



# Education Legislation Act 2016

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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 Legislation Act 2016.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Amendments to Education Act 1989**

**3 Principal Act**

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

Subpart 1—Amendments to Part 3 (enrolment and attendance of students)

**4 Section 28 amended (Secretary may require parents of certain children to enrol them at correspondence school)**

In section 28(1)(b), replace “section 16(7)(c)” with “section 16(1)(c)”.

**5 Section 35 replaced (Fines to be paid to boards)**

Replace section 35 with:

**35 Fines to be paid to board or sponsor (as applicable)**

Every fine recovered under this Part must be paid to the board or sponsor (as applicable) on whose behalf the proceedings concerned were commenced.

Subpart 2—Amendments to Part 7 (control and management of State schools)

**6 Section 60 amended (Interpretation)**

In section 60, insert in its appropriate alphabetical order:

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

**7 Section 65 amended (Staff)**

In section 65, replace “section 120A” with “section 349”.

**8 Section 65B amended (Terms)**

Replace section 65B(2) and (3) with:

- (2) Every board must ensure that each school it administers is open for instruction for 1 half-day that finishes at or before noon and 1 half-day that starts at or after noon on every day during the terms prescribed, ascertained, or determined under subsection (1).
- (3) However, a board may vary the time at which any 1 or more half-days take place (for example, by starting a second half-day before noon) if the board—
  - (a) has adequately consulted parents, staff, the local community, and any other person who the board considers may be affected, about the proposed variation and it is generally acceptable; and
  - (b) is satisfied that the adoption of the proposal will not result in the students of the school spending less time in school than other students in comparable schools and other local schools; and
  - (c) has taken all reasonable steps to notify students and parents in writing of the board’s final decision on the proposed variation.
- (3A) A board may also vary the time at which any 1 or more half-days take place without satisfying the requirements in subsection (3)(a) if—
  - (a) the variation is made for operational reasons; and
  - (b) the variation applies for no more than 2 days; and
  - (c) the board has not made a variation under this subsection during the previous 6 weeks.

- (3B) A student enrolled at a State school must comply with section 25 even if the school's board varies the time of any 1 or more half-days.
- (3C) On any day, a school is not open for instruction at all if it is open for less than 1 half-day.
- (3D) To avoid doubt, if a school opens on any day for only 1 half-day, that half-day may be counted towards the number of half-days prescribed by the Minister under section 65A(1).

**9 Section 65D amended (Exceptions in particular cases)**

Repeal section 65D(3) to (6).

**10 New section 75A inserted (Appointment of principals)**

After section 75, insert:

**75A Appointment of principals**

- (1) The powers conferred on a board by section 65 include the power to appoint a principal.
- (2) Two or more boards may appoint 1 person to be the principal of 2 or more schools administered by the boards.
- (3) A combined board (as defined in section 92) may appoint 1 person to be the principal of 2 or more schools administered by the board.

**11 Section 76 amended (Principals)**

Replace the heading to section 76 with “**Role of principal**”.

**12 Section 78A amended (Powers of entry and inspection)**

In section 78A(1)(b), after “board”, insert “, manager, or sponsor”.

**Subpart 3—Amendments to Part 8 (financial)**

**13 Section 79 amended (Grants for boards)**

- (1) In the heading to section 79, after “**boards**”, insert “**or sponsors**”.
- (2) In section 79(1), replace “a board shall” with “boards and sponsors must”.
- (3) In section 79(2), replace “the board concerned administers” with “administered by the board, or operated by the sponsor, concerned”.
- (4) In section 79(3), after “board”, insert “or sponsor”.

**14 Section 89 replaced (Payroll service)**

Replace section 89 with:



**89 Payroll service**

- (1) The Secretary must ensure that a payroll service is established and maintained to provide for the payment of employees of boards who are employed in the education service.
- (2) A board must use the payroll service unless the Secretary directs otherwise.
- (3) A board required by subsection (2) to use the payroll service must—
  - (a) keep all records that are necessary to enable the board to use the service; and
  - (b) provide those records to the Secretary on request.

## Subpart 4—Amendments to Part 8A (payment of teacher salaries)

**15 Part 8A heading amended**

In the Part 8A heading, replace “salaries” with “salaries, limitations on staffing, and powers of Secretary to employ teachers and create positions”.

**16 Section 91A amended (Interpretation)**

- (1) In section 91A(1), insert in their appropriate alphabetical order:

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

**employment-based trainee teaching position** means a position established by the Secretary under section 91O(1)

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

- (2) In section 91A(1), definition of **regular teacher**, after “relieving teacher”, insert “or an employment-based trainee teacher”.

**17 Section 91G amended (Relieving teachers)**

- (1) Replace the heading to section 91G with “**Payment of salaries of relieving teachers and employment-based trainee teachers**”.
- (2) In section 91G(1), after “relieving teachers”, insert “and employment-based trainee teachers”.
- (3) In section 91G(2), after “relieving teacher” insert “or an employment-based trainee teacher”.
- (4) In section 91G(3), replace “a relieving teacher’s salary” with “the salary of a relieving teacher or an employment-based trainee teacher”.

**18 New cross-heading above section 91N inserted**

After section 91M, insert:

*Powers of Secretary to employ teachers and create positions*

**19 New section 91O inserted (Employment-based trainee teaching positions)**

After section 91N, insert:

**91O Employment-based trainee teaching positions**

- (1) On receipt of a request from the board of a school, the Secretary may, by written notice to the board, establish an employment-based trainee teaching position for the school.
- (2) Despite any provision to the contrary in this Act or in the State Sector Act 1988, the board of a school for which an employment-based trainee teaching position has been established may appoint only an employment-based trainee teacher to the position.

Subpart 5—Amendments to Part 9 (school boards)

**20 Section 94 amended (Constitution of boards of State schools)**

In section 94(1)(b), replace “principals” with “principal or principals”.

**21 Section 116A repealed (Appointment of principal of combined board)**

Repeal section 116A.

Subpart 6—Amendments to Part 11 (miscellaneous)

**22 Section 139C amended (Offence of insulting, abusing, or intimidating staff)**

In section 139C(1), replace “staff of a school” with “staff of a registered school”.

**23 Section 144C amended (Regulations about school hostels)**

In section 144C(1)(f), replace “or boards,” with “boards, or sponsors”.

Subpart 7—Amendment to Part 12 (establishment of schools)

**24 Section 158 amended (Provision by one board of tuition for students enrolled at school administered by another)**

(1) Replace section 158(1) with:

- (1) By agreement between the boards or sponsors concerned, students enrolled at a specified school may receive tuition at or from another specified school.
- (1A) Despite section 79, the board or sponsor of the specified school at which the students are enrolled may pay the board or sponsor of the specified school giving the tuition for that tuition.

(2) After section 158(3), insert:

- (3A) In subsections (1) and (1A), **specified school** means a State school or a partnership school kura hourua.

## Subpart 8—Amendments to Part 12A (partnership schools kura hourua)

### 25 Section 158A amended (Interpretation)

- (1) In section 158A, replace the definition of **body** with:

**body**—

- (a) means a body corporate, corporation sole, or limited partnership; and
  - (b) includes an institution or a related entity (as defined in section 164A)
- (2) In section 158A, insert in its appropriate alphabetical order:

**institution** has the meaning given by section 159(1)

### 26 Section 158C amended (Minister must appoint advisory group)

In section 158C(1), replace “1 or more members” with “at least 5, but no more than 9, members”.

### 27 Section 158N amended (Enrolment in partnership schools kura hourua)

- (1) In section 158N(1)(b), replace “any student” with “any applicant”.
- (2) After section 158N(3), insert:
- (3A) A student who is enrolled in a partnership school kura hourua whose sponsor is an institution is not, by reason only of the student’s enrolment in the partnership school kura hourua, also enrolled in the institution.

### 28 Section 158Y amended (Official Information Act 1982 not to apply to partnership schools kura hourua)

In section 158Y, insert as subsection (2):

- (2) However, if the sponsor is an institution, the Official Information Act 1982 applies unless the institution is performing its functions as a sponsor under this Act or a partnership school contract.

### 29 New sections 158Z and 158ZA inserted

After section 158Y, insert:

#### 158Z Application of State Sector Act 1988 to institutions sponsoring partnership schools kura hourua

The State Sector Act 1988 does not apply to an institution that is a sponsor if the institution is performing its functions as a sponsor under this Act or a partnership school contract.

**158ZA Application of Ombudsmen Act 1975 to institutions sponsoring partnership schools kura hourua**

- (1) This section applies to an institution that is a sponsor if the institution is performing its functions as a sponsor under this Act or a partnership school contract.
- (2) For the purposes of the Ombudsmen Act 1975, the institution—
  - (a) is a sponsor; and
  - (b) is not an institution (*see* Ombudsmen Act 1975, Schedule 1, Part 2).

Subpart 9—Amendment to Part 13A (Tertiary Education Commission)

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

Replace section 159M(b) with:

- (b) specify conditions under section 159L(3)(d) that set limits on the fees that organisations may charge domestic students until—
  - (i) the Minister has published a notice in the *Gazette* that—
    - (A) states that the Minister proposes to specify conditions of that kind; and
    - (B) sets out the proposed conditions; and
    - (C) invites submissions on the proposed conditions; and
    - (D) specifies the date by which submissions must be received, which must be a date no later than 21 days after the date of the *Gazette* notice; and
  - (ii) the date by which submissions must be received has passed.

Subpart 10—Amendments to Part 15 (administration of tertiary institutions)

**31 New section 164A inserted (Interpretation)**

After the Part 15 heading, insert:

**164A Interpretation**

In this Part, unless the context otherwise requires,—

**Crown entity group** has the meaning given by section 136 of the Crown Entities Act 2004

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

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

**32 Section 192 amended (Powers of institutions)**

- (1) After section 192(1)(c), insert:
  - (ca) the power to invest in the financial products of a related entity; and
- (2) After section 192(2)(aa), insert:
  - (ab) in the case of an institution that is approved to be a sponsor of a partnership school kura hourua, functions characteristic of a body that is a sponsor (including entering into, and performing functions in relation to, a partnership school contract); or

**33 Section 203 amended (Institutions are Crown entities)**

Replace section 203(4) with:

- (4) Section 65I(1) and (2) of the Public Finance Act 1989—
  - (a) applies, with all necessary modifications, to tertiary education institutions and, accordingly, every institution must invest in the same manner as the Treasury invests money under that section; but
  - (b) does not apply in respect of any investment made by an institution in the financial products of a related entity.

**34 Section 220 amended (Annual report)**

- (1) Replace section 220(2) and (2AA) with:
- (2) A council must comply with sections 154 to 156B and 157A of the Crown Entities Act 2004 in respect of the report.
- (2AA) Despite subsection (2),—
  - (a) the statement of responsibility referred to in section 155 of the Crown Entities Act 2004 is not required to be signed in accordance with that section, but must instead be signed by—
    - (i) the chairperson of the council and the chief executive of the institution; or
    - (ii) if there is no chairperson, the chief executive of the institution and the chief financial officer:
  - (b) a council of an institution that is a parent Crown entity must comply with section 154 of the Crown Entities Act 2004 (even though the institution is a member of a Crown entity group to which section 156A(1) of that Act would otherwise apply).
- (2) After section 220(4), insert:
- (5) In this section, **parent Crown entity** has the meaning set out in section 8 of the Crown Entities Act 2004.

**35 New section 220A inserted (Minister may require related entities to prepare statements or reports)**

After section 220, insert:

**220A Minister may require related entities to prepare statements or reports**

- (1) If the Minister has reasonable grounds to believe that an institution may be at risk due to the institution's investment in a related entity, the Minister may, by notice in writing, require the entity to prepare 1 or more statements or reports.
- (2) In considering whether an institution may be at risk, the Minister must apply the criteria (determined by the Secretary under section 195A) for assessing the level of risk to the operation and long-term viability of institutions.
- (3) Before issuing a notice under subsection (1), the Minister must consult the institution, or institutions, to which the entity is related.
- (4) The notice must specify—
  - (a) which statements and reports are required; and
  - (b) the financial years or other period (which may be until further notice) for which each statement or report is required.
- (5) In this section, **statement or report** has the meaning given by section 156A(4) of the Crown Entities Act 2004.

Subpart 11—Amendment to Part 20 (New Zealand Qualifications Authority)

**36 Section 253 amended (Rules)**

Replace section 253(7) with:

- (7) Rules made under this section are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Subpart 12—Amendments to Part 26 (early childhood education and care)

**37 Section 309 amended (Interpretation)**

In section 309, replace the definition of **home-based education and care service** with:

**home-based education and care service—**

- (a) means the provision of education or care, for gain or reward, to children who are under the age of 5 years, or who are 5 years of age but not enrolled in school, in—
  - (i) the children's own home; or
  - (ii) the home of the person providing the education or care; or

- (iii) any other home nominated by the parents of the children; and
- (b) includes the provision of education or care to any child of the person providing the service who is—
  - (i) under the age of 5 years; or
  - (ii) 5 years of age but not enrolled in school

**38 New section 317A inserted (Requirements for licensed home-based education and care service)**

After section 317, insert:

**317A Requirements for licensed home-based education and care service**

- (1) A licensed home-based education and care service may be provided to 1 or more children, up to a total of 4 in any 1 home.
- (2) While children are participating in the service, the total number of children present in the home in which the service is provided (including those receiving the service) must not be more than 6.
- (3) In this section,—

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

**educator** has the meaning given by regulation 3 of the Education (Early Childhood Services) Regulations 2008.

Subpart 13—Repeal of Part 29 (Learning Media Limited)

**39 Part 29 repealed**

Repeal Part 29.

Subpart 14—Amendment to Part 30 (national student numbers)

**40 Section 344 amended (Use of national student numbers)**

After section 344(2)(e), insert:

- (f) establishing and maintaining student identities to support students' participation in online learning.

Subpart 15—Amendment to Part 31 (teacher registration)

**41 Section 348 amended (Interpretation)**

In section 348, insert in its appropriate alphabetical order:

**half-day** has the meaning given by section 60

## Subpart 16—Amendments to Schedule 13A (application of Crown Entities Act 2004 to tertiary education institutions)

### 42 Schedule 13A amended

In Schedule 13A, replace the items relating to sections 155, 156, and 157 of the Crown Entities Act 2004 with:

Section 155, as modified by the Education Act 1989, section 220(2AA)(a)	Statement of responsibility for financial statements
Section 156, as modified by the Education Act 1989, section 220(2B)	Audit report
Section 156A, as modified by the Education Act 1989, section 220(2AA)(b)	Application of subpart 2 of Part 4 of the Crown Entities Act 2004 to Crown entity groups
Section 156B	Minister of Finance may require additional reporting
Section 157A	Other multi-parent subsidiaries

## Part 2 Amendments to other Acts

### Subpart 1—Amendments to New Zealand Council for Educational Research Act 1972

#### 43 Principal Act

This subpart amends the New Zealand Council for Educational Research Act 1972 (the **principal Act**).

#### 44 Section 2 amended (Interpretation)

- (1) In section 2, repeal the definition of **electoral college**.
- (2) In section 2, insert in its appropriate alphabetical order:

**fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest

- (3) In section 2, definition of **financial year**, replace “31 March” with “30 June”.

#### 45 Section 5 amended (Disqualification from membership of Council)

- (1) In section 5(b), replace “his” with “an”.
- (2) Replace section 5(c) with:
  - (c) a person convicted of any offence punishable by imprisonment, unless the person has received a full pardon or has served the sentence or otherwise suffered the penalty imposed:



- (3) In section 5(d), replace “officer or servant” with “employee”.

**46 Section 6 replaced (Constitution of Council)**

Replace section 6 with:

**6 Constitution of Council**

The Council consists of—

- (a) 1 member appointed by the Minister:
- (b) 5 elective members appointed by the Council on election in accordance with rules made under section 33(1):
- (c) 3 members appointed by the Council.

**6A Criteria for appointment to Council**

- (1) When appointing a member under section 6(a), the Minister must—
  - (a) appoint a person who, in the Minister’s opinion, has the appropriate knowledge, skills, and experience to assist the Council to perform its functions; and
  - (b) take into account the collective knowledge, skills, and experience of all of the members that constitute the Council.
- (2) When appointing a member under section 6(c), the Council must—
  - (a) appoint a person who, in the Council’s opinion, has the appropriate knowledge, skills, and experience to assist the Council to perform its functions; and
  - (b) take into account the collective knowledge, skills, and experience of all of the members that constitute the Council; and
  - (c) take into account the desirability of achieving diversity in the membership of the Council.

**47 Section 7 amended (Extraordinary vacancies on Council)**

Replace section 7(1)(b) with:

- (b) resigns by signed notice of resignation given to the chairperson of the Council; or

**48 Section 8 replaced (Term of office of members of Council)**

Replace section 8 with:

**8 Term of office of members of Council**

- (1) Unless otherwise provided by this Act, each member of the Council is appointed for a term of up to 4 years and may be reappointed.

- (2) Despite anything in this Act, each member of the Council continues to hold office (unless the member earlier vacates the office) until a successor comes into office.

**49 Section 9 amended (Chairman, deputy chairman, and treasurer)**

- (1) In the heading to section 9, replace “**Chairman, deputy chairman,**” with “**Chairperson, deputy chairperson,**”.
- (2) In section 9(1), replace “shall appoint a chairman, a deputy chairman” with “must appoint a chairperson, a deputy chairperson”.
- (3) In section 9(2), replace “chairman, deputy chairman, or treasurer shall, while he continues to be a member of the Council, hold office until the appointment of his successor” with “chairperson, deputy chairperson, or treasurer, while the person continues to be a member of the Council, holds office until the appointment of a successor”.

**50 Section 10 amended (Meetings of Council)**

- (1) In section 10(2), replace “chairman” with “chairperson”.
- (2) Repeal section 10(4).
- (3) Replace section 10(5), (6), and (7) with:
- (5) The chairperson must preside at all meetings of the Council at which he or she is present.
- (6) The deputy chairperson (if present) must preside at any meeting of the Council from which the chairperson is absent.
- (7) At any meeting from which both the chairperson and the deputy chairperson are absent, the members present must appoint one of their number to chair the meeting.
- (8) At any meeting of the Council, the chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

**51 Section 11 amended (Passing of resolutions by Council without a meeting)**

- (1) In section 11(1), replace “his duly appointed deputy, entitled to sign that resolution may by notice in writing to the chairman” with “the member’s duly appointed deputy, entitled to sign that resolution may by notice in writing to the chairperson”.
- (2) In section 11(3), replace “chairman” with “chairperson” in each place.

**52 New section 12A inserted (Members of Council not personally liable)**

After section 12, insert:

**12A Members of Council not personally liable**

No member of the Council is personally liable for—

- (a) any act or omission by the Council; or

- (b) any loss to the Council arising out of any act or omission by the member if the act or omission was in good faith with the intention of performing the functions of the Council.

**53 Section 14 amended (Powers of Council)**

In section 14(b), replace “him or them” with “the person or persons”.

**54 Section 15 amended (Power to appoint officers and servants)**

- (1) In the heading to section 15, replace “**officers and servants**” with “**employees**”.
- (2) In section 15(1), replace “officers and servants” with “employees” in each place.
- (3) In section 15(2), replace “officers and servants” with “employees”.

**55 Section 16 amended (Power to insure members, officers, and servants)**

- (1) In the heading to section 16, replace “**members, officers, and servants**” with “**members and employees**”.
- (2) In section 16(1), replace “members, officers, and servants” with “members and employees”.
- (3) In section 16(1), replace “case of officers and servants” with “case of employees”.
- (4) In section 16(2), replace “his” with “the person’s”.

**56 Section 21 and cross-heading repealed**

Repeal section 21 and the cross-heading above section 21.

**57 Section 26 replaced (Money to be paid into bank)**

Replace section 26 with:

**26 Bank account**

The Council must, as soon as practicable after it receives money belonging to the Council, pay the money into the account of the Council at a bank appointed by the Council.

**58 Section 28 amended (Accounting records must be kept)**

Repeal section 28(2) and (3).

**59 Section 30 replaced (Remuneration and travelling expenses of members of the Council and of committees)**

Replace section 30 with:

**30 Remuneration of members of Council**

- (1) Every Council member and member of a committee appointed under section 14(e) is entitled to receive from the Council remuneration for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework.
- (2) A person holding any of the following offices is not entitled to any remuneration for services as a member of the Council or a member of a committee:
  - (a) a Judge:
  - (b) a member of Parliament:
  - (c) an employee of the State services who is acting in the employee's official capacity.

**30A Expenses of Council members and committee members**

In addition to any remuneration received under section 30, every Council member and member of a committee is entitled, in accordance with the fees framework, to be reimbursed by the Council for actual and reasonable travelling and other expenses incurred in carrying out his or her service as a member.

**60 Section 33 amended (Rules)**

- (1) Replace section 33(1) with:
  - (1) The Council must, as soon as practicable, by resolution, make rules prescribing the method of election of members of the Council.
  - (1A) Rules made under subsection (1) must require the notification of elections.
  - (1B) The Council may from time to time, by resolution, make rules that are reasonably necessary to enable the Council to perform its functions.
- (2) After section 33(2), insert:
- (3) Rules made under this section are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Subpart 2—Amendments to Ngarimu VC and 28th (Maori) Battalion  
Memorial Scholarship Fund Act 1945

**61 Principal Act**

This subpart amends the Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945 (the **principal Act**).

**62 Long Title amended**

In the Long Title, replace “**the Maoris**” with “**Māori**”.

**63 Preamble amended**

In the preamble,—

- (a) replace “the Maoris” with “Māori”;
- (b) delete “in New Zealand”.

**64 Section 2 amended (Interpretation)**

- (1) In section 2, insert in its appropriate alphabetical order:

**fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest

- (2) In section 2, definition of **financial year**, replace “31 December” with “30 June”.

- (3) In section 2, replace the definition of **Maori** with:

**Māori** means a person of the Māori race of New Zealand; and includes a descendant of any such person

**65 Section 3 amended (Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund established)**

- (1) Replace section 3(2) with:

- (2) The Board must, as soon as practicable after it receives money belonging to the Fund, pay the money into an account of the Board (the **Fund account**) at a bank appointed by the Board.

- (2) After section 3(3), insert:

- (4) The Board may appoint a fund manager to administer the Fund on its behalf.

**66 Section 4 replaced (Establishment of Board to administer Fund)**

Replace section 4 with:

**4 Establishment of Board to administer Fund**

- (1) The Ngārimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Board is established for the purpose of administering the Fund.

- (2) The Board consists of—

- (a) the Minister, who is the chairperson of the Board;
- (b) the Minister for Māori Development;
- (c) the Secretary for Education;
- (d) the members of Parliament representing the Māori electoral districts;
- (e) up to 4 people (preferably people who have served in the Armed Forces) to be appointed by the Governor-General to represent each of the companies that make up the 28th (Māori) Battalion:

- (f) 1 Māori to be nominated by the descendants of Hamuera Ngārimu and Maraea Ngārimu and appointed by the Governor-General:
  - (g) 1 Māori who has received assistance from the Fund to undertake tertiary education, and who has successfully completed that education, to be appointed by the Governor-General.
- (3) The Board—
- (a) is a body corporate, with perpetual succession and a common seal; and
  - (b) is capable of holding real and personal property and of doing and suffering all that bodies corporate may do and suffer.
- (4) Despite subsection (2), the Board consisting of those people specified in subsection (2) before the commencement of subpart 2 of Part 2 of the Education Legislation Act 2016 may continue to perform the functions and exercise the powers of the Board under this Act until the Board described in subsection (2) is assembled.

#### **4A People disqualified from Board membership**

The following people are disqualified from being members of the Board:

- (a) a person who is an undischarged bankrupt:
- (b) a person who is prohibited under any enactment from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body:
- (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
- (d) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's—
  - (i) competence to manage the person's own affairs in relation to the person's property; or
  - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of the person's personal care and welfare:
- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person.

#### **67 Section 5 amended (Term of office of members of Board)**

Replace section 5(1) and (2) with:

- (1) The members of the Board to be appointed by the Governor-General must be appointed for a term not exceeding 3 years, and any such member may from time to time be reappointed.

- (2) Despite subsection (1), a member continues in office until the member's successor comes into office, even if this means that the member's term exceeds 3 years.
- (2A) Subsection (2) applies unless the member vacates the office earlier due to the member's resignation, removal from office, or disqualification.
- (2B) A member may at any time resign from the Board by notice in writing to the Minister.

### **68 Section 6 amended (Meetings of Board)**

- (1) Replace section 6(1) to (3) with:
  - (1) A meeting of the Board may be held—
    - (a) by a quorum of members, being assembled together at the time and place appointed for the meeting; or
    - (b) by means of audio, audio and visual, or electronic communications, provided that—
      - (i) all of the members who wish to participate in the meeting have access to the technology needed to participate in the meeting; and
      - (ii) a quorum of members can simultaneously communicate with each other throughout the meeting.
  - (2) The chairperson must preside over every meeting at which the chairperson is present.
  - (2A) If the chairperson is absent from any meeting, the members present must appoint a present member to be the chairperson for that meeting.
  - (3) The quorum necessary for any meeting is 5 members, of whom 3 must be members appointed by the Governor-General under section 4(2)(e) to (g).
- (2) In section 6(5), replace “Chairman” with “chairperson”.

### **69 Section 6A amended (Standing Committee)**

- (1) In section 6A, replace “Chairman” with “chairperson” in each place.
- (2) Replace section 6A(3) with:
  - (3) The chairperson must preside over every meeting of the Standing Committee at which the chairperson is present.
  - (3A) If the chairperson is absent from any meeting of the Standing Committee, the members present must appoint a present member to be the chairperson for that meeting.
- (3) In section 6A(4), delete “or the Deputy Chairman”.
- (4) Repeal section 6A(5).
- (5) Replace section 6A(6) with:

- (6) While a member of the Board acts in the place of the chairperson or any other member of the Standing Committee, the member of the Board is for all purposes a member of the Committee.
- (6A) The fact that a member of the Board attends any meeting of the Standing Committee is sufficient evidence of the member's authority to do so.

**70 Section 7 amended (Functions of Board)**

- (1) In section 7(1), delete “by way of scholarship, subsidy, special grant, or bursary”.
- (2) Replace section 7(2) with:
  - (2) Without limiting subsection (1), the Board may apply money towards all or any of the following purposes:
    - (a) the provision of tertiary education scholarships for Māori:
    - (b) the provision of prizes for competitions relating to the overseas war service of Māori or to any other subject connected with Māori people:
    - (c) the provision of grants for the education of primary and secondary school students:
    - (d) the granting of leadership awards:
    - (e) the promotion of Māori leaders who demonstrate the qualities of Second Lieutenant Te Moananui a Kiwa Ngārimu and the 28th (Māori) Battalion.

**71 Section 9 amended (Annual grant to Board)**

In section 9, replace “he” with “the Minister of Finance”.

**72 Section 12 replaced (Travelling expenses of Board)**

Replace section 12 with:

**12 Remuneration of members of Board**

- (1) A member of the Board is entitled to receive from the Fund remuneration for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework.
- (2) The following office-holders are not entitled to any remuneration for services as a member of the Board:
  - (a) a Judge:
  - (b) a member of Parliament:
  - (c) an employee of the State services who is acting in the employee's official capacity.



**12A Expenses of members of Board**

In addition to any remuneration received under section 12, a member of the Board is entitled, in accordance with the fees framework, to be reimbursed out of the Fund for actual and reasonable travelling and other expenses incurred in carrying out the member's service as a member.

**12B Conflicts of interest**

- (1) A person is **interested in a matter** if the person—
  - (a) may derive a financial benefit from the matter; or
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) is otherwise directly or indirectly interested in the matter.
- (2) A member who is interested in a matter relating to the Board must disclose to the Board details of the interest as soon as practicable after the member becomes aware that the member is interested.
- (3) The details that must be disclosed are—
  - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
  - (b) the nature and extent of the interest (if the monetary value cannot be quantified).
- (4) A member who is interested in a matter—
  - (a) must not vote or take part in any discussion or decision of the Board or Standing Committee relating to the matter, or otherwise participate in any activity of the Board or Standing Committee that relates to the matter; and
  - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter.
- (5) In this section, **matter** means—
  - (a) the Board's, or the Standing Committee's, performance of its functions or exercise of its powers; or
  - (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Board or the Standing Committee.

**73 Section 13 replaced (Members of Board not personally liable)**

Replace section 13 with:

**13 Members of Board not personally liable**

No member of the Board is personally liable for—

- (a) an act done or omitted to be done by the Board or the Standing Committee; or
- (b) any loss to the Fund arising out of any act done or omitted to be done by the member, if the act or omission was (so far as the member's involvement is concerned) in good faith and in pursuance or intended pursuance of the functions of the Board or the Standing Committee.

**74 New section 13A inserted (Removal of Board members)**

After section 13, insert:

**13A Removal of Board members**

- (1) The Governor-General may, at any time for just cause, on the advice of the Minister given after consultation with the Attorney-General, remove a member of the Board appointed under section 4(2)(e), (f), or (g).
- (2) The removal must be made by written notice to the member (with a copy to the Board).
- (3) The notice must—
  - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) state the reasons for the removal.
- (4) The Minister must notify the removal in the *Gazette* as soon as practicable after the notice is given.

**Subpart 3—Amendments to Pacific Islands Polynesian Education Foundation Act 1972****75 Principal Act**

This subpart amends the Pacific Islands Polynesian Education Foundation Act 1972 (the **principal Act**).

**76 Name of principal Act changed**

From the commencement of this section,—

- (a) the Pacific Islands Polynesian Education Foundation Act 1972 is called the Pacific Education Foundation Act 1972; and
- (b) every reference in any enactment and in any document to the Pacific Islands Polynesian Education Foundation Act 1972 must, unless the context otherwise provides, be read as a reference to the Pacific Education Foundation Act 1972.

**77 Section 1 replaced (Short Title)**

Replace section 1 with:

**1 Title**

This Act is the Pacific Education Foundation Act 1972.

**78 Section 2 replaced (Interpretation)**

Replace section 2 with:

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**Board** means the Board of the Foundation

**contributor** means a contributor to the Foundation within the meaning of section 6

**education** includes pre-school education

**fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest

**financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013

**financial year** means a period of 12 months ending with the last day of June

**Foundation** means the Pacific Education Foundation continued under section 4(1)

**generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013

**Minister** means the Minister of Education

**Pacific person** means—

- (a) a person living in New Zealand who is both—
  - (i) a native of the Cook Islands, Fiji, Kiribati, Niue, Samoa, Tokelau, Tonga, or Tuvalu; and
  - (ii) a New Zealand citizen or a person who has been granted permanent residence or who has been permitted to enter New Zealand with the intention of permanent residence; and
- (b) a descendant of a person described in paragraph (a)

**Public Service** has the same meaning as in section 2 of the State Sector Act 1988.

**79 New section 2A inserted (Transitional, savings, and related provisions)**

After section 2, insert:

**2A Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

**80 Section 3 repealed (Administration of Act)**

Repeal section 3.

**81 Section 4 amended (Foundation established)**

Replace section 4(1) with:

- (1) The Pacific Islands Polynesian Education Foundation is continued with the name Pacific Education Foundation.

**82 Section 5 amended (Purpose of Foundation)**

In section 5, replace “Polynesians” with “Pacific people”.

**83 Section 6 amended (Contributors)**

- (1) In section 6(1)(a), replace “\$1” with “\$10” in each place.
- (2) In section 6(2), replace “\$40” with “\$500” in each place.

**84 Section 7 amended (Meetings of contributors)**

- (1) Repeal section 7(2).
- (2) In section 7(3), replace “chairman” with “chairperson”.
- (3) In section 7(4), replace “he” with “the person”.

**85 Section 8 replaced (Constitution of Board)**

Replace section 8 with:

**8 Constitution of Board**

- (1) The Board of the Pacific Islands Polynesian Education Foundation is continued as the Board of the Pacific Education Foundation.
- (2) The Board consists of the following members:
  - (a) the Secretary for Education;
  - (b) the chief executive of the Ministry for Pacific Peoples;
  - (c) the manager at the Ministry of Education who has responsibility for the education of Pacific peoples;
  - (d) 5 other members, to be appointed jointly by the Minister and the Minister for Pacific Peoples after consultation with those Pacific communities that the Ministers consider it appropriate to consult.
- (3) If a member who is an employee of the Public Service is absent from any meeting, the member may authorise another employee to attend the meeting in the

- member's place (and the employee is, for the purposes of the meeting, a member of the Board).
- (4) If a member appointed under subsection (2)(d) is absent from any meeting, the member may authorise any other person to attend the meeting in the member's place (and the person is, for the purposes of the meeting, a member of the Board).
- (5) A member appointed under subsection (2)(d)—
- (a) must be appointed for a 3-year term; and
  - (b) is eligible for reappointment at the expiry of the 3-year term; and
  - (c) may at any time be removed from the Board by the Minister for inability to perform the duties of a Board member, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister; and
  - (d) may at any time resign from the Board by notice in writing to the Minister.
- (6) If a member appointed under subsection (2)(d) (**member A**) dies, is removed from office, or resigns,—
- (a) the vacancy created must be filled in the manner in which member A was appointed; and
  - (b) the member who fills the vacancy must be appointed for the remainder of the term for which member A was appointed.
- (7) Unless subsection (6) applies, a member appointed under subsection (2)(d) must continue in office until the member's successor comes into office (even if the member's term of appointment has expired).
- (8) The powers of the Board are not affected by any vacancy in the Board's membership.

**86 New section 8A inserted (Board to elect chairperson and deputy chairperson)**

After section 8, insert:

**8A Board to elect chairperson and deputy chairperson**

Every year, at a meeting of the Board, the members of the Board must elect—

- (a) 1 member to be chairperson of the Board; and
- (b) 1 member to be deputy chairperson of the Board.

**87 Section 9 amended (Chairman at meetings of the Board and contributors)**

- (1) In the heading to section 9, replace “**Chairman**” with “**Chairperson**”.
- (2) In section 9,—
  - (a) replace “chairman” with “chairperson” in each place; and
  - (b) replace “trustee” with “member” in each place.

- (3) In section 9(1), replace “he” with “the chairperson”.
- (4) In section 9(4), replace “trustees” with “members”.

**88 Section 10 amended (Meetings of Board)**

- (1) In section 10,—
  - (a) replace “chairman” with “chairperson” in each place; and
  - (b) replace “trustees” with “members” in each place.
- (2) In section 10(3), replace “at any time when he” with “if either person”.
- (3) In section 10(5), replace “chairman shall in addition to his deliberative vote also have a casting vote” with “chairperson has both a deliberative vote and a casting vote”.
- (4) Repeal section 10(6) and (7).

**89 Section 11 replaced (Fees and travelling allowances)**

Replace section 11 with:

**11 Remuneration of members of Board and Special Committees**

- (1) Board members and members of a Special Committee are entitled to receive from the Board remuneration for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework.
- (2) The following office-holders are not entitled to any remuneration for services as a Board member or a member of a Special Committee:
  - (a) a Judge;
  - (b) a member of Parliament;
  - (c) any employee of the State services who is acting in the employee’s official capacity.

**11A Expenses of members of Board and Special Committees**

In addition to any remuneration received under section 11, Board members and members of a Special Committee are entitled, in accordance with the fees framework, to be reimbursed by the Board for actual and reasonable travelling and other expenses incurred in carrying out their service as a member.

**90 Section 12 amended (Executive Committee, Special Committees, and delegation of powers)**

- (1) In section 12, replace “trustee” with “Board member” in each place.
- (2) In section 12(1), delete “, by resolution,”.
- (3) In section 12(1)(a), replace “trustees” with “Board members”.
- (4) In section 12(2), replace “he” with “the person”.
- (5) Replace section 12(7) with:

(7) A delegation under this section continues in force until it is revoked, regardless of any change in the membership of the Board or of any committee.

**91 Section 13 amended (Common seal)**

In section 13, replace “trustees” with “Board members”.

**92 Section 14 amended (Contracts)**

In section 14(2), replace “trustee” with “Board member”.

**93 Section 15 amended (Appointment of officers and collectors)**

In section 15(2), replace “his” with “the person’s”.

**94 Section 20 amended (Grants to Foundation)**

In section 20(3), delete “affecting it, them, or him”.

**95 Section 24 amended (Authorised expenditure)**

- (1) In section 24, replace “Polynesians” with “Pacific people” in each place.
- (2) Repeal section 24(1)(b) and (l).
- (3) In section 24(1)(e), replace “the Polynesian” with “Pacific”.
- (4) In section 24(1)(h), replace “Polynesian to assist him” with “Pacific person to assist the person”.
- (5) In section 24(1)(k), replace “Polynesian” with “Pacific person”.

**96 Section 26 replaced (Bank account)**

Replace section 26 with:

**26 Bank account**

The Board must, as soon as practicable after it receives money belonging to the Foundation, pay the money into the account of the Board at a bank appointed by the Board.

**97 Section 27 amended (Estimates of receipts and expenditure)**

In section 27(2), replace “May” with “November”.

**98 Section 28 amended (Accounting records must be kept)**

Repeal section 28(2) to (5).

**99 Section 30 amended (Annual report)**

In section 30(1),—

- (a) replace “30 June” with “31 December”; and
- (b) replace “Minister of Pacific Island Affairs” with “Minister for Pacific Peoples”.

**100 Section 32 repealed (Office of Foundation)**

Repeal section 32.

**101 Section 33 replaced (Members of Board not personally liable)**

Replace section 33 with:

**33 Members of Board and Special Committees not personally liable**

- (1) No member of the Board is personally liable for—
  - (a) an act done or omitted to be done by the Board or the Executive Committee; or
  - (b) any loss to the Foundation arising out of any act done or omitted to be done by the member, if the act or omission was (so far as the member's involvement is concerned) in good faith and in pursuance or intended pursuance of the functions of the Board or the Executive Committee.
- (2) No member of a Special Committee is personally liable for—
  - (a) an act done or omitted to be done by the Special Committee; or
  - (b) any loss to the Foundation arising out of any act done or omitted to be done by the member, if the act or omission was (so far as the member's involvement is concerned) in good faith and in pursuance or intended pursuance of the functions of the Special Committee.

**102 Section 34 amended (Regulations)**

In section 34, replace “he” with “the Governor-General”.

**103 New Schedule inserted**

After section 34, insert the Schedule 1 set out in Schedule 1 of this Act.

**Subpart 4—Amendment to Private Schools Conditional Integration Act 1975****104 Principal Act**

This subpart amends the Private Schools Conditional Integration Act 1975 (the **principal Act**).

**105 Section 7 amended (Integration agreement)**

After section 7(9), insert:

- (9A) Despite subsection (1), the Minister's power under subsection (9) to enter into a supplementary agreement may be delegated under section 28 of the State Sector Act 1988.



## Subpart 5—Amendments to State Sector Act 1988

### 106 Principal Act

This subpart amends the State Sector Act 1988 (the **principal Act**).

### 107 Section 2 amended (Interpretation)

In section 2, definition of **education service**, replace paragraph (a)(iii) with:

- (iii) any tertiary institution (unless the institution is a sponsor within the meaning of section 2(1) of the Education Act 1989 and the employment relates to its functions as a sponsor under that Act or to a partnership school contract (as defined in Part 12A of that Act)); or

### 108 Section 75 amended (Actual conditions of employment)

- (1) In section 75(1), delete “(other than at any tertiary education institution)”.
- (2) After section 75(1), insert:
  - (1A) The Commissioner may, in addition to the actual conditions declared under subsection (1), approve further conditions of employment for an individual employee who is employed in the education service under a collective agreement if the conditions are—
    - (a) mutually agreed by the employee and his or her employer; and
    - (b) not inconsistent with the conditions of the collective agreement.
- (3) In section 75(2), delete “(other than employees at any tertiary education institution)”.
- (4) After section 75(3), insert:
  - (4) In this section, **education service** excludes service in the employment of a tertiary education institution.

## Subpart 6—Consequential amendments and revocation

### 109 Consequential amendments and revocation

- (1) Amend the enactments specified in Parts 1 and 2 of Schedule 2 as set out in those Parts.
- (2) The order specified in Part 2 of Schedule 2 is revoked.

**Schedule 1**  
**New Schedule of Pacific Education Foundation Act 1972**

s 103

**Schedule 1**  
**Transitional, savings, and related provisions**

s 2A

**Part 1**  
**Provisions relating to Education Legislation Act 2016**

**1 Interpretation**

In this schedule,—

**amendment Act** means the Education Legislation Act 2016

**commencement date** means the commencement date of the amendment Act.

**2 Board of Pacific Islands Polynesian Education Foundation continued**

Despite section 8(2), the Board consisting of those people specified in section 8(2) before the commencement date may continue to exercise the functions and powers of the Board under this Act until the Board described in section 8(2) is assembled.

**3 Chairman and deputy chairman to continue in office**

Despite section 8A,—

- (a) the first election of a chairperson and a deputy chairperson is not required to take place until the year after the year in which the amendment Act commences; and
- (b) the chairman and deputy chairman of the Board before the commencement date continue to hold office (as chairperson and deputy chairperson) until the first election is held.

## Schedule 2

### Consequential amendments

s 109

#### Part 1

#### Consequential amendments to other Acts

##### **Crown Entities Act 2004 (2004 No 115)**

In the heading to section 157, delete “or tertiary education institution”.

In section 157(1), delete “or tertiary education institution”.

In Schedule 4, replace the items relating to sections 155, 156, and 157 with:

Section 155, as modified by the Education Act 1989, section 220(2AA)(a)	Statement of responsibility for financial statements
Section 156, as modified by the Education Act 1989, section 220(2B)	Audit report
Section 156A, as modified by the Education Act 1989, section 220(2AA)(b)	Application of subpart 2 of Part 4 to Crown entity groups
Section 156B	Minister of Finance may require additional reporting
Section 157A	Other multi-parent subsidiaries

##### **Education Act 1964 (1964 No 135)**

Replace section 77 with:

<b>77 Teaching in State primary schools must be secular</b>	
Teaching in every State primary school must, while the school is open, be entirely of a secular character.	

In section 78, after “section 77”, insert “or in section 65B of the Education Act 1989”.

##### **Fees and Travelling Allowances Act 1951 (1951 No 79)**

In Schedule 1, repeal the item relating to the Ngarimu VC and 28th (Maori) Battalion Memorial Fund Board.

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

In section 2(1), definition of **organisation**, paragraph (a), after “functions”, insert “as a sponsor”.

#### Part 2

#### Consequential revocation

New Zealand Council for Educational Research (Electoral College) Order 2009 (SR 2009/92)

### Legislative history

26 November 2015	Introduction (Bill 100–1)
8 December 2015	First reading and referral to Education and Science Committee
30 June 2016	Reported from Education and Science Committee (Bill 100–2)
16 August 2016	Second reading
11 October 2016	Committee of the whole House (Bill 100–3)
20 October 2016	Third reading
28 October 2016	Royal assent

This Act is administered by the Ministry of Education.