

**Reprint
as at 1 April 2020**



Industry Training and Apprenticeships Act 1992

Public Act 1992 No 55
Date of assent 19 June 1992
Commencement see section 1(2)

Industry Training and Apprenticeships Act 1992: repealed, on 1 April 2020, by section 75 of the Education (Vocational Education and Training Reform) Amendment Act 2020 (2020 No 1).

Act name: replaced, on 23 April 2014, by section 5(a) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Education.

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Title *[Repealed]*

Title: repealed, on 23 April 2014, by section 4 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

1 Title and commencement

- (1) This Act is the Industry Training and Apprenticeships Act 1992.
- (2) Except as provided in section 20, this Act shall come into force on 1 July 1992.

Section 1 heading: amended, on 23 April 2014, by section 6(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 1(1): amended, on 23 April 2014, by section 6(2) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Part 1
Preliminary

1A Purpose

The purpose of this Act is to—

- (a) provide for the recognition and funding of organisations (to be known as industry training organisations) to develop and maintain skill standards for, and administer the delivery of, industry training; and
- (b) encourage and improve industry training; and
- (c) encourage and help people to take up and complete apprenticeship training; and
- (d) provide for other related matters.

Section 1A: inserted, on 23 April 2014, by section 7 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

2 Interpretation

In this Act, unless the context otherwise requires,—

apprentice means a person receiving apprenticeship training

apprenticeship training has the meaning given to it by section 13C

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

apprenticeship training code means the code of practice (if any) for the time being issued under section 13F

Commission means the Tertiary Education Commission established by section 159C of the Education Act 1989

condition of recognition means a condition imposed on an industry training organisation by the Minister under section 5(2) or (5)(b)

Directory of Assessment Standards means the Directory of Assessment Standards described in section 248A of the Education Act 1989

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

funding agreement means a written agreement entered into under section 11A between the Commission and 1 or more persons

funding approval means a decision made by the Commission under section 159YA of the Education Act 1989 to fund (in whole or in part) some or all of the activities described in section 10(2) in relation to which funding is sought

industry means 2 or more enterprises that use—

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

industry training means systematic training, including apprenticeship training, provided for people employed in an industry (or 2 or more industries)—

- (a) by or on behalf of employers in the industry (or industries); or
- (b) for the benefit of employers and employees in the industry (or industries),—

in skills characteristic of, or likely to be valuable to, people engaged in the industry (or industries)

industry training organisation means a body corporate for the time being recognised under section 5 or section 8(1)

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

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

plan means a plan in relation to which funding approval has been given

prescribed quality assurance requirements means the quality assurance requirements prescribed by the Qualifications Authority under section 253(1)(gb) of the Education Act 1989 (which may relate to the matters in section 13B)

proposed plan means a proposed plan in relation to which an organisation is seeking funding for activities in section 10(2) under section 159YA of the Education Act 1989

qualification means a qualification listed on the New Zealand Qualifications Framework described in section 248 of the Education Act 1989

Qualifications Authority means the New Zealand Qualifications Authority established by section 248(1) of the Education Act 1989

recognise means recognise for the purposes of this Act

satisfied means satisfied on reasonable grounds

similar includes the same, and related

skills includes methods and knowledge

skill standard,—

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

specified industry means,—

- (a) in relation to an industry training organisation, the industry or industries in respect of which the industry training organisation is recognised; or
- (b) in relation to a body corporate applying for recognition as an industry training organisation, the industry or industries in respect of which the body corporate seeks to be recognised

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

Section 2 **agency**: repealed, on 1 January 2003, by section 4(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 2 **applicant organisation**: repealed, on 1 January 2003, by section 4(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 2 **apprentice**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **apprenticeship contract**: repealed, on 23 April 2014, by section 8(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **apprenticeship training**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **apprenticeship training agreement**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **apprenticeship training code**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **Board**: repealed, on 1 January 2003, by section 4(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 2 **Commission**: inserted, on 1 January 2003, by section 4(2) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 2 **condition of recognition**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **Directory of Assessment Standards**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **employment agreement**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **employment contract**: repealed, on 2 October 2000 by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2 **funding agreement**: replaced, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **funding approval**: inserted, on 1 January 2008, by section 49(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 2 **industry**: amended, on 23 April 2014, by section 8(3) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **industry** paragraph (b): amended, on 23 April 2014, by section 8(2) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **industry training**: amended, on 23 April 2014, by section 8(4) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **listed skill standard**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **plan**: inserted, on 1 January 2008, by section 49(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 2 **prescribed quality assurance requirements**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **profile**: repealed, on 1 January 2008, by section 49(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 2 **proposed plan**: inserted, on 1 January 2008, by section 49(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 2 **qualification**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **Qualifications Authority**: amended, on 23 April 2014, by section 8(5) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **specified industry**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **statement of tertiary education priorities**: repealed, on 1 January 2008, by section 49(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 2 **technician's contract**: repealed, on 23 April 2014, by section 8(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **technicians' determination**: repealed, on 23 April 2014, by section 8(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **training board**: repealed, on 23 April 2014, by section 8(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 2 **training contract**: inserted, on 23 April 2014, by section 8(6) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

3 Training contracts and apprenticeship training agreements part of employment agreement

Training contracts and apprenticeship training agreements are part of the employment agreement between the employee and employer concerned.

Section 3: replaced, on 23 April 2014, by section 9 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

4 Act binds the Crown

This Act binds the Crown.

4A Savings and transitional provisions relating to amendments to this Act

Schedule 1AA contains savings and transitional provisions relating to amendments made to this Act after 1 January 2014 that affect other provisions of the Act (*see* section 53).

Section 4A: inserted, on 23 April 2014, by section 10 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Part 2

Recognition of industry training organisations and funding of training activities

5 Minister may recognise industry training organisations

- (1) After receiving an application for recognition under section 6, the Minister may, by notice in the *Gazette*, recognise a body corporate as an industry training organisation.
- (2) Recognition under subsection (1) may be subject to any conditions that, in the Minister's opinion, are reasonably necessary to maintain the quality and effectiveness of industry training in the specified industry.
- (3) Before recognising an organisation under subsection (1), the Minister must—
 - (a) take into account the matters set out in section 7; and
 - (b) be satisfied that the organisation has, or will have, the skill and knowledge to be able to carry out the core activities of an industry training organisation under section 11B(1)(a); and
 - (c) be satisfied, following consultation with the Qualifications Authority, that the organisation has, or will have, and is likely to maintain—
 - (i) systems and processes to enable the organisation to comply with the prescribed quality assurance requirements; and
 - (ii) the capability, knowledge, and experience to enable the organisation to comply with the prescribed quality assurance requirements.
- (4) The *Gazette* notice under subsection (1) must specify—
 - (a) the name of the organisation; and

- (b) the specified industry; and
 - (c) any conditions of recognition.
- (5) The Minister may,—
- (a) at the request of the industry training organisation, amend the notice to change the description of the specified industry:
 - (b) at any time,—
 - (i) revoke a condition of recognition; or
 - (ii) amend a condition of recognition, or impose a new condition, if, in the Minister's opinion, the amended or new condition is reasonably necessary to maintain the quality and effectiveness of industry training in the specified industry.

Section 5: replaced, on 23 April 2014, by section 11 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

6 Application for recognition as industry training organisation

- (1) A body corporate may apply to the Minister for recognition as an industry training organisation.
- (2) An application under subsection (1) must be accompanied by the fee (if any) charged by the Qualifications Authority under section 254(2)(d) of the Education Act 1989.
- (3) The Minister need not consider an application if the applicant has failed to provide, within 30 days of receiving a request, any information requested in relation to the application by—
 - (a) the Qualifications Authority; or
 - (b) the Commission.

Section 6: replaced, on 23 April 2014, by section 11 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

7 Matters that Minister must take into account before organisation recognised

The matters that the Minister must take into account under section 5(3)(a) are, without limitation,—

- (a) whether the organisation provides services to, or will provide services to, a sufficient number of employers in the specified industry; and
- (b) whether the organisation is, or will be, adequately funded by employers in the specified industry; and
- (c) whether the organisation has in place adequate arrangements for involving employers in the governance of the organisation; and
- (d) whether the organisation has, or will have, the capacity to—
 - (i) monitor demand for training within the specified industry; and

- (ii) respond to the demand for industry training at the skill level required by employers in the specified industry; and
- (e) the need to avoid unnecessary duplication of resources in providing industry training for the specified industry; and
- (f) whether the organisation has, or will have, and is likely to maintain—
 - (i) Qualifications Authority approval for programmes or training schemes for the specified industry; and
 - (ii) Qualifications Authority consent, under section 252 of the Education Act 1989, to assess its students against listed skill standards; and
- (g) whether the organisation has performed satisfactorily at other times when the organisation has been recognised; and
- (h) whether the organisation has taken reasonable steps to avoid fragmentation and to provide a clear and representative industry focus.

Section 7: replaced, on 23 April 2014, by section 11 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

8 Provisional recognition

- (1) The Minister may, by notice in the *Gazette*, grant provisional recognition to an industry training organisation that does not satisfy the matters described in section 5(3)(c).
- (2) Before granting provisional recognition, the Minister must be satisfied that—
 - (a) the organisation has, or will have, the skill and knowledge to be able to carry out the core activities of an industry training organisation under section 11B(1)(a); and
 - (b) if the applicant completes the actions specified in the *Gazette* notice, the applicant will satisfy the Minister that it should be recognised under section 5(1); and
 - (c) in all the circumstances, it is appropriate that the Commission should be able to fund the applicant via a plan.
- (3) A *Gazette* notice under subsection (1) must specify—
 - (a) the name of the organisation; and
 - (b) the specified industry; and
 - (c) any conditions of recognition; and
 - (d) that the applicant has been granted provisional recognition; and
 - (e) the actions that the applicant must take in order to satisfy the Minister that it should be recognised under section 5(1); and
 - (f) the period (not exceeding 3 years) for which provisional recognition has been granted.

Section 8: replaced, on 23 April 2014, by section 11 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

9 Expiry and cancellation of recognition

- (1) The recognition of an industry training organisation under section 5 expires 5 years after it is granted.
- (2) The recognition of an industry training organisation under section 8(1) expires when—
 - (a) the period for which it was granted expires; or
 - (b) the organisation is recognised under section 5.
- (3) The Minister may cancel the recognition of an industry training organisation under section 5(1) or 8(1) (with immediate effect)—
 - (a) if it asks the Minister to cancel its recognition; or
 - (ab) if the circumstances in subsection (3A) apply; or
 - (ac) if it has breached the requirement in section 11E; or
 - (b) if the Minister is satisfied that the organisation no longer exists.
- (3A) The circumstances referred to in subsection (3)(ab) are that—
 - (a) the Minister has issued a notice to the organisation, in accordance with subsection (3B), stating that he or she considers that the organisation's performance is inadequate for any of the following reasons:
 - (i) it is not carrying out at least 1 of the core activities set out in section 11B(1)(a):
 - (ii) it is failing to comply with 1 or more conditions of recognition:
 - (iii) it is failing to comply with a compliance notice issued by the Qualifications Authority under section 11D; and
 - (b) the period of time specified in the notice within which the organisation must improve its performance has elapsed; and
 - (c) the Minister is satisfied that the organisation's performance continues to be inadequate for the reason specified in the notice.
- (3B) A notice under subsection (3A) must—
 - (a) be in writing; and
 - (b) specify—
 - (i) the areas in which the Minister considers the organisation's performance to be inadequate; and
 - (ii) what actions that the organisation should take to improve its performance; and
 - (iii) the period, which must be a reasonable period, within which the organisation must improve its performance; and

- (iv) the fact that the Minister may cancel the organisation's recognition, under subsection (3)(ab), if it fails to improve its performance within that period.
- (4) Nothing in this section prevents an organisation whose recognition has expired under subsection (1) or subsection (2), or been cancelled under subsection (3)(a) or (ab), from seeking recognition in accordance with section 5 and being recognised in accordance with that section or section 8(1).

Section 9(3): amended, on 23 April 2014, by section 12(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 9(3): amended, on 1 January 2004, by section 9(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3)(a): amended, on 1 January 2004, by section 9(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3)(ab): inserted, on 1 January 2003, by section 9(2) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3)(ac): inserted, on 23 April 2014, by section 12(2) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 9(3)(b): amended, on 1 January 2004, by section 9(1) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3A): inserted, on 1 January 2003, by section 9(3) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3A)(a): replaced, on 23 April 2014, by section 12(3) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 9(3A)(c): amended, on 1 January 2004, by section 9(5) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3B): inserted, on 1 January 2003, by section 9(3) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3B)(b)(i): amended, on 23 April 2014, by section 12(4) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 9(3B)(b)(i): amended, on 1 January 2004, by section 9(7) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(3B)(b)(iv): amended, on 1 January 2004, by section 9(7) of the Industry Training Amendment Act 2002 (2002 No 51).

Section 9(4): substituted, on 1 January 2003, by section 9(4) of the Industry Training Amendment Act 2002 (2002 No 51).

Funding of industry training

Heading: inserted, on 23 April 2014, by section 13 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

10 Industry training organisation's proposed plan must identify activities for which it seeks funding

- (1) An industry training organisation that seeks funding under a funding mechanism that provides for funding via plans (as indicated by the Minister under section 159L(2)(b) of the Education Act 1989) must—

- (a) prepare a proposed plan in accordance with section 159X of the Education Act 1989; and
 - (b) specify in the proposed plan the activities set out in subsection (2) in relation to which funding is sought; and
 - (c) submit the proposed plan for consideration of funding approval under section 159YA of that Act.
- (2) The activities are—
- (a) developing and maintaining skill standards for the industry (or industries); and
 - (b) developing arrangements for the delivery (not being delivery by the organisation itself or organisations themselves) of industry training intended to enable trainees to attain those standards, including arrangements for—
 - (i) monitoring the training to ensure that it enables trainees to attain those standards; and
 - (ii) assessing trainees and the extent to which they have in fact attained those standards; and
 - (c) making arrangements for the delivery (not being delivery by the organisation itself or organisations themselves) of industry training that will enable trainees to attain skill standards previously set by the organisation (or organisations) and registered by the Qualifications Authority, including arrangements accepted by the Qualifications Authority for—
 - (i) monitoring the training to ensure that it enables trainees to attain those standards; and
 - (ii) assessing trainees and the extent to which they have in fact attained those standards; and
 - (d) the apprenticeship training activities described in section 13D(2) (which, if funded, must be carried out as a package); and
 - (e) *[Repealed]*
 - (f) developing arrangements for the collective representation of employees in the governance of the organisation.
- (3) Every proposed plan of an industry training organisation, or combined proposed plan of 2 or more industry training organisations, must—
- (a) specify agreed levels of performance for the industry training organisation or organisations to which the proposed plan relates; and
 - (b) provide for the variation, suspension, and termination of funding if those levels of performance are not achieved.
- (4) Nothing in this section limits any other requirement as to the content of proposed plans that may be specified by the Commission under Part 13A of the Education Act 1989.

Section 10: substituted, on 1 January 2004, by section 11 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 10 heading: amended, on 1 January 2008, by section 50(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 10(1): substituted, on 1 January 2008, by section 50(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 10(2)(a): amended, on 23 April 2014, by section 14(1) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 10(2)(c): amended, on 23 April 2014, by section 14(2) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 10(2)(d): replaced, on 23 April 2014, by section 14(3) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 10(2)(e): repealed, on 23 April 2014, by section 14(3) of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Section 10(3): amended, on 1 January 2008, by section 50(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 10(3)(a): amended, on 1 January 2008, by section 50(3) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 10(4): substituted, on 1 January 2008, by section 50(4) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

10A Power to fund if employer switches industry training organisation

The Commission may give funding approval to a proposed plan of an industry training organisation under which it seeks to manage the delivery of industry training to the employees of a particular employer who is not part of the industry specified in the *Gazette* notice published under section 5 relating to the industry training organisation, if—

- (a) that employer has applied to the Commission in writing for industry training to be managed by the industry training organisation; and
- (b) the Commission is satisfied that the employer's application should be granted because either—
 - (i) the industry training organisation that manages training for the employer's industry does not have the capacity to provide a satisfactory service to the employer; or
 - (ii) the employer faces significant administrative and compliance costs (but not taking into account the cost of any training levies) because its training needs are covered by more than 1 industry training organisation; and
- (c) the Commission is satisfied that the industry training organisation is capable of managing delivery of industry training that will enable the employees of the employer to attain the skill standards applicable in the industry to which the training relates.

Section 10A: inserted, on 1 January 2004, by section 11 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 10A: amended, on 1 January 2008, by section 51 of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

11 Matters to which Commission must have regard in determining whether to give funding approval to proposed plan

In determining whether to give an industry training organisation's proposed plan funding approval, the Commission must have regard to the following matters:

- (a) the amount of training to which it relates, and the likely number of trainees to be trained in accordance with it; and
- (b) the desirability of introducing into the organisation's industry (or the organisations' industries) skills (whether new skills or enhanced existing skills) likely to increase its (or their) international competitiveness; and
- (c) the desirability of extending industry training to industries, or areas of any industry (or industries), where industry training linked to nationally recognised qualifications has not traditionally been available; and
- (d) the desirability of extending industry training to people of a kind or description specified in the Commission's statement of intent as people to whom industry training linked to nationally recognised qualifications has not traditionally been available (whether within any industry or industries, or generally).

Section 11: substituted, on 1 January 2004, by section 12 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 11 heading: amended, on 1 January 2008, by section 52(1) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

Section 11: amended, on 1 January 2008, by section 52(2) of the Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106).

11A Persons other than industry training organisations may receive funding for industry training

- (1) The Commission may enter into funding agreements with persons other than industry training organisations to provide for those persons—
 - (a) to make arrangements, in respect of an industry or industries described in the agreement, for the delivery of industry training that will enable trainees to attain listed skill standards, including arrangements accepted by the Qualifications Authority for—
 - (i) monitoring the training to ensure that the training enables trainees to attain those standards; and
 - (ii) assessing trainees and the extent to which they have attained those standards; and

- (b) to perform, in respect of an industry or industries described in the agreement, the apprenticeship training activities described in section 13D(2)(c) to (h) (which, if funded, must be carried out as a package); and
 - (c) to receive funding from the Commission for the purposes described in paragraphs (a) and (b).
- (2) A funding agreement must—
- (a) specify agreed levels of performance for the person receiving funding under the agreement; and
 - (b) provide for the variation, suspension, and termination of funding, or the funding agreement, or both, if the specified levels of performance are not achieved.

Section 11A: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Obligations of industry training organisations

Heading: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

11B Obligations of industry training organisations

- (1) An industry training organisation must—
- (a) carry out 1 or both of the following core activities (whether or not it receives funding for those activities via a plan):
 - (i) developing and maintaining skill standards to be listed on the Directory of Assessment Standards and used in the assessment of trainees;
 - (ii) developing and maintaining arrangements for the delivery of industry training that will enable trainees to achieve the relevant skill standards; and
 - (b) comply with any conditions of recognition applying to the organisation; and
 - (c) comply with any prescribed quality assurance requirements that apply to the activities carried out by the organisation; and
 - (d) develop and maintain arrangements for the collective representation of employees in the governance of the organisation.
- (2) In carrying out the activity described in subsection (1)(a)(ii), an industry training organisation must have regard to the needs of Māori and other population groups identified in the tertiary education strategy issued under section 159AA of the Education Act 1989.

Section 11B: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

11C Qualifications Authority may issue quality assurance improvement notice

- (1) The Qualifications Authority may, if satisfied that such action is reasonably necessary to maintain the quality and effectiveness of industry training in a specified industry, issue a quality assurance improvement notice to an industry training organisation.
- (2) A quality assurance improvement notice must—
 - (a) set out any concerns the Qualifications Authority has about the organisation's systems, practices, training, or procedures; and
 - (b) specify the time within which the organisation is expected to address the Qualification Authority's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - (c) state that, if the Qualifications Authority's concerns are not addressed within the specified time, the Qualifications Authority may issue a compliance notice under section 11D; and
 - (d) specify the possible consequences of a failure to comply with a compliance notice.

Section 11C: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

11D Qualifications Authority may issue compliance notice

- (1) The Qualifications Authority may issue a compliance notice to an industry training organisation requiring the organisation to do 1 or both of the following things:
 - (a) to do, or to refrain from doing, a particular thing in relation to a prescribed quality assurance requirement:
 - (b) to address any concerns set out in a quality assurance improvement notice issued under section 11C that were not addressed within the time specified in that notice.
- (2) Section 255(3) to (6) of the Education Act 1989 applies to compliance notices issued under this section.
- (3) If an industry training organisation fails to comply with a notice issued under subsection (1), the Qualifications Authority may recommend to the Minister that the Minister do 1 or both of the following things:
 - (a) issue a notice in accordance with section 9(3B) (which may lead to cancellation of the organisation's recognition under section 9(3));
 - (b) impose a new condition of recognition, or amend an existing condition, under section 5(5)(b).
- (4) A compliance notice may be issued to an industry training organisation whether or not a quality assurance improvement notice has been issued under section 11C.

- (5) Nothing in this section limits the power of the Qualifications Authority to issue a compliance notice to an industry training organisation in accordance with section 255 of the Education Act 1989.

Section 11D: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

11E Industry training organisations not to operate registered private training establishments

- (1) An industry training organisation must not operate or hold any interest in a registered private training establishment.
- (2) Despite subsection (1), during the 12 months after the date on which this section comes into force, no action may be taken under section 9 against an industry training organisation if,—
- (a) before the commencement of this section, the organisation operated or held an interest in a registered private training establishment; and
 - (b) the organisation continues to operate, or continues to hold the same interest in, the registered private training establishment.
- (3) In this section, **registered private training establishment** means a private training establishment that has been granted registration by the Qualifications Authority under Part 18 of the Education Act 1989, other than a registration that has been cancelled.

Section 11E: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

11F Annual fee

- (1) Every industry training organisation must pay to the Qualifications Authority an annual fee prescribed by or determined under rules made under section 253(1)(ga) of the Education Act 1989.
- (2) The annual fee may recover no more than the reasonable costs, excluding those costs that are recoverable through fees charged under section 254 of the Education Act 1989, incurred by the Qualifications Authority for—
- (a) prescribing quality assurance requirements under section 253(1)(gb) of the Education Act 1989; and
 - (b) monitoring compliance, and addressing non-compliance, with those requirements in accordance with its function under section 13A(a); and
 - (c) issuing quality assurance improvement notices under section 11C.
- (3) The fee is—
- (a) payable by the due date prescribed in the rules; and
 - (b) recoverable as a debt due to the Qualifications Authority.

Section 11F: inserted, on 23 April 2014, by section 15 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

12 Commission may require industry training organisation to provide information

[Repealed]

Section 12: repealed, on 1 January 2004, by section 13 of the Industry Training Amendment Act 2002 (2002 No 51).

Functions of Commission and Qualifications Authority

Heading: inserted, on 23 April 2014, by section 16 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13 Additional functions of Commission

In addition to the functions given to the Commission by or under enactments other than this Act, the Commission has the following functions:

- (a) to increase the availability within industry of high-quality industry training that is linked to qualifications:
- (b) to promote the availability of industry training that is linked to qualifications to people of a kind or description specified in the Commission's statement of intent as people to whom such training has not traditionally been available (whether within a particular industry or industries, or generally):
- (c) to administer and disburse public money appropriated by Parliament for the purpose of industry training:
- (d) to develop and recommend to the Minister an apprenticeship training code for the purposes described in section 13F(1):
- (e) to make the apprenticeship training code available, in accordance with section 13G:
- (f) to monitor the performance of persons carrying out apprenticeship training activities (whether via a plan or under a funding agreement) to ensure that they comply with the apprenticeship training code:
- (g) to exercise the powers and perform the functions of the Commission under Part 5.

Section 13: replaced, on 23 April 2014, by section 16 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13A Additional functions of Qualifications Authority

In addition to the functions given to the Qualifications Authority by or under enactments other than this Act, the Qualifications Authority has the following functions:

- (a) to monitor, through the exercise of its powers under this Act, compliance by industry training organisations with the prescribed quality assurance requirements, and to address non-compliance:

- (b) to monitor the quality and results of an industry training organisation's system and procedures for the moderation of vocational training.

Section 13A: inserted, on 23 April 2014, by section 16 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13B Qualifications Authority may prescribe quality assurance requirements

- (1) Rules made under section 253(1)(gb) of the Education Act 1989 to prescribe quality assurance requirements for industry training organisations may include, without limitation other than subsection (2), requirements relating to—
 - (a) the quality of the management, operation, and governance of industry training organisations; and
 - (b) the quality of the skill standards developed and maintained by industry training organisations; and
 - (c) the quality of the arrangements made by industry training organisations for the delivery of industry training (including apprenticeship training); and
 - (d) the ability of industry training organisations to acquire, and to maintain,—
 - (i) Qualifications Authority approval for programmes or training schemes for the specified industry; and
 - (ii) Qualifications Authority consent, under section 252 of the Education Act 1989, to assess their students against listed skill standards.
- (2) Rules made under section 253(1)(gb) of the Education Act 1989 may not prescribe quality assurance requirements relating to the governance of industry training organisations unless the quality of governance affects a matter described in subsection (1)(b), (c), or (d).

Section 13B: inserted, on 23 April 2014, by section 16 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Part 2A Apprenticeship training

Part 2A: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13C Apprenticeship training defined

For the purposes of this Act, **apprenticeship training** is a type of industry training that—

- (a) is provided for a person who is working in an industry while undertaking training in that industry; and
- (b) is provided wholly or partly at the person's workplace, mainly by or on behalf of the person's employer; and

- (c) consists of a programme of study or training, or both, leading to a qualification in the skills of an industry that provides entry into an occupation in that industry; and
- (d) is facilitated by—
 - (i) an industry training organisation that receives funding via a plan; or
 - (ii) a person that receives funding under a funding agreement.

Section 13C: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13D Apprenticeship training activities must be included in proposed plan

- (1) An industry training organisation that seeks funding for apprenticeship training activities via a plan must specify in its proposed plan how it intends to carry out each of those activities (described in subsection (2)).
- (2) The apprenticeship training activities are—
 - (a) to promote apprenticeship training generally through the provision of information, guidance, and advice to employers and prospective apprentices on the benefits of an apprenticeship:
 - (b) to identify—
 - (i) prospective apprentices; and
 - (ii) employers able to offer apprenticeship training:
 - (c) to arrange training or employment that may lead to apprenticeship training for prospective apprentices:
 - (d) to help prospective apprentices enter into apprenticeship training agreements:
 - (e) to produce, and facilitate (in consultation with an apprentice and the apprentice's employer) the implementation of, individual training plans consistent with an apprentice's apprenticeship training agreement:
 - (f) to monitor individual apprentices to ensure that their apprenticeship training leads them to attain, within a reasonable time, the level of skills necessary to complete a qualification in the skills of the specified industry:
 - (g) to ensure, as far as is reasonably practicable, that apprenticeship training, and every apprenticeship training agreement, within the specified industry is consistent with any apprenticeship training code:
 - (h) to provide or procure appropriate pastoral care and support for apprentices, having regard to the age and experience of the apprentice and the contents of any apprenticeship training code.

Compare: 2000 No 94 ss 15(1), 16(1)

Section 13D: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13E Obligations of persons carrying out apprenticeship training activities

- (1) Persons carrying out apprenticeship training activities (whether via a plan or under a funding agreement) must,—
 - (a) in performing any apprenticeship training activity described in section 13D(2), comply with every part of the apprenticeship training code that affects that activity:
 - (b) before helping a person under the age of 18 years to enter into an apprenticeship training agreement, advise that person to seek advice about the agreement from an independent person (for example, a parent, guardian, caregiver, or lawyer).
- (2) If an industry training organisation becomes aware that it is impractical for an apprentice under the organisation's care to continue his or her training with his or her current employer, the industry training organisation must make reasonable endeavours to find a new employer with whom the apprentice can complete his or her training.

Compare: 2000 No 94 ss 15(2), 17(a)

Section 13E: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Apprenticeship training code

Heading: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13F Minister may issue apprenticeship training code

- (1) The Minister may, by notice in the *Gazette*, issue an apprenticeship training code that—
 - (a) is consistent with this Act; and
 - (b) sets out the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training activities under this Act.
- (2) The apprenticeship training code may, but need not, be a code recommended by the Commission.
- (3) Before issuing an apprenticeship training code, the Minister may consult any persons or organisations that the Minister considers appropriate.
- (4) The *Gazette* notice under subsection (1) must—
 - (a) specify the date on which the apprenticeship training code comes into force (which must be at least 28 days after the date on which the notice is published); and
 - (b) either—
 - (i) set out the apprenticeship training code in full; or
 - (ii) give enough information to identify the code and state where copies of the code may be obtained.

Section 13F: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13G Availability of apprenticeship training code

The Commission must make any apprenticeship training code available—

- (a) at every office of the Commission, free of charge; and
- (b) on the Commission's Internet site in a format that is readily accessible.

Compare: 2000 No 94 s 27

Section 13G: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13H Apprenticeship training code to be taken into account by mediation personnel, Employment Relations Authority, and Employment Court

In exercising or performing, in relation to a matter concerning an apprentice, any power or function under the Employment Relations Act 2000, the following must take into account every applicable element of any apprenticeship training code:

- (a) a person providing mediation services under that Act;
- (b) the Employment Relations Authority;
- (c) the Employment Court.

Compare: 2000 No 94 s 7

Section 13H: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

13I Application of Legislation Act 2012 to apprenticeship training code

An apprenticeship training code is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act.

Compare: 2000 No 94 s 29

Section 13I: inserted, on 23 April 2014, by section 17 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Part 3

Technicians Training Act 1967 and Apprenticeship Act 1983

[Repealed]

Part 3: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

14 Technicians Training Act 1967 and Apprenticeship Act 1983 repealed

[Repealed]

Section 14: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

15 Transitional

[Repealed]

Section 15: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

16 Certain repealed provisions deemed to form part of existing contracts

[Repealed]

Section 16: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

17 Powers of Commission in relation to existing contracts

[Repealed]

Section 17: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

18 Powers of Commission in relation to other training programmes

[Repealed]

Section 18: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

19 Consequential amendment

[Repealed]

Section 19: repealed, on 23 April 2014, by section 18 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Part 4

**Industrial Training Levies Act 1978 and Vocational Training Act
1982**

[Repealed]

Part 4: repealed, on 1 January 2003, by section 18 of the Industry Training Amendment Act 2002 (2002 No 51).

20 Commencement of provisions deferred for 2 years

[Repealed]

Section 20: repealed, on 1 January 2003, by section 18 of the Industry Training Amendment Act 2002 (2002 No 51).

21 Repeals

[Repealed]

Section 21: repealed, on 1 January 2003, by section 18 of the Industry Training Amendment Act 2002 (2002 No 51).

22 Industry training boards dissolved

[Repealed]

Section 22: repealed, on 1 January 2003, by section 18 of the Industry Training Amendment Act 2002 (2002 No 51).

23 Employers may be levied to meet shortfall in assets of dissolved board

[Repealed]

Section 23: repealed, on 1 January 2003, by section 18 of the Industry Training Amendment Act 2002 (2002 No 51).

Part 5 Training levies

Part 5: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

24 Purpose

The purpose of this Part is to enable the making of Orders in Council imposing a training levy on the members of an industry, payable to an industry training organisation, if there is sufficient support for the imposition of that levy following a ballot of those members.

Section 24: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

25 Interpretation

For the purposes of this Part,—

ballot means a ballot under section 27(1)(a)

closing date means the date, specified in the ballot paper under section 36(b), by which ballot papers must be returned

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

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

qualifying member, in relation to a levy group, means a member who does not have a certificate of exemption under section 40

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

Section 25: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Imposition of levy

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

26 Governor-General may impose levy

- (1) The Governor-General may, on the recommendation of the Minister, by Order in Council, impose a levy on qualifying members of a levy group, payable to an industry training organisation.
- (2) The Minister must not recommend the making of an Order in Council under subsection (1) unless the Minister is satisfied of the matters in section 27.
- (3) Under a levy order under subsection (1), a levy may be payable to—
 - (a) 1 industry training organisation by all qualifying members of the industry that is covered by that organisation; or
 - (b) 1 industry training organisation by all qualifying members of a specific industry that is within the range of industries covered by that industry training organisation; or
 - (c) more than 1 industry training organisation, jointly, by all qualifying members of an industry that is covered by those industry training organisations.
- (4) A levy order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 26: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 26(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

27 Restrictions on making of levy orders

- (1) The Minister must not recommend the making of a levy order unless he or she is satisfied that—
 - (a) the industry training organisation to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with sections 31 to 38, in relation to a proposal that the levy should be imposed on those members; and
 - (b) at least 60% of the ballot papers distributed were validly completed and returned to the independent returning officer conducting the ballot, before the closing date; and
 - (c) out of those ballot papers validly completed and returned,—
 - (i) more than 60% of the total supported the imposition of the levy; and
 - (ii) more than 60%, weighted according to the size of the industry member that returned the ballot paper (calculated at the date that

the ballot closed and on the same basis as the levy is proposed to be charged, as set out in the ballot paper), supported the imposition of the levy; and

- (d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and
 - (e) the details specified in the order are acceptable to the Minister; and
 - (f) the industry training organisation has or will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
 - (g) all other relevant matters known to the Minister have been properly considered.
- (2) When considering the matters in subsection (1), the Minister must consult with the Commission and may consult with any other persons the Minister considers appropriate.

Section 27: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

28 Matters to be specified in levy orders

Every levy order must specify the matters set out in Schedule 4.

Section 28: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

29 Purposes for which levy may be required

- (1) A levy order must specify the purposes for which levy funds are to be used.
- (2) A levy order may also specify any purpose or purposes for which no amount of levy may be used.
- (3) In specifying how levy funds are to be used, a levy order may specify 1 or more purposes that will benefit the levy group as a whole and that are related to meeting the costs (including infrastructure and administration costs) associated with developing and maintaining skill standards for the specified industry.
- (4) No levy order may specify a purpose for which levy funds may be used that is related to—
 - (a) meeting the costs of arranging delivery of industry training; or
 - (b) undertaking any commercial or trading activity; or
 - (c) any matter that directly benefits 1 or more individual members of the levy group, as opposed to generally benefiting the relevant industry as a whole.
- (5) Nothing in subsection (4)(b) prevents an industry training organisation from—
 - (a) using any part of a levy to publish or sell any educational, informative, or promotional material (whether or not at a profit); or
 - (b) investing any part of a levy pending its expenditure.

Section 29: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 29(3): replaced, on 23 April 2014, by section 19 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

30 Levy order may require provision of information

A levy order may require qualifying members of the levy group to provide information to the industry training organisation, or some other person or body, for the purpose of enabling or assisting the determination of the amount of levy payable.

Section 30: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Ballots

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

31 Independent returning officer must conduct ballot

A ballot must be conducted by an independent returning officer appointed by the industry training organisation and approved by the Minister.

Section 31: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

32 Industry training organisation must identify potential members of levy group

- (1) An industry training organisation that proposes to impose a levy must take reasonable steps to ensure that it identifies all potential members of the levy group, including—
 - (a) obtaining from that organisation's records, and from records that may be available from other organisations, information that is able to be used to identify potential members; and
 - (b) giving adequate notice of the ballot in public newspapers and industry-specific publications, and inviting members of the relevant industry to register to receive information about the ballot and ballot papers.
- (2) After satisfying the requirements of subsection (1), the industry training organisation must provide to the independent returning officer who is administering the ballot a list of all potential members of the levy group of whom it is aware.

Section 32: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

33 Returning officer must notify potential members of levy group

- (1) The returning officer must give notice of the ballot to—
 - (a) every person named on the list of potential members of the levy group provided by the industry training organisation under section 32(2); and

- (b) any other person whom the independent returning officer considers may be a member of the levy group.
- (2) The notice under subsection (1) must advise the person about the ballot and must state—
 - (a) the description of the industry that is intended to be covered by the proposed levy order; and
 - (b) that the returning officer considers that the person is or may be a member of that industry; and
 - (c) that membership of the industry means that the person—
 - (i) is entitled to participate in the ballot; and
 - (ii) will be required to pay the levy if there is sufficient support for it in the ballot and the levy order is made; and
 - (d) that the person must notify the returning officer if the person disputes that he or she or it is a member of the industry intended to be covered by the proposed levy order (a **coverage dispute**); and
 - (e) the date by which that notification of a coverage dispute must be received.

Section 33: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

34 Commission resolves coverage disputes

If the returning officer is notified by a person under section 33(2)(d) that the person wishes to raise a coverage dispute, the returning officer must refer that issue to the Commission for determination in accordance with section 49.

Section 34: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

35 Population to be balloted

As soon as practicable after all coverage disputes have been finally determined (including any appeals under section 50(2)), the returning officer must send a ballot paper to each person in the levy group.

Section 35: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

36 Requirements of ballot papers

A ballot paper must state—

- (a) the address to which ballot papers must be returned; and
- (b) the date by which ballot papers must be returned; and
- (c) full information on the nature of the levy power being sought, including all the matters listed in Schedule 4.

Section 36: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

37 Returning officer must count votes

The returning officer must collect all validly completed ballot papers received by him or her at the closing date and calculate—

- (a) the proportion of the total number of ballot papers distributed by him or her under section 35 that have been validly completed and received by him or her at the closing date; and
- (b) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy; and
- (c) the proportion of the validly completed ballot papers received by him or her at the closing date that are in favour of the proposal to impose the levy if the votes are weighted according to the size of the member of the industry that returned the ballot paper (calculated at the date that the ballot closed and on the same basis as the levy is proposed to be charged as set out in the ballot paper).

Section 37: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

38 Returning officer must keep ballot papers, etc

The returning officer must take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with a ballot conducted under this Part are preserved and kept for a period of 1 year after the completion of the ballot.

Section 38: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Collection of levy

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

39 Levy is payable by qualifying members to industry training organisation

If a levy order is made, the levy specified in the order is payable by every qualifying member of the levy group to the industry training organisation or organisations named in the levy order.

Section 39: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

40 Certificate of exemption

- (1) The chief executive of the Commission may issue a certificate of exemption from payment of a levy to a member of the relevant industry who—
 - (a) was a member of the industry at the time of the ballot held in relation to that levy; and

- (b) was, through no fault or neglect on that person's part, not included in the ballot.
- (2) The chief executive may revoke a certificate of exemption if—
 - (a) the person to whom it has been issued agrees; or
 - (b) it was issued in error.

Section 40: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

41 Method of collecting levy

- (1) An industry training organisation may collect levies directly from qualifying members of the levy group or by using a collection agent specified in the levy order in accordance with section 42.
- (2) An industry training organisation may recover levies due from any qualifying member of the levy group—
 - (a) by deducting the amount due from any amount the organisation owes that qualifying member; or
 - (b) as a debt due to the organisation in any court of competent jurisdiction.

Section 41: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

42 Levy order may provide for collection by agent

- (1) A levy order may specify persons, other than the persons who are primarily responsible for paying the levy, who must collect levy money due from qualifying members and pay it to the industry training organisation.
- (2) If a levy order specifies a person who must act as a collection agent under subsection (1), the levy order must also specify an amount from, or a percentage of, the levy money collected that the person may retain as a fee for providing the collection service.

Section 42: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

43 Collection of levy if person switches industry training organisation

- (1) A person who is a qualifying member of an industry must continue to pay any levy that is payable to the industry training organisation or organisations that cover members of that industry (the **original organisation**) even if the Commission grants an application by the person under section 10A for another industry training organisation (the **new organisation**) to manage the person's industry training.
- (2) If a person must pay a levy to its original organisation under subsection (1),—
 - (a) the person does not have to pay a levy to the new organisation as a result only of the new organisation managing the person's training; but

- (b) if the person was obliged to pay a levy to the new organisation before the employer's application was granted, the employer must continue to pay the levy.

Section 43: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 43(1): amended, on 1 January 2004, by section 17 of the Industry Training Amendment Act 2002 (2002 No 51).

Duties of industry training organisations and others in relation to levies

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

44 Levy funds must be kept in separate bank accounts and used only for authorised purposes

- (1) An industry training organisation that receives a levy under a levy order must open 1 or more bank accounts for the purpose of the levy and must use the account or those accounts for the following purposes only:
 - (a) the deposit of amounts of levy paid or recovered; and
 - (b) making payments out of levy funds.
- (2) Only people expressly authorised by the organisation may operate the account or those accounts.
- (3) No money may be paid out of the account or those accounts except for a purpose authorised in the levy order.

Section 44: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

45 Duty to keep records

An industry training organisation that receives a levy must ensure that accurate and up-to-date records are kept of—

- (a) the names of all members of the levy group from whom the levy has been collected or recovered; and
- (b) the amount of the levy collected or recovered from those members; and
- (c) the names of all members of the levy group who are or may be liable to pay the levy but have not done so; and
- (d) the use to which the levy funds have been put.

Section 45: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

46 Duty to provide annual report

- (1) As soon as is practicable after the end of a financial year during which a levy has been paid to an industry training organisation under a levy order, the organisation—

- (a) must prepare, in respect of that year, financial statements in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013); and
 - (b) must include in the financial statements required by paragraph (a) all the necessary information to explain—
 - (i) the balance of the levy fund; and
 - (ii) the movements in the levy fund over the course of the year, including receipts of money collected and payments of money made under the levy order; and
 - (iii) the use of assets acquired or built up with or out of money received under the levy order.
- (2) The organisation must ensure that the financial statements prepared under subsection (1) are audited within 90 days of the end of that financial year.
- (3) Financial statements prepared under subsection (1) must be included in the organisation's annual report for that year.
- (4) An industry training organisation that is required by subsection (3) to include financial statements in its annual report must, as soon as that report has been completed, give a copy to the Minister, and the Minister must present a copy to the House of Representatives not later than 6 sitting days after receiving it.
- (5) Despite subsection (4), if an enactment other than this Act requires an industry training organisation to give a Minister a copy of its annual report and requires the Minister to present a copy to the House of Representatives, that organisation must, to the extent that the enactment and subsection (4) impose different requirements, comply with the enactment and not with subsection (4).
- (6) An industry training organisation that is required by subsection (3) to include financial statements in its annual report must take all reasonable steps to ensure that every person primarily liable for paying the levy that is reflected in those financial statements receives a copy of the annual report as soon as is reasonably practicable after the report has been completed.

Section 46: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 46(1)(a): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

47 Duty to protect commercially sensitive information

Every person who receives commercially sensitive information for the purposes of carrying out a function or activity under this Part, or under a levy order, must take reasonable steps to protect that information.

Section 47: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Disputes

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

48 Arbitration or mediation system must be established

- (1) An industry training organisation that receives a levy under a levy order must establish a method of arbitration or mediation in the case of disputes as to—
 - (a) whether a person was included in the ballot relating to that levy; and
 - (b) whether a person has paid the levy; and
 - (c) the amount of levy payable; and
 - (d) any other matter relating to the levy, except disputes about whether a person is within the levy group.
- (2) Details of the arbitration or mediation system must be specified in the levy order, including—
 - (a) the method of appointment of arbitrators or mediators; and
 - (b) the procedures to be followed by arbitrators or mediators; and
 - (c) the remuneration of arbitrators or mediators; and
 - (d) the payment of costs in relation to arbitration or mediation; and
 - (e) any other matters relating to the resolution of disputes.

Section 48: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

49 Disputes about coverage

- (1) If there is a dispute about whether a person is within a levy group, whether before or after the ballot, the dispute must be referred to the Commission, which must determine the matter.
- (2) The industry training organisation that is proposing to impose a levy or, if a levy order has been made, that is responsible for administering the levy must pay the reasonable costs of the Commission for determining disputes.

Section 49: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

50 Appeals to District Court

- (1) If a dispute is unresolved following arbitration or mediation in accordance with the method specified in the levy order, or if a party wishes to appeal a decision of an arbitrator or mediator, the dispute may be referred, or the decision may be appealed, to the District Court.
- (2) A determination by the Commission under section 49 may be appealed on grounds of procedural error only.

- (3) An appeal under subsection (2) may be made to the District Court by the person disputing membership of the levy group or by the industry training organisation that is proposing to impose, or responsible for administering, the levy.

Section 50: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 50(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 50(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Confirmation and expiry of orders

Heading: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

51 Orders are confirmable instruments

- (1) The explanatory note of a levy order made under section 26(1) must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

- (5) The Minister on whose recommendation a levy order was made must, by notice published in the *Gazette* at least 6 months before the time at which the order may be revoked by section 47C(1)(a) or (b) of the Legislation Act 2012, indicate the Minister's intentions with regard to its continuing in force unless the levy order has already been—

- (a) revoked; or
- (b) disallowed under Part 3 of the Legislation Act 2012; or
- (c) confirmed by an Act of Parliament.

Section 51: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 51 heading: amended, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(1): replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(2): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(3): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(4): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(5): amended, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 51(5)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

52 Expiry of levy orders

- (1) A levy order expires 5 years after the day on which it was made unless it is sooner—
 - (a) revoked; or
 - (b) disallowed under Part 3 of the Legislation Act 2012.
- (2) A levy order is deemed to be revoked if the industry training organisation responsible for administering the levy ceases to be recognised.

Section 52: added, on 1 January 2003, by section 16 of the Industry Training Amendment Act 2002 (2002 No 51).

Section 52(1)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Savings and transitional provisions

Heading: inserted, on 23 April 2014, by section 21 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

53 Savings and transitional provisions relating to amendments to this Act

The savings and transitional provisions set out in Schedule 1AA, which relate to amendments made to this Act after 1 January 2014, have effect for the purposes of this Act.

Section 53: inserted, on 23 April 2014, by section 21 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

Schedule 1AA

Application, savings, and transitional provisions relating to amendments made to this Act after 1 January 2014

ss 4A, 53

Schedule 1AA: inserted, on 23 April 2014, by section 22 of the Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16).

1 Interpretation

In this schedule,—

amendment Act means the Industry Training and Apprenticeships Amendment Act 2014

apprenticeship co-ordinator, apprenticeship training agreement, and funding agreement have the meanings given in section 4 of the Modern Apprenticeship Training Act 2000

Modern Apprenticeship Training Act 2000 means the Modern Apprenticeship Training Act 2000 as it was immediately before its repeal by the amendment Act

transition period means the period beginning on the date on which the amendment Act comes into force and ending with the close of 31 December 2017.

2 Application

The Act applies to all industry training organisations, including those organisations recognised under the Act before the amendment Act comes into force.

3 Apprenticeship training agreements saved

- (1) In this clause, an **agreement** means an apprenticeship training agreement that—
 - (a) is entered into before the amendment Act comes into force; and
 - (b) on the date on which the amendment Act comes into force, has not ceased to be in force.
- (2) During the transition period, for the purposes of an agreement,—
 - (a) the Modern Apprenticeship Training Act 2000, and the code of practice approved or issued under section 20 of that Act, continue to apply to any employee, apprenticeship co-ordinator, and apprentice who is a party to the agreement; and
 - (b) this Act only applies to the employee, apprenticeship co-ordinator, and apprentice to the extent that it applied before the commencement of the amendment Act.

4 Funding agreements saved

- (1) In this clause, **funding agreement** means a funding agreement between the Commission and an apprenticeship training co-ordinator that—
 - (a) is entered into before the amendment Act comes into force, whether or not it is amended before or after that date; and
 - (b) on the date on which the amendment Act comes into force, has not ceased to be in force.
- (2) During the transition period,—
 - (a) every funding agreement continues in force, and may be renewed annually; and
 - (b) the Modern Apprenticeship Training Act 2000, and the code of practice approved or issued under section 20 of that Act, continue, for the purposes of the agreement, to apply to the Commission and to the apprenticeship co-ordinator to whom the funding agreement applies; and
 - (c) the Commission may continue to fund the apprenticeship co-ordinator in accordance with the funding agreement as if the amendment Act had not been passed.
- (3) Any funding agreement that has not otherwise ceased to be in force expires at the close of 31 December 2017.

5 Commission may make direction to ensure continuation of training

During the transition period, the Commission may, for the purpose of ensuring that an apprentice can continue his or her apprenticeship training, or undertake suitable alternative training, issue 1 or more of the following directions:

- (a) that a specified industry training organisation must make arrangements for the apprentice to continue his or her apprenticeship training in accordance with this Act;
- (b) that a specified apprenticeship co-ordinator must assume, in respect of the apprentice, the responsibilities and functions of an apprenticeship co-ordinator under the Modern Apprenticeship Training Act 2000;
- (c) that a specified industry training organisation must assume, in respect of the apprentice, the responsibilities and functions of an apprenticeship co-ordinator under the Modern Apprenticeship Training Act 2000.

6 Applications for recognition made before commencement

Where an application for recognition as an industry training organisation is received by the Minister before the commencement of the amendment Act, the Minister—

- (a) must consider the application in accordance with the provisions of this Act as they were before the commencement of the amendment Act; and

- (b) may recognise the organisation under section 5(1) or 8(1) as those sections were before the commencement of the amendment Act.

7 Notice of cancellation issued before commencement

If, before the commencement of the amendment Act, the Minister issues a notice under section 9(3A), the Minister must, after the amendment Act comes into force, decide whether to cancel recognition of the industry training organisation on the basis of the provisions of this Act as they were before the commencement of the amendment Act.

Schedule 1 Consequential repeals

s 14(2)

Apprenticeship Amendment Act 1985 (1985 No 4)

Apprenticeship Amendment Act 1991 (1991 No 23)

Education Amendment Act 1990 (1990 No 60)

Amendment(s) incorporated in the Act(s).

Official Information Amendment Act 1987 (1987 No 8) (RS Vol 21, p 579)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Trustee Amendment Act 1988 (1988 No 119)

Amendment(s) incorporated in the Act(s).

Schedule 2

Enactments repealed

s 21(1)

Education Amendment Act 1990 (1990 No 6)*Amendment(s) incorporated in the Act(s).***Industrial Training Levies Act 1978 (1978 No 82)****Industrial Training Levies Amendment Act 1988 (1988 No 25)****Industrial Training Levies Amendment Act 1989 (1989 No 90)****Labour Department Act Repeal Act 1989 (1989 No 82)***Amendment(s) incorporated in the Act(s).***National Provident Fund Restructuring Act 1990 (1990 No 126)***Amendment(s) incorporated in the Act(s).***Public Finance Act 1989 (1989 No 44)***Amendment(s) incorporated in the Act(s).***Vocational Training Act 1982 (1982 No 54)****Vocational Training Amendment Act 1985 (1985 No 45)****Vocational Training Amendment Act 1988 (1988 No 40)**

Schedule 3

Consequential revocations

s 14(3)

Building Industry Technician Training Council Order 1969 (*Gazette* Vol I 1969, p 739)

Dental Technician Training Council Order 1973 (*Gazette* Vol I 1973, p 683)

Dental Technician Training Council Order 1973, Amendment No 1 (*Gazette* Vol I 1979, p 973)

Dental Technician Training Council Order 1973, Amendment No 2 (*Gazette* Vol III 1980, p 4113)

Schedule 4

Matters to be specified in levy orders

ss 28, 36

Schedule 4: added, on 1 January 2003, by section 19 of the Industry Training Amendment Act 2002 (2002 No 51).

To whom levy is payable and who pays

- 1 The name of the industry training organisation or organisations that will receive the levy.
- 2 A description of the industry the members of which will be primarily liable to pay the levy.

Amount of levy

- 3 The basis on which the amount of the levy will be calculated or ascertained.
- 4 How the size of a qualifying member of the levy group will be calculated for the purposes of calculating the levy payable by that member, such as—
 - (a) based on the number of employees of the member that work in the relevant industry; or
 - (b) based on the level of production of the member.
- 5 Whether the levy will be payable at a single rate or 2 or more different rates and, if it will be payable at different rates, the basis on which those different rates will apply.
- 6 How the rates of the levy will be notified.
- 7 Maximum and minimum amounts of levy payable (if any).
- 8 The amount of any additional charges, or the percentage increase in the levy payable, if amounts of levy otherwise payable are paid late or not paid at all (if applicable).

Uses to which levy may be put

- 9 Either—
 - (a) how the organisation is to spend the levy; or
 - (b) the means by which the organisation is to consult qualifying members of the levy group as to how the organisation is to spend it.
- 10 Whether the levy must be spent by the organisation or may be paid to, and spent by, branches or subsidiaries of the organisation.

Payment of levy

- 11 When and how the levy will be payable, including—
 - (a) the period to which the levy will apply (the **levy period**); and
 - (b) how often levy payments will be required to be made; and

- (c) the methods of payment of the levy that will be available to qualifying members of the levy group.
- 12 How the amount of the levy payable will be calculated when a person becomes a qualifying member of the levy group part way through a levy period.
- 13 How refunds of the levy will be calculated, and when they will be paid, if a qualifying member ceases to be a qualifying member of the levy group part way through a levy period.
- 14 What exemptions from payment of the levy will be available.
- 15 The circumstances (if any) in which, and the conditions subject to which, qualifying members of the levy group may be allowed extensions of time for the payment of any amount of levy.
- 16 The enforcement mechanisms that the industry training organisation receiving the levy may use to collect the levy.

Collection of levy by agent

- 17 The persons (if any), other than the industry members primarily responsible for paying the levy, who are responsible for collecting the levy in accordance with section 42.
- 18 The amount of, or percentage of, the levy money collected that a collection agent may retain as a fee for providing the collection service.

Miscellaneous

- 19 The records to be kept by—
 - (a) the industry training organisation receiving the levy; and
 - (b) persons collecting the levy; and
 - (c) persons who are, or may be, liable to pay the levy.
- 20 The details of the method of arbitration or mediation to apply in the case of disputes, as required by section 48.

Reprints notes

1 *General*

This is a reprint of the Industry Training and Apprenticeships Act 1992 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Education (Vocational Education and Training Reform) Amendment Act 2020 (2020 No 1): section 75

District Court Act 2016 (2016 No 49): section 261

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Industry Training and Apprenticeships Amendment Act 2014 (2014 No 16)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Legislation Act 2012 (2012 No 119): section 77(3)

Education (Tertiary Reforms) Amendment Act 2007 (2007 No 106): sections 49–52

Insolvency Act 2006 (2006 No 55): section 445

Industry Training Amendment Act 2002 (2002 No 51)

Employment Relations Act 2000 (2000 No 24): section 240