



## Education Amendment Act (No 3) 2010

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Commencement see section 2

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

**1 Title**

This Act is the Education Amendment Act (No 3) 2010.

**2 Commencement**

- (1) Sections 31 to 33 come into force 6 months after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**3 Principal Act amended**

This Act amends the Education Act 1989.

**4 Interpretation**

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961

“**criteria for registration**, in relation to a private school or proposed private school, means the criteria set out in section 35C

“**government training establishment** has the same meaning as it has in section 159

“**industry training organisation** has the same meaning as in section 2 of the Industry Training Act 1992

“**institution** has the same meaning as it has in section 159

“**lead provider** means a provider of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under section 31F as a lead provider

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

“**participating student** means a student undertaking a secondary-tertiary programme who is enrolled in any of the following:

“(a) a secondary school:

“(b) a composite school:

“(c) a school that is registered under section 35A, other than a school registered under that section only as a primary school:

“(d) a special school that is a relevant school within the meaning of section 246

“**provider group** means a group of providers of secondary-tertiary programmes that is recognised by the Minister by notice in the *Gazette* under section 31B as a provider group

“**registered establishment** has the same meaning as it has in section 159

“**review officer** has the same meaning as it has in section 323

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

“**secondary-tertiary programme** has the meaning given to it in section 31A

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

“**tertiary component**, in relation to a secondary-tertiary programme, means the portion of the programme that consists of the participating student’s apprenticeship training (as defined

in section 5 of the Modern Apprenticeship Training Act 2000), or participation in tertiary education that—

- “(a) is provided by any 1 or more of the following:
  - “(i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
  - “(ii) the managers of a school registered under section 35A, other than a school registered under that section only as a primary school:
  - “(iii) a government training establishment:
  - “(iv) an institution:
  - “(v) a registered establishment; and
- “(b) may include work experience (other than work experience obtained by a student under section 71) as part of the programme that is approved by the provider of the secondary or tertiary component of the programme”.

## **5 New section 4E inserted**

The following section is inserted after section 4D:

### **“4E Courses for foreign students**

- “(1) The board of a State school or the managers of a school registered under section 35A must not establish, or permit any student to enrol or continue to be enrolled in, any class, course, or programme, intended exclusively or mainly for foreign students, unless the class, course, or programme is for the time being approved by the New Zealand Qualifications Authority.
- “(2) The New Zealand Qualifications Authority must not approve a class, course, or programme under subsection (1) unless satisfied on reasonable grounds that—
  - “(a) the school has or will have adequate staff, equipment, and premises to provide it; and
  - “(b) the standard of instruction provided in it will be no lower than the standard that would be expected in any similar class, course, or programme for domestic students.”

## **6 How to select applicants who live outside home zone**

- (1) Section 11F(1) is amended by repealing paragraphs (d) and (e) and substituting the following paragraphs:

- “(d) fourth priority must be given to any applicant who is a child of a former student of the school:
  - “(e) fifth priority must be given to any applicant who is either a child of an employee of the board of the school or a child of a member of the board of the school:
  - “(f) sixth priority must be given to all other applicants.”
- (2) Section 11F(2) is amended by omitting “or fifth” and substituting “fifth, or sixth”.

#### **7 Students required to enrol must attend school**

Section 25 is amended by adding the following subsection:

- “(4) Nothing in subsections (1) to (3) applies to a participating student who is enrolled at a registered school for the purposes of the secondary component of his or her secondary-tertiary programme, but he or she must attend the school for any portion of the programme as notified by the provider group or lead provider under section 31J.”

#### **8 Employment of school-age children**

- (1) Section 30(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) in the case of a person who is a student participating in a secondary-tertiary programme, when the employment interferes with the person’s ability to undertake the secondary-tertiary programme; or”.

- (2) Section 30(1)(d) is amended by inserting the following subparagraph after subparagraph (i):

“(ia) in the case of a person who is a participating student, interferes with the person’s ability to undertake his or her secondary-tertiary programme; or”.

#### **9 Ensuring attendance of students**

Section 31 is amended by adding the following subsection:

- “(9) This section applies to a participating student only in relation to any portion of his or her secondary-tertiary programme during which he or she is required to attend school, as notified by the provider group or lead provider under section 31J.”

**10 New sections 31A to 31L inserted**

The following sections are inserted after section 31:

**“31A Nature of secondary-tertiary programme**

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

- “(a) consists of a secondary component and a tertiary component; and
- “(b) is co-ordinated by a provider group or a lead provider.

**“31B Provider group for secondary-tertiary programme**

“(1) The Minister may, by notice in the *Gazette*, recognise as a provider group of secondary-tertiary programmes a group of organisations that consists of—

- “(a) any 1 or more of the following:
  - “(i) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
  - “(ii) a body corporate that is the manager of a school registered under section 35A, other than a school registered under that section only as a primary school; and
- “(b) any 1 or more of the following:
  - “(i) a government training establishment:
  - “(ii) an industry training organisation:
  - “(iii) an institution:
  - “(iv) a registered establishment.

“(2) Each member of a provider group is jointly and severally liable with the other members of the group in respect of the group’s obligations and responsibilities.

“(3) Each member of a provider group must take all reasonable steps to work in a co-operative manner with the other members of the group.

**“31C Secretary may enter into agreement with provider group**

“(1) A provider group may co-ordinate a secondary-tertiary programme, if the provider group has entered into a written agreement with the Secretary in relation to the programme.

- “(2) The matters that an agreement under subsection (1) may provide for, in relation to a secondary-tertiary programme, may include (without limitation) any 1 or more of the following:
- “(a) its organisation and operation:
  - “(b) its curriculum, courses, and any qualification resulting from it:
  - “(c) selection of students to participate in it:
  - “(d) clarification of responsibility for the welfare and educational performance of participating students:
  - “(e) pastoral care and career guidance for participating students:
  - “(f) its funding, and the responsibility of specific members of the provider group in relation to that funding:
  - “(g) the maximum number of students that may participate in it.
- “(3) The Secretary and the provider group may agree at any time to cancel or vary an agreement under subsection (1).
- “(4) The Secretary or the provider group may cancel an agreement under subsection (1) by giving at least 6 months’ notice in writing to the provider group or the Secretary (as the case may be).

**“31D Provider group plan for secondary-tertiary programme**

- “(1) A provider group must—
- “(a) prepare and maintain a plan that contains short-term and long-term goals for each secondary-tertiary programme that it co-ordinates; and
  - “(b) provide the Secretary with a copy of the plan.
- “(2) A provider group that alters any plan provided to the Secretary under subsection (1)(b) must provide the Secretary with a copy of the changed plan as soon as practicable.

**“31E Report to Secretary by provider group**

- “(1) A provider group must report at least annually to the Secretary regarding its performance and progress.
- “(2) The Secretary may, by notice in the *Gazette*, specify the format, or content, or both, required for reports that are to be made under subsection (1).

**“31F Recognition as lead provider of secondary-tertiary programme**

The Minister may, by notice in the *Gazette*, recognise as a lead provider of secondary-tertiary programmes any of the following:

- “(a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
- “(b) a body corporate that is the manager of a school registered under section 35A, other than a school registered under that section only as a primary school:
- “(c) a government training establishment:
- “(d) an industry training organisation:
- “(e) an institution:
- “(f) a registered establishment.

**“31G Lead provider to co-ordinate secondary-tertiary programme**

- “(1) A lead provider may co-ordinate a secondary-tertiary programme, if the lead provider has made an arrangement for the safety, welfare, and educational programmes of participating students that is—
  - “(a) agreed to by the Secretary; or
  - “(b) in a form approved by the Secretary.
- “(2) Any of the following may provide a secondary component or a tertiary component of a secondary-tertiary programme, after making an arrangement as specified in subsection (1) with the lead provider of the programme:
  - “(a) a board of a secondary school, a composite school, or a special school that is a relevant school within the meaning of section 246:
  - “(b) the managers of a school registered under section 35A, other than a school registered under that section only as a primary school:
  - “(c) a government training establishment:
  - “(d) an institution:
  - “(e) a registered establishment:
  - “(f) an employer providing work experience under the programme.

“(3) The Secretary may withdraw his or her agreement under subsection (1)(a), or his or her approval under subsection (1)(b), by giving at least 6 months’ notice in writing to the lead provider.

**“31H Government policies or priorities**

“(1) The Minister may, by notice in the *Gazette*, publish Government policies, or priorities, or both that apply in relation to any 1 or more of the following:

“(a) secondary-tertiary programmes:

“(b) provider groups, or specified types of provider groups:

“(c) lead providers, or specified types of lead providers.

“(2) The Minister may, by written notice to a provider group or lead provider, issue a Government policy or priority that applies in relation to the group or provider.

“(3) A provider group or lead provider must take all reasonable steps to comply with any Government policy or priority—

“(a) published under subsection (1); or

“(b) notified under subsection (2).

“(4) In this section, **comply** means to give effect to the Government policy or priority or to have regard to the Government policy or priority, as the context requires.

**“31I Entry into secondary-tertiary programme**

“(1) A student who is enrolled in any of the following may apply to a provider group or lead provider for his or her entry into a secondary-tertiary programme:

“(a) a secondary school:

“(b) a composite school:

“(c) a school that is registered under section 35A, other than a school registered under that section only as a primary school:

“(d) a special school that is a relevant school within the meaning of section 246.

“(2) Approval for a student’s entry into a secondary-tertiary programme is at the discretion of the provider group or lead provider.

**“31J Provider group or lead provider to notify student and parents about any school attendance requirement**

The provider group or lead provider co-ordinating a participating student’s secondary-tertiary programme must take all reasonable steps to notify the student and his or her parents in writing about any portion of the programme during which the student’s participation in the programme requires his or her attendance at school.

**“31K Withdrawal from secondary-tertiary programme**

- “(1) A participating student may withdraw from his or her secondary-tertiary programme at any time.
- “(2) A provider group or lead provider (as the case may be) may withdraw its approval for a student’s participation in a secondary-tertiary programme after consulting with the student.

**“31L Foreign students and secondary-tertiary programmes**

A provider group or lead provider must not approve the entry of a foreign student (other than an exempt student) into a secondary-tertiary programme if to do so would result in the provider excluding from entry to the programme any domestic student, or any exempt student, who has applied for entry into the programme and is otherwise eligible to participate in the programme.”

**11 New headings and sections 35A to 35R substituted**

Sections 35A to 35C are repealed and the following headings and sections substituted:

*“Registration of private schools*

**“35A Provisional and full registration of private schools**

- “(1) The managers of an unregistered or proposed private school must apply to the Secretary, on a form provided by the Secretary for the purpose, for its provisional registration as a primary, secondary, or special private school, or as a school of 2 or all of those descriptions.
- “(2) The Secretary must provisionally register a school in respect of which an application is made under subsection (1) as a school of the description or descriptions concerned if he or she is sat-

isfied that the school or proposed school meets or is likely to meet the criteria for registration as a private school.

- “(3) Provisional registration of a school or proposed school continues—
- “(a) for 12 months (unless it is revoked earlier); or
  - “(b) until the expiry of any period specified by the Secretary under subsection (4).
- “(4) The Secretary may renew the provisional registration of a school only once, for a period specified by the Secretary, if he or she is satisfied that—
- “(a) exceptional circumstances exist in relation to the school; and
  - “(b) the school is likely to meet the criteria for registration as a private school in that period.
- “(5) The Secretary may request a further review, in addition to the review under section 35I(2), of a school that has its provisional registration renewed under subsection (4).
- “(6) The Secretary must fully register a school as a school of the description or descriptions concerned if he or she is satisfied, having considered any report under section 35I(4) in relation to a review under section 35I(2) or (3) (as the case may be), that a provisionally registered school meets the criteria for registration as a private school.

**“35B Secretary may require application for registration of school**

The Secretary may require the managers of a school that is not registered under section 35A to apply for its registration under that section if he or she considers that the school is operating as a school, whether or not certificates of exemption under section 21 are held in respect of all or any of the students being taught there.

*“Criteria for registration as private school*

**“35C Criteria for registration as private school**

The criteria for registration as a private school under section 35A are that the school—

- “(a) has premises that are suitable, as described in section 35D; and
- “(b) usually provides tuition for 9 or more students who are of or over the age of 5 years but are under the age of 16 years; and
- “(c) has staffing that is suitable to the age range and level of its students, the curriculum taught at the school, and the size of the school; and
- “(d) has equipment that is suitable for the curriculum being delivered or to be delivered at the school; and
- “(e) has a curriculum for teaching, learning, and assessment and makes details of the curriculum and its programme for delivery available for parents; and
- “(f) has suitable tuition standards, as described in section 35F; and
- “(g) has managers who are fit and proper persons (as described in section 35G) to be managers of a private school.

**“35D Suitable premises**

- “(1) Suitable premises for a school registered under section 35A are premises that are suitable for a school of its description and the number of students at the school.
- “(2) Subsection (1) applies to all premises used by the school for the regular delivery of courses, whether or not the managers of the school own or lease the premises for the school.

**“35E Additional and substituted premises to be approved**

- “(1) The managers of a school registered under section 35A must, in the circumstances set out in subsection (2), notify the Secretary and obtain his or her approval before using new premises for the regular delivery of courses.
- “(2) The circumstances are that the managers of the school propose that the school is to occupy—
  - “(a) premises that are in addition to its current premises; or
  - “(b) different premises that are to replace the premises currently occupied by the school.

“(3) When considering whether to grant approval of premises under subsection (1), the Secretary must consider whether the premises are suitable, as described in section 35D.

**“35F Tuition standards**

“(1) Tuition of a suitable standard at a school registered under section 35A must include giving students tuition of a standard no lower than that of the tuition given to students enrolled at State schools of the same class levels.

“(2) In assessing the standard of tuition, the mode of curriculum delivery and the regularity of instruction must be considered.

**“35G Managers to be fit and proper persons**

“(1) In assessing whether a person who is a manager of a school is a fit and proper person to be a manager of a school registered under section 35A, the following matters must be taken into account:

“(a) any conviction for a serious criminal activity:

“(b) any health problems that may affect the person’s ability to comply with his or her obligations towards the school and its students:

“(c) any adjudication of bankruptcy under the Insolvency Act 2006 or the Insolvency Act 1967, or prohibition from being a director or promoter of, or being concerned or taking part in the management of, a company under any of sections 382, 383, 385, and 386A of the Companies Act 1993:

“(d) any previous cancellation under this Act or section 186 of the Education Act 1964 of the registration of a school of which the person was a manager:

“(e) any serious breach of the person’s statutory duties as manager of a school registered under section 35A of this Act or section 186 of the Education Act 1964:

“(f) any conviction for an offence under section 35R:

“(g) all other relevant matters.

“(2) If the manager of a school is—

“(a) a company, the assessment under subsection (1) applies to its directors:

- “(b) an incorporated society or an incorporated trust board, the assessment under subsection (1) applies to its members.
- “(3) When the management of a school registered under section 35A changes in its entirety or is transferred to a new entity, the new managers must give notice to the Secretary and an assessment under subsection (1) must be made of the new managers of the school.

*“Managers to advise Secretary of private school  
ceasing operation*

**“35H Managers must advise Secretary of school ceasing operation**

The managers of a school registered under section 35A that is about to cease to operate as a school must inform the Secretary—

- “(a) that the school will cease to operate as a school; and
- “(b) of the date on which the school will cease to operate as a school.

*“Review of private schools registered under  
section 35A*

**“35I Review of schools registered under section 35A**

- “(1) As soon as practicable after provisionally registering a school or proposed school under section 35A(2), the Secretary must inform the Chief Review Officer of the provisional registration.
- “(2) The Chief Review Officer must ensure that a review officer reviews any school that is provisionally registered under section 35A(2) either—
  - “(a) between 6 and 12 months after the provisional registration of the school or proposed school; or
  - “(b) earlier, by agreement with its managers.
- “(3) The Chief Review Officer must ensure that a review officer conducts a further review of a school that has had its provisional registration renewed under section 35A(4), when the further review is requested by the Secretary under section 35A(5).

- “(4) The Chief Review Officer must ensure that a review officer who conducts a review under subsection (2) or (3) prepares a written report in relation to the review and gives copies of it to the Secretary and the school’s manager.
- “(5) The Chief Review Officer must ensure that a school, while registered under section 35A(6), is reviewed in accordance with Part 28.
- “(6) The Chief Review Officer must also ensure that the review officer who conducts a review under subsection (5)—
- “(a) prepares a written report on the review; and
  - “(b) gives copies of it to the Secretary and the school’s principal (or other chief executive) and managers.
- “(7) A review officer’s written report on a review under this section must also include—
- “(a) information as to whether the school meets the criteria for registration as a private school; and
  - “(b) information as to the areas in which improvement is required, if it does not meet the criteria.

*“Actions by Secretary in regard to schools  
registered under section 35A*

**“35J Secretary’s actions in regard to schools registered under section 35A**

- “(1) The Secretary may take action in regard to a school registered under section 35A if—
- “(a) he or she considers that the school is not meeting all or any of the criteria for registration as a private school; or
  - “(b) a review conducted under section 35I indicates that the school does not, or is not likely to, meet all or any of the criteria for registration as a private school; or
  - “(c) the managers of the school have breached or are breaching their statutory duties in relation to the school under this or any other enactment; or
  - “(d) he or she has reasonable grounds to believe that serious criminal activity is occurring in the school.
- “(2) If the Secretary is satisfied that any 1 or more of the grounds set out in subsection (1) exist in relation to a school registered

under section 35A, he or she may do any 1 or more of the following:

- “(a) issue the school’s managers with a notice to comply:
  - “(b) require the managers of a school to inform parents of the students at the school that the school is not meeting the criteria for registration as a private school:
  - “(c) impose conditions on the school’s registration:
  - “(d) impose a requirement or requirements under any 1 or more of paragraphs (a) to (c), and suspend the school’s registration:
  - “(e) cancel the school’s registration under section 35M.
- “(3) Any action taken by the Secretary under subsection (2)—
- “(a) must be proportionate to the seriousness of the school’s situation; and
  - “(b) is in addition to any fine incurred or other penalty imposed under section 35R or under any other enactment.

**“35K Suspension of registration if welfare of students may be at risk**

The Secretary may at any time suspend the registration of a school registered under section 35A if he or she has reasonable grounds to believe that the welfare of the students at the school is at risk, and—

- “(a) that it is unlikely that the risk can be managed by any practicable means other than by suspension of the registration; or
- “(b) that, although the risk could be managed by means other than by suspension of the registration, the amount of time necessary to do so is likely, in the opinion of the Secretary, to be excessive.

**“35L Duration of suspension**

- “(1) Suspension under section 35J(2)(d) continues until the Secretary—
  - “(a) is satisfied that the managers of the school have complied with all requirements imposed by him or her under any of paragraphs (a) to (c) of section 35J(2); or
  - “(b) cancels the school’s registration under section 35M.
- “(2) Suspension under section 35K continues until the Secretary—

- “(a) is satisfied that the welfare of the students at the school is no longer at risk; or
- “(b) cancels the school’s registration under section 35M, after taking action under section 35J(2).

**“35M Process for cancellation of registration**

- “(1) The Secretary may cancel the registration of a school if, following an action by him or her taken under any of paragraphs (a) to (d) of section 35J(2),—
  - “(a) the school—
    - “(i) does not improve sufficiently to meet the criteria for registration under section 35A; and
    - “(ii) is not likely to do so, in the opinion of the Secretary, within a further reasonable time; or
  - “(b) the managers of the school are continuing in breach of their statutory duties in relation to the school; or
  - “(c) serious criminal activity continues to occur in the school.
- “(2) Before cancelling a school’s registration under subsection (1), the Secretary must—
  - “(a) take reasonable steps to obtain and consider any relevant information, including any report by a review officer; and
  - “(b) give written notice to the managers of the school that he or she is considering cancelling the school’s registration, and give reasons; and
  - “(c) give the managers of the school a reasonable opportunity to respond to the notice.

*“Grants for private schools*

**“35N Grants for private schools**

- “(1) The Minister may make grants to the managers of schools registered under section 35A out of money appropriated by Parliament for the purpose.
- “(2) The Minister must determine the amount of each grant made under subsection (1).
- “(3) A grant may be made unconditionally, or subject to conditions determined by the Minister.

“(4) The managers of a school to which a grant is made subject to conditions must take all reasonable steps to ensure that the conditions are complied with.

**“350 Record-keeping in relation to grants to private schools**

“(1) The managers of a school to which a grant has been made unconditionally under section 35N must ensure that records are kept—

“(a) in respect of the year in which the grant was made and the year after; and

“(b) in a manner approved by the Minister.

“(2) The records must—

“(a) show fully and correctly all the managers’ financial transactions, assets, liabilities, and funds; and

“(b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.

“(3) The managers of a school to which a grant under section 35N has been made subject to conditions must ensure that all necessary records are kept—

“(a) in respect of the year in which the grant was made and the year after; and

“(b) in a manner approved by the Minister.

“(4) The records must—

“(a) show fully and fairly—

“(i) any of the managers’ financial transactions, assets, liabilities, and funds, that relate to or are or were affected by the making of the grants; and

“(ii) that the conditions have been complied with; and

“(b) be available for inspection at all reasonable times by any employee of the Ministry approved by the Secretary for the purpose.

“(5) For the purposes of this section and section 35P, the financial year of a school’s managers ends—

“(a) at the close of the day specified by the Minister for the purpose; or

“(b) at the close of 30 June, if the Minister has not specified a day for the purpose.

**“35P Providing accounts to Secretary**

As soon as practicable after the end of each financial year during which a school’s managers are required by section 35O to keep records, they must—

- “(a) have prepared an income and expenditure account, showing all financial transactions for the year records of which are required to be kept; and
- “(b) have the account audited by a chartered accountant; and
- “(c) give the Secretary copies of the account and the audit report on it.

*“Suspensions and expulsions from private schools*

**“35Q Suspensions and expulsions of students from private schools to be notified to Secretary**

- “(1) Immediately after a student has been suspended from attendance at, or expelled from, a school registered under section 35A, the school’s principal or head teacher must give the Secretary—
  - “(a) written notice of—
    - “(i) the student’s name and last known address; and
    - “(ii) the day on which the student was suspended or expelled or, if the student was first suspended and later expelled, the days on which the student was suspended and expelled, and the length of the suspension; and
  - “(b) a written statement of the reasons for the student’s suspension or expulsion.
- “(2) Unless the student is within a reasonable time reinstated at the school or enrolled at some other registered school, the Secretary must (if the student is younger than 16) and may (if the student is 16 or older)—
  - “(a) arrange for the student to be enrolled at some other reasonably convenient registered school that the student can attend; or
  - “(b) direct the board of a State school that is not an integrated school to enrol the student at the school; and, in that case, the board must do so; or

- “(c) direct a parent of the student to have the student enrolled at a correspondence school.
- “(3) The Secretary must not give a direction under subsection (2) unless he or she has also made all reasonable attempts to consult the student, the student’s parents, the board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student’s education or welfare.
- “(4) A direction under subsection (2)(b) overrides section 11M.
- “(5) To the extent that there is any inconsistency between this section and a contract of enrolment at the school, this section prevails.

*“Offences in relation to private schools*

**“35R Offences in relation to operation of private schools**

- “(1) A manager of a private school that is not registered under section 35A commits an offence if it operates as a school.
- “(2) A manager of a private school that is registered under section 35A as a school of a particular description or descriptions commits an offence if the school operates as a school of another description or of other descriptions.
- “(3) The managers of a private school that is registered under section 35A commit an offence if the school ceases to operate before the managers tell the Secretary that it will cease to operate.
- “(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$200 for every day or part of a day on which the offence took place.”

**12 Entry where school suspected of being unregistered**

- (1) The heading to section 78B is amended by inserting “**private**” after “**where**”.
- (2) Section 78B(1) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of section 35R”.

- (3) Section 78B(3) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of section 35R”.
- (4) Section 78B(5) is amended by omitting “school in contravention of section 35A(12)” and substituting “private school in contravention of section 35R”.

### 13 Interpretation

The definition of **authorisation** in section 120 is amended by omitting “persons” and substituting “people”.

### 14 Restrictions on appointment of teachers

Section 120A is amended by repealing subsection (1) and substituting the following subsection:

- “(1) An employer must not appoint to a teaching position—
- “(a) any person—
    - “(i) whose registration has been cancelled; and
    - “(ii) who has not since been registered again; or
  - “(b) any person whose practising certificate is suspended under section 139AU or 139AW(1)(d); or
  - “(c) any person whose authorisation has been cancelled, and who has not since—
    - “(i) been authorised again; or
    - “(ii) been registered as a teacher; or
  - “(d) any person whose limited authority to teach is suspended under section 139AU or 139AW(1)(d).”

### 15 Restrictions on continued employment of teachers

Section 120B is amended by repealing subsection (1) and substituting the following subsection:

- “(1) An employer must not continue to employ in a teaching position—
- “(a) any person—
    - “(i) whose registration has been cancelled; and
    - “(ii) who has not since been registered again; or
  - “(b) any person whose practising certificate is suspended under section 139AW(1)(d); or

- “(c) any person whose authorisation has been cancelled, and who has not since—
  - “(i) been authorised again; or
  - “(ii) been registered as a teacher; or
- “(d) any person whose limited authority to teach is suspended under section 139AW(1)(d).”

#### **16 New section 120C inserted**

The following section is inserted after section 120B:

##### **“120C Restrictions on activities of teachers whose practising certificate or limited authority to teach subject to interim suspension**

- “(1) This subsection applies to a person employed in a teaching position if—
  - “(a) he or she holds a practising certificate that is suspended under section 139AU; or
  - “(b) he or she has a limited authority to teach that is suspended under section 139AU.
- “(2) While subsection (1) applies to a person, his or her employer—
  - “(a) must ensure that he or she does not carry out any of the duties of the teaching position concerned; and
  - “(b) if the person is employed at a registered school (within the meaning of section 2(1)) or an early childhood education and care service, must take all reasonably practicable steps to ensure that he or she does not undertake any activities that might bring him or her into contact with students enrolled at the school or, as the case may be, children who attend the service.
- “(3) While subsection (1) applies to a person, he or she must not carry out any of the duties of the teaching position concerned.”

#### **17 Matching of register information and information about payment of teacher salaries at payrolled schools**

- (1) Section 128A(1)(b) is amended by inserting “and relieving teachers” after “regular teachers”.
- (2) Section 128A(2)(a) is amended by inserting “and relieving teachers” after “regular teachers”.

- (3) Section 128A(3)(b) is amended by omitting “teachers” and substituting “regular teachers and relieving teachers in receipt of salaries at payrolled schools”.
- (4) Section 128A(4) is amended by inserting “**relieving teacher**,” after “**regular teacher**,”.

### **18 Cancellation of registration as teacher and cancellation of limited authority to teach**

- (1) Section 129(1)(d) is amended by omitting “139AZC(8)(c)” and substituting “139AZCB(b)”.
- (2) Section 129(4) is amended by omitting “139AZC(8)(c)” and substituting “139AZCB(b)”.

### **19 Practising certificates**

Section 130 is amended by adding the following subsections:

- “(7) This subsection applies to a renewed practising certificate issued to a person if—
- “(a) the practising certificate he or she already holds when the renewed certificate is issued is suspended under section 139AU; or
  - “(b) he or she does not already hold a practising certificate when the renewed certificate is issued; but—
    - “(i) the practising certificate he or she last held was suspended under section 139AU when it expired; and
    - “(ii) its suspension was not due to expire until a time after the issue of the renewed certificate.
- “(8) A renewed practising certificate to which subsection (7) applies must be treated as being suspended under section 139AU; and its suspension expires when the suspension of the previous practising certificate held by its holder would have expired.”

### **20 Offences**

Section 137(1) is amended by inserting the following paragraphs after paragraph (f):

- “(fa) being the employer of a person to whom section 120C(1) applies, fails or refuses to ensure that the per-

son does not carry out any of the duties of the teaching position in which he or she is employed; or

“(fb) being the employer of a person to whom section 120C(1) applies, and the board of a State school, the managers of a school registered under section 35A, or the person or body who appoints staff at an early childhood education and care service, fails or refuses to take all reasonably practicable steps to ensure that the person does not undertake any activities that might bring him or her into contact with students enrolled at the school or, as the case may be, children who attend the service; or

“(fc) being a person to whom section 120C(1) applies, carries out any of the duties of the teaching position in which he or she is employed; or”.

## 21 Interpretation

Section 139AB is amended by repealing the definition of **authorised person** and substituting the following definitions:

“**authorised person** means the holder of an authority

“**authority** means a limited authority to teach given under Part 10”.

## 22 Interim suspension until complaint of possible serious misconduct concluded

(1) The heading to section 139AU is amended by omitting “**complaint of**” and substituting “**matter about or involving**”.

(2) Section 139AU is amended by repealing subsection (1) and substituting the following subsection:

“(1) At any time between when the Complaints Assessment Committee receives a complaint or receives or becomes aware of a report that is about or involves a teacher’s possible serious misconduct and when the matter is concluded (as specified in section 139AUA(6)), the Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher’s practising certificate or authority.”

(3) Section 139AU is amended by repealing subsection (1A).

- (4) Section 139AU(2) is amended by omitting “or (1A)”.

**23 Duration of interim suspension**

Section 139AUA(6) is amended by—

- (a) inserting “and section 139AU” after “this section”; and  
(b) inserting “or report” after “complaint”.

**24 Appeals**

Section 139AZB(1) is amended by omitting “139AZC” and substituting “139AZCB”.

**25 Complaints about competence**

Section 139AZC is amended by repealing subsection (8).

**26 New sections 139AZCA and 139AZCB inserted**

The following sections are inserted after section 139AZC:

**“139AZCA Investigation of mandatory reports about competence**

- “(1) When investigating a report under section 139AK or 139AN about a teacher’s competence, the Teachers Council may ask the teacher’s employer or former employer for information in addition to the information supplied in the report.
- “(2) When the Teachers Council asks an employer or former employer for information under subsection (1), the employer or former employer must provide the information as requested by the Teachers Council.
- “(3) When a report is made under section 139AK or 139AN by a member of the Teachers Council, that member must not be involved in any investigation of the report.

**“139AZCB Powers of Teachers Council after finding required level of competence not attained**

Following an investigation of a complaint under section 139AZC, or following receipt of a report under section 139AK or 139AN and any investigation of the report, the Teachers Council may, if satisfied that the teacher has not attained the required level of competence,—

- “(a) do any 1 or more of the following:

- “(i) impose conditions on the teacher’s practising certificate or authority:
- “(ii) refer the teacher to an impairment process which may involve either or both of the following:
  - “(A) assessment of an impairment:
  - “(B) assistance with an impairment:
- “(iii) annotate the register or the list of authorised persons in a specified manner, in relation to any action taken under subparagraph (i); or
- “(b) order that the teacher’s registration or authority be cancelled (*see* section 129(1)).”

**27 No corporal punishment in early childhood services or registered schools**

- (1) Section 139A(1)(b) is amended by omitting “(within the meaning of section 35A(1)) of a private school” and substituting “of a school registered under section 35A”.
- (2) Section 139A(2)(b) is amended by omitting “(within the meaning of section 35A(1)) of a private school” and substituting “of a school registered under section 35A”.

**28 Secretary may require information for proper administration of Act**

- (1) Section 144A(1)(c) is amended by omitting “(within the meaning of section 35A(1)) of any private school registered under that section” and substituting “of any school registered under section 35A”.
- (2) Section 144A is amended by repealing subsection (2) and substituting the following subsection:
  - “(2) For the purposes of the provisions of this Act relating to the registration and inspection of private schools, the following information is relevant to the question of whether or not a school meets the criteria for registration as a private school:
    - “(a) information that is required under subsection (1) to be given to the Secretary; and
    - “(b) information that is reasonably necessary or desirable for the Secretary to have for the proper administration of this Act.”

**29 Roles within tertiary education sector**

Section 159AD is amended by inserting the following subsection before subsection (2):

- “(1) The Ministry is the Minister’s principal policy adviser on tertiary education matters.”

**30 Functions of Commission**

- (1) Section 159F(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) to provide advice to the Minister on the activities and performance of tertiary education organisations and the tertiary education sector generally; and”.

- (2) Section 159F(1) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) to provide advice to the Minister on the implementation of policy and on the operational implications of new policy initiatives; and”.

**31 Grant or refusal of application**

- (1) Section 236(1)(c) is amended by inserting “and the notice made under section 236AB” after “section 236A”.

- (2) Section 236(1)(d)(ii) is amended by inserting “domestic” after “every”.

- (3) Section 236(1)(d)(iii) is amended by inserting “domestic” after “every”.

- (4) Section 236(1)(d) is amended by inserting the following subparagraphs after subparagraph (iii):

“(iiia) allows, or will allow, every foreign student enrolled for a course of study or training (other than a course of less than 3 months’ duration) to withdraw from it at any time within the period specified in the notice made under section 236AB; and

“(iiib) refunds, or will refund, to every foreign student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that course, and, if withdrawal from that course also constitutes withdrawal from the

establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under section 236AB; and”.

- (5) Section 236 is amended by adding the following subsection:
- “(5) For the purposes of this section, **first day of the course for which the attendance of students at the establishment is required** means, in relation to a student enrolled for a course of study or training at the establishment, the first day on which the establishment requires the student to attend the establishment to begin the course of study or training.”

### **32 Information, withdrawals, and refunds**

- (1) Section 236A(1)(c) is amended by inserting “domestic” after “every”.
- (2) Section 236A(1)(d) is amended by—
- (a) inserting “domestic” after “every”; and
  - (b) adding “; and”.
- (3) Section 236A(1) is amended by adding the following paragraphs:
- “(e) allow every foreign student enrolled for a course of study or training that is a course of 3 months or more to withdraw from it at any time within the period specified in the notice made under section 236AB; and
  - “(f) refund to every foreign student who so withdraws, without deduction, at least so much of any payment, or of the sum of any payments, made by the student to the establishment in respect of that course, and, if withdrawal from the course also constitutes withdrawal from the establishment as a whole, in respect of enrolment at the establishment, as exceeds the percentage specified in the notice made under section 236AB; and
  - “(g) allow every foreign student enrolled for a course of study or training that is of less than 3 months’ duration to withdraw from it within a period (being less than 7 days) specified by the Qualifications Authority; and
  - “(h) refund to every foreign student who so withdraws a minimum amount or proportion, specified by the Au-

thority, of any payments made by the student to the establishment in respect of the course.”

(4) Section 236A is amended by repealing subsection (2) and substituting the following subsection:

“(2) If a student has made any payment or payments to an establishment in respect of the student’s enrolment or participation in a course of study or training before the expiry of the period for withdrawal from the course specified in subsection (1)(c), (e), or (g) (as the case may be),—

“(a) the establishment must ensure that there is paid to an independent person approved by the Qualifications Authority for the purpose out of that payment or those payments, to be held in trust to be available for refund to the student under paragraph (d), (f), or (h) of subsection (1) (as the case may be), an amount equal to the amount required to be refunded to the student under that paragraph; and

“(b) if satisfied that the student withdrew from the course within the period specified in subsection (1)(c), (e), or (g) (as the case may be), the person must pay the amount held to the student; and

“(c) if satisfied that the student did not withdraw from the course within the period specified in subsection (1)(c), (e), or (g) (as the case may be), the person must (as the case requires) pay the amount held to the establishment, or hold it for the establishment’s creditors.”

(5) Section 236A is amended by adding the following subsection:

“(3) For the purposes of this section, **first day of the course for which the attendance of students at the establishment is required** means, in relation to a student enrolled for a course of study or training at an establishment, the first day on which the establishment requires the student to attend the establishment to begin the course of study or training.”

### 33 New section 236AB inserted

The following section is inserted after section 236A:

**“236AB Refund requirements set by *Gazette* notice**

- “(1) The Minister must specify, by notice in the *Gazette*, for the purposes of refunds under section 236A(1)(f),—
- “(a) the period within which a foreign student may withdraw from a course of 3 months or more and be entitled to a refund under that section; and
  - “(b) the maximum percentage of the payment or payments that an establishment may retain; and
  - “(c) the cost components of the fee total on which the maximum percentage is determined; and
  - “(d) the expenses or categories of expense that the establishment must show that it has incurred in relation to a foreign student in order to deduct the maximum percentage.
- “(2) Before giving notice in the *Gazette* under subsection (1), the Minister must consult with any 1 or more of the following, as he or she considers appropriate:
- “(a) private training establishments;
  - “(b) sector and industry representative organisations;
  - “(c) any other relevant bodies.
- “(3) A notice under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and for the purposes of the Acts and Regulations Publication Act 1989.”

**34 Meaning of early childhood education and care centre**

- (1) Section 310(2) is amended by inserting the following paragraph after paragraph (h):
- “(ha) any premises, during any period of use for the education or care of 3 or more children under the age of 6, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children’s parents or caregivers are—
    - “(i) in close proximity to the children and are able to be contacted; and
    - “(ii) able to resume responsibility for the children at short notice.”.
- (2) Section 310(3) is amended by inserting “any of paragraphs (a) to (h) or paragraph (i) of” after “described in” in each place where it appears.

*Amendments to Education Act 1964***35 Amendments to Education Act 1964**

- (1) This section amends the Education Act 1964.
- (2) Section 2(1) is amended by repealing the definitions of **private primary school**, **private school**, and **private secondary school**.
- (3) The definition of **secondary education** in section 2(1) is amended by omitting “private secondary school” and substituting “secondary private school registered under section 35A of the Education Act 1989”.

*Amendment to Education (Polytechnics)  
Amendment Act 2009***36 Amendment to Education (Polytechnics) Amendment Act 2009**

- (1) This section amends the Education (Polytechnics) Amendment Act 2009.
- (2) Section 17 and the heading above section 17 are repealed.

*Transitional provision***37 Continuation of registration if school registered under repealed section 35A**

- (1) In this section,—
  - (a) **old section 35A** means the section 35A of the Education Act 1989 repealed by section 11 of this Act; and
  - (b) **new section 35A** means the section 35A of the Education Act 1989 substituted by section 11 of this Act.
- (2) A school that, immediately before new section 35A comes into force, is or is deemed to be fully registered as a school of a particular description or descriptions under old section 35A, is to be regarded as fully registered as a school of that description or those descriptions under new section 35A.
- (3) Despite subsection (2), the managers of a school to which that subsection applies must comply with the criteria for registration as a private school under new section 35A as if it had been registered under that section.

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- (4) A school that, immediately before new section 35A comes into force, is provisionally registered as a school of a particular description or descriptions under old section 35A, is to be regarded as provisionally registered as a school of that description or those descriptions under new section 35A when that section comes into force.
- (5) Despite subsection (4), when the Secretary is deciding whether to fully register a school to which that subsection applies, he or she must do so as if—
- (a) old section 35A had not been repealed by section 11 of this Act, but continued in force; and
  - (b) he or she were considering under old section 35A whether to fully register a provisionally registered school.

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### Legislative history

17 June 2010	Introduction (Bill 169–1)
30 June 2010	First reading and referral to Education and Science Committee
20 October 2010	Interim report of Education and Science Committee
2 November 2010	Reported from Education and Science Committee (Bill 169–2)
16 November 2010	Second reading
9 December 2010	Committee of the whole House, third reading
20 December 2010	Royal assent

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This Act is administered by the Ministry of Education.

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