

Education (Tertiary Education and Other Matters) Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education (Tertiary Education and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Education (Tertiary Education and Other Matters) Amendment Bill seeks to amend the Education Act 1989 to:

- strengthen accountability in the tertiary education system
- provide for consistent treatment of tertiary education organisations
- broaden student protection arrangements.

The committee's recommended changes to the bill

In this commentary we discuss the main changes we recommend to the bill. We do not cover minor or technical changes.

Consultation where a funding determination is amended

Clause 14 would insert new section 159OA to provide for the Minister of Education to vary a determination of the design of a funding mechanism after the Tertiary Education Commission (TEC) has implemented the funding mechanism. This includes a power to attach new conditions to a funding approval that has already been granted.

Where a proposed variation to a funding mechanism relates to conditions that set limits on the fees an organisation may charge domestic students, the changes would have already been subject to consultation under section 159M(b) of the Education

Act. Under new section 159OA(3), the Minister would be obliged to consult again on the proposed changes to the limits on fees before deciding to vary a determination to give effect to the changes.

We do not consider it necessary to have two rounds of consultation in respect of the same change. Therefore, we recommend inserting new section 159OA(3A) to provide that the Minister is not required to consult on a proposed variation of a funding mechanism where it concerns changes to the conditions that limit the fees an organisation may charge domestic students. Such a variation would have been subject to prior consultation, as noted above.

Notifying a provider when an investigation begins

Clause 10 would amend section 159E of the Education Act to enable the TEC to charge a tertiary education organisation (TEO) a fee for investigating a confirmed breach of a funding condition. We recommend amending clause 10 to insert new section 159E(2B) requiring the TEC to first notify the affected organisation of the proposed investigation and its start date before charging a fee.

Consideration of submissions on a proposed condition

Clause 16 would amend section 159YC of the Education Act so that the TEC could set conditions for the approval of funding. Any condition must be reasonably necessary for the effective monitoring of the performance of a TEO and the tertiary education sector. A condition could cover both a TEO's funded and unfunded activities.

We recommend amending section 159YC(2A) to make it clear that, before giving funding approval, the TEC must give the organisation concerned at least 21 days' notice of the proposed condition, and consider any submission it made about the proposed condition. This would ensure that TEOs have the opportunity to raise any issues with the TEC before a condition is imposed.

Definitions about the recording of student achievement

Clause 9 would amend section 159(1) of the Education Act by providing definitions of terms including "credit" and "record of achievement".

We recommend replacing "credit" with the broader term "educational outcome" and the following definition:

"educational outcome means a credit, grade, mark, or other measure of student achievement that contributes towards the student gaining:

- a qualification listed on the Qualifications Framework; or
- an award that recognises the successful completion of a training scheme; or
- recognition for successfully meeting the learning outcomes of a standard listed on the Directory of Assessment Standards."

This new definition would cover all the ways in which student achievement may be recorded by a provider on a record of achievement, rather than only what is recorded at the completion of a unit of study or training.

We also recommend replacing the definition of “record of achievement” with the following:

“record of achievement means a record of a student’s educational outcomes maintained by the Qualifications Authority, a tertiary education provider, or an industry training organisation.”

The revised definition uses “educational outcomes” instead of “credits”, reflecting our amendment above. It also includes industry training organisations, but excludes schools.

Offence provisions for falsely awarding credits

Clause 38 would amend section 292C of the Education Act to make it an offence to falsify a record of achievement. We recommend deleting proposed new section 292C(2A) and replacing section 292C(3) of the Education Act to describe more clearly what constitutes an offence of falsifying an educational outcome on a student’s record of achievement.

We also recommend increasing the penalty for the various offences concerning falsifying student records under subsections 292C(1) or (3) to a fine not exceeding \$50,000. We understand that this amount is comparable to fines charged for similar offences. The current fine under subsection 2 (not exceeding \$10,000 for knowingly receiving a false award) would remain unchanged.

As a result of increasing the penalty, the limitation period for filing a charging document would increase from the current 12 months from the date the offence was committed, to five years. This is provided for by section 25(3)(c) of the Criminal Procedure Act 2011.

We believe our proposed amendments would assist in the detection and prosecution of these offences. Typically they have remained hidden in a provider’s records unless identified in the course of the New Zealand Qualifications Authority’s (NZQA) normal quality assurance activities. It may be up to four years before a routine evaluation and review uncovers possible offending by a tertiary education organisation.

We consider that the amendments would provide an appropriate level of deterrence, and would reflect the gravity of the offending in terms of its effect on the public’s confidence in the integrity of the qualifications system.

Consistent treatment of tertiary education providers

Government members recommend removing clauses 12 and 13 from the bill. The majority of submitters also supported this deletion.

Opposition members are strongly opposed to deleting these clauses. The clauses would have established the principle that providers with similar offerings and outcomes for students should receive the same rate of funding. This is currently the practice. Opposition members are concerned that removing these clauses will introduce uncertainty into the sector and reduce investment over time.

In accordance with this recommendation, we also recommend deleting the definition of “equal treatment principle” from clause 9(1).

Schools’ management of international student misconduct

Clause 5 would insert new sections 4(2A) and (2B) to allow the board of a school to take appropriate disciplinary action against an international student. This could include suspension, exclusion, or the termination of the student’s enrolment if the action is in accordance with the Education (Pastoral Care of International Students) Code of Practice 2016, and the contract of enrolment. We recommend amending subsection (2A) to read, “If an international student’s conduct is in breach of the contract of enrolment, the board of the school may take appropriate disciplinary action against the student.” This amendment would explain the situation more simply and what action may be taken by whom.

Clauses 7 and 8 would amend section 13 of the Education Act to make it clear that sections 14 to 18AA of that Act only apply to domestic students. These sections set out the requirements and conditions for the stand-down, suspension, exclusion, or expulsion of students during school hours or activities.

Definition of “contract of enrolment”

International students can enter into binding enrolment contracts, subject to the limits of enforceability against a minor under the Contract and Commercial Law Act 2017. Such a contract would not be enforceable if the student was a minor.

To be clear about what is meant by a contract of enrolment, we recommend inserting clause 4A to include in section 2 of the Education Act the following definition of “contract of enrolment”:

“Contract of enrolment, in relation to an international student, means a written contract entered into between the student (or the student’s parent if the student is under the age of 18) and the board of a State school that entitles the student to receive tuition at the school.”

This would make it clear that the contract relates to receiving tuition at a school. It would also be consistent with the Contract and Commercial Law Act, and clause 16(4) of the Education (Pastoral Care of International Students) Code of Practice.

Comment from the Regulations Review Committee

The Regulations Review Committee wrote to the Education and Science Committee of the previous Parliament expressing concern that the bill would provide for disciplinary action against international students to be governed solely by the code of practice, and would exclude them from sections 13 to 18AA of the Education Act.

In this regard it made the following two recommendations:

- that the bill be amended to provide for the stand-down, suspension, exclusion, or expulsion of international students for misconduct inside and outside of school in the primary legislation

- alternatively, that the committee insert an amendment to section 238F of the Education Act to set clear limits on the regulation-making power in relation to the code of practice.

We appreciate the concerns of the Regulations Review Committee about a substantive matter of policy being determined by a code of practice. However, we consider it clearer and more effective to provide fair disciplinary procedures in the code of practice, rather than in legislation that was designed primarily to protect domestic students' access to schools. The code of practice has been specifically designed to protect international students' well-being and rights.

Section 238F of the Education Act sets out the purpose and scope of the code. We consider that these provisions ensure that the processes allowing for suspension, exclusion, or termination of a student's enrolment incorporate the principles of natural justice and fairness.

The export education levy and international students at private or partnership schools

Clause 34 would amend section 238I so that the funds of the export education levy could be used to reimburse a student if a private school or partnership school kura hourua was unable to provide a course of study or training on which the student was enrolled, and was unable to reimburse the student.

We recommend amending clause 34 to remove the references to partnership schools kura hourua. This is because it is government policy to discontinue this type of school.

Continued use of the term private training establishment

We recommend amending clause 9 by removing the term "independent tertiary establishment" and its definition. As a result, the existing term "private training establishment" would continue to be used to describe privately owned tertiary education providers. This reflects government policy.

Introduction of community tertiary education providers

We recommend amending clause 9 to include a new type of establishment: "community tertiary education provider". The Minister of Education will establish criteria to determine what would constitute a community tertiary education provider.

In accordance with our recommendation to recognise community tertiary education providers, we recommend inserting clause 31A to add section 232AA to the Education Act. New section 232AA(1) would provide for the Minister, by notice in the Gazette, to recognise a registered establishment as a community tertiary education provider. Under subsection (2) the Minister must, by notice in the Gazette, specify the criteria for recognition of a registered establishment as a community tertiary education provider.

Written resolutions

Clause 28 would insert new section 178A to provide for an institution's council to pass resolutions in writing without the need for a meeting.

We recommend removing this clause, as it would contradict the Local Government Official Information and Meetings Act 1987 which requires council meetings to be open to the public.

Provision of compulsory student services fee information

Clause 31 would amend section 227A of the Education Act to enable the Minister to direct an institution to include information about its compulsory student services fees in its annual report and on its internet site.

Similarly, clause 33 would amend section 235D to enable the Minister to direct a private training establishment to include information about its compulsory student services fees in its annual written report to students and on its internet site.

We recommend amending sections 227A(1)(d)(iii) and 235D(1)(d)(iii) so that the compulsory student services fee would be expressed as an amount payable per student, rather than an amount payable per equivalent full-time student. This would avoid any confusion.

Appendix

Committee process

The Education (Tertiary Education and Other Matters) Amendment Bill was referred to the Education and Science Committee of the 51st Parliament on 11 May 2017. It was reinstated with the Education and Workforce Committee of the 52nd Parliament.

The closing date for submissions was 23 June 2017. The Education and Science Committee received and considered 2,054 submissions from interested groups and individuals. That committee heard oral evidence from 49 submitters at hearings in Wellington.

The Regulations Review Committee reported to the Education and Science committee on the powers contained in clauses 5 and 8. Both committees received advice from the Ministry of Education.

Committee membership

Sarah Dowie (Chairperson)

Hon Paul Goldsmith

Hon Nikki Kaye

Denise Lee

Marja Lubeck

Jo Luxton

Hon Tim Macindoe

Mark Patterson

Jamie Strange

Chlöe Swarbrick

Jan Tinetti

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Chris Hipkins

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Education (Tertiary Education and Other Matters) Amendment Act **2016**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Education Act 1989 (the **principal Act**).
- 4 ~~New section 1A inserted (Transitional, savings, and related provisions)~~** 10
After section 1, insert:

1A Transitional, savings, and related provisions
The transitional, savings, and related provisions set out in **Schedule 1A** have effect according to their terms.

Part 1

Amendments to principal Act relating to international and domestic school students

4A	Section 2 amended (Interpretation)	5
	In section 2(1), insert in its appropriate alphabetical order:	
	<u>contract of enrolment, in relation to an international student, means a written contract entered into between the student (or the student’s parent if the student is under the age of 18) and the board of a State school that entitles the student to receive tuition at the school</u>	
5	Section 4 amended (Enrolment of international students)	10
(1)	In section 4(2), replace “section 4B and to subsections (3) and (4)” with “sections 4B and 13A and to subsections (2A) to (4)”.	
(2)	After section 4(2), insert:	
(2A)	If an international student’s conduct is in breach of the written contract of enrolment entered into between a State school and the student (or the student’s parent or legal guardian) , the board of the school may take appropriate disciplinary action against the student.	15
(2B)	For the purposes of subsection (2A) , disciplinary action, including suspension, exclusion, or the termination of the student’s enrolment, is appropriate disciplinary action if it is taken in accordance with the most recent code of practice published under section 238F and the written contract of enrolment .	20
6	Cross-heading above section 13 amended	
	In the cross-heading above section 13, after “ <i>of</i> ”, insert “ <i>domestic</i> ”.	
7	Section 13 amended (Purpose)	
	In section 13, replace “of a student” with “of a domestic student”.	25
8	New section 13A inserted (Application of sections 14 to 18AA)	
	After section 13, insert:	
13A	Application of sections 14 to 18AA	
	Sections 14 to 18AA <u>(and any rules made under section 18AA)</u> apply only in relation to domestic students.	30

Part 2

Amendments to principal Act and other enactments ~~enactment~~ relating to tertiary education

9 Section 159 amended (Interpretation)

- (1) In section 159(1), insert in their appropriate alphabetical order: 5
- community tertiary education provider** means a registered establishment that has been recognised by the Minister under **section 232AA**
- credit** means a unit of completed study or training towards an award
- educational outcome** means a credit, grade, mark, or other measure of student achievement that contributes towards the student gaining— 10
- (a) a qualification listed on the Qualifications Framework; or
- (b) an award that recognises the successful completion of a training scheme; or
- (c) recognition for successfully meeting the learning outcomes of a standard listed on the Directory of Assessment Standards 15
- equal treatment principle** means the principle set out in **section 159NA(1)**
- independent tertiary establishment** means an establishment, other than an institution, that provides post-school education or vocational training
- record of achievement**, in relation to a student, means a record, maintained by the Qualifications Authority or a tertiary education provider, of the credits and the results achieved by the student 20
- record of achievement** means a record of a student's educational outcomes maintained by the Qualifications Authority, a tertiary education provider, or an industry training organisation
- (2) In section 159(1), repeal the definition of **private training establishment**. 25
- (2) In section 159(1), definition of **tertiary education provider**, paragraph (d), delete “(for example, community education providers)”. 25

10 Section 159E amended (Charging)

In section 159E, insert as **subsections (2A) to (5)**:

- (2A) The Commission may charge an organisation a fee relating to the cost of the Commission investigating whether the organisation has breached or is breaching a condition subject to which the organisation was given funding approval under section 159YA or funding under section 159ZC if the Commission finds that the organisation has breached or is breaching such a condition. 30
- (2B) However, the Commission may charge a fee under **subsection (2A)** only if the Commission has notified the affected organisation of the proposed investigation and the date on which the investigation will start. 35

- (3) In reaching a decision on whether to charge an organisation a fee under **subsection (2A)** and on the amount of the fee (if one is to be charged), the Commission must have regard to—
- (a) the nature and seriousness of the breach; and
 - (b) the effect that a fee would have on the operation, long-term viability, and performance of the organisation. 5
- (4) The Governor-General may, by Order in Council, on the recommendation of the Minister made in accordance with **subsection (5)**, make regulations—
- (a) prescribing the criteria against which the Commission must assess a breach to determine the nature and seriousness of the breach for the purposes of **subsection (3)**; and 10
 - (b) prescribing the criteria against which the Commission must assess a proposed fee to determine, for the purposes of **subsection (3)**, the effect that the fee would have on the operation, long-term viability, and performance of an organisation; and 15
 - (c) specifying the maximum percentage or proportion of the cost incurred by the Commission in its investigation that may be charged as a fee by the Commission under **subsection (2A)**.
- (5) Before making a recommendation under **subsection (4)**, the Minister must consult all persons and organisations that the Minister considers ought to be consulted. 20

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

In section 159M, after “section 159L”, insert “or in varying a determination under **section 159OA**,”.

12 New section 159NA inserted (Funding mechanisms consistent with principle of equal treatment of all tertiary education providers) 25

After section 159N, insert:

~~159NA Funding mechanisms consistent with principle of equal treatment of all tertiary education providers~~

- (1) Every funding mechanism must be consistent with the principle that an activity or approved programme or training scheme is to be funded at the same rate as a directly comparable activity or directly comparable approved programme or training scheme, regardless of the identities of the tertiary education providers concerned. 30
- (2) Despite **subsection (1)**, the Commission may provide funding at different rates if there is a difference in the extent to which each tertiary education provider has achieved its proposed outcomes in relation to the activity or approved programme or training scheme, as measured by the performance indicators— 35
 - (a) specified in the plan in relation to which funding approval is given; or

- (b) agreed with the Commission if funding is given under section 159ZC.
- (3) Despite ~~subsection (1)~~, the Commission may provide funding at different rates, or provide funding on a different basis, if that is in accordance with a funding mechanism—
- (a) that uses a contestable funding process to reach decisions on the allocation of funding between tertiary education providers in respect of directly comparable activities or directly comparable approved programmes or training schemes; or 5
- (b) that is designed to allocate funding between tertiary education providers based on performance. 10
- (4) For the purposes of this section and section 159O,—
- (a) activities are directly comparable if the proposed outcomes in relation to the activities are the same or substantially the same; and
- (b) approved programmes or training schemes are directly comparable if the qualifications resulting from their successful completion are the same or substantially the same. 15
- (5) In this section and section 159O,—
- activity** includes anything, except for an approved programme or training scheme, for which funding may be provided under a funding mechanism
- proposed outcomes** means the outcomes proposed in the plan in relation to which funding approval is given or, if funding is given under section 159ZC, the outcomes agreed with the Commission. 20

13 Section 159O amended (Commission to implement funding mechanisms)

In section 159O, insert as subsection (2):

- (2) The Commission, in implementing the funding mechanisms, must have regard to the equal treatment principle. 25

14 New section 159OA inserted (Variation of determination of design of funding mechanisms)

After section 159O, insert:

159OA Variation of determination of design of funding mechanisms 30

- (1) After the Commission has implemented, or started to implement, the funding mechanisms under section 159O, the Minister may vary the determination of the design of the funding mechanisms.
- (2) The Minister may only vary a determination—
- (a) if it is reasonably necessary to do so; and 35
- (b) by making changes in relation to the matters mentioned in section 159L(2)(a) and (b) and (3)(a) to (e).

- (3) Before deciding to vary a determination, the Minister must consult—
- (a) all organisations that would be affected by a variation that the Minister proposes; and
 - (b) all other persons and organisations that the Minister considers ought to be consulted. 5
- (3A) However, the Minister is not required to consult under **subsection (3)** in relation to a variation of the conditions under section 159L(3)(d) that set limits on the fees that organisations may charge domestic students.
- (4) If the Minister varies a determination, an organisation affected by the variation must— 10
- (a) consider whether any amendments are needed to its plan as a result of the variation; and
 - (b) if it considers that a significant amendment is needed to its plan, or that its plan needs to be replaced, ask the Commission to approve the significant amendment to, or the replacement of, its plan under section 159YK. 15
- (5) If the Minister varies a determination and, as a result of the variation, the Commission must attach new conditions to funding under a funding mechanism,—
- (a) the Commission must attach the new conditions to any funding approval that it has given under that funding mechanism; and
 - (b) the Commission must notify any affected organisation of the attachment of the new conditions to the organisation’s funding approval; and 20
 - (c) the new conditions take effect on the date on which the affected organisation is so notified.
- (6) If the Minister varies a determination, the variation takes effect on a date specified by the Minister that must be no earlier than whichever is the later of the following: 25
- (a) the day that is 3 months after the date on which the Minister varies the determination;
 - (b) the beginning of the calendar year after the calendar year during which the Minister varies the determination. 30

15 Section 159U amended (Exemption from requirement to submit proposed plan)

After section 159U(3), insert:

- (4) If the Commission exempts an organisation under subsection (1), the Commission may fund that organisation under section 159ZC as if it were an organisation for which a funding mechanism provides for funding other than via plans. 35

16 Section 159YC amended (Conditions on receiving funding under section 159YA)

- (1) In section 159YC(2)(b), after “will be achieved”, insert “; or”.
- (2) After section 159YC(2)(b), insert:
 - (c) conditions that the Commission considers reasonably necessary to enable the Commission to effectively monitor the performance of organisations and the tertiary education sector generally. 5
- (3) After section 159YC(2), insert:
 - (2A) If the Commission intends to give funding approval subject to a condition of the type described in **subsection (2)(c)**, the Commission ~~must give the affected organisation at least 21 days’ notice of the proposed condition before giving the funding approval.~~ must, before giving funding approval,— 10
 - (a) give the affected organisation at least 21 days’ notice of the proposed condition; and
 - (b) consider any submissions on the proposed condition made by the organisation. 15

17 Section 159YD amended (Accountability for funding received under section 159YA)

In section 159YD(1), delete “(other than an institution)”.

18 Section 159YE amended (Expiry of funding approval) 20

In section 159YE(2), after “revoked”, insert “or withdrawn”.

19 Section 159YG amended (Commission may suspend or revoke funding given under section 159YA)

- (1) In the heading to section 159YG, replace “**or revoke**” with “**, revoke, or withdraw**”. 25
- (2) After section 159YG(5), insert:
 - (6) The Commission may withdraw some or all funding given under section 159YA at the written request of the organisation to which the funding has been given.
 - (7) If the Commission withdraws some or all funding under **subsection (6)**, it must advise the organisation of the date on which the funding will be withdrawn. 30

20 Section 159YI amended (Effect of suspending or revoking funding given under section 159YA)

- (1) In the heading to section 159YI, replace “**or revoking**” with “**, revoking, or withdrawing**”. 35
- (2) In section 159YI(2), after “revoking”, insert “or withdrawing”.

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(3) In section 159YI(2)(b), after “revoked”, insert “or withdrawn”.	
21 Section 159YK amended (Organisation may seek approval for significant amendment, or replacement, of plan)	
(1) In section 159YK(1), after “plan that”, insert “satisfies the criteria set by the Commission under subsection (1A) and that”.	5
(2) After section 159YK(1), insert:	
(1A) The Commission must —	
(a) set the criteria that must be satisfied by an amendment for the purposes of subsection (1); and	
(b) publish those criteria in the <i>Gazette</i> .	10
(3) In section 159YK(2), delete “, or the replacement of,”.	
(4) After section 159YK(2), insert:	
(2A) An organisation may, at any time, ask the Commission to approve the replacement of a plan if the organisation considers that the criteria for replacement of a plan are satisfied.	15
(2B) The Commission must —	
(a) set the criteria for replacement of a plan; and	
(b) publish those criteria in the <i>Gazette</i> .	
(1) <u>In section 159YK(2), after “plan”, insert “if the organisation considers that the criteria for significant amendment to a plan or the criteria for replacement of a plan are satisfied”.</u>	20
(2) After section 159YK(2), insert:	
(2A) <u>The Commission must —</u>	
(a) <u>set the criteria for significant amendment to a plan; and</u>	
(b) <u>set the criteria for replacement of a plan; and</u>	25
(c) <u>publish those criteria in the <i>Gazette</i>.</u>	
(5) In section 159YK(7), after “it”, insert “if the Commission considers that <u>a the criteria for significant amendment should be made to the a</u> plan or that the criteria for replacement of a plan are satisfied”.	
22 Section 159ZE amended (Accountability for funding received under section 159ZC)	30
In section 159ZE(1), delete “(other than an institution)”.	
23 Section 159ZF amended (Commission may suspend or revoke funding given under section 159ZC)	
(1) In the heading to section 159ZF, replace “or revoke” with “ , revoke, or with- draw”.	35

- (2) After section 159ZF(4), insert:
- (5) The Commission may, at the written request of an organisation, withdraw some or all payment, or any or all further payments, of any funding given to the organisation under section 159ZC.
- (6) If the Commission withdraws funding under **subsection (5)**, it must advise the organisation of the date on which the funding will be withdrawn.

24 Section 167 replaced (Affixing of council's common seal)

Replace section 167 with:

167 Common seal

- (1) An institution may have a common seal if its council adopts one by statute. 10
- (2) A council may, by statute,—
 - (a) specify the type or class of documents that may be executed by affixing the common seal to them; and
 - (b) specify the type or class of documents that may be executed only by affixing the common seal to them; and 15
 - (c) specify any member or members of the council, and any member or members of the staff of the institution, who may countersign documents (or a specified type or class of documents) to which the common seal is affixed.
- (3) The common seal of an institution must be judicially noticed in all courts and for all purposes. 20

25 New section 167A inserted (Method of contracting)

After section 167, insert:

167A Method of contracting

- (1) An institution may enter into a contract or other enforceable obligation as provided in this section. 25
- (2) An obligation that, if entered into by an individual, is required to be entered into by deed may be entered into by the council in writing, signed under the name of the institution by 2 or more members of the council.
- (3) An obligation that, if entered into by an individual, is required to be entered into in writing may be entered into by the council in writing, signed by 1 person or more than 1 person acting under the institution's express or implied authority. 30
- (4) An obligation that, if entered into by an individual, is not required to be entered into in writing may be entered into by the council in writing or orally by a person acting under the institution's express or implied authority. 35
- (5) This section applies to a contract or other enforceable obligation—

- (a) whether or not that obligation was entered into in New Zealand; and
- (b) whether or not the law governing that obligation is the law of New Zealand.

26 Section 176 amended (Casual vacancies)

In section 176(2), replace “3” with “6”. 5

27 Section 178 amended (Meetings of councils)

After section 178(4), insert:

- (4A) Meetings may be held by means of audio, audio and visual, or electronic communication if—
 - (a) each member who wishes to participate in the meeting has access to the technology needed to participate in the meeting; and 10
 - (b) a quorum of members can simultaneously communicate with each other throughout the meeting.
- (4B) If a meeting is held in accordance with **subsection (4A)**, each member who participates in the meeting by means of audio, audio and visual, or electronic communication is present at the meeting for the purposes of subsections (5) to (9). 15

28 ~~New section 178A inserted (Written resolutions of councils)~~

After section 178, insert:

- 178A ~~Written resolutions of councils~~** 20
 - (1) ~~A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members of the council who are entitled to vote on the matter is as valid and effectual as if it had been passed at a meeting of the council.~~
 - (2) ~~The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.~~ 25

29 New sections 201C to 201E inserted

After section 201B, insert:

- 201C Council may establish common fund**
 - (1) This section and **sections 201D and 201E** are for the avoidance of doubt. 30
 - (2) The council of an institution may—
 - (a) establish a common fund; and
 - (b) subject to **subsections (3) and (4)**, invest any trust funds in its possession, in whole or in part, in the common fund (whether the funds came into the council’s possession before or after this section came into force). 35

- (3) If the council has in its possession trust funds of a trust of which the council is a co-trustee, the council may only invest those trust funds in the common fund with the consent of all the other co-trustees.
- (4) The council may not invest trust funds in the common fund if this would be inconsistent with the terms of any trust instrument governing the investment of the trust funds. 5

201D Investment of funds held in common fund

- (1) The council may invest funds that are held in a common fund only in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds. 10
- (2) Investments of funds held in a common fund must not be made on account of, and do not belong to, any particular trust, but the council must, at all times, maintain an account showing the entitlement of each trust in the common fund.
- (3) If trust funds are invested in a type or class of investment in which the common fund may be invested, the council may transfer that investment to the common fund and, if it does so,— 15
 - (a) the investment ceases, at the time of transfer, to belong to the trust that held the investment; and
 - (b) the council must give credit in the common fund to the trust for the fair market value of the investment at the time of transfer. 20
- (4) Any profit or loss upon the realisation of any investment in a common fund is to be credited or debited to the common fund.

201E Income and capital of common fund

- (1) Each financial year, the council must— 25
 - (a) pay or allocate the income from the common fund to the trusts entitled to the amounts invested in the common fund— 25
 - (i) in proportion to the value of their respective interests in the common fund; and
 - (ii) at a uniform rate determined by the council; and
 - (b) hold the capital of the common fund on behalf of the trusts entitled to the amounts invested in the common fund in proportion to the value of their respective interests in the common fund; and 30
 - (c) hold any income that is not paid or allocated to trusts, and any capital that is not held on behalf of trusts, in a reserve fund separate from other trust funds. 35
- (2) The council may apply funds held in the reserve fund, including any income derived from investments of the reserve fund, for any of the following purposes:
 - (a) augmenting the capital of the common fund:

- (b) reinstating any losses of capital in the common fund:
 - (c) increasing or supplementing the income paid or allocated to trusts that have interests in the common fund.
 - (3) The council may withdraw any amount from the common fund to the credit of a trust that has an interest in the common fund— 5
 - (a) for the purpose of investing the amount on a separate account for the trust; or
 - (b) for any other purpose relating to the exercise and discharge of its duties, powers, authorities, and functions.
 - (4) If any amount is withdrawn from the common fund to the credit of a trust that has an interest in the common fund,— 10
 - (a) that amount may, at the discretion of the council, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments; and
 - (b) as from the date of its withdrawal, the trust has no claim on the fund in respect of the amount, whether for interest or otherwise. 15
 - (5) The council—
 - (a) may charge a reasonable fee, payable out of the income received by the common fund, for services provided by the council in relation to the administration or management of the common fund; and 20
 - (b) must publish the amount of any such fee, and the method by which the fee is calculated or applied (and any change to that method), in the annual report.
- 30 Section 220 amended (Annual report)**
- After section 220(2B), insert: 25
- (2C) A statement of service performance under subsection (2A)(f) must be prepared in accordance with generally accepted accounting practice, within the meaning of section 8 of the Financial Reporting Act 2013.
- 31 Section 227A amended (Ministerial direction to institutions relating to compulsory student services fees)** 30
- Replace section 227A(1)(d) with:
- (d) requires the institution or institutions to include the following information in the institution's annual report (under section 220):
 - (i) a description of the services funded out of the student services fee:
 - (ii) a statement of the fee income and expenditure for each type of student service: 35
 - (iii) the student services fee expressed as an amount payable per equivalent full-time student:

- (iv) a statement describing how the institution has complied with a ~~any~~ requirement to hold fees in a manner specified in a direction given under paragraph (b):
- (e) requires the institution or institutions to publish information about the following matters on an Internet site maintained by the institution:
 - (i) the student services fee expressed as an amount payable per ~~equivalent full-time~~ student: 5
 - (ii) the arrangements that the institution has established for decisions to be made jointly or in consultation with students or their representatives in accordance with paragraph (c): 10
 - (iii) how students can participate in the process of joint decision making or consultation mentioned in paragraph (c).

31A New section 232AA and cross-heading inserted

After section 232, insert:

Recognition of community tertiary education provider 15

232AA Minister may recognise community tertiary education provider

- (1) The Minister may, by notice in the *Gazette*, recognise a registered establishment as a community tertiary education provider.
- (2) The Minister must, by notice in the *Gazette*, specify the criteria for recognition of a registered establishment as a community tertiary education provider. 20

32 Section 235 amended (Refund entitlements of domestic students)

After section 235(1), insert:

- (1A) ~~An independent tertiary~~ A private training establishment must—
 - (a) allow every domestic student enrolled for a programme or training scheme that is of less than 3 months' duration to withdraw from it within a period (being less than 7 days) specified by the Authority; and 25
 - (b) refund to every domestic student who so withdraws a minimum amount or proportion, specified by the Authority, of any payments made by the student to the establishment in respect of the programme or training scheme. 30

33 Section 235D amended (Ministerial direction to registered private training establishments relating to compulsory student services fees)

Replace section 235D(1)(d) with:

- (d) requires the establishment or establishments to provide each year to students a written report including the following information: 35
 - (i) a description of the services funded out of the student services fee:

- (ii) a statement of the fee income and expenditure for each type of student service:
- (iii) the student services fee expressed as an amount payable per equivalent full-time student:
- (iv) a statement describing how the establishment has complied with any requirement to hold fees in a manner specified in a direction given under paragraph (b): 5
- (e) requires the establishment or establishments to publish information about the following matters on an Internet site maintained by the establishment: 10
 - (i) the student services fee expressed as an amount payable per equivalent full-time student:
 - (ii) the arrangements that the establishment has established for decisions to be made jointly or in consultation with students or their representatives in accordance with paragraph (c): 15
 - (iii) how students can participate in the process of joint decision making or consultation mentioned in paragraph (c).

34 Section 238I amended (Purpose and administration of export education levy)

- (1) In section 238I(1A)(a), after “establishment”, insert “~~;~~or a private school~~;~~~~or partnership school kura hourua~~”. 20
- (2) In section 238I(1A)(b), after “18”, insert “~~,~~ or the private school held a current registration under section 35A~~,~~ ~~or the partnership school kura hourua was a school in respect of which a partnership school contract was in force~~”. 25
- (3) In section 238I(1A)(c), after “establishment”, insert “~~;~~or private school~~;~~~~or partnership school kura hourua~~”. 25
- (4) In section 238I(1B)(a), (b), and (c)(ii), after “establishment”, insert “~~;~~or private school~~;~~~~or partnership school kura hourua~~” in each place.
- (5) After section 238I(1B), insert:
- (1C) In subsections (1A) and (1B), ~~partnership school kura hourua and partnership school contract~~ have the same meanings as in section 2(1). 30

35 Cross-heading above section 253C replaced

Replace the cross-heading above section 253C with:

Use of certain terms in name or description of registered establishment or wananga

- 36 Section 253C amended (Minister may consent to registered establishments using certain terms in their names)**
- (1) Replace the heading to section 253C with “**Minister may consent to use of certain terms in name or description of registered establishment or wananga**”. 5
 - (2) Repeal section 253C(1).
 - (3) Replace section 253C(2) with:
 - (2) A registered establishment may apply to the Minister for consent to describe itself using the term university, college of education, polytechnic, or institute of technology. 10
 - (2A) A wananga may apply to the Minister for consent to describe itself using the term university, college of education, polytechnic, or institute of technology.
 - (4) In section 253C(3) and (4), after “(2)”, insert “or **(2A)**”.
 - (5) In section 253C(3)(b), after “Authority”, insert “and from the Commission”.
 - (6) Replace section 253C(5) with: 15
 - (5) The Minister may grant consent under **subsection (2) or (2A)** subject to conditions that the Minister considers reasonably necessary to—
 - (a) ensure that students, employers, and members of the public are adequately informed of the legal status or characteristics of the registered establishment or wananga to which the consent is granted; and 20
 - (b) ensure adequate protection of the quality and reputation of the institutions that may use the term without applying to do so; and
 - (c) protect the interests of the tertiary education system and the nation as a whole.
 - (5A) The Minister may, at any time, carry out a review of a registered establishment or wananga to assess whether it is continuing to comply with any conditions subject to which it was granted consent under **subsection (2) or (2A)**. 25
 - (7) In section 253C(6), after “If”, insert “, having regard to a review carried out under **subsection (5A)**,”.
 - (8) In section 253C(6), after “establishment”, insert “or wananga”. 30
 - (9) In section 253C(6), replace “requirements for consent to use the term for which consent has been given” with “conditions subject to which it was granted consent under **subsection (2) or (2A)**”.
- 37 Section 292 amended (Offences relating to use of certain terms)**
- In section 292(1)(a)(ii), (b)(ii), (c)(ii), and (d)(ii), after “registered establishment”, insert “or wananga”. 35

Part 2 cl 38	Education (Tertiary Education and Other Matters) Amendment Bill	
38	Section 292C amended (Offence to issue false qualifications and falsify records)	
	After section 292C(2), insert:	
(2A)	A person commits an offence— (a) who knowingly or recklessly makes a false representation on a student’s record of achievement that the student has achieved a credit; (b) who without reasonable excuse causes a false representation to be made on a student’s record of achievement that the student has achieved a credit.	5
(1)	Replace section 292C(3) with:	10
(3)	A person commits an offence if the person— (a) enters or changes an educational outcome on a student’s record of achievement, knowing that or being reckless as to whether the entry or change has the effect of falsifying the student’s record; or (b) fails to enter an educational outcome on a student’s record of achievement, knowing that or being reckless as to whether the omission has the effect of falsifying the student’s record; or (c) without reasonable excuse or lawful authority, causes an entry or a change to be made on a student’s record of achievement that has the effect of falsifying the student’s record.	15
(2)	In section 292C(4), replace “against this section” with “under subsection (2)”.	20
(3)	After section 292C(4), insert:	
(5)	A person who commits an offence under subsection (1) or (3) is liable on conviction to a fine not exceeding \$50,000.	
39	New Schedule 1A Part 5A of Schedule 1 inserted	25
	Insert the Schedule 1A set out in Schedule 1 of this Act as the first schedule to appear after the last section of the principal Act. In Schedule 1, after Part 5, insert the Part 5A set out in Schedule 1 of this Act.	
40	Consequential amendments to principal Act	
	Amend the principal Act as set out in Schedule 2 .	30
41	Consequential <u>amendment</u> amendments to other enactments	
	Amend the enactments <u>enactment</u> specified in Schedule 3 as set out in that schedule.	

Schedule 1
New ~~Schedule 1AA~~ Part 5A of Schedule 1 inserted

s 39

Schedule 1AA
~~Transitional, savings, and related provisions~~

5

s 1A

Part 15A
**Provisions relating to Education (Tertiary Education and Other
Matters) Amendment Act 2016**

11A Interpretation

10

In this Part, **commencement date** means the date on which the Education (Tertiary Education and Other Matters) Amendment Act **2016** comes into force.

2 ~~Meaning of private training establishment (section 159)~~

~~Every reference in any enactment (other than this Act), or in any document, to a private training establishment must be read, unless the context otherwise requires, as a reference to an independent tertiary establishment.~~

15

311B Variation of determination of design of funding mechanisms (section 159OA)

A variation of a determination under **section 159OA** may affect an organisation whose plan has been given funding approval, and may involve the attachment of new conditions to the funding approval, whether the funding approval was given before, on, or after the commencement date.

20

411C Accountability for funding (sections 159YD and 159ZE)

Sections 159YD and 159ZE as amended by the Education (Tertiary Education and Other Matters) Amendment Act **2016** apply in relation to funding received by an organisation after the commencement date.

25

511D Casual vacancies (section 176)

Section 176 as amended by the Education (Tertiary Education and Other Matters) Amendment Act **2016** applies in relation to any vacancy that arises after the commencement date.

30

611E Annual report (section 220)

The first statement of service performance to which **section 220(2C)** applies is the statement of service performance for the first financial year that begins after the commencement date.

Schedule 1	Education (Tertiary Education and Other Matters) Amendment Bill
711F	Ministerial direction relating to compulsory student services fees (sections 227A and 235D) Sections 227A and 235D as amended by the Education (Tertiary Education and Other Matters) Amendment Act 2016 apply in the first academic year that begins after the commencement date and all subsequent academic years. 811G Refund entitlements of domestic students (section 235) Section 235(1A) applies in relation to domestic students who enrol for a programme or training scheme on or after the date that is 6 months after the commencement date.

5

Schedule 2

Consequential amendments to principal Act

s 40

In section 159(1), definition of **registered establishment**, replace “a private training establishment” with “an independent tertiary establishment”. 5

In the headings to sections 229D, 232A, 232D, 234B, 235D, 235F, 236A, and 292F, replace “**private training establishments**” with “**independent tertiary establishments**”.

In sections 229D, 235B(2)(a), 235D(1), 235F(2), 280(1)(b) and (d), 282(c), and 303(3), replace “private training establishments” with “independent tertiary establishments” in each place. 10

In sections 229D(a), 232D(1), 232E(1), 233(1), (4), and (5), 233A(1), 233B(1), 233D(2), 234(2), 234D(1), 234E(1), 235(1), 235F(7), (8), and (9), 236A(2), 238I(1A)(a), 253(1)(a)(i) and (e), 254(2)(a)(vii), 255A(1), and 292B(3), replace “a private training establishment” with “an independent tertiary establishment”. 15

In sections 229D(b), 233A(1)(a) and (b), 233C, 233D(1), 233E(2) and (3), 234(1), (2A), (3), (5), and (6), 234A(1) and (2), 234B, 234E(5)(b), 235(2) and (3)(a) and (b), 235A(3)(a) and (b) and (4), 235D(1), (4), and (6), 235F(3)(a) and (b), (4), (5)(b), and (6)(g), 236A(1), and 238I(1A)(b) and (c) and (1B)(a), (b), and (c)(ii), replace “private training establishment” with “independent tertiary establishment” in each place. 20

In the Part 18 heading, replace “**Private training establishments**” with “**Independent tertiary establishments**”.

In section 232, definition of **governing member**, replace “a private training establishment” with “an independent tertiary establishment”.

In section 232, definition of **senior manager**, replace “a private training establishment” with “an independent tertiary establishment”. 25

In sections 232A(1) and (2), 232C, 232D(1), 235A(1), 235E(1), 236(1) and (2), 292D(1) and (2), 292F(2), and 292G(1) and (3), replace “A private training establishment” with “An independent tertiary establishment”.

In the headings to sections 232E and 233A, replace “**private training establishment**” with “**independent tertiary establishment**”. 30

In section 234C(1), definition of **independent trustee**, replace “a private training establishment” with “an independent tertiary establishment”.

In section 234C(1), definition of **refund period**, paragraph (a), replace “private training establishment” with “independent tertiary establishment”. 35

In the heading to section 235E, replace “**Private training establishment**” with “**Independent tertiary establishment**”.

In section 235F(8), replace “the private training establishment” with “the independent tertiary establishment”.

~~In section 238D, definition of **provider**, paragraph (c), replace “private training establishment” with “independent tertiary establishment”.~~

~~In section 253(1)(c), replace “or private training establishment” with “or independent tertiary establishment”.~~

~~In section 255A(1)(a), replace “the private training establishment” with “the independent tertiary establishment”.~~ 5

Schedule 3
Consequential amendment amendments to other enactments

s 41

Public Bodies Contracts Act 1959 (1959 No 98)

In Schedule 1, Part 1, repeal the item relating to tertiary institutions. 5

Part 1
~~Amendments to Acts~~

~~Building (Earthquake-prone Buildings) Amendment Act 2016 (2016 No 22)~~

In section 24, new section 133AE(1)(d)(iii), replace “a private training establishment” with “an independent tertiary establishment”. 10

~~Copyright Act 1994 (1994 No 143)~~

In section 2(1), definition of **educational establishment**, paragraph (e)(ii), replace “private training establishment” with “independent tertiary establishment”.

~~Goods and Services Tax Act 1995 (1995 No 141)~~

In section 78B(2A)(aa)(ia) and (b)(i), replace “a private training establishment” with “an independent tertiary establishment”. 15

In section 78B(2B)(a), replace “a private training establishment” with “an independent tertiary establishment”.

~~Industry Training and Apprenticeships Act 1992 (1992 No 55)~~

In the heading to section 11E, replace “**private training establishments**” with “**independent tertiary establishments**”. 20

In section 11E(1), replace “private training establishment” with “independent tertiary establishment”.

Repeal section 11E(2).

In section 11E(3), replace “**registered private training establishment**” with “**registered independent tertiary establishment**”. 25

In section 11E(3), replace “a private training establishment” with “an independent tertiary establishment”.

~~Privacy Act 1993 (1993 No 28)~~

In section 97, definition of **specified agency**, paragraph (j), replace “private training establishment” with “independent tertiary establishment”. 30

~~Public Bodies Contracts Act 1959 (1959 No 98)~~

In Schedule 1, Part 1, repeal the item relating to tertiary institutions.

~~Residential Tenancies Act 1986 (1986 No 120)~~

In section 5B(6), replace “private training establishments” with “independent tertiary establishments”.

~~Taranaki Scholarships Trust Board Act 1957 (1957 No 108)~~

In section 12(6)(b), replace “private training establishment” with “independent tertiary establishment”. 5

Part 2

Amendments to legislative instruments

~~Education (Refund Requirements for International Students) Notice 2012 (SR 2012/312)~~

10

In clause 3(2), replace “private training establishment” with “independent tertiary establishment”.

In clause 4(2), replace “private training establishment” with “independent tertiary establishment”.

In clause 5, replace “private training establishment” with “independent tertiary establishment”. 15

In clause 6, replace “a private training establishment” with “an independent tertiary establishment”.

In clause 7(1), replace “private training establishment” with “independent tertiary establishment”. 20

In clause 7(2), replace “a private training establishment” with “an independent tertiary establishment”.

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

In rule 28(2)(a), replace “private training establishments” with “independent tertiary establishments”. 25

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

In the Schedule, clause 102(2)(a), replace “private training establishments” with “independent tertiary establishments”.

~~Social Security (Youth Support—Authorised Agencies) Order 2012 (SR 2012/209)~~

30

In the Schedule, replace “private training establishment” with “independent tertiary establishment”.

~~Student Allowances Regulations 1998 (SR 1998/277)~~

~~In regulation 2(1), definition of **tertiary provider**, replace “a private training establishment” with “an independent tertiary establishment”.~~

Legislative history

8 February 2017
11 May 2017
8 November 2017

Introduction (Bill 210–1)
First reading and referral to Education and Science Committee
Reinstated before Education and Workforce Committee