in the course of carrying out his or her functions.

**78R Annual review of interventions**

Within 1 year of the date of a notice under any of sections 78J(1), 78K(1), 78L(1), 78M(1), or 78N(1) or (3), the Secretary must review the operation of the intervention commenced by each notice, and after that must review the operation of the intervention annually.

**78S Application of interventions to integrated schools**

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

**78T Application of interventions to Kura Kaupapa Maori**

- (1) Before applying any of the interventions in this Part to a Kura Kaupapa Maori, the Secretary must consult with te kaitiaki o Te Aho Matua (as defined in section 155B).
- (2) Subsection (1) applies only to Kura Kaupapa Maori that are required by their charters to operate in accordance with Te Aho Matua.

**21 Grants for Boards**

- (1) Section 79(1) of the principal Act is amended by inserting, after the word “grants”, the words “and supplementary grants”.
- (2) Section 79 of the principal Act is amended by adding the following subsection:
- (3) A supplementary grant is paid subject to the condition that it will be used for the purposes set out in the grant, and a Board that receives a supplementary grant must use it for those purposes only.

**22 Consequential repeals relating to interventions in schools**

The principal Act is consequentially amended by repealing sections 64A, 81B, and 106 to 109.

*School planning and reporting*

**23 Annual reports**

- (1) Section 87 of the principal Act is amended—
  - (a) by omitting from subsection (1) the words “a report on its operations for the year”, and substituting the words “an annual report in accordance with this section”;
  - (b) by adding to subsection (2)(b) the expression “; and”.
- (2) Section 87(2) of the principal Act is amended by adding the following paragraphs:
  - (c) a report, presented in the manner required by the Minister by notice in the *Gazette*, on the total remuneration paid to school principals employed by the Board; and
  - (d) the Board’s annual financial statements; and
  - (e) a statement in which schools provide an analysis of any variance between the school’s performance and the relevant aims, objectives, directions, priorities, or targets set out in the school charter:
- (3) Section 87 of the principal Act is amended by adding the following subsections:
  - (3) The annual financial statements must be prepared in accordance with generally accepted accounting practice, audited as required by section 41(3) of the Public Finance Act 1989, and include all of the following:
    - (a) a statement of the financial position of the Board as at its balance date;
    - (b) a statement of financial performance reflecting the revenue and expenses of the Board for the financial year;
    - (c) if required by generally accepted accounting practice, a statement of cash flows reflecting cash flows of the Board for the financial year;
    - (d) a statement of the commitments of the Board as at the balance date;
    - (e) a statement of the contingent liabilities of the Board as at the balance date;
    - (f) a statement of accounting policies;
    - (g) such other statements as are necessary to fairly reflect the financial operations of the Board for the financial year and its financial position at the end of the financial year;
    - (h) any other statements that the Secretary determines in consultation with the Auditor-General;
    - (i) in relation to each statement required by paragraphs (a) to (c) and, if appropriate, by paragraph (g), budgeted figures for the financial year:

- (j) in relation to each statement required by paragraphs (a) to (c), paragraph (d), and paragraph (e) and, if appropriate, by paragraph (g), comparative actual figures for the previous financial year.
- (4) The annual financial statements must be accompanied by a statement of responsibility signed by the chair of the Board and principal, as required by section 42 of the Public Finance Act 1989.

#### 24 New section 91N inserted

The principal Act is amended by inserting in Part 8A after section 91M, the following section:

##### 91N Power of Secretary to employ teachers

- (1) The Secretary may, in his or her discretion, employ any person to work in a school as a teacher.
- (2) In applying any Order in Council under this Part limiting the number of teachers who may be employed at a school, teachers employed under this section are not to be counted.
- (3) The provisions of Parts X and 10A apply in relation to persons employed as teachers under this section as if the Secretary were a school Board and with any other necessary modifications.

#### *Teacher registration*

#### 25 Interpretation

- (1) Section 120 of the principal Act is amended by inserting, after the definition of **authorisation**, the following definitions:

**early childhood service** means—

- (a) a chartered service, as defined in section 308; and
- (b) an early childhood centre licensed under section 317

**early childhood education and care service** means—

- (a) a free kindergarten; and
- (b) an early childhood service declared to be an early childhood education and care service by regulations made under section 69(2) of the Education Standards Act 2001

**employer** means any 1 of the following who employs, or intends to employ, 1 or more teachers or authorised persons in a teaching position

- (a) the Board of Trustees of a state school;
- (b) the managers of a school registered under section 35A;
- (c) the management of an early childhood education and care service
- (d) the Secretary, in his or her capacity as an employer under section 91N

**free kindergarten** means an early childhood centre (as defined in section 308) controlled by a free kindergarten association founded for the purpose of establishing and maintaining a kindergarten or kindergartens

- (2) Section 120 of the principal Act is amended by repealing the definition of **general education system**, and substituting the following definition:

**general education system** means the system of education provided in—

- (a) registered schools (as defined in section 2); and
- (b) early childhood services; and
- (c) other educational institutions and services established or deemed to have been established, or provided, under this Act or the Education Act 1964

- (3) Section 120 of the principal Act is amended by inserting, after the definition of **practising certificate**, the following definition:

**professional leader** means,—

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

- (4) Section 120 of the principal Act is amended by repealing paragraph (b) of the definition of **teaching position**, and substituting the following paragraphs:

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

- (5) Section 120 of the principal Act is amended by adding, after the definition of **teaching position**, the following definition:

**Teachers Council** means the New Zealand Teachers Council established under Part 10A.

- (6) Section 120 of the principal Act is amended by repealing the definitions of **registered private school**, **Registration Board**, **school authority**, **School Board**, and **state school**.

## 26 Restrictions on appointment of teachers

Section 120A(3) of the principal Act is repealed.

## 27 Restrictions on continued employment of teachers

Section 120B(5) of the principal Act is repealed.

**28 New section 124B inserted**

The principal Act is amended by inserting, after section 124A, the following section:

**124B Determining good character and fitness to be teacher**

- (1) For the purpose of determining whether a person is of good character and fit to be a teacher, the Teachers Council must obtain a police vet of the person.
- (2) Subsection (1) does not limit any other matters that the Teachers Council may take into account in determining character and fitness to be a teacher.

**29 New section 129 substituted**

The principal Act is amended by repealing section 129, and substituting the following section:

**129 Deregistration**

- (1) The Teachers Council must deregister a registered teacher or authorised person if any of the following applies:
  - (a) the Teachers Council is satisfied on reasonable grounds that the person no longer satisfies (as the case requires)—
    - (i) the requirements for registration as a teacher under section 122; or
    - (ii) the requirements for limited authority to teach under section 130B(2);
  - (b) the Teachers Council is satisfied on reasonable grounds that the registration or authorisation was effected by mistake or obtained by fraud;
  - (c) the Teachers Council is satisfied on reasonable grounds, following a complaint and investigation under section 139AZC, that the teacher or authorised person is not competent to be a teacher or authorised person and ought to be deregistered;
  - (d) the Disciplinary Tribunal of the Teachers Council requires that the teacher or authorised person be deregistered as a result of misconduct or conviction for an offence.
- (2) Unless a proposed deregistration is the result of a hearing by the Disciplinary Tribunal, the Teachers Council may not deregister a person without first—
  - (a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed deregistration; and
  - (b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed deregistration.
- (3) The fact that a person has been deregistered does not prevent the teacher from again being registered or authorised.

- (4) When a teacher is deregistered on the ground that he or she is not competent to be registered, if the person later applies for registration, he or she may be treated as a person who has not held a practising certificate within the past 5 years.
- (5) The Teachers Council must take all reasonable steps to ensure that employers are informed when a person is deregistered.
- (6) In this section, **deregistration** includes the cancellation of a limited authority to teach.

### **30 Practising certificates**

- (1) Section 130 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

- (1) Any person may apply to the Teachers Council, on a form provided by the Council, for a practising certificate.
- (1A) The Teachers Council must issue a practising certificate to every applicant who—
  - (a) is registered as a teacher; and
  - (b) has had a satisfactory police vet within the past 3 years.

- (2) Section 130 of the principal Act is amended by adding the following subsection:

- (6) If a teacher applies to renew his or her practising certificate, the Teachers Council may issue a renewed practising certificate only if it is satisfied that the teacher—
  - (a) continues to meet the criteria for registration; and
  - (b) has satisfactory recent teaching experience; and
  - (c) has had a satisfactory police vet within the past 3 years; and
  - (d) has completed satisfactory professional development during the past 3 years.

### **31 Determining character and likely teaching ability**

Section 130C of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

- (2) For the purpose of determining whether a person is of good character and fit to be a teacher, the Teachers Council must obtain a police vet of the person.
- (3) Subsection (2) does not limit any other matters that the Teachers Council may take into account in determining good character and fitness to be a teacher.

### **32 Section 130G repealed**

Section 130G of the principal Act is repealed.

**33 Heading and sections 131 to 135 repealed**

The heading immediately above section 131, and sections 131 to 135 of the principal Act, are repealed.

**34 Offences**

- (1) Section 137(g) of the principal Act is repealed.
- (2) Section 137 of the principal Act is amended by adding, as subsection (2), the following subsection:
- (2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who appoints any person to a position, or continues to employ any person in a position, knowing that the appointment or employment is contrary to section 120A or section 120B.

**35 Section 138 repealed**

Section 138 of the principal Act is repealed.

**36 Sections 138A and 138B repealed**

Sections 138A and 138B of the principal Act are repealed.

*New Zealand Teachers Council*

**37 New Part 10A inserted**

- (1) The principal Act is amended by inserting, after Part 10, the following Part:

**Part 10A**  
**New Zealand Teachers Council**

**139AA Purpose of Part**

The purpose of this Part is to provide professional leadership in teaching, enhance the professional status of teachers in schools and early childhood education, and contribute to a safe and high quality teaching and learning environment for children and other learners.

**139AB Interpretation**

- (1) In this Part, unless the context otherwise requires,—
  - authorised person** means the holder of a limited authority to teach given under Part X
  - Complaints Assessment Committee** means the Complaints Assessment Committee established by rules
  - disciplinary body** means either or both of the Complaints Assessment Committee and the Disciplinary Tribunal
  - Disciplinary Tribunal** means the Disciplinary Tribunal established by rules



**rules** means rules made under section 139AJ

**serious misconduct** means conduct by a teacher—

- (a) that—
  - (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
  - (ii) reflects adversely on the teacher's fitness to be a teacher; and
- (b) is of a character or severity that meets the Teachers Council's criteria for reporting serious misconduct

**teacher** includes—

- (a) a registered teacher; and
  - (b) a former registered teacher; and
  - (c) an authorised person; and
  - (d) a former authorised person.
- (2) Terms in this Part that are defined in section 120 have the meanings given to them by that section.

#### *Teachers Council*

#### **139AC New Zealand Teachers Council established**

- (1) The New Zealand Teachers Council (**Teachers Council**) is established as a body corporate owned by the Crown.
- (2) The Teachers Council is a Crown entity for the purposes of the Public Finance Act 1989.
- (3) The Seventh Schedule applies to the Teachers Council and its members.

#### **139AD Composition of Teachers Council**

- (1) The Teachers Council comprises 11 members, as follows:
  - (a) 4 members appointed by the Minister, 1 of whom the Minister must appoint as chairperson:
  - (b) 4 elected members (each of whom must be a registered teacher holding a current practising certificate), being—
    - (i) 1 teacher representing the early childhood sector, elected by teachers from that sector; and
    - (ii) 1 teacher representing the primary sector, elected by teachers from that sector; and
    - (iii) 1 teacher representing the secondary sector, elected by teachers from that sector; and
    - (iv) 1 principal, elected by principals:

- (c) 1 person appointed by the Minister on the nomination of the New Zealand Educational Institute:
  - (d) 1 person appointed by the Minister on the nomination of the New Zealand Post Primary Teachers' Association:
  - (e) 1 person appointed by the Minister on the nomination of the New Zealand School Trustees Association.
- (2) The elected members of the Teachers Council must be elected in accordance with rules made under section 139AJ(1)(a) by registered teachers who each hold a current practising certificate.
- (3) The first elections for the elected members must be held as soon as practicable after the commencement of this section but, until the date on which the elected members take office following those elections, the positions of the elected members must be filled by persons appointed by the Minister.
- (4) In order to provide for the staggered turnover of members, the Minister may specify, when appointing members to hold office when this section comes into force, which members are to hold office for 3 years (which is the standard term of office), and which are to hold office for 18 months.

#### **139AE Functions of Teachers Council**

The functions of the Teachers Council are as follows:

- (a) to provide professional leadership to teachers and others involved in schools and early childhood education:
- (b) to encourage best teaching practice:
- (c) to carry out the functions under Part X relating to teacher registration:
- (d) to determine standards for teacher registration and the issue of practising certificates:
- (e) to establish and maintain standards for qualifications that lead to teacher registration:
- (f) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes on the basis of the standards referred to in paragraph (e):
- (g) to develop a code of ethics for teachers:
- (h) to exercise the disciplinary functions in this Part relating to teacher misconduct and reports of teacher convictions:
- (i) to set the criteria for reporting serious misconduct and for reporting on competence issues:
- (j) to exercise the functions in this Part relating to teacher competence:
- (k) to co-ordinate a system providing for the vetting by the police of all teachers and other people employed in schools and early childhood services:

- (l) to identify research priorities and, where appropriate, to promote and sponsor research according to those priorities:
- (m) to exercise any other functions conferred on it by this Act, any other enactment, or the Minister.

### **139AF Powers of Teachers Council**

- (1) The Teachers Council has—
  - (a) all the rights, powers, and privileges of a natural person of full age and capacity; and
  - (b) the power to do anything it is authorised to do by or under this Act, or any other enactment, or any rule of law.
- (2) The Teachers Council may exercise its powers only for the purpose of carrying out its functions.
- (3) The Teachers Council may provide goods and services that are consistent with its functions and may, with the approval of the Minister, charge a commercial rate for any goods and services provided.
- (4) The Teachers Council may, by notice in the *Gazette*, fix fees for all or any of the following:
  - (a) any addition or alteration to a person's registration as a teacher:
  - (b) any addition or alteration to, or extension of, a person's limited authority to teach:
  - (c) any addition or alteration to a person's practising certificate:
  - (d) inspection of the register of registered teachers or any other register or any other documents kept by the Teachers Council that are open to inspection:
  - (e) the supply of a copy of any entry in a register or other document referred to in paragraph (d):
  - (f) any other matter for which this Act provides that the Teachers Council may charge fees.

### **139AG Ministerial directions**

- (1) The Minister may, after consultation with the Teachers Council, give directions to the Council about the Government's expectations regarding the performance of its functions, other than its functions under section 139AE(a) and (b) (which relate to professional leadership and best teaching practice).
- (2) The Minister may not give a direction under this section that requires the Teachers Council to do, or refrain from doing, any act that is intended to bring about a particular result in respect of 1 or more particular individuals.
- (3) Every direction from the Minister must be in writing and be signed and dated.
- (4) The Minister must, as soon as practicable after giving the direction,—

- (a) publish a copy of it in the *Gazette*; and
  - (b) present a copy of it to the House of Representatives.
- (5) The Teachers Council must give effect to every direction given by the Minister.

**139AH Advisory groups**

- (1) The Teachers Council must establish—
- (a) an early childhood advisory group; and
  - (b) a Maori-medium advisory group.
- (2) The Council may establish any other advisory groups, whether on an ongoing basis or for a fixed term.
- (3) The Council must determine the membership of advisory groups, and their terms of reference, budget, and other matters necessary to ensure their efficient and effective operation.
- (4) The Council must have regard to advice given by an advisory group about any matter within its area of expertise.

**139AI Code of ethics**

- (1) The code of ethics prepared under this section is binding on all teachers who hold a practising certificate and on all authorised persons.
- (2) The Teachers Council must, as soon as practicable after the first elected members of the Council take office, prepare a code of ethics for teachers.
- (3) When preparing the code of ethics (and any amendments to it), the Teachers Council must take all reasonable steps to consult with those who will be bound by it.
- (4) The code of ethics must be signed by the chairperson of the Teachers Council and—
- (a) notice of it must be given in the *Gazette*; and
  - (b) the notice must say where copies of the code may be obtained free of charge; and
  - (c) the notice must give the date on which the code comes into force, which must be a date on or after the date of the *Gazette* notice; and
  - (d) the Teachers Council must take all reasonable steps to ensure that those bound by the code hear of it and are able to obtain copies of it.
- (5) The Council may amend the code of ethics, and every amendment—
- (a) must be notified in the *Gazette*; and
  - (b) forms part of the code on the date specified in the notice as the date on which it will come into force.

**139AJ Teachers Council to make rules**

- (1) The Teachers Council must, as soon as practicable after the commencement of this section, make rules providing for—
  - (a) the conduct of elections for elected members and the establishment of rolls for the election of each elected member; and
  - (b) a Complaints Assessment Committee to—
    - (i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
    - (ii) carry out any other function, and exercise any power given under this Act or delegated to it by the Teachers Council; and
  - (c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and
  - (d) the practices and procedures of the disciplinary bodies; and
  - (e) the procedures of the Teachers Council for dealing with reports received under the mandatory reporting provisions in sections 139AK, 139AL, 139AM, 139AN, and 139AP; and
  - (f) the procedures relating to police vets, and in particular the rights of persons who are vetted; and
  - (g) the amendment and replacement of rules made under this subsection, including any consultation requirements.
- (2) The Teachers Council may make rules for any other purpose relating to the performance of its functions.
- (3) When preparing rules (and any amendments to them), the Teachers Council must take all reasonable steps to consult with those affected by the rules.
- (4) When rules are made under this section,—
  - (a) notice of them must be given in the *Gazette*; and
  - (b) the notice must say where copies of the rules may be obtained free of charge; and
  - (c) the notice must give the date on which the rules come into force, which must be a date on or after the date of the *Gazette* notice; and
  - (d) the Teachers Council must take all reasonable steps to ensure that those affected by the rules hear of them and are able to obtain copies of them.
- (5) Rules made under this section are regulations for the purposes of the Regulations (Disallowance) Act 1989.

*Mandatory reporting***139AK Mandatory reporting of dismissals and resignations**

- (1) When an employer dismisses a teacher for any reason, the employer must immediately report the dismissal to the Teachers Council.
- (2) An employer must immediately report to the Teachers Council when a teacher resigns from a teaching position if, within the 12 months preceding the resignation, the employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher's competence.
- (3) Every report under this section must be in writing, and must include,—
  - (a) in the case of a report of dismissal, the reason for the dismissal; and
  - (b) in the case of a report of a resignation,—
    - (i) a description of the conduct or competency issues that the employer had been concerned about; and
    - (ii) a report of what action (if any) the employer had taken with respect to the conduct or competency issues.

**139AL Mandatory reporting of complaints received about former employees**

- (1) The former employer of a teacher must immediately report to the Teachers Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives a complaint about the teacher's conduct or competence while he or she was an employee.
- (2) Every report under this section—
  - (a) must be in writing; and
  - (b) must set out the nature of the complaint; and
  - (c) may include any additional information that the employer considers relevant.
- (3) A former employer must not report a complaint under this section if—
  - (a) it is satisfied that the complaint is malicious, vexatious, or without any foundation; or
  - (b) the complaint is about competence, and the complaint does not meet the Teachers Council's criteria for reporting about competence issues.

**139AM Mandatory reporting of possible serious misconduct**

- (1) The employer of a teacher must immediately report to the Teachers Council if it has reason to believe that the teacher has engaged in serious misconduct.
- (2) Every report under this section must—
  - (a) be in writing; and

- (b) include a description of the conduct of the teacher that the employer believes to be serious misconduct; and
- (c) include a description of what action (if any) the employer has taken in relation to it.

**139AN Mandatory reporting of failure to reach required level of competence**

- (1) The employer of a teacher must immediately report to the Teachers Council if it is satisfied that, despite undertaking competency procedures with the teacher, the teacher has not reached the required level of competence.
- (2) Every report under this section must—
  - (a) be in writing; and
  - (b) include a description of the competency issues leading to the report; and
  - (c) include a description of the action that the employer has taken in relation to it.

**139AO Offence to fail to report**

- (1) An employer or former employer commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 if it fails without reasonable justification to report to the Teachers Council as required under any of sections 139AK, 139AL, 139AM, or 139N.
- (2) It is a defence to a charge under subsection (1) against the former employer of a teacher if the former employer proves that it believed on reasonable grounds that, by virtue of section 139AL(3), it was not required to report to the Teachers Council.

**139AP Mandatory reporting of convictions**

- (1) Every teacher who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Teachers Council.
- (2) Failure to report a conviction to the Teachers Council in accordance with subsection (1) is misconduct that may give rise to disciplinary proceedings.
- (3) The Registrar of every court must, unless the court expressly orders otherwise in a particular case, report to the Teachers Council when a person whom the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more.
- (4) If the Registrar has reported a conviction to the Teachers Council under subsection (3), then, if that conviction is subsequently quashed, the Registrar must notify the Teachers Council of that fact.

*Disciplinary functions***139AQ Disciplinary bodies**

- (1) The constitution of the disciplinary bodies must be set out in the rules, and those rules must be consistent with this section.
- (2) Disciplinary bodies may have members who are not members of the Teachers Council, but the majority of members on each body must be members of the Teachers Council.
- (3) The Disciplinary Tribunal must include at least 1 person who is not a member of the Teachers Council and who is not a teacher, employer, or a member of an employing body.
- (4) No member of the Complaints Assessment Committee may be a member of the Disciplinary Tribunal.
- (5) Rules must provide for the replacement of any member of a disciplinary body who, in relation to a particular complaint,—
  - (a) made the complaint; or
  - (b) is otherwise in a position of conflict of interest.
- (6) When performing their functions and exercising their powers, the disciplinary bodies must act in accordance with the rules of natural justice.

**139AR Complaints of misconduct**

- (1) A person who wishes to make a complaint about the conduct of a teacher must first make the complaint to the teacher's employer, unless 1 of the circumstances in subsection (2)(a) to (d) applies.
- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the conduct of a teacher—
  - (a) if the complaint is about a teacher who is not currently employed by an employer; or
  - (b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
  - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
  - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a report of any action that the employer or former employer has taken in relation to it.



**139AS Complaints and reports relating to teacher conduct**

- (1) The Teachers Council must refer to the Complaints Assessment Committee—
  - (a) every report received by it under any of sections 139AK, 139AL, or 139AM that relate to teacher conduct; and
  - (b) every report received by it under section 139AP; and
  - (c) every complaint received by it under section 139AR.
- (2) In relation to a complaint received under section 139AR from a person other than the current employer of the teacher concerned,—
  - (a) if the Complaints Assessment Committee considers that the complaint should have been sent first to the teacher’s employer, it must refer the matter to the employer; and
  - (b) in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (3) An employer to whom a complaint is referred under subsection (2), or who is required to provide information in the course of an investigation by the Complaints Assessment Committee, must report to the Committee as required by it.

**139AT Powers of Complaints Assessment Committee**

- (1) The Complaints Assessment Committee may investigate any complaint or report referred to it under section 139AS.
- (2) Following an investigation, the Complaints Assessment Committee may, in respect of a complaint or report referred to it under section 139AS,—
  - (a) dismiss the matter, or resolve to take it no further:
  - (b) refer the teacher concerned to a competency review:
  - (c) refer the teacher concerned to an impairment process which may involve assessing, and (if necessary) assisting with, an impairment:
  - (d) in the case of a complaint of misconduct, resolve the complaint by agreement with the teacher and the person who made the complaint, which may include doing any of the following:
    - (i) censuring the teacher:
    - (ii) imposing conditions on the teacher’s practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
    - (iii) suspending the teacher’s practising certificate or authority for a specified period, or until specified conditions are met:
    - (iv) annotating the register or the list of authorised persons in a specified manner.

- (3) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing.
- (4) If the Complaints Assessment Committee is satisfied on reasonable grounds that a teacher has engaged in serious misconduct, the Committee must—
  - (a) refer the matter to the Disciplinary Tribunal for a hearing; and
  - (b) send a notice to the teacher concerned setting out the charge of serious misconduct against him or her.

#### **139AU Interim suspension to enable investigation**

- (1) For the purpose of investigating a complaint of serious misconduct about a teacher, the Complaints Assessment Committee may at any time apply to the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.
- (2) On an application for an interim suspension, the Disciplinary Tribunal may, either with or without a hearing, suspend the teacher's practising certificate or authority for a specified period, or until specified conditions have been met, but in any case for not more than 3 months.

#### **139AV Investigation of reports of convictions**

- (1) Every report of the conviction of a teacher for an offence punishable by 3 months' or more imprisonment that is received by, or comes to the attention of, the Teachers Council must be investigated by the Complaints Assessment Committee.
- (2) Following investigation of a report of such a conviction, the Complaints Assessment Committee may, by agreement with the teacher, annotate the register or the list of authorised persons.
- (3) If the Complaints Assessment Committee considers that the conviction may warrant action by the Disciplinary Tribunal, it must refer the report to the Disciplinary Tribunal for a hearing.

#### **139AW Powers of Disciplinary Tribunal**

- (1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:
  - (a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2):
  - (b) censure the teacher:
  - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
  - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:

- (e) annotate the register or the list of authorised persons in a specified manner:
  - (f) impose a fine on the teacher not exceeding \$3,000:
  - (g) require the deregistration (as defined in section 129(6)) of the teacher:
  - (h) require any party to the hearing to pay costs to any other party:
  - (i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing.
- (2) Despite subsection (1), following a hearing that arises out of a report under section 139AP of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in paragraphs (d), (f), (h), or (i) of subsection (1).
- (3) A fine imposed on a teacher, and a sum ordered to be paid to the Teachers Council under subsection (1)(i), are recoverable as debts due to the Teachers Council.

#### **139AX Evidence at hearings**

- (1) The Disciplinary Tribunal may—
- (a) receive evidence on oath (and for that purpose an officer or employee of the Teachers Council may administer an oath); and
  - (b) permit a person appearing as a witness before it to give evidence by written statement, and verify that statement by oath.
- (2) A hearing before the Disciplinary Tribunal is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961 (which relates to punishment for perjury).

#### **139AY Powers of Disciplinary Tribunal in relation to witnesses**

- (1) The Disciplinary Tribunal may require a person to do either or both of the following:
- (a) attend and give evidence at a hearing of the Disciplinary Tribunal:
  - (b) produce any documents, records, or other information in his or her custody or control that relate to the subject matter of the hearing, whether specified by the Disciplinary Tribunal or not.
- (2) A requirement under subsection (1) must be in writing signed by the chairperson of the Disciplinary Tribunal.
- (3) A person required to attend a hearing is entitled to be paid, by the party calling the person (or, if called on the volition of the Disciplinary Tribunal itself, by the Teachers Council), witnesses' fees, allowances, and travelling expenses, according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly.

**139AZ Offences relating to witnesses**

A person commits an offence, and is liable on summary conviction to a fine not exceeding \$500 who, without lawful justification, fails or refuses—

- (a) to attend and give evidence when required by the Disciplinary Tribunal; or
- (b) to answer truly and fully any question put to him or her by a member of the Disciplinary Tribunal; or
- (c) to produce any document, record, or other information as required by the Disciplinary Tribunal.

**139AZA Privileges and immunities**

- (1) Every person who does any of the following has the same privileges as witnesses have in a court:
  - (a) provides documents, things, or information to a disciplinary body;
  - (b) produces documents or things to a disciplinary body;
  - (c) gives evidence to, or answers questions by, a disciplinary body.
- (2) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court.
- (3) If a person is represented at a hearing before the Disciplinary Tribunal by a person other than a barrister or solicitor,—
  - (a) any communications between the person and the representative in relation to the hearing are as privileged as they would have been if the representative had been a barrister or solicitor; and
  - (b) the representative is a counsel for the purposes of subsection (2).

**139AZB Appeals**

- (1) A person who is dissatisfied with all or any part of a decision by the Disciplinary Tribunal under section 139AU(2) or section 139AW, or by the Council under section 139AZC, may appeal to a District Court.
- (2) An appeal under this section must be made within 28 days of receipt of written notice of the decision, or any longer period that the court allows.
- (3) Subsections (3) to (7) of section 126 apply to every appeal under this section as if it were an appeal under subsection (1) of section 126.

*Review of competence***139AZC Complaints about competence**

- (1) A person who wishes to make a complaint about a teacher's competence must first make the complaint to the teacher's employer, unless 1 of the circumstances in subsection (2)(a) to (d) applies.

- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the competence of a teacher—
  - (a) if the complaint is about a teacher who is not currently employed by an employer; or
  - (b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
  - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
  - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a description of the competency issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.
- (4) If the Teachers Council considers that a complaint under this section should have been sent first to the teacher's employer, it must refer the matter to the employer; and in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (5) When the Teachers Council refers a complaint to an employer, the employer must report as required by the Teachers Council.
- (6) If the Teachers Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Teachers Council may investigate the complaint.
- (7) When a complaint about competence is made by a member of the Teachers Council, that member may not be involved in any investigation of the complaint.
- (8) If, after investigation, the Teachers Council is satisfied that the teacher has not attained the required level of competence, it may—
  - (a) impose conditions on the teacher's practising certificate or authority;
  - (b) refer the teacher to an impairment process involving the assessment of, and (if necessary) assistance with, an impairment;
  - (c) deregister the teacher under section 129.

*Police vetting*

**139AZD Teachers Council must co-ordinate police vetting**

- (1) The Teachers Council must establish a system for co-ordinating police vetting that is requested by—

- (a) the Teachers Council, in relation to—
    - (i) teacher registration and the issue of practising certificates; and
    - (ii) the granting of limited authorities to teach; and
  - (b) Boards of state schools, and the management of schools registered under section 35A, in relation to—
    - (i) current and prospective non-teaching and unregistered employees; and
    - (ii) contractors who work regularly at the school during school hours; and
  - (c) the management of early childhood services, in relation to—
    - (i) current and prospective non-teaching and unregistered employees; and
    - (ii) contractors who work regularly at the service during normal opening hours.
- (2) A copy of the result of the police vet of a person must be given to both the person or body that requested it and the person who is the subject of the vet.
  - (3) The Teachers Council may charge fees to any Board or management that requests a police vet, to cover its administrative costs associated with providing vets and co-ordinating the system of police vetting.
  - (4) The Teachers Council must establish internal procedures for dealing with police vets requested for its own purposes and for those requested by Boards and managements which must, in particular,—
    - (a) identify the person or office-holder within the Council to whom police vets must be sent; and
    - (b) ensure that strict confidentiality is observed for police vets.
  - (5) The Teachers Council may not take adverse action in relation to a person who is the subject of a police vet until—
    - (a) the person has validated the information contained in the vet; or
    - (b) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.
- (2) The principal Act is amended by repealing Schedule 7, and substituting Schedule 7 set out in Schedule 1.

### *Data gathering*

#### **38 Secretary may require information for statistical purposes**

- (1) The heading to section 144A of the principal Act is amended by omitting the words “**statistical purposes**”, and substituting the words “**proper administration of Act**”.

- (2) Section 144A(1) of the principal Act is amended by omitting the words “statistical information (not being information that identifies, or discloses information about, any individual person)”, and substituting the word “information”.
- (3) Section 144A of the principal Act is amended by inserting, after subsection (1), the following subsection:
  - (1A) Information required by the Secretary under this section that identifies individuals may be used only for the following purposes:
    - (a) statistical purposes:
    - (b) ensuring that institutions and students receive relevant resourcing:
    - (c) monitoring, and ensuring students’ rights in respect of, enrolment and attendance.
- (4) Section 144A(2) of the principal Act is amended by omitting the word “statistical”.
- (5) Section 144A(2)(b) of the principal Act is repealed.

*Regulating school hostels*

**39 New sections 144B to 144E inserted**

The principal Act is amended by inserting, after section 144A, the following sections:

**144B Purpose of sections 144C to 144E**

The purpose of sections 144C to 144E is to help ensure the safety of students who board at hostels.

**144C Regulations about school hostels**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) adopting minimum standards that apply to hostel premises and facilities, whether the regulations set out the standards themselves or adopt standards contained in other documents:
  - (b) adopting codes of practice relating to the management of hostels, whether the regulations set out the codes themselves or adopt codes contained in other documents:
  - (c) prescribing offences for failing to comply with minimum standards or codes of practice adopted by regulations, and providing for a penalty on summary conviction for any such offence to be a fine not exceeding \$10,000:
  - (d) providing for exemptions from the application of minimum standards or codes of practice:

- (e) prescribing a system of licensing for hostels, which may include provisions—
    - (i) providing for different sorts of licences:
    - (ii) setting out the conditions to be met before a licence may be issued:
    - (iii) prescribing the circumstances in which conditions may be imposed on a licence:
    - (iv) setting out the conditions or type of conditions that may attach to a licence:
    - (v) prohibiting students from boarding at an unlicensed hostel:
    - (vi) prohibiting the payment of a boarding bursary, or any government subsidy relating to the cost of boarding at a hostel, in respect of a student boarding at an unlicensed hostel:
    - (vii) prescribing offences for failure to comply with all or any licence conditions, and providing for a penalty on summary conviction for any such offence to be a fine not exceeding \$10,000:
    - (viii) providing for the suspension or cancellation of any licence:
    - (ix) establishing a licensing body:
    - (x) prescribing fees payable on application for, or renewal of, a licence, and for the return or refund of any fees in specified circumstances:
  - (f) establishing a complaints procedure relating to complaints by students, parents, or Boards, about hostels:
  - (g) providing for any other matters necessary or expedient for giving effect to the purpose described in section 144B.
- (2) Regulations made under subsection (1) may relate to all hostels, individual hostels, hostels of specified classes, or parts of hostels.

#### **144D Inspection of hostels**

- (1) An authorised person may at any reasonable time do any or all of the following:
- (a) enter any hostel premises and inspect the premises and facilities:
  - (b) inspect, and make and remove copies of, any information relating to the management of the hostel:
  - (c) require any person at a hostel to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the hostel.
- (2) An authorised person may exercise the powers in subsection (1) only for the purpose of monitoring compliance with minimum standards, codes of practice, licences, or licence conditions.



- (3) The person in charge (or apparent charge) of the hostel must, if an authorised person requests it, co-operate in allowing the authorised person access to the premises, facilities, and information relating to the management of the hostel, including assisting the authorised person to copy (in usable form) any information required for the inspection.
- (4) The person in charge (or apparent charge) of a hostel commits an offence and is liable upon summary conviction to a fine not exceeding \$5,000 if he or she fails, without reasonable excuse, to comply with subsection (3).
- (5) An authorised person may not enter or inspect the room or sleeping area of a student accommodated at the hostel unless—
  - (a) the authorised person believes on reasonable grounds that entry or inspection is necessary for a purpose specified in subsection (2); and
  - (b) prior notice of the inspection is given to the student, and the purpose of the inspection is explained; and
  - (c) the student is present during the inspection.

**144E Authorised person for purpose of section 144D**

- (1) The Minister may, by notice in writing, appoint any person as an authorised person for the purpose of exercising the powers in section 144D.
- (2) An authorisation under subsection (1) must state—
  - (a) the name of the authorised person; and
  - (b) the powers that he or she may exercise under section 144D; and
  - (c) the date on which the authorisation was given, and the date (if any) on which it expires.
- (3) When an authorised person is exercising powers under section 144D, he or she must carry a copy of his or her authorisation, and must show it,—
  - (a) on entering a hostel to be inspected, to the person in charge, or apparent charge, of the hostel; and
  - (b) if the authorised person wishes to speak to any person in connection with the inspection, to that person.

*Human Rights Act 1993 compliance*

**40 Interpretation**

Section 145(1) of the principal Act is amended by inserting, after the definition of **Secretary**, the following definition:

**single sex school** means a school maintained wholly or principally for students of one sex; and includes a school declared by notice under section 146A to be a boys' school or a girls' school

**41 Single sex schools**

Section 146A of the principal Act is amended by adding the following subsections:

- (3) Subject to section 157(2), the Minister may, by notice in the *Gazette*, limit, in relation to a specified single sex school,—
  - (a) in the case of a boys' school, the number of girls who may enrol at it, or the proportion of the total roll of the school that may be girls;
  - (b) in the case of a girls' school, the number of boys who may enrol at it, or the proportion of the total roll of the school that may be boys.
- (4) In setting limits on a school under subsection (3), the Minister must have regard to the necessity of safeguarding the single-sex nature of the school.

**42 Consultations**

Section 157(2) of the principal Act is amended by inserting, after paragraph (aa), the following paragraph:

- (ab) set limits by notice under section 146A(3) on the number of girls who may attend a boys' school, or boys who may attend a girls' school; or

*Tertiary education institutions*

**43 Disestablishment of institutions**

Section 164(2) of the principal Act is amended by omitting the words “specified in Part I of the Thirteenth Schedule to this Act”, and substituting the words “established under section 162”.

*Human Rights Act 1993 compliance*

**44 Requirements as to constitutions of Councils**

- (1) The principal Act is amended by repealing section 171(6)(a).
- (2) The principal Act is amended by repealing section 171(6)(b), and substituting the following paragraph:
  - (b) the person is subject to a compulsory treatment order that is an inpatient order, or becomes a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

*Tertiary education institutions*

**45 Functions of Councils**

Section 180(a) of the principal Act is amended by adding the words “, and to monitor and evaluate his or her performance”.

**46 Duties of Councils**

Section 181 of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

- (e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:

**47 New heading and sections 195A to 195G inserted**

The principal Act is amended by inserting, after section 195, the following heading and sections:

*Institutions at risk*

**195A Criteria for risk assessment of institutions**

- (1) The Secretary must, after consulting with institution Councils, determine criteria for assessing the level of risk to the operation and long-term viability of institutions.
- (2) The Secretary must publish criteria determined under subsection (1) in the *Gazette*.
- (3) Criteria determined under this section must be reviewed at least once in every 2 years following the date of their publication in the *Gazette*.

**195B Institutions to provide information if required**

- (1) The Secretary may, if he or she has reasonable grounds to believe that an institution may be at risk, by written notice to the Council of an institution, require the Council to provide either or both of the following:
  - (a) specified information about the operation, management, or financial position of the institution at a given time;
  - (b) reports at specified intervals on specific aspects of the operation, management, or financial position of the institution.
- (2) If the Secretary requires information under subsection (1), the information required must be information that relates to the risks to the institution that the Secretary is concerned about.
- (3) A Council that receives a notice under subsection (1) must provide the Secretary with the required information within or at the time or times specified in the notice.
- (4) The Secretary may revoke or amend any notice given under subsection (1).
- (5) Nothing in this section limits section 45B of the Public Finance Act 1989.

**195C Minister may appoint Crown observer**

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

**195D Minister may dissolve Council and appoint commissioner**

- (1) The Minister may, by written notice, dissolve the Council of an institution and appoint a commissioner to act in place of the Council if the Minister believes on reasonable grounds that—
  - (a) there is a serious risk to the operation or long-term viability of the institution; and
  - (b) other methods of reducing the risk either have failed or appear likely to fail.
- (2) For the purpose of subsection (1), there is a serious risk to the operation or long-term viability of an institution if—
  - (a) the institution is, or is at risk of being, unable to pay its debts as they become due in the normal course of business; and

- (b) according to the criteria published under section 195A(2), there is a serious level of risk to the operation or long-term viability of the institution.
- (3) A notice under subsection (1) must specify—
  - (a) the date when the dissolution and appointment take effect; and
  - (b) the name of the person appointed as commissioner.
- (4) The Minister may not exercise the power under subsection (1) in relation to an institution unless he or she has first—
  - (a) consulted with the Council of the institution and any other interested parties over the possible need to dissolve the Council and appoint a commissioner; and
  - (b) following that consultation, given the Council written notice of his or her preliminary decision that the Council should be dissolved and a commissioner appointed in its place; and
  - (c) allowed the Council at least 21 days in which to respond to the preliminary decision; and
  - (d) considered any submissions made by the Council about why the preliminary decision should not be confirmed.
- (5) 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.
- (6) When a commissioner is appointed under this section, the Minister must review the appointment at least once in every 12 months following the appointment.
- (7) 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 the institution be administered by a Council, a new Council must be appointed in accordance with the constitution of the Council most recently notified in the *Gazette*.
- (8) A commissioner's appointment ends on the close of the day before a new Council takes office.

**195E Powers and functions of commissioner**

- (1) A commissioner appointed under section 195D has all the powers, functions, and duties of the Council that he or she is appointed to replace, and must exercise those powers and perform those functions and duties in accordance with this Act (having particular regard to sections 160 and 161) and the institution's charter.
- (2) A commissioner replaces all Council members who serve on any committee of the Council that he or she is appointed to replace.

- (3) Anything that, if done by or on behalf of a Council, is required to be signed by 2 or more members of the Council, may be done by the commissioner's signature alone.

#### **195F Minister to appoint advisory committee**

- (1) If the Minister appoints a commissioner under section 195D, the Minister must also appoint an advisory committee for the purpose of advising and supporting the commissioner in the exercise of the commissioner's functions, duties, and powers.
- (2) The Minister may appoint up to 5 persons to be members of an advisory committee and must ensure that the composition of the committee reasonably reflects the community of the institution as represented by its Council at the time of the Council's dissolution.
- (3) Members of an advisory committee may be paid fees at the same rates as were paid to members of the Council at the time of its dissolution.
- (4) The commissioner must have regard to any advice given by an advisory committee.
- (5) For the purposes of section 222(1) (which is about delegations by the Council to committees), an advisory committee is deemed to be a committee appointed under section 193(3).

#### **195G Review of operation of sections 195A to 195F**

No later than 5 years from the date on which sections 195A to 195F come into force, the Minister must—

- (a) review, in consultation with interested parties, the operation of sections 195A to 195F; and
- (b) prepare a report of the review that includes recommendations on whether any amendment to those sections is necessary or desirable; and
- (c) present a copy of the report to the House of Representatives.

### *Pastoral care of international students*

#### **48 New Part 18A inserted**

The principal Act is amended by inserting, after Part 18, the following Part:

### **Part 18A**

#### **Code of practice for providers who enrol international students**

##### **238D Interpretation**

In this Part, unless the context otherwise requires,—

**administrator** means the person or organisation responsible for administering the code

**code** means the code of practice established under section 238F

**IEAA** means the International Education Appeal Authority established by the code

**international student** means a person who—

- (a) is studying in New Zealand on a student permit under the Immigration Act 1987; and
- (b) is enrolled by a provider; and
- (c) in relation to the provider, is a foreign student as defined in section 2 or section 159 (whichever is applicable)

**provider** means—

- (a) a registered school; or
- (b) an institution as defined in section 159; or
- (c) a private training establishment holding a current registration under Part XVIII

**review panel** means the review panel established by the code.

#### **238E Signatories to code may enrol persons as international students**

- (1) A provider may enrol a person as an international student or continue to have an international student enrolled, so long as the provider is a signatory to the code.
- (2) A provider must not enrol a person as an international student or continue to have an international student enrolled, or provide educational instruction for such a person, if—
  - (a) the provider is not a signatory to the code; or
  - (b) the provider is removed as a signatory to the code under section 238G; or
  - (c) for any other reason provided in the code, the provider ceases to be a signatory to the code.
- (3) A provider that is suspended under section 238G may continue to have international students enrolled and may provide educational instruction to only those students to the extent permitted by the review panel under that section.

#### **238F Code**

- (1) The Minister may publish a code of practice that provides a framework for the pastoral care of international students.
- (2) Without limiting subsection (1), the code may include provisions for all or any of the following purposes:
  - (a) designating the administrator:

- (b) setting out requirements relating to the manner in which providers may assess and recruit prospective international students, including the information to be given by providers about courses, procedures, and costs:
  - (c) providing for the welfare of international students, including the support services to be provided by a provider and any reporting obligations:
  - (d) requiring providers to review their own performance to ensure compliance with the code, and providing for the designation or appointment of an independent person or organisation to monitor the performance of providers to ensure compliance with the code:
  - (e) establishing the IEAA to investigate and determine complaints from international students about alleged breaches of the code, after all internal grievance procedures have been exhausted, and to refer appropriate cases to the review panel; setting out rules of procedure or empowering the IEAA to regulate its own procedure; and, subject to section 238G, specifying the remedies and sanctions it may impose:
  - (f) establishing the review panel to determine whether a signatory should be removed or suspended as a signatory to the code; setting out rules of procedure or empowering the review panel to regulate its own procedure; and, subject to section 238G, specifying the remedies and sanctions it may impose:
  - (g) despite everything in the Public Finance Act 1989, requiring providers to indemnify the administrator:
  - (h) providing for such other matters as are contemplated by or necessary for giving full effect to this Part and for its due administration.
- (3) The code of practice may make different provisions in relation to international students aged under 18 and in relation to international students aged 18 or over.
  - (4) The code is binding on all parties who are signatories to the code.
  - (5) The Minister must notify the making of the code in the *Gazette* and make copies available for inspection free of charge, or for purchase at a reasonable cost, in such form and at such places as the Minister determines.

### **238G Sanctions**

- (1) If it finds that a signatory to the code has committed a serious breach of the code of practice, the IEAA may recommend to the review panel that—
  - (a) the provider be removed as a signatory to the code; or
  - (b) the provider be suspended for a specified period as a signatory to the code.
- (2) If it finds that a signatory to the code has committed a breach of the code other than a serious breach, the IEAA may impose an appropriate sanction (other than a sanction referred to in subsection (1)(a) or (b)) provided in the code.



- (3) If it considers that the sanction it has imposed on a provider under subsection (2) has not been complied with to its satisfaction, the IEAA can recommend to the review panel that—
  - (a) the provider be removed as a signatory to the code; or
  - (b) the provider be suspended for a specified period as a signatory to the code.
- (4) The review panel may—
  - (a) impose the sanction referred to in subsection (1)(a) or (b) that is recommended by the IEAA; or
  - (b) substitute the other sanction referred to in subsection (1); or
  - (c) substitute an appropriate lesser sanction provided for in the code; or
  - (d) set aside the recommendation made by the IEAA.
- (5) At any time pending a final determination by the review panel, it may refer a matter back to the IEAA with directions to reconsider the whole or any specified part of the matter.

#### **238H Providers to pay annual fee**

- (1) The Minister may, by notice in the *Gazette*, set an annual fee payable by providers that are signatories to the code.
- (2) The fee is for the purposes of the administration of the code.
- (3) The Minister must ensure that the annual fee is sufficient to meet the full costs of the IEAA, the review panel, and of administering and enforcing the code.
- (4) A provider is liable to pay an annual fee set under subsection (1).
- (5) The funds collected from an annual fee must be kept in a trust account administered by the administrator.
- (6) If the code is revoked and not replaced, the money held in the trust account must be paid into the Crown Bank Account in accordance with any directions of the Secretary to the Treasury.

#### *Human Rights Act 1993 compliance*

#### **49 Constitution**

The principal Act is amended by repealing section 249(5)(a).

#### *New Zealand Qualifications Authority*

#### **50 Definitions**

Section 246 of the principal Act is amended by adding the following definition:

**secondary school** means a secondary school or composite school, as those terms are defined in section 2.

**51 Functions of Authority**

- (1) Section 253(1)(e) of the principal Act is amended by inserting, after the word “institutions”, the words “, secondary schools,”.
- (2) Section 253(1)(f) of the principal Act is amended by inserting, after the word “institutions”, the words “, secondary schools,”.
- (3) Section 253(1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:
  - (g) to assist overseas governments, and agencies of those governments, by—
    - (i) conducting examinations and assessments:
    - (ii) approving programmes and courses of study:
    - (iii) accrediting providers to deliver programmes and courses of study:
    - (iv) assisting governments and agencies to develop and conduct examinations, and to develop and confer awards:

**52 General powers of Authority**

Section 254 of the principal Act is amended by adding the following subsection:

- (5) The Authority may delegate its power to consent to the award of a qualification described as a degree to any body referred to in section 260(2) (other than the Vice-Chancellors Committee); and if it does so,—
  - (a) subsections (3) and (4), and section 264, apply to every body to whom that power is delegated as if it were the Authority; and
  - (b) the Authority may revoke any such delegation.

**53 Approval of courses**

- (1) Section 258 of the principal Act is amended by inserting, after subsection (1), the following subsection:
  - (1A) In this section, **institution** includes institutions, government training establishments, registered establishments, secondary schools, and other bodies.
- (2) Section 258(2) of the principal Act is amended by omitting the words “, government training establishment, or registered establishment”.
- (3) The principal Act is amended by repealing section 258(8), and substituting the following subsection:
  - (8) If the Authority considers that there may be grounds for withdrawing an approval for a course from an institution, the Authority must give written notice to the governing body of the institution—
    - (a) setting out the grounds on which the Authority is considering withdrawing the approval; and

(b) giving the governing body of the institution a reasonable period within which to make submissions on the matter.

(4) Section 258(9) of the principal Act is amended by omitting the words “Council or”.

#### **54 Accreditation of institutions or private training establishments as providers of approved courses**

(1) The heading to section 259 of the principal Act is amended by omitting the words “**of institutions or private training establishments as providers of**”, and substituting the words “to provide”.

(2) Section 259 of the principal Act is amended by inserting, after subsection (1), the following subsection:

(1A) In this section, **institution** means an institution, government training establishment, registered establishment, or secondary school.

(3) Subsection (2) of section 259 of the principal Act is amended by omitting the words “, government training establishment, or a registered establishment”.

(4) Subsection (3) of section 259 of the principal Act is amended by omitting the words “government training establishment, or registered establishment”.

(5) The principal Act is amended by repealing section 259(5), and substituting the following subsection:

(5) If the Authority considers that there may be grounds for withdrawing an accreditation from an institution, the Authority must give written notice to the governing body of the institution—

(a) setting out the grounds on which the Authority is considering withdrawing the approval; and

(b) giving the governing body of the institution a reasonable period within which to make submissions on the matter.

(6) Section 259(6) of the principal Act is amended by omitting the words “Council or”.

#### **55 Applications for consents by Authority**

(1) The principal Act is amended by repealing section 264(1)(a).

(2) Section 264(2) of the principal Act is amended by omitting the words “subsection (3) of this section and”.

(3) The principal Act is amended by repealing section 264(3).

#### **56 New section 264A inserted**

The principal Act is amended by inserting, after section 264, the following section:

**264A Minister may consent to registered establishments using certain terms in their names**

- (1) A registered establishment may apply to the Minister for consent to use the term “university”, “college of education”, “polytechnic”, or “institute of technology” to describe a registered establishment that is not an institution.
- (2) Before deciding whether to give consent under subsection (1), the Minister must—
  - (a) take into account the characteristics of institutions as described in section 162(4); and
  - (b) receive advice on the application from the Authority; and
  - (c) consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.
- (3) In deciding whether to give consent under subsection (1) to the use of the term “institute of technology”, the relevant characteristics that the Minister must take into account are the characteristics of a polytechnic.

**57 Offences**

- (1) The principal Act is amended by repealing paragraph (a) of section 292(4), and substituting the following paragraph:
  - (a) except with the consent of the Minister, use of any of the following terms to describe an educational establishment or facility other than an institution:
    - (i) university:
    - (ii) college of education:
    - (iii) polytechnic:
    - (iv) institute of technology: or
- (2) Section 292(4)(b) of the principal Act is amended by inserting, after the word “Authority”, the words “or body subject to a delegation under section 254(5)”.

*Human Rights Act 1993 compliance***58 Student Allowance Appeal Authority**

Section 304(3) of the principal Act is amended by omitting the word “disability”, and substituting the words “inability to adequately perform the duties of office”.

*Student loan information matching***59 New section 307C inserted**

The principal Act is amended by inserting in Part 25 , after section 307B, the following section:

**307C Ministry may carry out information matching of student loan information**

- (1) This section applies for the purposes of enabling the following to be verified:
  - (a) a borrower's entitlement to a full interest write-off under sections 38A and 38B of the Student Loan Scheme Act 1992;
  - (b) whether or not information has been exchanged under section 85D of the Tax Administration Act 1994.
- (2) When this section applies, the Commissioner of Inland Revenue may—
  - (a) request the Ministry to carry out an information comparison under subsection (3) in order to provide the details sought by the Commissioner; and
  - (b) for the purpose of enabling the comparison to be made, provide the Ministry with information referred to in section 85D(3) of the Tax Administration Act 1994 that the Commissioner holds about the borrower.
- (3) On receiving a request and information from the Commissioner under this section, the Secretary must, as soon as practicable,—
  - (a) cause the information provided by the Commissioner to be compared with information referred to in section 85D(3) of the Tax Administration Act 1994 that is held by the Ministry, in order to provide the details sought by the Commissioner; and
  - (b) provide to the Commissioner the details that the Ministry is able to ascertain.
- (4) In this section, **Ministry** has the same meaning as in section 2(1).

*Teacher registration*

**60 New sections 315 to 315AB substituted**

The principal Act is amended by repealing section 315, and substituting the following sections:

**315 Police vetting of non-teaching and unregistered employees at early childhood services**

- (1) Before appointing a person who is not a registered teacher or holder of a limited authority to teach to a permanent position at an early childhood service, the management of the service must obtain a police vet of the person from the New Zealand Teachers Council.
- (2) The management of every early childhood service must apply to the New Zealand Teachers Council for a police vet of every person who is employed by the management but is not a registered teacher or holder of a limited authority to teach—
  - (a) within 2 weeks of first employing the person on a casual or temporary basis at the service:

- (b) in the case of a person employed at the service when this section comes into force, as required by the Teachers Council;
  - (c) in the case of a person on whom a police vet has been conducted within the last 3 years, on or about the third anniversary of the previous police vet.
- (3) In this section, **early childhood service** has the same meaning as it is given in section 120.

**315AA Police vetting of contractors and their employees who work at early childhood services**

- (1) The management of every early childhood service must apply to the New Zealand Teachers Council for a police vet of every contractor who regularly works at the service during normal opening hours—
- (a) within 2 weeks of the contractor first starting to work at the service;
  - (b) in the case of a contractor working at the service when this section comes into force, as required by the Teachers Council;
  - (c) in the case of a contractor on whom a police vet has been conducted within the last 3 years, on or about the third anniversary of the previous police vet.
- (2) In this section, **contractor** means both—
- (a) a person who, under a contract (other than an employment contract), works at an early childhood service; and
  - (b) a person employed by a person referred to in paragraph (a) who, in the course of that employment, works at an early childhood service.

**315AB Internal procedures relating to police vets**

- (1) In this section, **requester** means the management of an early childhood service that has applied to the Teachers Council for a police vet of a person.
- (2) Every requester must establish internal procedures for dealing with police vets that are received as a result of a request under section 315 or section 315AA, which must, in particular,—
- (a) identify the person or office-holder within the requester to whom police vets must be sent by the Teachers Council; and
  - (b) ensure that strict confidentiality is observed for police vets.
- (3) A requester may not take adverse action in relation to a person who is the subject of a police vet until—
- (a) the person has validated the information contained in the vet; or
  - (b) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

*Recognised education bodies*

**61 Recognised bodies to keep accounts**

Section 322 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- (2) The Minister and the Minister of Finance may jointly determine that section 203 applies to a body if, in any year (being a period of 12 months commencing on or after 1 July 2001), a grant under section 321 is paid to the body.
- (3) Section 203 applies to the body in respect of the year in which the grant was paid and the year after as if the body were both an institution and the Council of that institution.
- (4) The Ministers may determine under subsection (2) that section 203 applies to a body if—
  - (a) the body is likely to receive funding for a substantial period rather than a one-off grant for a short period; or
  - (b) the body exists for a public purpose or a large amount of its work is of a public nature; or
  - (c) the amount of money received by the body is so substantial either in total or as a proportion of the body's total income that the Ministers believe the body should be accountable to the Crown through section 203.

*Regulating school hostels*

**62 Interpretation**

- (1) Section 323 of the principal Act is amended by inserting, after the definition of **Chief Review Officer**, the following definition:

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

- (2) Section 323 of the principal Act is amended by inserting, after the definition of **parent**, the following definition:

**registered school** has the same meaning as it has in section 2(1)

**63 New sections 328E to 328H inserted**

The principal Act is amended by inserting in Part 28, after section 328D, the following heading and sections:

*Provisions concerning hostels*

**328E Functions of Chief Review Officer**

The Chief Review Officer—

- (a) may carry out reviews (which may be general or in relation to particular matters) of the provision of a safe physical and emotional environment

that supports learning for students accommodated in hostels and must carry out those reviews when directed by the Minister to do so; and

- (b) must administer the preparation of reports to the Minister on the undertaking and results of the reviews; and
- (c) must give the Minister any other assistance and advice on the provision of a safe physical and emotional environment that supports learning for students accommodated at hostels that the Minister from time to time requires.

### **328F Review officers**

Review officers designated under section 326 are also review officers for the purposes of section 328E, and sections 328G and 328H apply to them accordingly.

### **328G Powers of review officers for purposes of sections 328E to 328H**

- (1) For the purposes of enabling any functions of the Chief Review Officer to be performed for the purposes of section 328E, any review officer may, at any reasonable time and having given reasonable notice to the management of the hostel, enter any hostel and do all or any of the following:
  - (a) conduct inspections or inquiries;
  - (b) require any person to produce documents or information relating to—
    - (i) the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel; or
    - (ii) the students accommodated in the hostel;
  - (c) make copies or extracts of any documents and information referred to in paragraph (b);
  - (d) require any person to make or provide statements, in any form and manner that is reasonable in the circumstances, about any matters relating to the provision of a safe physical and emotional environment that supports learning for the students accommodated in the hostel;
  - (e) meet and talk to any person who is accommodated at the hostel.
- (2) Nothing in this section confers on a review officer the power to enter any room or sleeping area of a student accommodated at the hostel unless—
  - (a) the review officer believes on reasonable grounds that entry or inspection is necessary for the purpose of review; and
  - (b) the review officer produces his or her certificate of designation to the student; and
  - (c) the student is present during the inspection.
- (3) This section does not limit any other powers of a review officer under this Act.



**328H Review officers to prove identity before acting under section 328G**

Every review officer who exercises any power under section 328G must, before exercising that power and, if requested, at any later time, produce to the person apparently in charge the review officer's certificate of designation.

*Human Rights Act 1993 compliance*

**64 Schedules amended**

Schedules 2, 3, 15, 16, 17 and 18 of the principal Act are amended by omitting from clause 2(1) of each schedule the word "disability", and substituting in each case the words "inability to adequately perform the duties of office".

**Part 2**

**Transitional and miscellaneous provisions, and consequential amendments**

*Transitional provisions relating to school planning and reporting*

**65 Transition to new planning regime**

(1) In this section,—

**new national administration guidelines** means national administration guidelines issued under section 60A(1)(c) of the principal Act as substituted by section 12

**old national administration guidelines** means national administration guidelines that were issued under section 60A(1)(c) of the principal Act, as it read immediately before the date of commencement of section 12, and had effect immediately before that date.

(2) The provisions of old national administration guidelines continue to have effect until replaced or superseded by new national administration guidelines.

**66 Transition to new annual reporting requirements**

(1) In this section,—

**new section 87** means section 87 of the principal Act as amended by section 23

**old section 87** means section 87 of the principal Act as it read immediately before the commencement of section 23.

(2) A Board must make its first annual report under new section 87 in relation to the 2003 school year.

(3) Until a Board's first annual report has to be made under new section 87, it must make its annual reports in accordance with old section 87.

*Transitional provision relating to intervention in poorly performing schools*

**67 Transitional arrangements for financial managers**

- (1) This section applies to every person who, at the close of the day before the commencement of this section, is a financial manager appointed under section 81B of the principal Act (before its repeal by this Act).
- (2) On the date of commencement of this section, a person to whom this section applies is deemed to be a limited statutory manager appointed under section 78M of the principal Act by a notice that states—
  - (a) that the person has and may exercise all the functions, powers, and duties of the Board that are necessary to enable him or her to manage the Board's financial management system; and
  - (b) that no cheque drawn on the Board's accounts is valid unless signed by the person.
- (3) The conditions in a notice under subsection (2) may be amended under section 78M(6) of the principal Act as if they were contained in a notice issued under section 78M(1).

**68 Transitional arrangements for commissioners**

- (1) On the date of commencement of this section, a commissioner appointed under section 106 of the principal Act (before its repeal by this Act) is deemed to be a commissioner appointed under section 78N(3) of the principal Act (as inserted by this Act).
- (2) On the date of commencement of this section, a commissioner appointed under section 107 of the principal Act (before its repeal by this Act) is deemed to be a commissioner appointed under section 78N(2) of the principal Act (as inserted by this Act).

*Transitional provisions relating to teacher registration*

**69 Delayed application of teacher registration provisions**

- (1) Part 31 of the principal Act does not apply to, or apply in relation to, Kura Kaupapa Maori or any person employed in a teaching position at a Kura Kaupapa Maori, except in accordance with regulations made under subsection (2).
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out 1 or more transition plans for bringing Kura Kaupapa Maori and early childhood services (as defined in section 348 of the principal Act) under Part 31 of the principal Act, including regulations—
  - (a) declaring specified early childhood services, or early childhood services of 1 or more specified types or descriptions, to be early childhood education and care services for the purpose of Part 31 of the principal Act:

- (b) setting a date or dates on which, or a period or periods within which, specified provisions of Part 31 of the principal Act apply to—
  - (i) Kura Kaupapa Maori, or persons employed in teaching positions at Kura Kaupapa Maori:
  - (ii) early childhood services or persons employed in teaching positions at those early childhood services:
- (c) modifying the definition of **teaching position** in section 348 of the principal Act for the purposes of applying it to Kura Kaupapa Maori, or early childhood services, or both.

Section 69(1): amended, on 1 July 2015, by section 43(2) of the Education Amendment Act 2015 (2015 No 1).

Section 69(2): amended, on 1 July 2015, by section 43(3) of the Education Amendment Act 2015 (2015 No 1).

Section 69(2): amended, on 17 May 2006, by section 56(1) of the Education Amendment Act 2006 (2006 No 19).

Section 69(2)(a): amended, on 1 July 2015, by section 43(3) of the Education Amendment Act 2015 (2015 No 1).

Section 69(2)(b): amended, on 1 July 2015, by section 43(3) of the Education Amendment Act 2015 (2015 No 1).

Section 69(2)(b)(ii): substituted, on 17 May 2006, by section 56(2) of the Education Amendment Act 2006 (2006 No 19).

Section 69(2)(c): amended, on 1 July 2015, by section 43(4) of the Education Amendment Act 2015 (2015 No 1).

Section 69(2)(c): amended, on 17 May 2006, by section 56(3) of the Education Amendment Act 2006 (2006 No 19).

### *Transitional provisions relating to New Zealand Teachers Council*

## **70 Interpretation**

In this section and sections 71 to 76,—

**Teachers Council** means the New Zealand Teachers Council established under Part 10A of the principal Act (as inserted by this Act).

**Teacher Registration Board** means the Teacher Registration Board established under section 131 of the principal Act (as repealed by this Act).

## **71 Teacher Registration Board to be absorbed into Teachers Council**

- (1) On the date of commencement of this section, the Teacher Registration Board ceases to exist and—
  - (a) the term of every member of the Teacher Registration Board expires; and
  - (b) the assets and liabilities of the Teacher Registration Board vest in the Teachers Council.
- (2) No member of the Teacher Registration Board is entitled to compensation as a result of the expiry under this section of his or her term of office.

- (3) On and from the date of commencement of this section, every reference in an enactment (other than this Act), or in any instrument or register, to the Teacher Registration Board (or Registration Board) must, if the context requires, be construed as a reference to the Teachers Council.
- (4) An application for teacher registration, a practising certificate, or a limited authority to teach that was properly made before this section commences must be treated as if it were properly made under Part 10 of the principal Act as amended by this Act.

## **72 Final annual report and final accounts**

- (1) As soon as practicable after the commencement of this section, the Teachers Council must, unless the Teacher Registration Board has already done so, prepare and forward to the Minister an annual report on the operations of the Teacher Registration Board for the year ended 30 June 2001.
- (2) The annual report must include—
  - (a) financial statements prepared in accordance with Part 5 of the Public Finance Act 1989; and
  - (b) the audit report and the statement of responsibility relating to those financial statements.
- (3) The Minister must present a copy of the annual report to the House of Representatives.
- (4) As soon as practicable after the commencement of this section, the Teachers Council must prepare and forward to the Auditor-General financial statements of the Teacher Registration Board to the end of the month preceeding the commencement of this section.

## **73 Transfer of employees**

- (1) Every person who is employed by the Teacher Registration Board immediately before the date of commencement of this Act transfers to the Teachers Council on that date of commencement.
- (2) The transfer of an employee by this section is subject to any relevant transfer provisions in the employment agreement or contract applying to that employee.
- (3) For the purpose of any provisions of a transferred employee's employment agreement or contract relating to continuity of service, the employee's transfer to the Teachers Council is insufficient by itself to break his or her employment.

## **74 Protection of terms and conditions for transferred employee**

- (1) The employment of a transferred employee must be on terms and conditions no less favourable than those applying to the employee immediately before the date of the person's transfer to the Teachers Council.
- (2) Subsection (1)—

- (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Teachers Council; but
- (b) does not apply to a transferred employee who, after the transfer, receives any subsequent appointment within the Teachers Council.

**75 No compensation for technical redundancy**

A transferred employee is not entitled to receive any compensation for redundancy or any severance payment solely on the ground that the person has ceased to be an employee of the Teacher Registration Board as a result of his or her transfer to the Teachers Council.

**76 Delayed application of certain provisions relating to Teachers Council**

- (1) The Teachers Council must give notice in the *Gazette* of the date on which the first elected members to the Council take office.
- (2) Until the date on which the first elected members take office, the Teachers Council may not—
  - (a) exercise its functions under section 139AE(g), (h), (i) or (j) of the principal Act; and
  - (b) prepare a code of ethics under section 139AI of the principal Act; and
  - (c) make the rules referred to in section 139AJ(1)(b) to (e) of the principal Act (which relate to disciplinary functions and mandatory reporting).
- (3) After the date on which the elected members take office, the Teachers Council may do any of the things specified in subsection (2), except exercise its functions under section 139AE(h) of the principal Act (which relates to disciplinary functions).
- (4) The Teachers Council must advise the Minister when it has made rules under section 139AJ(1)(b) to (e) of the principal Act.
- (5) The Governor-General must make an Order in Council bringing the following provisions into force as soon as practicable after the date on which the Teachers Council advises the Minister that it has made rules under section 139AJ(1)(b) to (e) of the principal Act:
  - (a) section 29 (which substitutes a new section 129 of the principal Act dealing with deregistration) and section 32 (which repeals section 130G of the principal Act (cancellation of authorisation));
  - (b) sections 35 and 36 (which repeal sections of the principal Act relating to deregistration and mandatory reporting);
  - (c) sections 139AK to 139AZB of the principal Act (as inserted by section 37) (which relate to mandatory reporting and disciplinary provisions);
  - (d) section 139AZC of the principal Act (as inserted by section 37) (which relates to complaints about competence).

- (6) On and from the date on which the provisions listed in subsection (5) come into force, the Teachers Council may exercise its functions under section 139AE(h) of the principal Act.

**77 Transitional provision relating to inquiries**

- (1) Until the disciplinary bodies of the Teachers Council are established, the Teachers Council may continue or commence, and may complete,—
- (a) any inquiries into notifications received under sections 138A or 138B of the principal Act, whether the notification is received by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date; and
  - (b) any inquiry in connection with the possible deregistration of a teacher under section 129 of the principal Act or the possible cancellation of an authorisation under section 130G of the principal Act, whether the inquiry is commenced by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date.
- (2) Before the disciplinary bodies are established, when doing any of the things described in subsection (1), the Teachers Council must (as far as reasonably practicable) follow the procedures, and apply the standards, that were used by the Teacher Registration Board for those purposes.
- (3) After the disciplinary bodies of the Teachers Council are established, those bodies must deal with any matter arising under any of sections 139AK to 139AP, section 139AR, or section 139AZC of the principal Act in accordance with the relevant rules.
- (4) However, in relation to an inquiry referred to in subsection (1) that is incomplete on the date when the disciplinary bodies are established,—
- (a) the Teachers Council must continue and complete the inquiry in the manner described in subsection (2); or
  - (b) with the agreement in writing (which is not revocable) of the teacher or authorised person concerned, the matter may be continued and completed by the disciplinary bodies in accordance with the relevant rules, as if the matter arose under the relevant equivalent provision specified in subsection (3).

*Transitional provision relating to pastoral care of international students*

**78 Transitional provisions relating to code**

- (1) This section applies to providers that enrol international students.
- (2) Until the close of 6 months after the date the code takes effect, a provider may enrol persons as international students and continue to have international students enrolled even though the provider is not a signatory to the code.

- (3) At the close of the period stated in subsection (2), the authority conferred by subsection (2) lapses.
- (4) This section applies despite the provisions of section 238E of the principal Act.
- (5) Terms used in this section and defined in section 238D of the principal Act have the same meanings as in that section.

*Financial reporting by schools*

**79 Public Finance Act 1989 amended**

- (1) The Public Finance Act 1989 is amended by repealing section 41A, and substituting the following section:

**41A Special provisions in relation to annual financial statements of school Board of Trustees**

Instead of preparing the statements referred to in section 41(2), a Board of Trustees constituted under Part 9 of the Education Act 1989 must prepare the financial statements referred to in section 87(3) of the Education Act 1989.

- (2) Section 44B(1) of the Public Finance Act 1989 is amended by omitting the expression “the 30th day of June”, and substituting the expression “30 September”.
- (3) Schedule 5 of the Public Finance Act 1989 is amended by repealing the item relating to Boards of Trustees constituted under Part 9 of the Education Act 1989.

*Human Rights Act 1993 compliance*

**80 Royal New Zealand Foundation for the Blind Act 1963 amended**

Section 32(1)(g) of the Royal New Zealand Foundation for the Blind Act 1963 is amended by omitting the words “wife, widow”, and substituting the words “spouse, de facto partner”.

**81 Pacific Islands Polynesian Education Foundation Act 1972 amended**

Section 8(6) of the Pacific Islands Polynesian Education Foundation Act 1972 is amended by omitting the word “disability”, and substituting the words “inability to adequately perform the duties of office”.

*Consequential amendments*

**82 Consequential amendments to principal Act**

- (1) The principal Act is consequentially amended in the manner indicated in Schedule 2.
- (2) The principal Act is further consequentially amended in the manner indicated in Schedule 3.

**83 Consequential amendments to other Acts**

The enactments in Schedule 4 are consequentially amended in the manner indicated in that schedule.

*Validation***84 Validation of accommodation grant payments to Te Kohanga Reo National Trust Board**

- (1) This section applies to the payments made by the Crown to Te Kohanga Reo National Trust Board that—
  - (a) were capital accommodation grants under section 309(1)(a)(ii) of the principal Act for the period beginning on 1 July 1996 and ending with the close of 30 June 2000; and
  - (b) were advanced to the constituent kohanga reo by way of loans.
- (2) The payments to which this section applies are validated and are to be treated for all purposes as if they were capital accommodation grants made in accordance with section 309 of the principal Act.

*Specialist Education Services***85 Interpretation**

- (1) In sections 86 to 97, unless the context otherwise requires,—

**assets** has the same meaning as in section 216 of the principal Act

**collective agreement** means an employment agreement that is binding on 1 or more employers and 2 or more employees

**effective date** means 28 February 2002, unless an earlier date is appointed as the effective date by the Governor-General by Order in Council under subsection (2)

**employment agreement**, in relation to a transferred employee,—

  - (a) has the same meaning as in section 5 of the Employment Relations Act 2000; and
  - (b) to avoid doubt, includes an employment contract that took effect before the commencement of that Act and covers the transferred employee's employment with the Specialist Education Services Board

**liabilities** has the same meaning as in section 216 of the principal Act

**Ministry** means the Ministry of Education

**rights** has the same meaning as in section 216 of the principal Act

**Secretary** means the chief executive of the Ministry



**transferred employee** means an employee of the Specialist Education Services Board who transfers to the Ministry under section 88 before or on the effective date.

- (2) The Governor-General may, by Order in Council, appoint an effective date for the purposes of this section and sections 86 to 97 that is earlier than 28 February 2002.

**86 Specialist Education Services Board abolished and undertaking transferred on effective date**

- (1) On the effective date,—
- (a) the Specialist Education Services Board ceases to exist; and
  - (b) all assets, liabilities, and rights of the Specialist Education Services Board, by virtue of this section, become those of the Crown.
- (2) On the effective date, Part 4 and Schedule 2 of the principal Act are consequentially repealed.
- (3) On the effective date, the following enactments are consequentially repealed:
- (a) section 13(1) of the Education Amendment Act 1990;
  - (b) sections 3 and 4 of the Education Amendment Act 1993;
  - (c) sections 14 and 15 and the heading above section 14 of the Education Amendment Act (No 2) 1998.

**87 Effect of reorganisation on employees**

Despite section 95, the abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not transfer the chief executive or an employee of the Specialist Education Services Board.

**88 Transfer of employees**

- (1) An employee of the Specialist Education Services Board transfers to the Ministry under this section if—
- (a) his or her position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and
  - (b) the Secretary agrees to his or her transfer under this section; and
  - (c) he or she is appointed to a position in the Ministry, whether before or on the effective date.
- (2) Nothing in sections 60, 61, and 65 of the State Sector Act 1988 applies to that appointment.
- (3) The transfer of the employee under this section is subject to any relevant provisions of the employee's employment agreement (but this subsection does not limit the operation of sections 89 to 92).

**89 Application of employment agreements of transferred employees**

- (1) Unless a transferred employee's employment agreement otherwise provides, and subject to subsection (2), the transferred employee's employment agreement continues to apply to that employee, on and from the date that the employee transfers to the Ministry, on the same terms and conditions (including the period of the agreement)—
  - (a) as if it were an agreement that had been made in respect of the Ministry; and
  - (b) as if it were binding on both that employee and on the Secretary, and on any other party to that agreement.
- (2) If there is a change to an employee's duties or location arising out of his or her transfer to the Ministry, the conditions of employment of that employee may be varied by agreement to reflect that change, but the conditions of employment (as so varied) must be no less favourable than those that the employee was entitled to receive under the employment agreement that applied to the employee at the date of the transfer.
- (3) Subsections (1) and (2) continue to apply to the conditions of employment of each transferred employee to whom this section applies until the time that any of the conditions of employment that apply under the employment agreement applying to that employee at the date of the transfer are subsequently varied (otherwise than for the purpose referred to in subsection (2)).
- (4) The conditions of employment of each such transferred employee must, on and from the date of any subsequent variation to which subsection (3) applies, be determined in accordance with the employment agreement that applies to that employee in the Ministry.
- (5) Nothing in subsection (1) or subsection (2) continues to apply to any transferred employee who receives any subsequent appointment, whether within the Ministry or any other department.

**90 Application of collective agreements of transferred employees**

- (1) This section limits the employees who may be bound by a collective agreement that binds the chief executive of the Specialist Education Services Board before the effective date and, as a consequence of sections 86 and 95, binds the Secretary and transferred employees after the effective date.
- (2) After the effective date, the only employees of the Ministry who are entitled to be bound by or enforce that collective agreement are transferred employees who are appointed to a position in the Ministry that has been established (whether or not previously existing in the Ministry) to enable the Ministry to perform the functions of the Specialist Education Services Board.
- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee

would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.

- (4) Sections 62 and 64 of the Employment Relations Act 2000 do not apply to a transferred employee in relation to the transfer.
- (5) This section limits the employees who may be bound by a collective agreement and the coverage of that agreement under Part 6 of the State Sector Act 1988 and sections 56(1), 57, 63(3), and 243 of the Employment Relations Act 2000.
- (6) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

**91 Employment of transferred employees continuous**

For the purposes of any provisions of a transferred employee's employment agreement relating to continuity of service, that employee's transfer from the Specialist Education Services Board to the Ministry is insufficient by itself to break his or her employment.

**92 Restriction of compensation for technical redundancy for transferred employees**

An employee of the Specialist Education Services Board who transfers to the Ministry under section 88 is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist.

**93 Restriction of compensation for technical redundancy for other employees**

- (1) This section applies to an employee of the Specialist Education Services Board who is not transferred to the Ministry under section 88.
- (2) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Specialist Education Services Board has ceased to exist if—
  - (a) the position ceases to exist as a result of the transfer of the functions of the Board to the Ministry; and
  - (b) in connection with that transfer of functions,—
    - (i) the employee is offered equivalent employment in the Ministry (whether or not the employee accepts the offer); or
    - (ii) the employee is offered, and accepts, other employment in the Ministry.
- (3) **Equivalent employment** to the employee's employment in the Specialist Education Services Board is employment in the Ministry—
  - (a) in substantially the same position; and
  - (b) in the same general locality; and

- (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
- (d) on terms that treat the period of service with the Specialist Education Services Board (or any other period of service recognised by that Board as continuous service) as if it were continuous service with the Ministry.

#### **94 Consequential amendments to other enactments**

On the effective date,—

- (a) Schedule 1 of the Official Information Act 1982 is consequentially amended by omitting the item relating to the Specialist Education Services Board; and
- (b) Schedule 1 of the Ombudsmen Act 1975 is consequentially amended by omitting from Part 2 the item relating to the Specialist Education Services Board; and
- (c) Schedules 4, 5, 6, and 7 of the Public Finance Act 1989 are amended by omitting the item relating to the Specialist Education Services Board; and
- (d) the Education (Change of Name of Education Entities) Order 2000 (SR 2000/117) is consequentially amended by revoking clause 3(4) and so much of the Schedule as relates to the Specialist Education Services Board.

#### **95 Consequential changes to other references**

- (1) If any other enactment or other thing refers to the Specialist Education Services Board (or to the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Ministry.
- (2) If any other enactment or other thing refers to the chief executive of the Specialist Education Services Board (or of the Special Education Service Board) and that reference is no longer appropriate because the Board has been abolished, the reference must be read as a reference to the Secretary.

#### **96 Application of consequential changes to references**

- (1) Section 95—
  - (a) applies to things that are in force or existing on the effective date (whether coming into force, entered into, or created before or after the commencement of this section); and
  - (b) applies to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.

- (2) Section 95 applies to an employment agreement only in accordance with sections 87 and 89.

**97 Effect of reorganisation**

- (1) On and from the effective date, anything done or omitted to be done by, or in relation to, the Specialist Education Services Board must be treated as having been done or omitted by, or in relation to, the Crown.
- (2) The abolition of the Specialist Education Services Board and the transfer of its undertaking and functions to the Crown does not affect—
- (a) the assets, liabilities, or rights of the Crown or the Board (other than by transferring them); or
  - (b) the commencement or continuation of proceedings by or against the Board; those proceedings may instead be commenced or continued by or against the Crown.
- (3) If a transfer of an asset or liability under section 86 is registrable, the person responsible for keeping the register must register the transfer immediately after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister.
- (4) Subsection (2) does not limit sections 86 to 96.

**Schedule 1**  
**New Schedule 7 of principal Act substituted**

s 37(2)

**Seventh Schedule**  
**New Zealand Teachers Council and members**

s 139AC(3)

**1 Interpretation**

In this schedule,—

**Council** means the New Zealand Teachers Council established under Part 10A

**member** means a member of the Council.

*Members*

**2 Appointment**

A person becomes a member of the Council,—

- (a) in the case of an appointed member, on the date specified in the person's letter of appointment;
- (b) in the case of an elected member, on the date fixed by the Council as the date on which elected members take office.

**3 Term of office**

- (1) The term of office of every member is 3 years.
- (2) Despite subclause (1), every member, unless ceasing to hold office under clause 4, continues in office until his or her successor comes into office.
- (3) No member may hold office for more than 2 consecutive terms.

**4 Ceasing to hold office**

- (1) A member may at any time resign from office,—
  - (a) in the case of an elected member, by notice in writing to the Council;
  - (b) in the case of an appointed member, by notice in writing to the Minister, with a copy to the Council.
- (2) The Minister may, at any time, and entirely at his or her discretion, remove an appointed member from office by written notice to the member.
- (3) The Minister may, at any time, by written notice to an elected member, remove the member from office if the Minister is satisfied that the member has failed, or is failing, without good reason to perform his or her duties as a member (as set out in clause 6).

- (4) The Minister may not remove an elected member from office unless he or she has first consulted with the Council and given the member an opportunity to explain the failure.
- (5) The Minister may, by written notice to a member, remove any member from office if the person becomes, or is found to have been at the time of appointment or election, a person referred to in clause 5(1) or (2).
- (6) A member who is removed from office under subclause (2), subclause (3), or subclause (5) is not entitled to any compensation or other payment relating to the removal.

## **5 Who may not be appointed**

- (1) No person may be appointed to, or elected as, a member of the Council if he or she—
  - (a) is subject to a compulsory treatment order that is an inpatient order, or becomes a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
  - (b) is a bankrupt who has not yet obtained an order of discharge, or whose order of discharge is suspended for a term not yet expired or subject to conditions not yet fulfilled; or
  - (c) has failed to disclose all material conflicts of interest; or
  - (d) has been convicted of an offence punishable by imprisonment and—
    - (i) has not been sentenced for the offence; or
    - (ii) having been sentenced, has not suffered the penalty imposed, nor received a full pardon; or
  - (e) is not a New Zealand citizen, and is—
    - (i) a person to whom section 7 of the Immigration Act 1987 applies; or
    - (ii) a person obliged, by or under that Act or any other enactment, to leave New Zealand immediately or within a specified time; or
    - (iii) deemed for the purposes of that Act to be in New Zealand unlawfully.
- (2) A person may not be appointed as a member, or continue as a member, if he or she holds another position that is, in the Minister's opinion, inconsistent with the person's duties as a member.

## **6 Duties of members**

- (1) When exercising powers or performing duties as a member, every member must act—
  - (a) in good faith; and
  - (b) with reasonable care, diligence, and skill; and

- (c) with honesty and integrity; and
  - (d) in accordance with any code of conduct issued by 1 or more Ministers of the Crown that applies to Crown entities generally.
- (2) The Council—
- (a) must ensure that the Council acts in a manner consistent with its functions, powers, statement of intent, and any directions given under section 139AG; and
  - (b) must ensure that the activities of the Council are conducted efficiently and effectively, and in a manner consistent with the spirit of service to the public; and
  - (c) must endeavour to ensure that the Council operates in a financially responsible manner that maintains the financial viability of the organisation, having regard to the position of its creditors.

#### **7 Liability of members**

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

#### **8 Remuneration**

Members of the Council must be paid, out of the funds of the Council, remuneration in accordance with the scale set by the Government for the payment of members of Crown entities of the class or type to which the Council belongs.

#### **9 Members not in service of Crown**

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

### *Council*

#### **10 Meetings and quorum**

- (1) The Council may regulate its own procedure, subject to this schedule.
- (2) The quorum for any meeting of the Council is 6 members.



- (3) No business may be transacted at a meeting of the Council unless a quorum is present.

**11 Who presides at meetings**

- (1) The chairperson must preside at all meetings of the Council at which he or she is present.
- (2) If the chairperson is absent from a meeting, the members present must appoint 1 of their number to be chairperson of that meeting.

**12 Decisions of the Council**

- (1) All questions arising at a meeting are decided by a majority of the votes cast by the members present.
- (2) At any meeting, the chairperson or other person presiding has a deliberative vote and, if the votes are equal, also has a casting vote.
- (3) A resolution in writing, signed or assented to by letter, fax, or email by all members, is as valid and effectual as if it had been passed at a meeting of the Council duly called and constituted.
- (4) A resolution to which subclause (3) applies may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.
- (5) If a telephone or video conference of at least 6 members of the Council is held, and all reasonable efforts have been made to enable every member to participate in the conference, then a resolution assented to by a majority of members participating in the conference is as valid and effectual as if it had been passed at a meeting of the Council duly called and constituted.

**13 Proceedings not invalidated by vacancy**

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

**14 Committees**

- (1) The Council may appoint committees of Council members, and may dissolve or change the membership of those committees.
- (2) Every committee may regulate its own procedure, subject to any direction from the Council.

**15 Delegations**

- (1) The Council may, by resolution of the Council and in writing, delegate to any employee, committee, or member any of its functions or powers, other than its powers—
- (a) to make rules:

- (b) relating to deregistration:
- (c) to appoint a chief executive.
- (2) If a delegation permits, every person or committee to whom a function or power is delegated may further delegate the function or power in accordance with the terms of the delegation.
- (3) Every delegation of a function or power is—
  - (a) revokable at will, but the revocation does not take effect until it is communicated to the delegate; and
  - (b) continues in force according to its terms until it is revoked; and
  - (c) does not prevent the Council from performing the function or exercising the power.
- (4) A person or committee to whom any functions or powers are delegated may carry out those functions, or exercise those powers, in the same manner and with the same effect as if they had been conferred on the person or committee directly by this Act and not by delegation.
- (5) The fact that a person or committee purports to perform any function or exercise any power of the Council under a delegation is, in the absence of proof to the contrary, sufficient evidence of the person's or committee's authority to do so.

## **16 Functions and powers of related entities**

If the Council has or exercises control over any other legal entity,—

- (a) that entity is subject to the same statutory limitations on its functions and powers as the Council; and
- (b) members have, in relation to that entity, the duties set out in clause 6(1).

## **17 Contracts**

- (1) The Council may enter into a contract or other enforceable obligation as follows:
  - (a) an obligation required to be in writing may be entered into on behalf of the Council, in writing, by a person acting under the express or implied authority of the Council;
  - (b) an obligation that may be entered into otherwise than by writing may be entered into on behalf of the Council, in writing or orally, by a person acting under the express or implied authority of the Council;
  - (c) an obligation that is required to be entered into by deed must be signed by 2 members of the Council.
- (2) The Council may, in addition to complying with subclause (1), affix the common seal of the Council (if it has one) to any document containing a contract or other enforceable obligation.

**18 Council's finances**

- (1) The funds of the Council consist of—
  - (a) fees received under Part X in relation to registration, practising certificates, and authorisation:
  - (b) any money appropriated by Parliament for the purposes of the Council:
  - (c) fees paid to the Council in respect of goods and services provided by the Council to any person:
  - (d) any funds transferred to the Council, or received by it, on establishment:
  - (e) all accumulations of income derived from any such money.
- (2) Any money that belongs to the Council and that is not immediately required by it may be invested in accordance with section 25 of the Public Finance Act 1989.
- (3) The Council may not borrow or contract to borrow any money, or renew any loan made to it, without the prior written consent of the Minister of Finance.
- (4) For the purposes of section CB 3(a) of the Income Tax Act 1994 (public and local authorities' exempt income), the Council is not a public authority.

*Employees*

**19 Chief executive**

- (1) The Council must from time to time appoint a chief executive, on terms and conditions agreed between the Council and the person appointed.
- (2) Before agreeing to any terms and conditions of employment for a chief executive, the chairperson of the Council must consult with the State Services Commissioner and must have regard to any recommendation that he or she makes to the Council about those terms and conditions.
- (3) If the terms and conditions (either the original ones or amended ones) prepared by the Council for the chief executive vary from those recommended by the State Services Commissioner, the Council must consult with the Minister before agreeing to those terms and conditions.

**20 Other employees**

The chief executive of the Council may appoint whatever other employees he or she considers necessary or desirable to enable the Council to perform its functions and duties.

**21 Certain State Sector Act 1988 provisions apply**

- (1) Subsections (1) and (2) of section 56 of the State Sector Act 1988 (which requires departments to be “good employers”), and section 58 of that Act (which relates to equal employment opportunities) apply to the Council as if the Council were a department referred to in those provisions.

- (2) To avoid doubt, no person employed by the Council is employed in the service of the Crown for the purposes of the State Sector Act 1988.

## **22 Superannuation**

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

**Schedule 2**  
**Consequential amendments to principal Act**

s 82(1)

*Amendments incorporated in the Act*

**Schedule 3**  
**Further consequential amendments to principal Act**

s 82(2)

*Amendments incorporated in the Act*

**Schedule 4**  
**Consequential amendments to other Acts**

s 83

**Official Information Act 1982 (1982 No 156)**

Amendment(s) incorporated in the Act(s)

**Ombudsmen Act 1975 (1975 No 9)**

Amendment(s) incorporated in the Act(s)

**Privacy Act 1993 (1993 No 28)**

Amendment(s) incorporated in the Act(s)

**Public Finance Act 1989 (1989 No 44)**

Amendment(s) incorporated in the Act(s)

**State Sector Act 1988 (1988 No 20)**

Amendment(s) incorporated in the Act(s)

**Eprint notes****1    *General***

This is an eprint of the Education Standards Act 2001 that incorporates all the amendments to that Act at the date of the last amendment to it.

**2    *About this eprint***

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

**3    *Amendments incorporated in this eprint***

Education Amendment Act 2015 (2015 No 1): section 43