

Education Amendment Bill (No 2)

Government Bill

As reported from the Education and Science
Committee

Commentary

Recommendation

The Education and Science Committee has examined the Education Amendment Bill (No 2) and recommends by majority that it be passed with the amendments shown.

Introduction

The Education Amendment Bill (No 2) proposes amendments to the Education Act 1989 relating to the regulation of the education profession by creating a new body, the Education Council of Aotearoa New Zealand (EDUCANZ). It also proposes amending the regulatory framework for teaching and the disciplinary regime for teachers, amending the governance arrangements of tertiary education institutions, strengthening the quality assurance arrangements in the tertiary education sector, and strengthening the legal framework governing the care and support of international students. The policy objectives of the bill are to ensure that New Zealand's education sector is equipped to meet the challenges and opportunities of the contemporary learning context, create a regulatory framework that pro-

motes accountability and high standards, and drive continuous improvement in the sector.

This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

Commencement and disallowable instruments

We recommend amending the bill to ensure that Schedule 19 and clause 1 of new Schedule 20 would both come into effect on the day after the date on which the bill received the royal assent. The bill as introduced would allow specific sections relating to international education to come into force by Order in Council. The Regulations Review Committee considered the circumstances of the bill were not “rare and exceptional”, so did not justify commencement by Order in Council. The amendments we propose would accommodate the committee’s concerns.

We also recommend amending clause 38, new sections 364, 372, and 383 to provide that *Gazette* notices regarding the fixing of fees made by EDUCANZ under these sections are disallowable instruments for the purposes of the Legislation Act 2012; to state where copies of the notice can be found and obtained free of charge; and to require that they be published on the EDUCANZ website. We also recommend amending new section 387 to provide that the code of conduct for teachers is a disallowable instrument for the purposes of the Legislation Act.

Membership of EDUCANZ

We recommend amending Schedule 3, new Schedule 22, clause 1(2) to include a requirement that at least five council members be teachers registered under section 353, who hold a practising certificate under new section 361 as inserted by clause 38. The bill as introduced proposes establishing a new professional body to lead and promote high-quality teaching, a nine-member council. The bill as introduced sets a maximum of five teachers out of the nine council members, but no minimum. We consider it important that practising teachers be represented, as they will understand the profession best. The proposed amendment would make EDUCANZ’s composition reflect the membership provisions of other similar regulating bodies. The vast majority of submissions on this bill related to this clause.

Discretion when registering teachers

We recommend amending clause 38, new section 353, regarding teacher registration. The bill as introduced details the criteria that a person must meet to be registered as a teacher. It excludes anyone who has been convicted of a specified offence under Schedule 3, new Schedule 21. We propose amending this clause so that people who have been convicted of a specified offence but who have been granted an exemption will be able to be registered, provided EDUCANZ considers that they have met the necessary criteria.

Mandatory reporting of dismissals and resignations

We recommend amending clause 38, new section 392(2). The bill as introduced would require an employer to immediately report to EDUCANZ when a teacher resigned if the resignation came within 12 months of the employer advising the teacher of dissatisfaction with, or its intention to investigate, the teacher's conduct or competence. Our proposed amendment would extend this requirement to notifying EDUCANZ of situations where the employee held a fixed-term position and left when the term expired, if the expiration was within 12 months of the employer advising the employee similarly, so that mandatory reporting would be consistent for teachers on a fixed-term contract and teachers who leave a permanent position.

We also recommend amending clause 38, new section 393. The bill as introduced would require the recent employer of a teacher to report to EDUCANZ if it received a complaint about a teacher's conduct or competence while he or she was an employee. Our proposed amendment specifies that any such report must be in writing, and include a description of the complaint, and what action, if any, the employer took regarding the complaint. The addition of these procedures would be consistent with the processes set out in clause 38, new sections 392, 394, and 395.

Powers of Complaints Assessment Committee

We recommend amending clause 38, new section 401. The bill as introduced would allow the Complaints Assessment Committee of EDUCANZ to censure a teacher who was the subject of a complaint, impose conditions on or suspend their practising certificate, annotate the register or the list of authorised persons in a specified way, or

direct EDUCANZ to impose conditions on any subsequent practising certificate after agreement with the teacher and the complainant. There is sufficient provision in respect of serious misconduct in existing legislation.

The proposed amendment would clarify that these sanctions could only be imposed regarding misconduct that was not serious; serious misconduct would be dealt with by the Disciplinary Tribunal.

We also recommend amending new section 410, to allow EDUCANZ to initiate investigations of matters of teachers' competency. This would be consistent with comparable procedures of other professional regulatory bodies.

Audit and moderation functions of EDUCANZ

We recommend amending clause 38, new section 382. The bill as introduced would require the new council to audit and moderate at least 10 percent of practising certificates each year. We recommend amending this to make clear that the provision would apply to 10 percent of the practising certificates, including renewals, issued in the year in question.

Powers of EDUCANZ

We recommend amending clause 38, new section 383, to allow EDUCANZ to charge for the provision of goods and services that are consistent with its functions. This amendment is intended to clarify that, as a body corporate, EDUCANZ would be able to charge for goods and services.

Appointment of members by councils of institutions

We recommend amending new section 171C, to allow tertiary education institutions to co-opt members onto their councils, up to the size of the council as set out in its constitution. The existing legislation allows councils to co-opt members by means of direct appointment, and our proposed amendment would see this situation continue. Direct appointment of members allows councils to acquire skill sets that are needed at particular times.

Accountability for individual duties

We recommend amending clause 9, new section 176B. The bill as introduced would allow the removal of members of university's councils if they did not comply with their individual duties, as set out in new section 176A. Our proposed amendment would add a reference to section 222AJ which relates to the removal of polytechnics' council members in similar circumstances. This is necessary as a consequence of repealing section 222AI relating to the accountability for individual duties of members of councils of polytechnics.

Disclosure of financial interests

We recommend amending clause 9, new section 176E to clarify that it is the councils of institutions, rather than the actual institutions, that will not be covered by the provisions of the Local Authorities (Members Interests) Act 1968. This Act includes provisions for the disclosure and management of council members financial interests, which are inconsistent with the more specific provisions in section 175 of the Education Act 1989. The proposed amendment would clarify that university and polytechnic councils are bound by Education Act provisions, rather than those of the Local Authority (Members Interests) Act.

Transition to new councils

We recommend amending schedule 1, new schedule 19, clause 9, which includes provisions for the transition to new university and polytechnic councils. These provisions would allow the Minister to give directions he or she thought necessary to ensure that a new council would deal effectively with the business before it after the transition. Our proposed amendment would require the Minister to consult with the council in question before issuing such directions.

Code of practice for pastoral care of international students

We recommend amending clause 24, section 238F(1A)(b) to specify that the proposed code of practice for the pastoral care of international students supports the Government's objectives for international education by ensuring that international students have

a positive experience in New Zealand that supports their educational achievement.

The New Zealand Labour Party minority view

The New Zealand Labour Party is concerned that the changes proposed in this bill have been overwhelmingly opposed by those submitting to the committee, that many useful changes proposed by submitters have been ignored, that robust evidence to support the changes has not been produced, and that the changes are being rushed through in the face of overwhelming opposition.

Creation of EDUCANZ

The proposed Education Council of Aotearoa New Zealand (EDUCANZ) has amongst its functions providing leadership and direction to the teaching profession and enhancing the status of teachers and education leaders, yet an overwhelming number of submissions presented to the committee were opposed to the bill.

Of the 937 submitters commenting on the proposed establishment of EDUCANZ, only six submitters fully supported the proposed amendments, while 855 were completely opposed. Many submitters considered that the model represented low trust in teachers.

A significant number of submitters were concerned that there were no provisions in the bill for a guaranteed number of teachers on the council of EDUCANZ, and that there is no provision for those governed by the new professional body to have a say in who represents them on the council. While the Labour Party welcomes amendments to ensure that at least five of the nine members of the council are registered teachers, we remain concerned that the lack of democratic representation undermines the integrity and independence of the whole organisation.

The majority of submitters commenting on the proposal to replace the existing code of ethics with a new code of conduct were opposed to the move, seeing it as indicative of a low-trust attitude to the profession and a move away from an aspirational to a more punitive approach. Many submitters were also concerned that the inclusion of any relevant minimum standards set by the State Services Commis-

sioner could potentially “gag” teachers, preventing them from making public comments on Government policy affecting education.

A number of submitters expressed concern that the functions to be exercised by EDUCANZ were too wide in scope, particularly given the lack of democratic representation on the council. They were also concerned that the expanded powers could have a financial impact on teachers who pay for the operation of the organisation yet have no say in how it is governed.

The requirement for EDUCANZ to undertake audit and moderation of at least 10 percent of practicing certificates each year could present significant additional cost to the teaching profession for little gain. Best-practice research suggests that the best teacher appraisals are those that are conducted in a collegial manner in a high-trust environment. The compliance focused changes in this bill cut against that notion.

We also share many submitters concerns about the proposal to extend the scope of Limited Authorities to Teach, which seem to completely contradict the Government’s stated desire to establish high standards for the teaching profession.

Changes to tertiary institution governance

At no point in the process of submissions has there been either a sufficient explanation for the proposed changes to tertiary institution governance or the mischief they are designed to remedy.

One lone submitter said that smaller councils were more efficient and that the number of council members should be reduced further, but most submitters said that there was no evidence to demonstrate a correlation between university council size and efficiency or performance. On the contrary, evidence was repeatedly provided of prestigious overseas universities with councils very much bigger than the proposals in this bill. Evidence was also tabled (University of Auckland submission) that showed that a similar reduction in the size of polytechnic councils had not produced better performance; in fact, quite the contrary was true. While there might not be a cause and effect relationship, that evidence certainly did not support the view that smaller councils improved performance.

Every university submitter, including students’ associations as well as staff, unions covering staff, Vice-Chancellors, and Universities NZ

opposed the provisions of these clauses. The loss of specified provision for staff and student representation was one of the major concerns. Labour shares this concern. Allowing student and staff representation is very different from prescribing it in law, and all submitters on this point spoke about the benefits of guaranteed representation of the people who work in the university and the people who pay to attend, together with Māori, Pasifika, and other community representation. In addition, concerns were expressed regarding the impact of the number of ministerial appointees to councils. The number and accountability of ministerial appointees would damage the academic independence of New Zealand universities in the view of all submitters on this point, and would harm the international reputation of our universities. Autonomy is one of the international indices by which universities are ranked. In the view of submitters, this provision in the bill would damage our international reputation. International standing is critically important to international students, on whom our universities increasingly rely for funding. Damage in this area would damage all universities' academic reputation as well as our international student recruitment.

The role of universities as critic and conscience of society is one taken very seriously by our academic community. The level of ministerial influence exercised by this bill is intolerable in the view of the Labour Party. It compromises the universities' autonomy, will harm their reputation and undermine their social critic and conscience function.

One submitter also raised concerns that certain clauses such as clause 9, sections 176A and 176B, were incompatible with sections 160 and 161 of the primary legislation, the Education Act 1989. Labour remains unconvinced that the proposed changes have been adequately set against other provisions in the primary legislation and believes this needs further consideration.

Taken together, these clauses will work to harm the performance, reputation, and societal role of New Zealand's universities and Labour is opposed to them.

Green Party of Aotearoa New Zealand minority view

The Green Party of Aotearoa New Zealand is unable to support this bill. Despite the improvements to some of the procedures around

registration and teachers disciplinary issues the bill sets up a new organisation to represent teachers with broad unclear goals and strong education sector opposition. It also undermines the governance of universities by limiting the numbers and roles on their governance bodies. The clauses relating to the proposed new EDUCANZ body, and on university governance changes, were vigorously opposed by a large number of submitters from all parts of the education sector. The Green Party supports these submitters in their genuine concerns.

Membership of EDUCANZ

The proposed amendment to Schedule 3, new Schedule 22, and clause 1(2) to require at least 5 council members to be registered teachers and to hold a practicing certificate is supported by the Green Party.

Purposes and Functions of EDUCANZ (Clause 382)

Clause 382(1) is a broad statement with unclear and ill-defined language. What is meant by “providing leadership and direction to the education profession”, “enhancing the status of teachers” and “identifying and disseminating best practice”? It is unclear whether these functions are meant to be different from the work of the Education Review Office or Ministry of Education. The changes to the New Zealand Teachers Council functions were a concern to many teachers who were comfortable about a robust registration system but very unsure what these new functions mean and what they will actually achieve. There are concerns that the council will be used to advance the Government’s privatisation agenda and the Green Party believes the absence of a clear rationale for the changes has not assisted the sector to have faith in the bill. It is not clear whether a new educational bureaucracy is being created with undefined roles and powers at a time when the sector has major policy differences with the Government. We believe these clauses needed to have been coherently negotiated and justified or removed. A teachers council could be a logical place for professional development and best practice support but the case was not made for this by the Government.

Name of EDUCANZ (Education Council of Aotearoa New Zealand)

A number of submitters opposed the change to the name and requested that the word “teachers” be included in any title of the board. Given that this is a professional body for teachers we support their comments. This broad title aligns with the vague and broad goals at the beginning of clause 382. It implies teaching is not at the heart of the functions of this body without being clear about its role.

Limited Authority to Teach (365)

The clauses relating to Limited Authority to Teach (LAT) are opposed by the Green Party as they build a long-term reliance on this model and avoid a requirement to commit to professional development and teacher training. The need for an expanded LATs role was not clearly explained. Teacher shortages should be addressed by workforce planning.

Clause 370 allows for LATs to hold three-year terms and also requires these staff to have no educational skills or plan to develop one except being “of good character”, having a police check, and the person running the early childhood education centre or school being satisfied with their capacity. This may well facilitate charter schools but does nothing to strengthen the profession.

Code of conduct

The bill proposes a change from a code of ethics to a code of conduct for teachers. There are no reasons given for this change and teachers are understandably wary of a shift from a high trust professional model to a more prescriptive mechanistic rule book. The Green Party supports a high-trust model which reflects the profession.

Student right of appeal

The bill rightly provides the teaching profession with some appeal rights over disciplinary decisions. The Green Party supports the suggestions from Youth Law that this also be made available to students and their families. We believe students and their families should have the right to appeal to any independent body, such as the Youth Court, to mediate a more restorative practice approach than expulsion from schools. We recognise this is seen by most of the committee as out-

side the scope of this bill, but the Green Party thinks this bill is a good place to create some consistency around appeal rights and that this idea is no more random than the vague provisions on the EDU-CANZ functions.

Tertiary education institution governance

The Green Party strongly opposes the clauses of the bill relating to

- contradictions between function of the university and ministerial powers over board,
- ministerial control of appointments,
- representation of legitimate interests and groups, and
- removal of members.

There was a tiny minority of submitters who saw any value in the changes proposed around tertiary governance.

One submitter who was an expert in governance and management said that the bill had confused the functions and applied the “lean-ness” which works well in management to the governance structures which need to be larger, more open and representative of institutional diversity.

A huge range of submitters, from emeritus professors and university leaders to student association representatives from all the national universities, challenged the university governance provisions. The changes were described as “molesting” universities by a very senior academic leader. The Green Party rejects the bills plan to cut numbers on councils, and give the Minister of Education huge powers to appoint and remove board members. The undermining of student and staff representation has been soundly rejected by all university submitters.

An issue of legal consistency was raised by a professor of law that is of concern to the Green Party. It was pointed out that the legal definition of universities as critic and conscience of society and strongholds of academic freedom is being contradicted in this bill by the clauses that give appointment powers to the Minister and removal powers based on badly drafted unclear criteria. Put simply this means people who disagree with a government can potentially be removed. This is draconian.

The universities feel our reputation as a country and our knowledge of effective university governance models is utterly compromised by

this bill. We support their concerns that these clauses are ideologically driven and unnecessary.

Most of the provisions relating to teacher registration in the bill are innocuous. However we cannot support the bill while it sets up a body with unclear functions which cannot be owned by the teaching profession, and which undermines university governance to an unprecedented level.

The bill has been modified to recognise one major concern for teachers but otherwise remains a huge disappointment to the education sector from early childhood education to university level and we cannot endorse it.

New Zealand First minority view

New Zealand First is unable to support the Education Amendment Bill (No 2) as there are several areas of concern that were raised by submitters that have not been addressed by the committee prior to its reporting back to the House. We will outline the major areas that we believe require addressing below.

We would first address the overwhelming number of submitters who spoke against the changes to the university councils. During the numerous oral submissions it became obvious that the suggested reduction in representation is not required and in fact could put our international educational reputation at risk. For this reason New Zealand First will not support these amendments.

With regard to the establishment of EDUCANZ. It is our view that the removal of “teacher” or “teaching” from the name of the council is an attack on the “profession” of teaching. It is an attempt to change the common understanding of qualified educational professionals and open the door to a wider acceptance of untrained, unqualified, and unregistered individuals inside our compulsory education sector.

We agree with submitters that section 349, as currently worded, does not provide sufficient recognition of trained, qualified, and registered teachers. There is no provision for the preferential appointment of trained, qualified, and registered teachers over individuals holding a Limited Authority to Teach (LAT), or that schools should only be able to appoint a LAT when they have shown that they have fully endeavoured to appoint a teacher as described previously. We accept that

exceptions will be needed, just as they are now, to access individuals with skills in learning areas not ordinarily supported by the New Zealand Curriculum, but believe that these positions are best identified by the schools themselves not at the whim of the individual who is seeking employment.

It is our view that the purpose of this body should be to regulate and lead the teaching profession by focussing on registering and de-registering teachers, awarding practising certificates and monitoring initial teacher education. The bill's proposed purpose statement is too broad and starts to impinge on the duties of the Ministry of Education in some areas and the Education Review Office in others. Our concern is heightened in light of the fact that this new body will be funded from Teacher's Registration Fees, which could be substantially increased with the broadness of that suggested. We agree with submitters that section 382, subsection (1)(c) should be removed.

We also see the shift from a code of ethics to a code of conduct as another move away from the high-trust model required to maintain an aspirational profession.

While this is not an exhaustive list of concerns raised inside this legislation it provides an outline of the areas of greatest concern which leads to our inability to support the legislation further.

Appendix

Committee process

The Education Amendment Bill (No 2) was referred to the committee on 13 March 2014. The closing date for submissions was 30 April 2014. We received and considered 1,568 individual submissions from interested groups and individuals, and 1,156 form submissions. We heard 296 submissions, holding hearings in Auckland and Christchurch as well as Wellington.

We received advice from the Ministry of Education. The Regulations Review Committee reported to the committee on the powers contained in clauses 2 and 21.

Committee membership

Dr Cam Calder (Chairperson)

Maggie Barry

Catherine Delahunty

Chris Hipkins

Colin King

Tracey Martin

Tim Macindoe

Hon Maryan Street

Hon Maurice Williamson

Dr Megan Woods

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Hon Hekia Parata

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education Amendment Act (No 2) **2014**.

2 Commencement

- (1) **Sections 5, 22 to 27, ~~37(1), 37(2), 38, 39(1), 39(2), 39(3),~~ 5**

and 40 to 47 come into force on the earlier of the following:

- (a) a date appointed by the Governor-General by Order in Council:

- (b) **1 September 2016**.

- (2) One or more Orders in Council may be made under **subsection (1)** appointing different dates for different provisions. 10

- (3) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

3 Principal Act

This Act amends the Education Act 1989 (the **principal Act**). 15

Part 1

Amendments to principal Act

4 Section 87 amended (Annual reports)

After section 87(3), insert:

- “(3AA) The annual financial statements in the annual report must be 20
in the form (if any) determined by the Secretary after consultation with the Auditor-General.”

4A Section 158D amended (Partnership School Contracts)

In section 158D(3)(d), replace “registered teachers or holders of” with “people holding a practising certificate or”. 25

5 Parts 10 and 10A repealed

Repeal Parts 10 and 10A.

*Governance of tertiary institutions***6 Sections 171 and 173 replaced**

Replace sections 171 and 173 with:

5

“170A Constitution to provide for membership of council

“(1) The constitution of a council must provide that it has 8, 9, 10, 11, or 12 members.

“(2) **Subsection (1)** does not apply to the constitution of the council of a designated polytechnic.

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“171 Membership of council

“(1) The council of an institution must have a total of 8, 9, 10, 11, or 12 members, as provided in its constitution, comprising—

“(a) the following number of members appointed by the Minister by written notice to the council:

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“(i) 4 members (in the case of a council comprising 10, 11, or 12 members):

“(ii) 3 members (in the case of a council comprising 8 or 9 members); and

“(b) enough members appointed by the council by resolution, in accordance with its statutes, to bring the membership up to that total number.

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“(2) **Subsection (1)** does not apply to the membership of the council of a designated polytechnic (for which sections 222AA and 222AM provide).

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“171A Certain people disqualified from appointment

“(1) A person cannot be appointed as a member of the council of an institution if he or she—

“(a) has at any time after the commencement of **section 6 of the Education Amendment Act (No 2) 2014** been removed as a member of the council of any institution of any kind; or

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“(b) is subject to a property order under the Protection of Personal and Property Rights Act 1988; or

- “(c) is a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on—
 - “(i) his or her competence to manage his or her own affairs in relation to his or her property; or 5
 - “(ii) his or her capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
- “(d) is a bankrupt—
 - “(i) who has not obtained his or her order of discharge; or 10
 - “(ii) whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled.
- “(2) **Subsection (1)** does not apply to the membership of the council of a designated polytechnic (for which section 222AA provides). 15

“171B Matters to be considered when appointing members

- “(1) It is desirable that the council of an institution should, so far as is reasonably practicable, reflect— 20
 - “(a) the ethnic and socio-economic diversity of the communities served by the institution; and
 - “(b) the fact that approximately half the population of New Zealand is male and half the population is female.
- “(2) When appointing members of a council, the Minister or council must have regard to **subsection (1)**, but— 25
 - “(a) must ensure that at least one member of the council is Māori; and
 - “(b) must appoint people who (in the Minister’s or council’s opinion)— 30
 - “(i) have relevant knowledge, skills, or experience; and
 - “(ii) are likely to be able to fulfil their individual duties to the council; and
 - “(iii) together with the other members of the council, 35
 - are capable of undertaking its responsibilities, duties, and functions.

“(3) **Subsections (1) and (2)** do not apply to the membership of the council of a designated polytechnic (for which section 222AD provides).

“**171C Statutes relating to appointment of members by councils of institutions**

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“(1) The council of an institution may make statutes relating to the appointment of members under **section 171(1)(b)** (or, as the case requires, section 222AA(1)(b)).

“(2) ~~The statutes may (in respect of any of the appointments the council has power to make)—~~

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~~“(a) require the appointment of a member—~~

~~“(i) of a stated description; or~~

~~“(ii) holding a stated office; or~~

~~“(iii) nominated by a stated institution or institutions, or an institution or institutions of a stated description; or~~

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~~“(iv) elected by people of a stated description.~~

~~“(b) provide for the process by which—~~

~~“(i) nominations may be called for and considered;~~

~~“(ii) elections may be held and their results may be determined.~~

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“(2) In respect of any of the appointments the council has power to make, the statutes—

“(a) may provide for direct appointment by the council of a member chosen by the council; or

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“(b) may require the council to appoint a member—

“(i) of a stated description; or

“(ii) holding a stated office; or

“(iii) nominated by a stated institution or institutions, or an institution or institutions of a stated description; or

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“(iv) elected by people of a stated description.

“(2A) To the extent that the statutes require the council to appoint any member elected by people of a stated description, they must also provide for the processes by which elections must be held and their results must be determined.

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“(2B) To the extent that the statutes require the council to appoint any member nominated by a stated institution or institutions,

or an institution or institutions of a stated description, they must also provide for the process by which nominations may be called for and must be considered.

- “(2C) In the case of an appointment pursuant to a statute providing for any of the matters stated in **subsection (2)(b)**, it is a sufficient compliance with **section 171B(2)(b)** if, when making the statute concerned, the council—
- “(a) had regard to **section 171B(1)**; and
- “(b) was satisfied that compliance with the statute would be likely to result in the appointment of a person who—
- “(i) has relevant knowledge, skills, or experience; and
- “(ii) is likely to be able to fulfil his or her individual duties to the council; and
- “(iii) together with the other members of the council, is capable of undertaking its responsibilities, duties, and functions.
- “(3) **Subsection (2) does** ~~Subsections (2) to (2B)~~ do not limit the generality of section 194.

“171D Limitations on number of occasions on which people may be appointed as members of councils

- “(1) The constitution of the council of an institution must contain a provision limiting the number of occasions on which a person may be appointed as a member of the council.
- “(2) A person cannot be appointed as a member of the council of an institution if he or she has previously been appointed as a member of the council on the number of occasions, or more than the number of occasions, stated in the provision described in **subsection (1)**.
- “(3) For the purposes of **subsection (2)**, **appointed** means—
- “(a) appointed, elected, or co-opted, (otherwise than to fill a casual vacancy) before the commencement of **section 6 of the Education Amendment Act (No 2) 2014**; or
- “(b) appointed on or after that commencement.
- “(4) Except as provided in **subsection (2)**, a person is not ineligible for appointment as a member of the council of an insti-

tution just because he or she has previously been a member of the council.

- “(5) **Subsections (1) to (3)** do not apply to the council of a designated polytechnic (for which section 222AF provides).

“**171E Membership of more than one council**

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A person who is a member of the council of an institution may be appointed a member of the council of another institution (whether or not they are institutions of the same kind).

“**171F Certain acts and proceedings not invalidated by defects**

- “(1) No act or proceeding of a council of an institution, or of any committee of a council of an institution, is invalidated by— 10

~~“(a) a defect in the appointment, election, or co-option of a member of the council or committee; or~~

“(a) a defect in the appointment of a member of the council or committee; or

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“(aa) a defect in the nomination of a member of the council or committee for appointment as a member of the council;
or

“(ab) a defect in the election of a member of the council or committee for appointment as a member of the council;

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or

“(b) a disqualification of a member of the council or committee; or

“(c) a vacancy or vacancies in the membership of the council or committee; or

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“(d) a defect in the convening of any meeting.

- “(2) **Subsection (1)** does not apply to the council of a designated polytechnic (for which section 222AA provides).

“**173 Term of office**

- “(1) When appointing a member of the council of an institution, the Minister or council— 30

“(a) may appoint the member for any period of not more than 4 years; and

“(b) must state in the notice or resolution appointing him or her—

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- “(i) the day on which his or her appointment takes effect; and
 - “(ii) the term for which he or she is appointed.
- “(2) If the term of office of a member of a council expires before a successor is appointed, he or she continues in office until his or her successor’s appointment takes effect.” 5

7 Section 174 amended (Vacation of office)

- (1) Replace section 174(1A) with:
- “(1A) Subsection (1) does not apply to the chief executive of an institution who has been appointed by its council pursuant to a statute requiring it to appoint the chief executive as a member of the council.” 10
- (2) Repeal section 174(2) and (2A).
- (3) In subsection (3), before paragraph (a), insert:
- “(aa) has, after the commencement of **section 6 of the Education Amendment Act (No 2) 2014**, been removed as a member of the council of some other institution; or” 15

8 Section 176 replaced (Casual vacancies)

Replace section 176 with: 20

“176 Casual vacancies

- “(1) If the office of a member of the council of an institution becomes vacant before the end of the member’s term of office,—
- “(a) another person must be appointed to the office by the procedure by which the member became a member; but 25
 - “(b) if the procedure is no longer available (or no longer applicable to the vacant position), the council must consider whether it is necessary to appoint another person under its constitution and, if so,—
 - “(i) determine the appropriate procedure for appointment of another person; and 30
 - “(ii) appoint another person using it.
- “(2) If the office becomes vacant within 3 months before the end of the member’s term of office, the Minister or council (as the case may be) may decide that the vacancy does not need to be filled under this section. 35

“(3) **Sections 173 and 174** apply to an appointment under this section.”

9 New sections 176A to 176E inserted

After section 176, insert:

“176A Individual duties of members of councils 5

“(1) A member of the council of an institution, when acting as a member of the council in any circumstances,—

“(a) must—

“(i) act with honesty and integrity; and

“(ii) act in the interests of the institution as a whole; 10
and

“(iii) act in a manner that promotes the performance of the functions characteristic of an institution of the kind to which it belongs, and the duties of the council; and 15

“(iv) act in good faith, and not pursue his or her own interests at the expense of the council’s interests; and

“(b) must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, 20
taking into account—

“(i) the nature of the ~~council~~ institution; and

“(ii) the nature of the action; and

“(iii) the position of the member as a member of the council of an institution, and the nature of the 25
responsibilities undertaken by him or her; and

“(c) must not disclose any information to which **subsection (3)** applies to any person, or make use of, or act on, that information, except—

“(i) in the performance of the council’s functions; or 30

“(ii) as required or permitted by law; or

“(iii) if he or she has earlier been authorised to do so by the council; or

“(iv) if disclosing, making use of, or acting on it will not, or will be unlikely to, prejudice the council 35
or the institution; or

“(v) in complying with requirements for members to disclose interests.

- “(2) The fact that a member of the council of an institution was appointed by the council in accordance with a statute providing for the appointment of a member (or 2 or more members) to represent the interests of a stated institution or of people or institutions of a stated description does not displace or limit the member’s duty under **subsection (1)(a)(ii)** to act in the interests of the institution as a whole. 5
- “(3) This subsection applies to information that—
 “(a) a member of the council of an institution has in his or her capacity as a member of the council; and 10
 “(b) would not otherwise be available to him or her.
- “(4) **Subparagraphs (i) to (iii) of paragraph (b) of subsection (1)** do not limit the generality of that paragraph.
- “**176B Accountability for individual duties**
- “(1) The duties of a member of the council of an institution (**council member**) under **section 176A (individual duties)** are duties owed to the Minister and the council. 15
- “(2) A council member who does not comply with his or her individual duties may be removed from office under **section 176C or 222AJ (as the case requires)**. 20
- “(3) The council of an institution may bring an action against a council member for breach of any individual duty.
- “(4) Except as provided in **subsections (2) and (3)**, a council member is not liable for a breach of an individual duty.
- “(5) This section does not affect any other ground for removing a council member from office. 25
- “(6) **Subsection (4)** does not affect anything for which a council member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach concerned. 30
- “(7) **Subsection (4)** does not affect anything for which a council member who is the chief executive of the institution concerned may, as chief executive, be liable under this Act or any other Act or rule of law, arising from the act or omission that constitutes the breach concerned. 35

“176C Removal of members

- “(1) If the council of an institution believes that the actions of a member may justify his or her removal from office, it must give the Minister a written report stating—
- “(a) its reasons for believing that the actions may justify his or her removal; and
 - “(b) the information or grounds in support of those reasons; and
 - “(c) its recommendation as to whether the member should be removed from office.
- “(2) After considering the report, the Minister may, if satisfied that there is just cause to do so, remove the member from office.
- “(3) The removal must be made by written notice to the member (with a copy to the council).
- “(4) The notice must state—
- “(a) the day on which the removal takes effect, which must not be earlier than the day on which the notice is received; and
 - “(b) the reasons for the removal.
- “(5) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice.
- “(6) This section does not limit or affect section 174.
- “(7) For the purposes of **subsection (2)**, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the council or the individual duties of members (depending on the seriousness of the breach).
- “(8) **Subsections (1) to (7)** do not apply to the removal from office of a member of the council of a designated polytechnic (for which section 222AJ provides).

“176D Process for removal

The Minister may remove a member of the council of an institution under **section 176C** with as little formality and technicality, and as much expedition, as is permitted by—

- “(a) the principles of natural justice; and
- “(b) a proper consideration of the matter; and
- “(c) the requirements of that section.

**“176E Application of Local Authorities (Members’ Interests)
Act 1968**

“(1) ~~An~~ council of an institution is not a local authority for the purposes of the Local Authorities (Members’ Interests) Act 1968.

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“(2) **Subsection (1)** is for the avoidance of doubt.”

10 Section 177 amended (Chairperson and deputy chairperson)

~~(1) Repeal section 177(1).~~

(2) Replace section 177(3) to (5) with:

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“(2A) The election of a member to fill the vacant office of chairperson or deputy chairperson of the council must be for a stated period (not exceeding the term of the member’s current term as a member of the council).

“(3) A member of the council who is the chief executive of the institution, a member of the staff of the institution, or a student enrolled at the institution is not eligible for election as the chairperson or deputy chairperson of the council.

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“(4) The chairperson or deputy chairperson of a council—

“(a) holds office for the period for which he or she is elected; but

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“(b) is eligible for re-election.

“(5) If the term of office of the chairperson or deputy chairperson of a council expires before a successor is elected, he or she continues in office until a successor is elected.

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“(5A) **Subsection (5)** overrides **subsection (4)**.”

(3) After section 177(6), insert:

“(6A) Subsection (6) overrides **subsections (4) and (5)**.”

10A Section 178 amended (Meetings of councils)

In section 178(3), replace “5” with “3”.

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11 Section 194 amended (Statutes)

(1) Repeal section 194(1)(c) and (d).

(2) Insert in section 194(1), after paragraph (i):

“(ia) any of the matters stated in **section 171C**.”

12 Sections 222AB, 222AC, 222AE, 222AH, and 222AI repealed

Repeal sections 222AB, 222AC, 222AE, 222AH, and 222AI.

Private training establishments

13 Section 233 amended (Grant or refusal of application)

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(1) In section 233(1), replace “establishment, and may grant the application, only if it is satisfied that” with “establishment if it is satisfied that”.

(2) In section 233(4), replace “withdraw” with “cancel”.

(3) In section 233(5)(a) and (b), replace “withdraws” with “cancels”. 10

14 Section 233D amended (Cancellation of registration)

(1) After section 233D(1)(b), insert:

“(ba) if it is satisfied on reasonable grounds that the establishment has failed or refused to comply with any relevant duties or obligations under this Act, including, but not limited to, the obligations relating to student fee protection; or” 15

(2) In section 233D(4), after “registration”, insert “under this section”. 15

15 Section 233E replaced (Effect of cancellation)

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Replace section 233E with:

“233E Effect of cancellation

“(1) Cancellation of registration under section 233D or 255(7)(a) takes effect on the date specified by the Authority in the notice given under section 233D(4) (the **date of cancellation**). 25

“(2) If the registration of a registered private training establishment is cancelled under section 233D or 255(7)(a), from the date of cancellation,—

“(a) all approved programmes or training schemes granted to the establishment are withdrawn; and 30

“(b) all accreditations granted to the establishment are withdrawn; and

“(c) all consents to assess against standards granted to the establishment are withdrawn.

- “(3) No notice is required to be given to a registered private training establishment for a withdrawal under **subsection (2)**.”

16 Section 234 amended (Lapse of registration)

- (1) After section 234(2), insert:

“(2A) Despite anything in subsections (1) and (2), the registration of a registered private training establishment lapses on the date that the establishment ceases to be a body corporate.” 5

- (2) In section 234(4), replace “an accreditation” with “a registration”.

- (3) After section 234(4), insert: 10

“(5) If the registration of a registered private training establishment lapses under subsection (1) or **(2A)**, any accreditation, approval, or consent associated with the registration is withdrawn on the date that the registration lapses.

- “(6) No notice is required to be given to a registered private training establishment for a withdrawal under **subsection (5)**.” 15

17 Section 234C amended (Interpretation)

In section 234C(1), replace the definition of **refund period** with:

“**refund period** means,— 20

“(a) in relation to a domestic student who, on or after **1 January 2015**, is enrolled in a programme or part of a programme, or enrolled in a training scheme, the period of time that begins when the student’s fees are paid to the private training establishment (or paid directly to the independent trustee) and ends on the later of 7 days after— 25

“(i) the first day of the programme or scheme for which the attendance of the student at the establishment is required; or 30

“(ii) any other day that the establishment permits the student to begin attendance:

“(b) in relation to a domestic student who, before **1 January 2015**, is enrolled in a programme or part of a programme, or enrolled in a training scheme, the 7 days after the first day of the programme or scheme for which 35

the attendance of the student at the establishment is required”.

18 Section 234E amended (Student fees must be deposited with independent trustee)

After section 234E(4), insert:

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“(5) The requirements specified in subsection (1) do not apply—

“(a) in respect of any programme or training scheme that is exempt from those requirements by rules made under **section 253(1)(pb)**; or

“(b) in the case of a student or group of students for whom the private training establishment has deposited, with an independent trustee approved by the Authority, an amount of money that is sufficient to make the necessary refunds to that student or those students under section 235 or 235A.”

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19 Section 235A amended (Refund entitlements of international students)

Replace section 235A(4) with:

“(4) In this section, **refund period** means the period that begins when the student’s fees are paid to the private training establishment (or paid directly to the independent trustee) and ends on the date specified in the notice made under section 235B.”

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20 Section 235B amended (Refund requirements set by Gazette notice)

Replace section 235B(1)(a) with:

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“(a) either—

“(i) the end of the period within which an international student may withdraw from a programme or training scheme of 3 months’ duration or more and be entitled to a refund under that section; or

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“(ii) a means by which the end of that period may be calculated or ascertained; and”.

21 Section 236A amended (Duties of private training establishments to maintain student records)

Replace section 236A(1)(a) with:

- “(a) keep accurate enrolment and academic records for each student enrolled in— 5
 - “(i) a programme or training scheme provided by the establishment; or
 - “(ii) standards-based study or training provided by the establishment through a consent to assess against standards granted under section 252; and”. 10

International students

22 Section 238D replaced (Interpretation)

Replace section 238D with:

“238D Interpretation

In this Part, unless the context otherwise requires,— 15

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

“**code administrator** means the person or agency appointed under **section 238FA(1)**

“**DRS** means the International Student Contract Dispute Resolution Scheme established by **section 238J** 20

“**DRS operator** means the person or agency appointed under **section 238J(4)(a)**

“**DRS rules** means the rules prescribed under **section 238M**

“**international student**— 25

“(a) has the meaning given by section 2(1); and

“(b) in relation to a provider, means an international student enrolled by the provider

“**provider** means a person or body that is—

“(a) a registered school; or 30

“(b) an institution within the meaning of section 159; or

“(c) a registered private training establishment registered under section 233; or

“(d) an organisation that provides adult and community education that receives funding under section 159YA or 159ZC 35

“**signatory provider** means a provider that is a signatory to the code

“**student claimant**, in relation to a provider, means a person who—

- “(a) is an international student enrolled by the provider; or 5
- “(b) is a former international student enrolled by the provider; or
- “(c) intends to be, or is in the process of being, enrolled by the provider as an international student.”

23 Section 238E amended (Signatories to code may enrol persons as international students) 10

Replace section 238E(3) with:

- “(3) A provider that is subject to a sanction under **section 238G(1)** may continue to have international students enrolled and may provide educational instruction to those students but only to the extent permitted by the sanction.” 15

24 Section 238F amended (Code)

- (1) After section 238F(1), insert:

“(1A) The purpose of the code is to support the Government’s objectives for international education by— 20

- “(a) requiring providers to take all reasonable steps to protect international students; and
- “(b) ensuring, so far as is possible, that international students have a positive experience in New Zealand a positive experience that supports their educational achievement. 25

“(1B) The scope of the code is to prescribe, alongside other quality assurance prescribed by this Act,—

- “(a) outcomes sought from providers for their international students; and
- “(b) key processes required of providers to support the well-being, achievement, and rights of international students.” 30

- (2) In section 238F(2), replace “subsection (1)” with “subsections (1) to **(1B)**”.

- (3) Repeal section 238F(2)(a) to (f). 35

- (4) Replace section 238F(5) with:

- “(5) The code 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.”

25 Section 238G replaced (Sanctions)

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Replace section 238G with:

“238FA Appointment of code administrator

- “(1) The Minister may, by notice in the *Gazette*, appoint a person or an agency to be responsible for administering the code.

- “(2) The functions of the code administrator are—

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- “(a) to receive applications from providers seeking to become signatories to the code; and

- “(b) to assess those applications against—

- “(i) the criteria stated in the code; and

- “(ii) the purpose stated in **section 238F(1A)** and the scope stated in **section 238F(1B)**; and

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- “(c) to allow or decline to allow applicants to become signatories to the code in accordance with its assessments; and

- “(d) to monitor and investigate the extent to which signatory providers comply with the code—

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- “(i) following a process prescribed by the code; and

- “(ii) in close collaboration with education quality assurance authorities; and

- “(e) to issue to signatory providers notices under **section 238FB**; and

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- “(f) to impose on signatory providers sanctions for breaches of the code and failure to comply with notices under **section 238FB**.

- “(3) The code administrator may allow an applicant to become a signatory to the code unconditionally, or subject to any conditions stated in writing to the applicant at the time the code administrator informs the applicant that the applicant is allowed to become a signatory to the code.

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“238FB Code administrator may issue compliance notices

- “(1) The code administrator may issue a compliance notice to a signatory provider requiring the signatory provider to do, or refrain from doing, a particular thing in relation to—
- “(a) the signatory provider’s obligations as a signatory to the code; or
 - “(b) the signatory provider’s conditions of approval as a signatory to the code.
- “(2) A notice under **subsection (1)** may specify the manner in which a thing must be undone or the manner in which the consequences of a thing must be rectified.
- “(3) The notice must be in writing and must—
- “(a) state the date on which it is issued; and
 - “(b) if it requires the signatory provider to take any action, state a time on or before which, or a period within which, the signatory provider must take the action; and
 - “(c) state the consequences or possible consequences of non-compliance with it.
- “(4) The code administrator may publish the notice, or a summary of it, in a manner designed to give public notice of it.
- “(5) The code administrator may, before the expiry of the time or period referred to in **subsection (3)(b)**, extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with.

“238FC Signatory providers to comply with compliance notices

- “(1) A signatory provider must comply with a notice under **section 238FB (a compliance notice)**.
- “(2) If, in the code administrator’s opinion, the signatory provider does not comply with the compliance notice, the code administrator may (as the code administrator sees fit) impose sanctions against the signatory provider under **section 238G**.
- “(3) The code administrator must not act under **subsection (2)** until the later of the following:
- “(a) 10 days after the date on which the compliance notice was issued:

“(b) the expiry of any time or period of a kind referred to in **section 238FB(3)(b)**.

“(4) This section and **section 238FB** do not limit, or affect the generality of, **section 238G**.

“238G Sanctions

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“(1) If satisfied that the signatory provider has breached the code or failed to comply with a notice under **section 238FB**, the code administrator may—

“(a) impose limitations on the signatory provider’s power to enrol international students; or

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“(b) impose new, or amend or revoke any existing, conditions on the signatory provider’s approval as a code signatory.

“(2) If satisfied that a signatory provider has not complied with a sanction imposed under **subsection (1)** or a notice under **section 238FB**, the code administrator may remove the signatory provider as a signatory to the code.”

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

After subsection (1)(b), insert:

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“(ba) the funding of the operation of the International Student Contract Dispute Resolution Scheme provided for by **section 238J**.”

27 New sections 238J to 238M inserted

After section 238I, insert:

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“238J International Student Contract Dispute Resolution Scheme

“(1) This section establishes the International Student Contract Dispute Resolution Scheme.

“(2) The purpose of the DRS is to resolve contractual and financial disputes between international students (and former and prospective international students) and providers.

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“(3) Every provider that enrolls, intends to enrol, or has enrolled international students is subject to and must (in relation to any contractual or financial dispute with an international student

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or a former or prospective international student) comply with the rules of the DRS prescribed under **section 238M**.

“(4) The Minister—

- “(a) may, by notice in the *Gazette*, appoint a person or an agency to be responsible for administering the DRS; 5
and
- “(b) must take reasonable steps to ensure that there is at all times a person appointed to be responsible for administering the DRS.

“(5) A student claimant may lodge with the DRS operator for resolution under the DRS any contractual or financial dispute with a provider, but only if— 10

- “(a) the provider has been given an opportunity to resolve the dispute, but the claimant is not satisfied with the process, the outcome, or both; or 15
- “(b) the provider has failed to, or has refused to, try to resolve the dispute.

“(6) The resolution of a dispute is binding on all parties to the dispute if—

- “(a) it is the outcome of an adjudication of the dispute by or on behalf of the DRS operator; or 20
- “(b) it is produced by a mediation undertaken by or on behalf of the DRS operator whose outcome the parties to the dispute have agreed will be binding.

“(7) The DRS operator— 25

- “(a) may charge fees to a student claimant, the provider concerned, or both, according to the rules of the DRS prescribed under **section 238M**; but
- “(b) (notwithstanding those rules) may in its absolute discretion partially or completely exempt any person, or persons of a particular description, from the payment of fees. 30

“**238K Cap of \$200,000 on amount that can be required to be paid**

In resolving any dispute, the DRS operator— 35

- “(a) must not require a provider to pay to a claimant in relation to any particular claim any amount exceeding \$200,000; but

- “(b) may charge the provider fees in addition to any amount required to be paid.

“238L District Court to enforce DRS

- “(1) The District Court may,—
- “(a) on the application of the student claimant or the DRS operator, make an order requiring a provider to comply with the rules of the DRS or to give effect to any resolution that is binding under **section 238J(6)**; or
- “(b) on the application of the provider or the DRS operator, make an order requiring a claimant to give effect to any resolution that is binding under **section 238J(6)**.
- “(2) If an order (or part of an order) requiring the provider to comply with the resolution requires the provider to pay any sum of money to any person, that order (or part) may be enforced as if it were a judgment by the District Court for the payment of that sum of money to that person.
- “(3) If the District Court is satisfied that the terms of the resolution of a dispute by the DRS operator are manifestly unreasonable, the court may modify the resolution before giving effect to it.
- “(4) **Subsection (3)** overrides **subsections (1) and (2) and section 238J(6)**.

“238M Rules of International Student Contract Dispute Resolution Scheme

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, prescribe rules for the functioning and administration of the DRS.
- “(2) The Minister must not recommend the making of an order without consulting any relevant bodies and sector representatives he or she thinks appropriate.
- “(3) The rules may prescribe fees, or a means by which fees can be calculated or ascertained.”

*New Zealand Qualifications Authority***28 Section 250A amended (Conditions on accreditation)**

In section 250A(1), replace “the rules made under section 253(1)(d) and (e)” with “the relevant rules made under section 253”.

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29 Section 250C amended (Withdrawal of accreditation)

In section 250C(1)(a), replace “the approval” with “the accreditation”.

30 Section 251A amended (Conditions of training scheme approval)

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In section 251A(1), replace “the rules made under section 253(1)(c)” with “the relevant rules made under section 253”.

31 Section 252A amended (Conditions)

(1) In section 252A(1), replace “the rules made under section 253(1)(c)” with “the relevant rules made under section 253”.

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(2) In section 252A(1), replace “on the approval” with “on the consent”.

32 Section 253 amended (Rules)

(1) After section 253(1)(p), insert:

“(pa) prescribing the quality assurance requirements for tertiary education bodies in respect of whom the Authority grants approvals or consents under this Part:

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“(pb) prescribing the types of programmes and training schemes that are exempt from the requirements specified in section 234E(1):”.

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(2) After section 253(3), insert:

“(3A) Rules made under **subsection (1)(pb)** before the day 12 months after the day on which the **Education Amendment Act (No 2) 2014** received the Royal assent come into force—

“(a) on the day 12 months after the day on which the **Education Amendment Act (No 2) 2014** received the Royal assent; or

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“(b) on a later day stated in those rules.”

33 Section 255 amended (Compliance notices)

In section 255(7)(d), replace “on the approval” with “on the consent”.

34 Section 255A amended (Powers of entry and inspection)

After section 255A(3), insert:

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- “(4) Every person commits an offence, and is liable on conviction to a fine not exceeding \$10,000, who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by subsection (1).”

Miscellaneous

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35 Section 292B amended (Liability of body corporate and directors in respect of false representations)

- (1) In section 292B(1), replace “section 292A(1)” with “section 292, 292A, 292C, 292D, 292E, 292F, or 292G”.

- (2) In section 292B(2), replace “section 292A” with “section 292, 292A, 292C, 292D, 292E, 292F, or 292G”.

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- (3) In section 292B(3), replace “section 292A(1)” with “section 292, 292A, 292C, 292D, 292E, 292F, or 292G”.

36 Section 292C amended (Offence to issue false qualifications and falsify records)

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- (1) In section 292C(1), replace “falsely represents” with “falsely represents, expressly or by implication,”.

- (2) In section 292C(2), replace “falsely represents” with “falsely represents, expressly or by implication,”.

37 New sections 299A and 299B inserted

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- (1) After section 299, insert:

“299A Transitional and savings provisions relating to councils of tertiary institutions consequential on enactment of Education Amendment Act (No 2) 2014

The transitional and savings provisions relating to councils of tertiary institutions set out in **Schedule 19** have effect for the purposes of the **Education Amendment Act (No 2) 2014**.”

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- (2) Before section 300, insert:

“299B Transitional and savings provisions relating to other matters consequential on enactment of Education Amendment Act (No 2) 2014

The transitional and savings provisions relating to other matters set out in **Schedule 20** have effect for the purposes of the **Education Amendment Act (No 2) 2014.**” 5

Teacher registration and Education Council

38 New Parts 31 and 32 inserted

After section 347, insert:

“Part 31

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“Teacher registration

“348 Interpretation

In this Part and **Schedule 22**, unless the context otherwise requires,—

“**authorisation**, in relation to any person, means the entry of the person’s name on the list of authorised people, and **authorised** has a corresponding meaning 15

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

“(a) a free kindergarten that is an early childhood service whose licence permits no child to attend for a period of more than 4 hours on any day; and 20

“(b) any other early childhood service that is declared by regulations made under section 69(2) of the Education Standards Act 2001 to be an early childhood education and care service for the purposes of this Part 25

“**early childhood service** means a licensed early childhood service (as defined in section 309)

“**Education Council** means the Education Council of Aotearoa New Zealand established under **Part 32**

“**employer** means any one of the following who employs, or intends to employ, 1 or more teachers or authorised persons in a teaching position: 30

“(a) the board of trustees of a State school:

“(b) the sponsor of a partnership school kura hourua:

“(c) the managers of a school registered under section 35A: 35

“(d) the person or body that appoints staff at an early childhood education and care service:

“(e) the Secretary, in his or her capacity as an employer under section 91N

“**free kindergarten** means an early childhood education and care centre (as defined in section 309) controlled by a free kindergarten association founded for the purpose of establishing and maintaining a kindergarten or kindergartens

“**general education system** means the system of education provided in— 10

“(a) registered schools; and

“(b) early childhood services; and

“(c) other educational institutions and services established or deemed to have been established, or provided, under this Act or the Education Act 1964 15

“**list of authorised people** means the list kept under **section 371(1)**

“**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 Part 20

“**practising certificate** means a certificate issued under **section 361(2) or (6)**

“**professional leader** means,—

“(a) in the case of a school other than a partnership school kura hourua, the principal: 25

“(b) in the case of a partnership school kura hourua, the person to whom the sponsor has assigned the role of supervising teaching practice:

“(c) in the case of an early childhood service, the professional leader of the service: 30

“(d) in the case of any other educational institution, the chief executive or person occupying an equivalent position

“**register** means the register kept under **section 359**

“**registration** or **registered**, in relation to any person, means the entry of the person’s name on the register 35

“**satisfactory recent teaching experience**, in relation to any person at any time, means either of the following, satisfactorily completed by the person during the 5 years before that time:

- “(a) an uninterrupted period of employment of 2 years (or some shorter period or periods approved by the Education Council for the person) in a teaching position or teaching positions in the general education system; or 5
- “(b) a period of employment of 2 years (or some shorter period or periods approved by the Education Council for the person) in a position (or positions) that (or each of which) in the Education Council’s opinion was equivalent to a teaching position, in an educational institution in New Zealand approved by the Education Council for the purposes of this Part 10

“**teaching position** means a position in the general education system that— 15

- “(a) requires its holder to instruct students; or
- “(b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or 20
- “(c) is the professional leader of an early childhood service or other educational institution.

“Compare: 1989 No 80 s 120

“Restrictions on appointment and employment of teaching staff” 25

“349 **Restrictions on appointment of teachers**

- “(1) An employer may not appoint to a teaching position—
- “(a) any person—
 - “(i) whose registration has been cancelled; and
 - “(ii) who has not since been registered again; or 30
- “(b) any person whose practising certificate is suspended under **section 402 or 404(1)(d)** or cancelled under **section 404(1)(g)**; or
- “(c) any person whose authorisation has been cancelled and who has not since— 35
 - “(i) been authorised again; or
 - “(ii) been registered as a teacher; or

- “(d) any person whose limited authority to teach is suspended under **section 402 or 404(1)(d)**.
- “(2) No employer, other than a sponsor, may permanently appoint to any teaching position any person who does not hold a practising certificate. 5
- “Compare: 1989 No 80 s 120A
- “350 Restrictions on continued employment of teachers**
- “(1) An employer may not continue to employ in a teaching position— 10
- “(a) any person—
- “(i) whose registration has been cancelled; and
- “(ii) who has not since been registered again; or
- “(b) any person whose practising certificate is suspended under **section 404(1)(d)**; or
- “(c) any person whose authorisation has been cancelled and who has not since— 15
- “(i) been authorised again; or
- “(ii) been registered as a teacher; or
- “(d) any person whose limited authority to teach is suspended under **section 404(1)(d)**. 20
- “(2) No employer, other than a sponsor, may continue to employ in any teaching position any person who holds neither a practising certificate nor an authorisation, if that person is not under the general supervision of a person who holds a practising certificate. 25
- “(3) No employer, other than a sponsor, may in any calendar year continue to employ in any teaching position a person who holds neither a practising certificate nor an authorisation, if the sum of the following periods is not less than the period specified in **subsection (4)**: 30
- “(a) the period or periods for which that person has already during that year been employed by the employer in a teaching position or positions; and
- “(b) any period or periods (of which the employer is aware) for which that person has already during that year been employed by any other employer in a teaching position or positions; and 35

- “(c) any period or periods (of which the employer is aware) for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service.
- “(4) The period referred to in **subsection (3)** is 20 half-days or any greater number of half-days the Education Council has allowed in any particular case, each being a half-day on which the school or early childhood education and care service at which the person was then employed was open for instruction.
“Compare: 1989 No 80 s 120B
- “351 Restrictions on activities of teachers whose practising certificate or limited authority to teach is subject to interim suspension**
- “(1) This subsection applies to a person employed in a teaching position if—
“(a) he or she holds a practising certificate that is suspended under **section 402**; or
“(b) he or she has a limited authority to teach that is suspended under **section 402**.
- “(2) While **subsection (1)** applies to a person, his or her employer—
“(a) must ensure that he or she does not carry out any of the duties of the teaching position concerned; and
“(b) if the person is employed at a registered school or an early childhood education and care service, must take all reasonably practicable steps to ensure that he or she does not undertake any activities that might bring him or her into contact with students enrolled at the school or, as the case may be, children who attend the service.
- “(3) While **subsection (1)** applies to a person, he or she may not carry out any of the duties of the teaching position concerned.
“Compare: 1989 No 80 s 120C

*“Teacher registration***“352 Applications for registration as teacher**

Any person may apply to the Education Council, on a form provided by the Education Council for the purpose and signed by the applicant, for registration as a teacher.

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“Compare: 1989 No 80 s 121

“353 Registration

“(1) The Education Council must register an applicant under **section 352** if satisfied that the applicant—

“(a) is of good character; and 10

“(b) is fit to be a teacher; and

“(c) is satisfactorily trained to teach; and

“(d) meets the criteria for teacher registration established under **section 382(1)(e)**; and

“(e) has not been convicted of a specified offence listed in **Schedule 21**; 15

“(e) either—

“(i) has not been convicted of a specified offence listed in **Schedule 21**; or

“(ii) has (in accordance with the provisions of any other relevant enactment) been granted an exemption by the chief executive in respect of every conviction for a specified offence listed in **Schedule 21**. 20

“(2) When performing its functions and exercising its powers, the Education Council must act in accordance with the rules of natural justice. 25

“Compare: 1989 No 80 s 122

“354 Determining whether training satisfactory

“(1) In determining whether a person is satisfactorily trained to teach, the Education Council may take into account any relevant matters. 30

“(2) In determining whether a person is satisfactorily trained to teach, the Education Council must take into account—

“(a) the person’s qualifications; and 35

- “(b) whether the person has satisfactorily completed training recognised by the Education Council as suitable for people who want to teach.
- “(3) **Subsection (2)** does not affect the generality of **subsection (1)**. 5
- “Compare: 1989 No 80 s 124A
- “**355 Determining good character and fitness to be teacher**
- “(1) For the purpose of determining whether a person is of good character and fit to be a teacher, the Education Council must obtain a Police vet of the person. 10
- “(2) **Subsection (1)** does not limit any other matters that the Education Council may take into account in determining character and fitness to be a teacher.
- “Compare: 1989 No 80 s 124B
- “**356 Appeals from decisions of Education Council** 15
- “(1) A person who is dissatisfied with all or any part of a decision of the Education Council under **section 353, 357, or 361** (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Education Council or any longer period the court, on application made before or after the end of the period, allows, appeal to the District Court against the decision. 20
- “(2) The court must hear the appeal as soon as practicable, and may confirm, reverse, or modify the decision concerned, or may refer the matter back to the Education Council in accordance with rules of court, or may give any decision that the Education Council could have given. 25
- “(3) Nothing in this section gives the court power to review any part of the Education Council’s decision that the appellant has not appealed against. 30
- “(4) Subject to any order of the court, every decision of the Education Council continues in force and has effect pending the determination of an appeal against it.
- “(5) On any appeal under this section, the court may order the Education Council or the appellant to pay the costs incurred by the other party in respect of the appeal. 35

- “(6) The Education Council or the appellant may, with the leave of the High Court or the Court of Appeal, appeal to the Court of Appeal on a question of law against any decision made by the District Court on an appeal under this section.

“Compare: 1989 No 80 s 126

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“357 Cancellation of registration as teacher

- “(1) The Education Council must cancel a person’s registration if—

“(a) the Education Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for registration as a teacher (as set out in **section 353**); or

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“(b) the Education Council is satisfied on reasonable grounds that the registration was effected by mistake or obtained by fraud; or

“(c) the Disciplinary Tribunal has ordered, under **section 404(1)(g)**, that the registration be cancelled.

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- “(2) The Education Council may not cancel a person’s registration under **subsection (1)(a) or (b)** without first—

“(a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and

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“(b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.

- “(3) The fact that a person’s registration has been cancelled does not prevent the person from again being registered.

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- “(4) The Education Council must take all reasonable steps to ensure that employers are informed of, and may make public on its Internet site, the name of every person whose registration is cancelled under this section.

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“Compare: 1989 No 80 s 129

“358 Voluntary deregistration

The Education Council must deregister a person if—

“(a) the Education Council receives a written request from the person seeking deregistration; and

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“(b) the Education Council is satisfied that the person is not the subject of an investigation under **Part 32**.

“Compare: 1989 No 80 s 127A

“359 Education Council to keep a register of people registered as teachers

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“(1) For the purposes of this Part, the Education Council must keep a register of people who are registered as teachers.

“(2) If the Education Council is satisfied that any of the information contained in the register is incorrect, the Education Council must ensure that the information is corrected.

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“(3) The Education Council may annotate the register following—

“(a) an interim suspension under **section 402(2)**; or

“(b) an action by a disciplinary body under **section 401, 404, or 412**.

“(4) In the case where the register is annotated following an interim suspension, the annotation must be removed or corrected as soon as practicable after the matter is concluded (as specified in **section 403(6)**).

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“Compare: 1989 No 80 s 128

“360 Matching of register information and information about payment of teacher salaries at payrolled schools

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“(1) The purpose of this section is to facilitate the exchange of information between the Ministry and the Education Council for the purposes of enabling—

“(a) the Education Council, in regard to any person employed in a teaching position, to identify—

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“(i) the person’s employer; and

“(ii) the person’s registration status; and

“(iii) the status and currency of the person’s practising certificate; and

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“(b) the Ministry, in regard to regular teachers and relieving teachers in receipt of salaries at payrolled schools, to identify their salary entitlement or eligibility (if any) for an allowance on the basis of their registration or practising certificate (if any).

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- “(2) For the purpose set out in **subsection (1)(a)**, the Education Council may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Education Council,—
- “(a) require the Secretary to supply all or any of the following information about all or any regular teachers and relieving teachers in receipt of salaries at payrolled schools: 5
- “(i) surname:
- “(ii) first name: 10
- “(iii) date of birth:
- “(iv) gender:
- “(v) address:
- “(vi) the school at which a teacher is employed:
- “(vii) payroll number: 15
- “(viii) registration number:
- “(ix) number of half-days employed in a teaching position in any calendar year; and
- “(b) compare the information supplied under **paragraph (a)** with the information contained in the register. 20
- “(3) For the purpose set out in **subsection (1)(b)**, the Secretary may, in accordance with arrangements under the Privacy Act 1993 previously agreed between the Secretary and the Education Council,—
- “(a) require the Education Council to supply all or any of the following information in regard to all or any people registered as teachers: 25
- “(i) surname:
- “(ii) first name:
- “(iii) date of birth: 30
- “(iv) gender:
- “(v) address:
- “(vi) the school at which a teacher is employed:
- “(vii) registration number:
- “(viii) registration or practising certificate expiry date: 35
- “(ix) registration or practising certificate classification; and
- “(b) compare the information supplied under **paragraph (a)** with the information held by the Ministry in regard

to regular teachers and relieving teachers in receipt of salaries at payrolled schools.

- “(4) In this section, **Ministry**, **payrolled school**, **regular teacher**, **relieving teacher**, **school**, and **Secretary** have the same meanings as in section 91A. 5

“Compare: 1989 No 80 s 128A

“**361 Practising certificates**

- “(1) Any person may apply to the Education Council, on a form provided by the Education Council, for a practising certificate.
- “(2) The Education Council must issue a practising certificate to 10 every applicant who—
- “(a) is registered as a teacher; and
 - “(b) has had a satisfactory Police vet within the past 3 years; and
 - “(c) meets the standards and criteria for the issue of practising certificates maintained by the Education Council under **section 382(1)(h)**. 15
- “(3) A teacher’s practising certificate must show clearly that the teacher is registered.
- “(4) Unless it is sooner cancelled or expires,— 20
- “(a) a practising certificate issued to a teacher who already holds a current practising certificate expires—
 - “(i) on the third anniversary of the day on which the certificate already held expires; or
 - “(ii) at any earlier time that the Education Council 25 specifies, by notice in the *Gazette*, in respect of all or any ~~categories~~ kinds of practising certificate:
 - “(b) a practising certificate issued to a teacher who does not already hold a current practising certificate expires— 30
 - “(i) on the third anniversary of the day it is issued; or
 - “(ii) at any earlier time that the Education Council decides in accordance with the standards and criteria maintained under **section 382(1)(h)**.
- “(5) A practising certificate expires when its holder’s registration 35 is cancelled.

- “(6) If a teacher applies to renew his or her practising certificate, the Education Council may issue a renewed practising certificate only if it is satisfied that the teacher—
- “(a) has satisfactory recent teaching experience; and
 - “(b) has had a satisfactory Police vet within the past 3 years; 5
and
 - “(c) has completed satisfactory professional development during the past 3 years; and
 - “(d) meets the standards and criteria maintained under **section 382(1)(h)**. 10
- “(7) This subsection applies to a renewed practising certificate issued to a person if—
- “(a) the practising certificate he or she already holds when the renewed certificate is issued is suspended under **section 402**; or 15
 - “(b) he or she does not already hold a practising certificate when the renewed certificate is issued, but—
 - “(i) the practising certificate he or she last held was suspended under **section 402** when it expired; and 20
 - “(ii) its suspension was not due to expire until a time after the issue of the renewed certificate.
- “(8) A renewed practising certificate to which **subsection (7)** applies must be treated as being suspended under **section 402**, and its suspension expires when the suspension of the previous 25
practising certificate held by its holder would have expired.
“Compare: 1989 No 80 s 130

“362 Cancellation of practising certificate

- “(1) The Education Council must cancel a person’s practising certificate if— 30
- “(a) the Education Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for holding a practising certificate (as set out in **section 361(2)**); or
 - “(b) the Education Council is satisfied on reasonable 35
grounds that the practising certificate was issued by mistake or obtained by fraud; or

- “(c) the Disciplinary Tribunal has ordered, under **section 404(1)(g)**, that the practising certificate be cancelled; or
 - “(d) the Education Council has determined, under **section 412**, that the practising certificate be cancelled.
- “(2) The Education Council may not cancel a person’s practising certificate under **subsection (1)(a) or (b)** without first—
- “(a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and
 - “(b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- “(3) The fact that a person’s practising certificate has been cancelled does not prevent the person from again holding a practising certificate.
- “(4) The Education Council must take all reasonable steps to ensure that employers are informed of, and may make public on its Internet site, the name of every person whose practising certificate is cancelled under this section.
- “Compare: 1989 No 80 s 129

“363 Determining whether employment satisfactorily completed

- “(1) In determining whether a period of employment was satisfactorily completed by a person, the Education Council may take into account any relevant matters.
- “(2) In determining whether a period of employment at a school, early childhood service, or other educational institution in New Zealand was satisfactorily completed by a person, the Education Council may take into account—
- “(a) the views of the professional leader of the school, early childhood service, or other educational institution; or
 - “(b) if the person was the professional leader of a school, early childhood service, or other educational institution, the views of his or her employer.
- “(3) **Subsection (2)** does not affect the generality of **subsection (1)**.
- “Compare: 1989 No 80 s 125

“364 Fees and costs for registration and practising certificates

“(1) The Education Council may, by notice in the *Gazette*, fix fees for registration as a teacher or for the issue of practising certificates, and different fees may be fixed—

- “(a) in respect of registration effected in different circumstances; and
- “(b) for practising certificates of different kinds.

“(1A) A notice under **subsection (1)**—

“(a) is a disallowable instrument for the purposes of the *Legislation Act 2012*; and

“(b) must be published on a website maintained by the Education Council; and

“(c) must state where printed copies of it are available free.

“(1B) The Education Council must make printed copies of every notice under **subsection (1)** that is in force available free at the place stated in it.

“(2) Despite anything in this Act, the Education Council may refuse to register a person as a teacher or issue a practising certificate until the appropriate fee has been paid.

“(3) If the Education Council cancels a teacher’s registration, it may, by written notice to the teacher, require the teacher to pay the Education Council any reasonable costs specified in the notice that were incurred by the Education Council in dealing with the proposal to cancel the registration or with the cancellation itself.

“(4) The Education Council may recover from a teacher as a debt due to it costs required under **subsection (3)** to be paid to the Education Council by the teacher.

“Compare: 1989 No 80 s 136

*“Limited authority to teach***“365 Purpose of limited authority to teach**

The purpose of granting a limited authority to teach is to enable employers to have access to skills that are in short supply and to enable those with specialist skills but not a teaching qualification to teach.

“Compare: 1989 No 80 s 130A

“366 Limited authority to teach

- “(1) Any person may apply to the Education Council, on a form provided by it for the purpose, for a limited authority to teach.
- “(2) The Education Council must grant a limited authority to teach if it considers that the applicant is of a suitable disposition 5 and—
- “(a) the applicant has the skills and experience appropriate to advance the learning of a student or group of students; or
- “(b) the applicant has the skills that are in short supply. 10
- “(3) A person who has previously been authorised may be authorised again, whether before or after the expiry or cancellation of the previous authorisation.
- “(4) In this section, **suitable disposition**, in relation to an applicant, means the applicant— 15
- “(a) is of good character and fit to hold a limited authority to teach; and
- “(b) has not been convicted of a specified offence listed in **Schedule 21** or, if the applicant has been convicted of a specified offence, has been granted an exemption by 20 the chief executive in accordance with the provisions of any other relevant enactment.

“Compare: 1989 No 80 s 130B

“367 Cancellation of limited authority to teach

- “(1) The Education Council must cancel a person’s limited authority to teach if— 25
- “(a) the Education Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for holding a limited authority to teach (as set out in **section 366(2)**); or 30
- “(b) the Education Council is satisfied on reasonable grounds that the authorisation was granted by mistake or obtained by fraud; or
- “(c) the Disciplinary Tribunal has ordered, under **section 404(1)(g)**, that the limited authority to teach be cancelled; or 35
- “(d) the Education Council has determined, under **section 412**, that the limited authority to teach be cancelled.

- “(2) The Education Council may not cancel a person’s limited authority to teach under **subsection (1)(a) or (b)** without first—
- “(a) taking all reasonable steps to ensure that the person is given notice of the reasons for the proposed cancellation; and 5
 - “(b) giving the person a reasonable opportunity to make submissions and be heard, either in person or by counsel or other representative, on the proposed cancellation.
- “(3) The fact that a person’s limited authority to teach has been cancelled does not prevent the person from again being given 10 a limited authority to teach.
- “(4) The Education Council must take all reasonable steps to ensure that employers are informed of, and may make public on its Internet site, the name of every person whose limited authority to teach is cancelled— 15
- “(a) under this section; or
 - “(b) as a result of the Education Council refusing to grant a limited authority to teach on the ground that the person is not of good character or is not fit to hold a limited authority to teach. 20
- “Compare: 1989 No 80 s 130G

“368 Determining character or fitness to hold limited authority to teach

- “(1) In determining whether a person is of good character or is fit to hold a limited authority to teach, the Education Council must 25 take into account and give due weight to—
- “(a) the views of the professional leader of the school; early childhood service; or other educational institution at which the person has been employed; and
 - “(b) if the person is the professional leader of a school; early 30 childhood service; or other educational institution, the views of his or her employer; and
 - “(c) any relevant skills and experience of the applicant; and
 - “(d) any other relevant matters.
- “(1) In determining whether a person is of good character or is fit 35 to hold a limited authority to teach, the Education Council—
- “(a) must take into account and give due weight to—

- “(i) any relevant skills and experience of the applicant; and
- “(ii) any other relevant matters; and
- “(b) if the applicant is currently employed as the professional leader of a school, early childhood service, or other educational institution, must take into account and give due weight to the views of his or her employer; and 5
- “(c) if the applicant is currently employed at a school, early childhood service, or other educational institution, but not as its professional leader, must take into account and give due weight to the views of the professional leader of the school, service, or institution. 10
- “(2) For the purpose of determining whether a person is of good character and fit to hold a limited authority to teach, the Education Council must obtain a Police vet of the person. 15
- “(3) **Subsection (21)** does not limit any other matters that the Education Council may take into account in determining good character and fitness to hold a limited authority to teach.
- “Compare: 1989 No 80 s 130C
- “369 Appeals from decisions** 20
- “(1) Any person who is dissatisfied with all or any part of a decision of the Education Council under **section 368** (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Education Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court. 25
- “(2) **Section 356(2) to (6)** applies to every appeal under **subsection (1)** of this section as if it were an appeal under **section 356(1)**. 30
- “Compare: 1989 No 80 s 130D
- “370 Period of authorisation**
- “(1) Subject to **subsection (2)**, a person’s authorisation expires after 3 years.

“(2) Notwithstanding **subsection (1)**, the Education Council may grant the authorisation for a period of less than 3 years.

“Compare: 1989 No 80 s 130E

“371 Education Council to keep list of persons who have limited authority to teach

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“(1) For the purposes of this Part, the Education Council must keep a list of persons who have a limited authority to teach.

“(2) If the Education Council is satisfied that any of the information contained in the list is incorrect, the Education Council must ensure that the information is corrected.

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“(3) The Education Council may annotate the list following—

“(a) an interim suspension under **section 402(2)**; or

“(b) an action by a disciplinary body under **section 401, 404, or 412**.

“(4) In the case where the list is annotated following an interim suspension, the annotation must be removed or corrected as soon as practicable after the matter is concluded (as specified in **section 403(6)**).

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“Compare: 1989 No 80 s 130F

“372 Fees and costs for granting limited authority to teach

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“(1) The Education Council may, by notice in the *Gazette*, fix fees for the granting of a limited authority to teach.

“(1A) A notice under **subsection (1)**—

“(a) is a disallowable instrument for the purposes of the Legislation Act 2012; and

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“(b) must be published on a website maintained by the Education Council; and

“(c) must state where printed copies of it are available free.

“(1B) The Education Council must make printed copies of every notice under **subsection (1)** that is in force available free at the place stated in it.

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“(2) Despite anything in this Act, the Education Council may refuse to grant any person a limited authority to teach until the appropriate fee has been paid.

“(3) If the Education Council cancels a limited authority to teach, it may, by written notice to the person concerned, require the

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person to pay the Education Council any reasonable costs specified in the notice that were incurred by the Education Council in dealing with the proposal to cancel the authorisation or with the cancellation itself.

- “(4) The Education Council may recover from any person as a debt due to it costs required by **subsection (3)** to be paid to the Education Council by that person. 5

“Compare: 1989 No 80 s 130H

“Miscellaneous provisions

“373 Education Council may disclose certain information 10

If the management of any registered early childhood centre that is not an early childhood education and care service asks the Education Council for information about any person who is a prospective employee, the Education Council may—

- “(a) make any inquiry about that person that it might have made if that person had applied for registration as a teacher; and 15
- “(b) disclose to the management any information it holds or has obtained about that person. 20

“Compare: 1989 No 80 s 135A

“374 Offences

- “(1) Every person commits an offence, and is liable on conviction to a fine not exceeding \$2,000, who—

- “(a) makes to the Education Council any statement as to any person’s qualifications or experience that would amount to perjury if made on oath in judicial proceedings; or 25
- “(b) not being a registered teacher, uses, or permits to be used, in connection with the person’s name or business, the words ‘registered teacher’, or any words or initials intended or likely to make any other person believe that the person is a registered teacher; or 30
- “(c) wilfully makes, or causes to be made, a false entry in or falsification of the register or a practising certificate; or
- “(d) falsely represents a document that is not a practising certificate to be a practising certificate; or 35

- “(e) falsely represents a document that is not a limited authority to teach to be a limited authority to teach; or
- “(f) is appointed to or continues to be employed in a position, knowing that the appointment or employment is contrary to **section 349 or 350**; or 5
- “(g) being the employer of a person to whom **section 351(1)** applies, fails or refuses to ensure that the person does not carry out any of the duties of the teaching position in which he or she is employed; or
- “(h) being the employer of a person to whom **section 351(1)** applies, fails or refuses to take all reasonably practicable steps to ensure that the person does not undertake any activities that might bring him or her into contact with students enrolled at the school or, as the case may be, children who attend the service; or 10 15
- “(i) being a person to whom **section 351(1)** applies, carries out any of the duties of the teaching position in which he or she is employed; or
- “(j) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of an employer (other than a sponsor) in a teaching position after the sum of the following periods is 20 half-days, or any greater number of half-days the Education Council has allowed that person (each being a half-day on which a school or an early childhood education and care service at which the person was then employed was open for instruction): 20 25
 - “(i) the period or periods for which that person has already during that year been employed by the employer in a teaching position or teaching positions; and 30
 - “(ii) any period or periods for which that person has already during that year been employed by any other employer in a teaching position or teaching positions; and 35
 - “(iii) any period or periods for which that person has during that year been employed as a teacher by the employer at an early childhood education and care service; or

- “(k) being a person who holds neither a practising certificate nor a limited authority to teach, in any calendar year continues in the employment of the employer at an early childhood education and care service as a teacher after the sum of the following periods is 20 half-days, or any greater number of half-days the Education Council has allowed that person (each being a half-day on which an early childhood education and care service or a school at which the person was then employed was open for instruction):
- “(i) the period or periods for which that person has already during that year been employed by the employer as a teacher; and
 - “(ii) any period or periods for which that person has already during that year been employed by an employer at any other early childhood education and care service as a teacher; and
 - “(iii) any period or periods for which that person has during that year been employed in a teaching position by the employer at a State school.
- “(2) Every person commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who appoints any person to a position, or continues to employ any person in a position, knowing that the appointment or employment is contrary to **section 349 or 350**.
- “Compare: 1989 No 80 s 137

“375 Periods of registration before commencement of this section

This Part applies to any period of registration as a teacher under the Education Act 1964 before the commencement of this section as if it were a period of registration under this Part.

**“Part 32
“Education Council**

“376 Purpose of Part

The purpose of this Part is to establish an Education Council.

“Compare: 1989 No 80 s 139AA

“377 Purpose of Education Council

The purpose of the Education Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession. 5

“Compare: 1989 No 80 s 139AA

“378 Interpretation

“(1) In this Part, unless the context otherwise requires,—

“**authorised person** means the holder of an authority 10

“**authority** means a limited authority to teach granted under **Part 31**

“**Complaints Assessment Committee** means the Complaints Assessment Committee established by rules

“**disciplinary body** means either or both of the Complaints Assessment Committee and the Disciplinary Tribunal 15

“**Disciplinary Tribunal** means the Disciplinary Tribunal established by rules

“**rules** means rules made under **section 388**

“**serious misconduct** means conduct by a teacher— 20

“(a) that—

“(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

“(ii) reflects adversely on the teacher’s fitness to be a teacher; or 25

“(iii) may bring the teaching profession into disrepute; and

“(b) that is of a character or severity that meets the Education Council’s criteria for reporting serious misconduct 30

“**teacher** includes—

“(a) a registered teacher; and

“(b) a former registered teacher; and

“(c) an authorised person; and

“(d) a former authorised person. 35

- “(2) Terms used in this Part that are defined in **section 348** have the meanings given to them by that section.

“Compare: 1989 No 80 s 139AB

“Education Council

“**379 Education Council of Aotearoa New Zealand established** 5

- “(1) The Education Council of Aotearoa New Zealand (the **Education Council**) is established.

- “(2) The Education Council is a body corporate with perpetual succession and is capable of—

- “(a) holding real and personal property; and 10
 “(b) suing and being sued; and
 “(c) otherwise doing and suffering all that bodies corporate may lawfully do and suffer.

- “(3) **Schedule 22** applies to the Education Council.

“Compare: 1989 No 80 s 139AC 15

“**380 Composition of Education Council**

- “(1) The Education Council must have 9 members appointed in accordance with **clause 1 of Schedule 22**.

- “(2) The Minister must appoint one of the members appointed under **subsection (1)** as chairperson, and that person holds office for the period specified in **clause 5 of Schedule 22**. 20

- “(3) The term of office of every member is up to 3 years and members may be reappointed for 2 more terms of up to 3 years each.

- “(4) Despite **subsection (3)**,—

- “(a) to provide for the staggered turnover of members, the Minister may specify, when appointing members to hold office, different terms of office for members: 25
 “(b) every member continues in office until his or her successor comes into office.

“Compare: 1989 No 80 s 139AD 30

“**381 Duties of members of Education Council**

The collective and individual duties of members of the Education Council are set out in **clauses 7 and 8 of Schedule 22**.

“382 Functions of Education Council**“(1)** The functions of the Education Council are as follows:

- “(a) to provide leadership to teachers and direction for the education profession:
- “(b) to enhance the status of teachers and education leaders: 5
- “(c) to identify and disseminate best practice in teaching and leadership and foster the education profession’s continued development in light of research, and evidence of changes in society and technology:
- “(d) to carry out the functions under **Part 31** relating to teacher registration: 10
- “(e) to establish and maintain any criteria for teacher registration under **Part 31** that the Education Council considers necessary or desirable:
- “(f) to establish and maintain standards for qualifications that lead to teacher registration: 15
- “(g) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes:
- “(h) to establish and maintain—
 - “(i) standards for ongoing practice; and 20
 - “(ii) criteria for the issue of practising certificates of different kinds:
- ~~“(i) to undertake audit and moderation of the assessment process for the issue of at least 10% of practising certificates each year:~~ 25
- “(i) to ensure that appraisals made by professional leaders for the issue and renewal of practising certificates achieve a reasonable and consistent standard, by auditing and moderating the appraisals made for at least 10% of the practising certificates issued or renewed in each year: 30
- “(j) to establish and maintain a code of conduct for teachers under **section 387**:
- “(k) to monitor and enforce the requirements relating to mandatory reporting in this Part and **Part 31**: 35
- “(l) to perform the disciplinary functions in this Part relating to teacher misconduct and reports of teacher convictions:

- “(m) to set the criteria for reporting serious misconduct and for reporting on competence issues:
- “(n) to perform the functions in this Part relating to teacher competence:
- “(o) to co-ordinate a system providing for the vetting by the Police of all teachers: 5
- “(p) to perform any other functions conferred on it by this Act or any other enactment.
- “(2) The functions specified in **subsection (1)(e) and (h)** must be performed as soon as practicable but no later than 2 years after the date of commencement of this section. 10
- “(3) When performing its functions and exercising its powers, the Education Council must act in accordance with the rules of natural justice.
- “Compare: 1989 No 80 s 139AE 15
- “383 Powers of Education Council**
- “(1) The Education Council may, by notice in the *Gazette*, fix fees for all or any of the following:
- “(a) any addition or alteration to a person’s registration as a teacher: 20
- “(b) any addition or alteration to a person’s limited authority to teach:
- “(c) any addition or alteration to a person’s practising certificate:
- “(d) inspection of the register of registered teachers or any other register or any other documents kept by the Education Council that are open to inspection: 25
- “(e) the supply of a copy of any entry in a register or other document referred to in **paragraph (d)**:
- “(f) the provision of professional leadership: 30
- “(g) costs relating to the performance of disciplinary functions:
- “(h) any other matter for which this Act provides that the Education Council may charge fees.
- “(1A) A notice under **subsection (1)**— 35
 - “(a) is a disallowable instrument for the purposes of the Legislation Act 2012; and

- “(b) must be published on a website maintained by the Education Council; and
- “(c) must state where printed copies of it are available free.
- “(1B) The Education Council must make printed copies of every notice under **subsection (1)** that is in force available free at the place stated in it. 5
- “(1C) The Education Council may charge a fee for anything that it has fixed a fee for under **subsection (1)**.
- “(1D) The Education Council may also charge for any goods or services it provides in accordance with its functions. 10
- “(2) The Education Council may, by written notice to a governing body, require the governing body to give the Education Council, within a time specified in the notice, any information specified in the notice, and the governing body must within that time give the Education Council in writing all information so 15
required that is reasonably necessary or desirable for the Education Council to have for the proper administration of this Part and **Part 31**.
- “(3) The Education Council has all other powers conferred by this Act or reasonably necessary to enable it to perform its functions. 20
- “(4) For the purposes of **subsection (2)**, **governing body** means the board of any State school or the sponsor of any partnership school kura hourua or a service provider who operates any licensed early childhood service (within the meaning of section 25
309) or any certificated playgroup or managers of any school registered under section 35A.
- “Compare: 1989 No 80 s 139AF
- “**384 Ministerial powers**
- “(1) For the purpose of ascertaining whether the Education Council is complying, or has complied, with the provisions of this Part and **Part 31**, the Minister may commission an independent audit of the conduct of the Education Council’s functions. 30
- “(2) The Minister may, by written notice to the Education Council, require the Education Council to provide to the Minister any 35
~~statistical~~ financial, statistical, or other information, including

information relating to the performance of the functions of the Education Council or any of its committees.

“Compare: 1989 No 80 s 139AG

“385 Reports

- “(1) At least every 3 years, following consultation with teachers, the Government, and the public, the Education Council must publish a report setting out its strategic direction for the next 5 years. 5
- “(2) The Education Council must present to the House of Representatives an annual report on its operations, including, but not limited to, the audited financial statements of the Education Council. 10

“386 Advisory boards

The Education Council may establish advisory boards for specific aspects of its operation or for particular issues as it sees fit. 15

“387 Code of conduct

- “(1) The Education Council must, as soon as practicable but not later than 2 years after the date of commencement of this section, establish and maintain a code of conduct for teachers. 20
- “(2) When preparing the code of conduct (and any amendments to it), the Education Council—
- “(a) must take all reasonable steps—
 - “(i) to consult those who will be bound by it; and
 - “(ii) to consult the State Services Commissioner; and 25
 - “(b) must have regard to any relevant minimum standards of integrity and conduct or code of conduct that the State Services Commissioner sets or issues under section 57 of the State Sector Act 1988.
- “(3) The code of conduct must be signed by the chairperson of the Education Council, and— 30
- “(a) notice of it must be given in the *Gazette*; and
 - “(b) the notice must say where copies of the code may be obtained free of charge; and

- “(c) the notice must give the date on which the code comes into force, which must be a date on or after the date of the *Gazette* notice; and
- “(d) the Education Council must take all reasonable steps to ensure that those bound by the code are aware of its existence and are able to obtain copies of it, including (but not limited to) publishing the code on its Internet site. 5
- “(4) The Education Council may amend the code of conduct, and every amendment— 10
- “(a) must be notified in the *Gazette*; and
- “(b) forms part of the code on the date specified in the notice as the date on which it will come into force.
- “(4A) The code of conduct, and every amendment of it, is a disallowable instrument for the purposes of the Legislation Act 2012. 15
- “(5) The code of conduct prepared under this section is binding on all teachers who hold a practising certificate and on all authorised persons.
- “(6) The code of ethics that the New Zealand Teachers Council prepared and that was in existence immediately before the commencement of this section is to be treated as the code of conduct prepared under this section until a code of conduct is prepared in accordance with **subsection (1)**. 20
- “Compare: 1989 No 80 s 139AI 25
- “388 Education Council to make rules**
- “(1) The Education Council must, as soon as practicable after the commencement of this section, make rules providing for—
- “(a) a Complaints Assessment Committee to— 30
- “(i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
- “(ii) carry out any other function, and exercise any power, given under this Act or delegated to it by the Education Council; and
- “(b) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and 35

- “(c) the practices and procedures of the disciplinary bodies;
and
 - “(d) the procedures of the Education Council for dealing
with reports received under the mandatory reporting
provisions in **sections 392 to 395 and 397**; and 5
 - “(e) the procedures relating to Police vetting, and in particu-
lar the rights of persons who are vetted.
 - “(2) The Education Council may make rules for any other purpose
relating to the performance of its functions.
 - “(3) When preparing rules (and any amendments to them), the Edu- 10
cation Council must take all reasonable steps to consult with
those affected by the rules.
 - “(4) When rules are made under this section,—
 - “(a) notice of them must be given in the *Gazette*; and
 - “(b) the notice must say where copies of the rules may be 15
obtained free of charge; and
 - “(c) the notice must give the date on which the rules come
into force, which must be a date on or after the date of
the *Gazette* notice; and
 - “(d) the Education Council must take all reasonable steps to 20
ensure that those affected by the rules are aware of their
existence and are able to obtain copies of them.
 - “(5) Rules made under this section are a legislative instrument and
a disallowable instrument for the purposes of the Legislation
Act 2012 and must be presented to the House of Representa- 25
tives under section 41 of that Act.
- “Compare: 1989 No 80 s 139AJ
- “389 Delegations**
- “(1) The Education Council may delegate any of its powers (other
than this power of delegation), either generally or specifically, 30
as it sees fit.
 - “(2) Despite **subsection (1)**, the Education Council may not dele-
gate its powers—
 - “(a) to appoint a chief executive:
 - “(b) to make rules: 35
 - “(c) relating to voluntary deregistration:

“(d) relating to cancellation of registration, practising certificates, or limited authorities to teach:

“(e) to establish and maintain a code of conduct for teachers under **section 387**.

“Compare: 1989 No 80 s 139AJA

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“390 Chief executive and employees

“(1) The Education Council may appoint a chief executive and any other employees it thinks necessary for the efficient performance of its functions.

“(2) No person appointed under **subsection (1)** may be a member of the Education Council.

“Compare: 1989 No 80 s 139AJB

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“391 Superannuation

“(1) Any person who, immediately before becoming an employee of the Education Council, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 or to the State Sector Retirement Savings Scheme is for the purpose of that Act treated as being employed in the Government service so long as he or she continues to be an employee of the Education Council.

“(2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person’s service as an employee of the Education Council were government service.

“(3) Nothing in **subsection (2)** entitles a person to become a contributor to the Government Superannuation Fund or to the State Sector Retirement Savings Scheme if the person has ceased to be a contributor.

“(4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Education Council is the controlling authority.

“Compare: 1989 No 80 s 139AJC

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*“Mandatory reporting***“392 Mandatory reporting of dismissals and resignations**

“(1) When an employer dismisses a teacher for any reason, the employer must immediately report the dismissal to the Education Council. 5

~~“(2) An employer must immediately report to the Education Council when a teacher resigns from a teaching position (including a fixed-term position) if, within the 12 months preceding the resignation, the employer advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher’s competence. 10~~

“(2) If, within the 12 months before the resignation of a teacher from a teaching position (including a fixed-term position) or the expiry of the term of a teacher’s fixed-term position, the teacher’s employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the teacher’s conduct, or the teacher’s competence, the employer must, immediately after the resignation or expiry, report it to the Education Council. 15

“(3) Every report under this section must be in writing and must include,— 20

“(a) in the case of a report of dismissal, the reason for the dismissal; and

“(b) in the case of a report of a resignation or expiry,—

“(i) a description of the conduct or ~~competency~~ competence issues that the employer was concerned about; and 25

“(ii) a report of what action (if any) the employer took with respect to the ~~conduct or competency~~ issues.

“Compare: 1989 No 80 s 139AK 30

“393 Mandatory reporting of complaints received about former employees

“(1) The former employer of a teacher must immediately report to the Education Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives 35 a complaint about the teacher’s conduct or competence while he or she was an employee.

“(2) Every report under this section must be in writing, and must include,—

“(a) in the case of an oral complaint, a description of aspects of the teacher’s conduct or competence complained of; and

“(b) in the case of a written complaint, a copy of the complaint; and

“(c) a report of what action (if any) the employer took with respect to the matters complained of.

“Compare: 1989 No 80 s 139AL

“394 Mandatory reporting of possible serious misconduct

“(1) The employer of a teacher must immediately report to the Education Council if it has reason to believe that the teacher has engaged in serious misconduct.

“(2) Every report under this section must—

“(a) be in writing; and

“(b) include a description of the conduct of the teacher that the employer believes to be serious misconduct; and

“(c) include a description of what action (if any) the employer has taken in relation to it.

“Compare: 1989 No 80 s 139AM

“395 Mandatory reporting of failure to reach required level of competence

“(1) The employer of a teacher must immediately report to the Education Council if it is satisfied that, despite undertaking competency procedures with the teacher, the teacher has not reached the required level of competence.

“(2) Every report under this section must—

“(a) be in writing; and

“(b) include a description of the ~~competency~~ competence issues leading to the report; and

“(c) include a description of the action that the employer has taken in relation to it.

“Compare: 1989 No 80 s 139AN

“396 Offence of failing to report

“(1) An employer or a former employer commits an offence and is liable on conviction to a fine not exceeding \$25,000 if it fails without reasonable justification to report to the Education Council in relation to any matter of conduct as required under **section 392, 393, or 394.** 5

“(2) An employer or a former employer commits an offence and is liable on conviction to a fine not exceeding \$5,000 if it fails without reasonable justification to report to the Education Council in relation to any matter of competence as required under **section 392, 393, or 395.** 10

“Compare: 1989 No 80 s 139AO

“397 Mandatory reporting of convictions

“(1) Every holder of a practising certificate and every authorised person who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Education Council. 15

“(2) Failure to report a conviction to the Education Council in accordance with **subsection (1)** is misconduct that may give rise to disciplinary proceedings. 20

“(3) The Registrar of every court must, unless the court expressly orders otherwise, report to the Education Council when a person who the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more. 25

“(4) If the Registrar has reported a conviction to the Education Council under **subsection (3)**, then, if that conviction is subsequently quashed, the Registrar must notify the Education Council of that fact. 30

“Compare: 1989 No 80 s 139AP

*“Disciplinary functions***“398 Disciplinary bodies**

“(1) The constitution of the disciplinary bodies must be set out in the rules, and those rules must be consistent with this section.

“(2) Both disciplinary bodies may operate in panels, and more than 1 panel of each body may operate at any one time. 35

- “(3) The Disciplinary Tribunal must include at least 1 person who is selected from a list, prepared by the Minister after consultation with the Education Council, of people who are not teachers, employers, or members of an employing body.
- “(4) The majority of members on the Disciplinary Tribunal, and on every panel of the Disciplinary Tribunal, must be registered teachers. 5
- “(5) No member of the Complaints Assessment Committee may be a member of the Disciplinary Tribunal.
- “(6) Rules must provide for the replacement of any member of a disciplinary body who, in relation to a particular complaint,— 10
- “(a) made the complaint; or
- “(b) is otherwise in a position of conflict of interest.
- “(7) When performing their functions and exercising their powers, the disciplinary bodies must act in accordance with the rules of natural justice. 15
- “Compare: 1989 No 80 s 139AQ

“399 Complaints about conduct

- “(1) A person who wishes to make a complaint about the conduct of a teacher, including complaints about possible breaches of the code of conduct prepared by the Education Council under **section 387**, must first make the complaint to the teacher’s employer, unless one of the circumstances in **subsection (2)(a) to (d)** applies. 20
- “(2) Any person (including a parent, employer, or member of the Education Council) may, at any time, make a written complaint to the Education Council about the conduct of a teacher— 25
- “(a) if the complaint is about a teacher who is not currently employed by an employer; or 30
- “(b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
- “(c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or 35

“(d) in any other exceptional circumstance.

- “(3) A complaint under this section by an employer or former employer must include a report of any action that the employer or former employer has taken in relation to it.

“Compare: 1989 No 80 s 139AR

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“400 Complaints and reports relating to teacher conduct

- “(1) The Education Council may refer to the Complaints Assessment Committee—

“(a) any report received by it under any of **sections 392 to 394 and 397** that relates to teacher conduct; and

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“(b) any complaint received by it under **section 399**.

- “(2) The Education Council may refer to the Complaints Assessment Committee any matters that relate to teacher conduct of its own motion as it sees fit.

- “(3) In relation to a complaint received under **section 399** from a person other than the current employer of the teacher concerned,—

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“(a) if the Complaints Assessment Committee considers that the complaint should have been sent first to the teacher’s employer or former employer, it must refer the matter to the employer or former employer; and

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“(b) ~~in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.~~

“(b) if the teacher is currently employed by an employer and it has not already referred the matter to the employer under **paragraph (a)**, it must notify the employer that it has received a complaint about the teacher.

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- “(4) An employer to whom a complaint is referred under **subsection (23)**, or who is required to provide information in the course of an investigation by the Complaints Assessment Committee, must report to the Complaints Assessment Committee as required by it.

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“Compare: 1989 No 80 s 139AS

“401 Powers of Complaints Assessment Committee

- “(1) The Complaints Assessment Committee may investigate any report, complaint, or matter referred to it under **section 400**.
- “(2) Following an investigation, the Complaints Assessment Committee may do ~~any~~ one or more of the following: 5
- “(a) resolve to take the matter no further:
 - “(b) refer the teacher concerned to a competency review:
 - “(c) refer the teacher concerned to an impairment process, which may involve either or both of the following: 10
 - “(i) assessment of an impairment:
 - “(ii) assistance with an impairment:
 - “(d) if there has been made a finding of misconduct that is not serious misconduct, by agreement with the teacher and the person who made the complaint or report or referred the matter, do any of the following: 15
 - “(i) censure the teacher:
 - “(ii) impose conditions on the teacher’s practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development: 20
 - “(iii) suspend the teacher’s practising certificate or authority for a specified period, or until specified conditions are met:
 - “(iv) annotate the register or the list of authorised persons in a specified manner: 25
 - “(v) direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.
- “(3) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing. 30
- “(4) The Complaints Assessment Committee must refer to the Disciplinary Tribunal any matter that the Committee considers may possibly constitute serious misconduct.
- “(5) When a matter is referred to the Disciplinary Tribunal under **subsection (4)**, a notice must be sent to the teacher concerned setting out the charge of misconduct against him or her. 35
- “(6) Any person authorised by the Complaints Assessment Committee may require an employer, a former employer, or a government agency to provide information that the person consid-

ers necessary for the purposes of an investigation under this section.

“Compare: 1989 No 80 s 139AT

“402 Interim suspension until matter about or involving possible serious misconduct concluded 5

“(1) At any time between when the Complaints Assessment Committee receives a complaint or receives or becomes aware of a report that is about or involves a teacher’s possible serious misconduct and when the matter is concluded (as specified in **section 403(6)**), the Complaints Assessment Committee may apply to the chairperson of the Disciplinary Tribunal for an interim suspension of the teacher’s practising certificate or authority. 10

“(2) On an application under **subsection (1)** for an interim suspension, the chairperson of the Disciplinary Tribunal may, having regard primarily to the safety of the children in the school or early childhood education and care service and to the reputation of the teaching profession, either with or without a hearing, suspend the teacher’s practising certificate or authority. 15 20

“Compare: 1989 No 80 s 139AU

“403 Duration of interim suspension

“(1) The duration of an interim suspension under **section 402** is initially until the earliest of the following occurs:

“(a) the expiry of a period specified by the chairperson of the Disciplinary Tribunal at the time the interim suspension commences: 25

“(b) the expiry of a period specified by the chairperson of the Disciplinary Tribunal after the interim suspension commences: 30

“(c) any conditions specified by the chairperson of the Disciplinary Tribunal are met:

“(d) the interim suspension is otherwise lifted or revoked, for example, as the result of a review under **subsection (2)**. 35

“(2) The chairperson of the Disciplinary Tribunal must review his or her initial interim suspension decision if the teacher—

- “(a) requests him or her to do so at any time during the initial interim period of suspension; and
 - “(b) provides a written explanation or statement in support of the request.
- “(3) The Disciplinary Tribunal may renew an interim suspension under **section 402** for further successive periods specified by the chairperson of the Disciplinary Tribunal, if, at the end of the relevant period of interim suspension,—
- “(a) the matter has not been concluded; and
 - “(b) the interim suspension has not been otherwise lifted or revoked, for example, as the result of an appeal against it under **subsection (4)**.
- “(4) A teacher whose practising certificate or authority is subject to an interim suspension under **section 402** that is renewed under **subsection (3)** may, at any time during a further period of interim suspension, appeal the interim suspension to the Disciplinary Tribunal at a hearing, if he or she believes that there is an unreasonable delay in concluding the matter.
- “(5) A hearing under **subsection (4)** is a hearing before the Disciplinary Tribunal, and **sections 405 to 409** apply to it.
- “(6) For the purposes of this section and **sections 359(4) and 402(1)**, a matter is concluded when the latest of the following occurs in relation to the complaint or report:
- “(a) the Complaints Assessment Committee has carried out whatever action it decides to take under **section 401(2)**;
 - “(b) the Disciplinary Tribunal has carried out whatever action it decides to take under **section 404(1)**, if the Complaints Assessment Committee has referred the matter to the Disciplinary Tribunal under **section 401(3) or (4)**.

“Compare: 1989 No 80 s 139AUA

“404 Powers of Disciplinary Tribunal

- “(1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:

- “(a) any of the things that the Complaints Assessment Committee could have done under **section 401(2)**: 5
- “(b) censure the teacher:
- “(c) impose conditions on the teacher’s practising certificate or authority for a specified period: 5
- “(d) suspend the teacher’s practising certificate or authority for a specified period, or until specified conditions are met:
- “(e) annotate the register or the list of authorised persons in a specified manner: 10
- “(f) impose a fine on the teacher not exceeding \$3,000:
- “(g) order that the teacher’s registration or authority or practising certificate be cancelled:
- “(h) require any party to the hearing to pay costs to any other party: 15
- “(i) require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:
- “(j) direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher. 20
- “(2) Despite **subsection (1)**, following a hearing that arises out of a report under **section 397** of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in **subsection (1)(d), (f), (h), or (i)**.
- “(3) A fine imposed on a teacher under **subsection (1)(f)**, and a sum ordered to be paid to the Education Council under **subsection (1)(i)**, are recoverable as debts due to the Education Council. 25
- “Compare: 1989 No 80 s 139AW
- “405 Evidence at Disciplinary Tribunal hearings 30**
- “(1) The Disciplinary Tribunal may—
- “(a) receive evidence on oath (and for that purpose an officer or employee of the Education Council may administer an oath); and
- “(b) permit a person appearing as a witness before it to give evidence by written statement and verify that statement by oath. 35

- “(2) A hearing before the Disciplinary Tribunal is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961 (which relates to punishment for perjury).
- “(3) Except as provided in **subsections (4) to (6)**, every hearing of the Disciplinary Tribunal must be held in public. 5
- “(4) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may hold a hearing or part of a hearing in private. 10
- “(5) The Disciplinary Tribunal may, in any case, deliberate in private as to its decision or as to any question arising in the course of a hearing.
- “(6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders: 15
- “(a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private: 20
- “(b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
- “(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person. 25

“Compare: 1989 No 80 s 139AX

“406 Powers of Disciplinary Tribunal in relation to witnesses

- “(1) The Disciplinary Tribunal may require a person to do either or both of the following: 30
- “(a) attend and give evidence at a hearing of the Disciplinary Tribunal:
- “(b) produce any documents, records, or other information in his or her custody or control that relate to the subject matter of the hearing, whether specified by the Disciplinary Tribunal or not. 35

“(2) A requirement under **subsection (1)** must be in writing and signed by the chairperson of the Disciplinary Tribunal.

“(3) A person required to attend a hearing is entitled to be paid, by the party calling the person (or, if called on the volition of the Disciplinary Tribunal itself, by the Education Council), witnesses’ fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations apply accordingly. 5

“Compare: 1989 No 80 s 139AY

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“407 Offences

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

“(a) to attend and give evidence when required by the Disciplinary Tribunal; or 15

“(b) to answer truthfully and fully any question put to him or her by a member of the Disciplinary Tribunal; or

“(c) to produce any document, record, or other information as required by the Disciplinary Tribunal. 20

“(2) A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if, without lawful excuse, he or she breaches an order made by the Disciplinary Tribunal under **section 405(6)**.

“Compare: 1989 No 80 s 139AZ

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“408 Privileges and immunities

“(1) Every person who does any of the following has the same privileges as witnesses have in a court:

“(a) provides documents, things, or information to a disciplinary body: 30

“(b) produces documents or things to a disciplinary body:

“(c) gives evidence to, or answers questions from, a disciplinary body.

“(2) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court. 35

- “(3) If a person is represented at a hearing before a disciplinary body by a person other than a barrister or solicitor,—
- “(a) any communications between the person and the representative in relation to the hearing are as privileged as they would have been if the representative had been a barrister or solicitor; and 5
- “(b) the representative is treated as counsel for the purposes of **subsection (2)**.

“Compare: 1989 No 80 s 139AZA

“409 Appeals 10

- “(1) The teacher who is the subject of a decision by the Disciplinary Tribunal made under **section 402(2) or 404**, or a decision by the Education Council made under **section 412**, may appeal against that decision to a District Court.
- “(2) The Complaints Assessment Committee may, with the leave of the Education Council, appeal to a District Court against a decision of the Disciplinary Tribunal made under **section 402(2) or 404**. 15
- “(3) An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows. 20
- “(4) **Section 356(3) to (6)** applies to every appeal under this section as if it were an appeal under **section 356(1)**.

“Compare: 1989 No 80 s 139AZB

“Review of competence 25

“410 Complaints about competence

- “(1) A person who wishes to make a complaint about a teacher’s competence must first make the complaint to the teacher’s employer, unless one of the circumstances in **subsection (2)(a) to (d)** applies. 30
- “(2) Any person (including a parent, an employer, or a member of the Education Council) may, at any time, make a written complaint to the Education Council about the competence of a teacher—
- “(a) if the complaint is about a teacher who is not currently employed by an employer; or 35

- “(b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
- “(c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
- “(d) in any other exceptional circumstance.
- “(2A) The Education Council may investigate any matters that relate to teacher competence of its own motion as it sees fit.
- “(3) A complaint under this section by an employer or former employer must include a description of the ~~competency~~ competence issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.
- ~~“(4) If the Education Council considers that a complaint under this section should have been sent first to the teacher’s employer, it must refer the matter to the employer, and, in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.~~
- “(4) If the Education Council considers that a complaint under this section should first have been sent to the teacher’s employer, it must refer it to the employer; and, in any other case, it must notify the employer (if the teacher is currently employed by an employer) that—
- “(a) it has received a complaint about the teacher’s competence; or (as the case may be)
- “(b) it is investigating the teacher’s competence of its own motion.
- “(5) When the Education Council refers a complaint to an employer, the employer must report as required by the Education Council.
- “(6) If the Education Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Education Council may investigate the complaint.

- “(7) When a complaint about competence is made by a member of the Education Council, that member may not be involved in any investigation of the complaint.

“Compare: 1989 No 80 s 139AZC

“411 Investigation of mandatory reports about competence 5

- “(1) When investigating a report under **section 392, 393, or 395**, the Education Council may require the teacher’s employer or former employer to supply information in addition to the information supplied in the report, and in that case, the employer or former employer must supply it. 10

- “(2) When a report is made under **section 392, 393, or 395** by a member of the Education Council, that member must not be involved in any investigation of the report.

“Compare: 1989 No 80 s 139AZCA

“412 Powers of Education Council after finding required level of competence not attained 15

Following an investigation of a complaint under **section 410**, or following receipt of a report under **section 392, 393, or 395** and any investigation of the report, the Education Council may, if satisfied that the teacher has not attained the required level of competence,— 20

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

“(i) impose conditions on the teacher’s practising certificate or authority:

“(ii) refer the teacher to an impairment process, which may involve either or both of the following: 25

“(A) assessment of an impairment:

“(B) assistance with an impairment:

“(iii) annotate the register or the list of authorised persons in a specified manner, in relation to any action taken under **subparagraph (i)**: 30

“(iv) impose conditions on any subsequent practising certificate or authority issued to the teacher; or

- “(b) cancel the teacher’s practising certificate or authority.

“Compare: 1989 No 80 s 139AZCB

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*“Police vetting***“413 Education Council must co-ordinate Police vetting**

“(1) The Education Council must establish a system for co-ordinating Police vetting, in relation to—

“(a) teacher registration and the issue of practising certificates; and 5

“(b) the granting of authorities to teach.

“(2) A copy of the result of the Police vet of a person must be given to the person or body that requested it and the person who is the subject of the vet. 10

“(3) The Education Council must establish internal procedures for dealing with the Police vet requested for its own purposes that must, in particular,—

“(a) identify the person or office holder within the Education Council to whom the results of the Police vet must be sent; and 15

“(b) ensure that strict confidentiality is observed for the Police vet.

“Compare: 1989 No 80 s 139AZD”

Schedules

20

39 New Schedules 19 to 22 inserted

(1) After Schedule 18, insert **Schedule 19** set out **Schedule 1** of this Act.

(2) In its appropriate numerical order, insert **Schedule 20** set out in **Schedule 2** of this Act. 25

(3) In their appropriate numerical order, insert **Schedules 21 and 22** set out in **Schedule 3** of this Act.

Part 2**Consequential amendments***Acts amended*

30

40 Crown Entities Act 2004

(1) This section amends the Crown Entities Act 2004.

(2) In Schedule 1, Part 2, repeal the item relating to the New Zealand Teachers Council.

41 Education Standards Act 2001

- (1) This section amends the Education Standards Act 2001.
- (2) In section 69(1), replace “Part 10” with “Part 31”.
- (3) In section 69(2), replace “Part 10” with “Part 31” in each place.
- (4) In section 69(2)(c), replace “section 120” with “section 348”. 5

42 Ombudsmen Act 1975

- (1) This section amends the Ombudsmen Act 1975.
- (2) In Schedule 1, Part 2, insert in its appropriate alphabetical order “Education Council of Aotearoa New Zealand”.
- (3) In Schedule 1, Part 2, repeal the item relating to the New Zealand Teachers Council. 10

43 Privacy Act 1993

- (1) This section amends the Privacy Act 1993.
- (2) In section 97, definition of **specified agency**, ~~repeal paragraph~~
~~(H) replace “New Zealand Teachers Council” with “Education~~
Council of Aotearoa New Zealand”. 15

44 State Sector Act 1988

- (1) This section amends the State Sector Act 1988.
- (2) In section 77C(2)(a), replace “New Zealand Teachers Council” with “Education Council of Aotearoa New Zealand”. 20

*Legislative instruments amended***45 Education (Early Childhood Centres) Regulations 1998**

- (1) This section amends the Education (Early Childhood Centres) Regulations 1998.
- (2) In regulation 36A(1), definition of **recognised qualification**, 25
replace “New Zealand Teachers Council” with “Education Council of Aotearoa New Zealand”.

46 Education (Early Childhood Services) Regulations 2008

- (1) This section amends the Education (Early Childhood Services) Regulations 2008. 30

- (2) In regulation 3, definition of **recognised qualification**, paragraph (a), replace “New Zealand Teachers Council” with “Education Council of Aotearoa New Zealand”.

47 Education (Registration of Early Childhood Services Teachers) Regulations 2004

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- (1) This section amends the Education (Registration of Early Childhood Services Teachers) Regulations 2004.
- (2) In regulation 9(1)(c), replace “New Zealand Teachers Council” with “Education Council of Aotearoa New Zealand”.
-

Schedule 1**s 39(1)****New Schedule 19 inserted****Schedule 19****s 299A(1)****Transitional and savings provisions
relating to councils of tertiary institutions**

5

1 Interpretation

For the purposes of this schedule, unless the context otherwise requires,—

- (a) **council** means the council of an institution that is not a designated polytechnic: 10
- (b) **transition period**, in relation to a council, means the period commencing on the commencement of this schedule, and ending on—
 - (i) the close of 31 December 2015; or
 - (ii) if the council fixes an earlier day for its successor council to take office, the close of the day before the day fixed: 15
- (c) terms defined in section 159(1) have the meanings given by that section.

2 Existing councils to prepare draft constitutions 20

- (1) Every council must, in accordance with this Act,—
 - (a) prepare a draft constitution for a new council for its institution; and
 - (b) give a copy to the Minister.
- (2) The copy must be given to the Minister at least 2 months before the end of the transition period, and the draft constitution must be prepared early enough for this to be done. 25

3 Draft constitutions to be approved by Minister

The Minister must, by notice in the *Gazette* setting out the constitution, confirm a draft constitution for a new council of an institution if— 30

- (a) the council has given a copy to the Minister at least 2 months before the end of the transition period; and
- (b) he or she is satisfied that it complies with the requirements of this Act. 35

Schedule 19—*continued***4 Minister may establish new constitution if council does not act in time**

The Minister may, by notice in the *Gazette* setting out the constitution, establish a constitution for a new council if the council has not given a copy of a draft constitution to the Minister at least 2 months before the end of the transition period. 5

5 When new constitution established

A constitution of an institution—

- (a) is established when a notice under **clause 3 or 4** is published; and 10
- (b) comes into effect at the close of the council's transition period.

6 New councils to be appointed

- (1) As soon as practicable after a constitution for a new council of an institution is established, the Minister and the existing council must, in accordance with this Act, appoint members of a new council. 15
- (2) The Minister must make appointments before the close of the council's transition period.
- (3) The council must make appointments no later than 3 months after the close of that period. 20

7 New councils to replace existing councils at close of transition period

- (1) At the close of its transition period,—
 - (a) the members of every council go out of office and are replaced by members appointed pursuant to **clause 6(1)**; and 25
 - (b) the chairperson and deputy chairperson of every council go out of office as chairperson or deputy chairperson (even if they are members appointed pursuant to **clause 6(1)**). 30
- (2) Neither the Crown nor the council is liable to make a payment to, or otherwise compensate, a person in respect of the

Schedule 19—*continued*

person's going out of office as a member of the council under **subclause (1)**.

- (3) At the first meeting of a council after the close of its transition period, a council must elect one of its members to be the chairperson, and another of its members to be the deputy chairperson, of the council. 5

8 Council continues to be same body

- (1) After the close of its transition period, a council—
 (a) is the same body it was immediately before that close; and 10
 (b) continues to have the rights and obligations it then had.
 (2) **Subclause (1)** is subject to **clause 9**.

9 Temporary power of direction

- (1) Before the close of a council's transition period, the Minister may, by written notice to the chief executive of the institution concerned, give any directions he or she thinks reasonably necessary to ensure that the council as reconstituted can deal effectively with the business before it ~~on and after that day~~ after the close of that period, and— 15
~~(a) the chief executive must give the notice to the council as soon as practicable after that day; and~~
 (a) the chief executive must give the council notice of the directions as soon as practicable after the close of that period; and
 (b) the council must comply with the directions. 25
 (2) The Minister must consult the council before giving the directions.

	Schedule 2	s 39(2)
	New Schedule 20 inserted	
	Schedule 20	s 299A(2)
	Transitional and savings provisions relating to other matters	5
	Provision delaying commencement of rules under section 253(pb)	
1	Rules under section 253(pb) to come into force no earlier than 12 months after assent to Act	
	Rules made under section 253(pb) before the day 12 months after the day on which this Act receives the Royal assent come into force—	10
	(a) on the day 12 months after the day on which this Act receives the Royal assent; or	
	(b) on a later day stated in those rules.	15
	Provision disestablishing International Education Appeal Authority and review panel	
2	International Education Appeal Authority and review panel disestablished but must dispose of existing complaints	20
(1)	The International Education Appeal Authority and review panel established by the code of practice established under section 238F of the principal Act—	
	(a) are disestablished; but	
	(b) continue in existence for the purpose of dealing with all complaints made before the commencement of section 27 of the Education Amendment Act (No 2) 2014 .	25
(2)	This Act applies to complaints made before the commencement of section 27 of the Education Amendment Act (No 2) 2014 as if sections 22 to 27 of that Act had not been enacted.	30

Schedule 20—*continued*Provisions relating to New Zealand Teachers
Council**3 Interpretation**

For the purposes of this schedule, unless the context otherwise requires,—

5

assets means any real or personal property of any kind, whether or not subject to rights, and includes (but is not limited to)—

(a) any estate or interest in any land, including all rights of occupation of land or buildings:

10

(b) all buildings, vehicles, plant, equipment, and machinery, and any rights in them:

(c) all securities within the meaning of the Securities Act 1978:

(d) all rights of any kind, including rights under Acts and agreements, and all applications, objections, submissions, and appeals in respect of those rights:

15

(e) all patents, trade marks, designs, copyright, plant variety rights, and other intellectual property rights of any kind whether enforceable by Act or rule of law:

20

(f) goodwill, and any business undertaking:

(g) interests of any kind in any of the foregoing

liabilities includes (but is not limited to)—

(a) liabilities and obligations under any Act or agreement; and

25

(b) debt securities within the meaning of the Securities Act 1978; and

(c) contingent liabilities; and

(d) interests of any kind in any of the foregoing

New Zealand Teachers Council means the New Zealand Teachers Council established under Part 10A of this Act.

30

4 Dissolution of New Zealand Teachers Council

(1) The New Zealand Teachers Council is dissolved.

(2) On the commencement of this clause, subject to **subclauses (3) to (5)**, every employee of the New Zealand Teachers Council, except the chief executive, becomes an employee of the

35

Schedule 20—*continued*

Education Council on the terms and conditions as applied immediately before he or she became an employee of the Education Council.

- (3) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of a transferred employee,—
 - (a) the employment agreement of that employee is to be treated as unbroken; and
 - (b) the employee's period of service with the New Zealand Teachers Council, and every other period of service of that employee that is recognised by the New Zealand Teachers Council as continuous service, is to be treated as a period of service with the Education Council.
 - (4) To avoid doubt, the employment of a transferred employee by the Education Council does not constitute new employment for the purposes of the KiwiSaver Act 2006.
 - (5) A transferred employee is not entitled to receive any payment or benefit from the New Zealand Teachers Council or the Education Council on the grounds that the person's position in the New Zealand Teachers Council has ceased to exist or the person has ceased to be an employee of the New Zealand Teachers Council as a result of the transfer to the Education Council.
 - (6) This section overrides Part 6A of the Employment Relations Act 2000.
- 5 Vesting of assets and liabilities of New Zealand Teachers Council**
- The assets and liabilities of the New Zealand Teachers Council vest in the Education Council.
- 6 Proceedings commenced before this clause comes into force**
- (1) All proceedings or any other matters involving the New Zealand Teachers Council that are to yet to be determined or completed on the commencement of this clause are to be determined or completed by the Education Council in accordance with the provisions of this Act as in force immediately

Schedule 20—*continued*

before the commencement of this clause as if the Education Council were the New Zealand Teachers Council.

- (2) Every application to the New Zealand Teachers Council for registration, a practising certificate, or a limited authority to teach that had not been determined or completed on the commencement of this clause must be determined or completed by the Education Council in accordance with the provisions of this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**. 5
- (3) **Subsection (2) overrides subsection (1).** 10
- 7 **Certain matters to be treated as having been done under this Act as amended by Education Amendment Act (No 2) 2014**
- Despite anything in **clause 4 of Schedule 20**,—
- (aa) any teacher who is registered immediately before the commencement of this clause is to be treated as being registered under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; and 15
- (a) any teacher who, immediately before the commencement of this clause, is ~~registered or~~ holds a practising certificate is to be treated as ~~being registered or~~ as holding a practising certificate under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**, but that practising certificate expires on the earlier of the following: 20
- (i) the date on which the practising certificate would have expired under this Act before it was amended by **section 38 of the Education Amendment Act (No 2) 2014**; or 25
- (ii) 24 months after the commencement of this clause; and 30
- (b) any person who, immediately before the commencement of this clause, holds a limited authority to teach is to be treated as holding a limited authority to teach under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; but that limited 35

Schedule 20—*continued*

- authority to teach expires when it would have expired under this Act if this Act had not been amended by **section 38 of the Education Amendment Act (No 2) 2014**; and
- (c) any teacher who, immediately before the commencement of this clause, is registered subject to confirmation under section 124(2) of this Act as in force immediately before the commencement of this clause continues to be registered subject to confirmation under section 124(2) as if that section 124(2) were still in force; but that registration expires on the earlier of the following:
- (i) the date on which the registration would have expired under this Act before amended by **section 38 of the Education Amendment Act (No 2) 2014**; or
 - (ii) 24 months after the commencement of this clause; and
- (c) where, immediately before the commencement of this clause, a person was provisionally registered under section 123, or registered subject to confirmation under section 124(2), the person's practising certificate must include a statement to that effect; and
- (d) every register of teachers or list of holders of limited authorities to teach made by the New Zealand Teachers Council under this Act that is in existence immediately before the commencement of this clause is to be treated as a register or list made by the Education Council under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; and
- (e) any rules made under this Act that are in force immediately before the commencement of this clause (other than the New Zealand Teachers Council Election Rules 2002) are to be treated as rules made under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**, but expire 12 months after the commencement of this clause if they are not replaced by rules made under this Act after the commencement of this clause; and

Schedule 20—*continued*

- (f) any system for co-ordinating Police vetting established under this Act that is in existence immediately before the commencement of this clause is to be treated as being established under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; and 5
- (g) any arrangement to facilitate the matching of register information and information about payment of teacher salaries established under this Act that is in existence immediately before the commencement of this clause is to be treated as an arrangement established under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; and 10
- (h) any person who was a member of a disciplinary body immediately before the commencement of this clause is to be treated as a person appointed as a member of that disciplinary body under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**; and 15
- (i) any rules described in **paragraph (e)** that are inconsistent with any provision of this Act after this Act is amended by **section 38 of the Education Amendment Act (No 2) 2014** are to be treated as expired and do not apply; and 20
- (j) all standards made under this Act for teacher registration or the issue of practising certificates that were in force immediately before the commencement of this clause are to be treated as standards and criteria for ongoing practice or (as the case may be) the issue of practising certificates made under this Act as amended by **section 38 of the Education Amendment Act (No 2) 2014**, but expire on the earlier of— 25
 - (i) their replacement by standards and criteria made under this Act after the commencement of this clause; 30
 - (ii) the day 24 months after the commencement of this clause. 35

Schedule 20—*continued***8 No compensation for loss of office**

A member of the New Zealand Teachers Council is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member, including (but not limited to) by reason of the dissolution of the New Zealand Teachers Council. 5

9 Employment in registered schools before commencement of this section

For the purposes of **section 353**, employment before the commencement of this section in a registered school (within the meaning of this Act or the Education Act 1964) is to be treated as employment in the general education system. 10

Schedule 3 **s 39(3)**
New Schedules 21 and 22 inserted
Schedule 21 **ss 353, 366**
Specified offences

- (1) An offence against any of the following sections of the Crimes Act 1961 is a specified offence for the purpose of **Part 31**: 5
- (a) section 128B (sexual violation):
 - (b) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
 - (c) section 129A (sexual conduct with consent induced by certain threats): 10
 - (d) section 130 (incest):
 - (e) section 131 (sexual conduct with dependent family member):
 - (f) section 131B (meeting young person following sexual grooming, etc): 15
 - (g) section 132 (sexual conduct with child under 12):
 - (h) section 134 (sexual conduct with young person under 16):
 - (i) section 135 (indecent assault): 20
 - (j) section 138 (sexual exploitation of person with significant impairment):
 - (k) section 144A (sexual conduct with children and young people outside New Zealand):
 - (l) section 144C (organising or promoting child sex tours): 25
 - (m) section 154 (abandoning child under 6):
 - (n) section 167 (murder):
 - (o) section 171 (manslaughter):
 - (p) section 173 (attempt to murder):
 - (q) section 178 (infanticide): 30
 - (r) section 188 (wounding with intent):
 - (s) section 189(1) (injuring with intent to cause grievous bodily harm):
 - (t) section 191 (aggravated wounding or injury):
 - (u) section 194 (assault on child): 35
 - (v) section 195 (ill-treatment or neglect of child or vulnerable adult):

Schedule 21—*continued*

- (w) section 195A (failure to protect child or vulnerable adult):
 - (x) section 198 (discharging firearm or doing dangerous act with intent):
 - (y) section 208 (abduction for purposes of marriage or sexual connection): 5
 - (z) section 210 (abduction of young person under 16).
 - (2) An offence that is equivalent to an offence against any section of the Crimes Act 1961 referred to in **subclause (1)**, but that was committed against a provision of the Crimes Act 1961 that has been repealed, is a specified offence. 10
 - (3) An attempt to commit any offence referred to in **subclause (1) or (2)**, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt, is a specified offence. 15
 - (4) A conspiracy to commit any offence referred to in **subclause (1) or (2)** is a specified offence.
-

Schedule 22 ss 348, 379, 380, 381
Governance provisions of Education Council

- 1 Appointment as member**
- (1) The Minister must appoint all 9 members of the Education Council. 5
- (2) ~~A maximum of 5 of the members must be people who are registered under **section 353**.~~
- (2) At least 5 of the members must be people who are registered under **section 353**, and hold a practising certificate under **section 361**. 10
- (3) At least 5 members must be appointed by the Minister from nominations received following notification of the Education Council vacancy in the *Gazette*.
- (4) The *Gazette* notice must specify the appointment process and must list the criteria for appointment specified in **subclause (5)**. 15
- (5) In making an appointment, the Minister must—
- (a) have regard to the collective skills, experience, and knowledge making up the overall composition of the Education Council; and 20
- (b) take into account each candidate's ability to carry out the duties of a member of the Education Council, including (but not limited to) the candidate's—
- (i) knowledge of education; and 25
- (ii) experience of governance; and
- (iii) leadership experience and skills; and
- (iv) financial skills; and
- (v) understanding of the partnership principles of the Treaty of Waitangi. 30
- (6) The Minister must appoint each member by written notice to the member.
- (7) The notice of appointment must state—
- (a) the date on which the appointment takes effect; and
- (b) the term for which the member is appointed. 35

Schedule 22—*continued***2 Disqualification from office**

The following persons are disqualified from being members:

- (a) a person who is an undischarged bankrupt:
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under any enactment other than this Act: 5
- (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
- (d) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's— 10
 - (i) competence to manage his or her own affairs in relation to his or her property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare: 15
- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person: 20
- (f) a member of Parliament.

3 Removal from office

25

- (1) The Minister may revoke the appointment of a member of the Education Council at any time for just cause.
- (2) The revocation must be made by written notice to the member with a copy to the Education Council.
- (3) The written notice must state— 30
 - (a) the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) the reasons for the removal.
- (4) ~~In this clause, just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any~~ 35

Schedule 22—*continued*

of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach):

- (4) In this clause, **just cause**—
- (a) includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach); and 5
 - (b) in the case of a member who held a practising certificate under **section 361** when appointed, includes— 10
 - (i) ceasing to hold the certificate; and
 - (ii) the suspension of the certificate.
- (5) The Minister may remove a member with as little formality and technicality, and as much expedition, as is permitted by— 15
- (a) the principles of natural justice; and
 - (b) a proper consideration of the matter.
- (6) A Judge may be removed as a member in accordance with the removal provisions of this Act for a breach of the Education Council's collective duties, but only if all of the other members are being removed for the same breach at the same time (and the removal does not affect his or her tenure as a Judge). 20
- (7) A member of the Education Council is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member.
- 4 Continuation in office** 25
- (1) Each member of the Education Council continues in office (unless he or she ceases to hold office under **subclause (4)**) until a successor is appointed.
 - (2) A member may resign from office by written notice to the Minister (with a copy to the Education Council) signed by the member. 30
 - (3) The resignation is effective on receipt by the Minister of the notice or at any later time specified in the notice.
 - (4) A member of the Education Council ceases to hold office if he or she— 35

Schedule 22—*continued*

- (a) resigns; or
- (b) is removed from office; or
- (c) becomes disqualified from being a member.

5 Chairperson

- (1) The Minister must appoint one of the members as chairperson 5
by notice in writing stating the date on which the appointment
takes effect.
- (2) The chairperson holds that office until—
 - (a) he or she resigns from that office; or
 - (b) he or she is removed from it by the Minister; or 10
 - (c) he or she ceases to hold office as a member; or
 - (d) the term of office specified on appointment expires.
- (3) A person may be reappointed as chairperson for a further term.
- (4) The chairperson may, without resigning as a member, resign
from that office by written notice to the Minister (with a copy 15
to the Education Council).
- (5) The notice of resignation must state the date on which the res-
ignation takes effect.
- (6) The Minister may, after consultation with the person con-
cerned, remove a chairperson of the Education Council from 20
that office by written notice to the person (with a copy to the
Education Council).
- (7) The notice of removal must state the date on which the removal
takes effect.

6 Administrative provisions

25

- (1) The powers of the Education Council are not affected by any
vacancy in its members.
- (2) The Education Council may appoint committees to advise it
on any matters relating to the Education Council's functions
and powers. 30
- (3) All questions arising at any meeting must be decided by a ma-
jority of those members present with the chairperson having a
casting vote.

Schedule 22—*continued*

- (4) Except as otherwise provided under this or another Act, the members may regulate their own procedure.

7 Collective duties

- (1) The Education Council must act in a manner consistent with its functions, duties, and powers. 5
- (2) The Education Council must ensure that it performs or exercises its functions, duties, and powers efficiently and effectively.
- (3) The Education Council must ensure that it operates in a financially responsible manner and, for this purpose, that it prudently manages its assets and liabilities. 10

8 Individual duties

- (1) A member of the Education Council must not contravene, or cause the contravention of, or agree to the Education Council contravening, this Act. 15
- (2) A member of the Education Council must, when acting as a member, act with honesty and integrity.
- (3) A member of the Education Council must, when acting as a member, act in good faith and not pursue his or her own interests at the expense of the Education Council's interests. 20
- (4) A member of the Education Council must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
- (a) the nature of the Education Council; and 25
 - (b) the nature of the action; and
 - (c) the position of the member and the nature of the responsibilities undertaken by him or her.
- (5) A member of the Education Council who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except— 30

Schedule 22—*continued*

- (a) in the performance of the Education Council's functions; or
- (b) as required or permitted by law; or
- (c) when the member is first authorised to do so by the Education Council and the disclosure, use, or act in question will not, or will be unlikely to, prejudice the Education Council. 5

9 Members not personally liable

No member of the Education Council is personally liable for any act done or omitted to be done by the body or any loss to the Education Council arising out of any act done or omitted to be done by the member if the act or omission was (so far as the member's involvement is concerned) in good faith and in pursuance or intended pursuance of the functions of the Education Council. 10 15

10 Conflicts of interest

- (1) A person is interested in a matter if he or she—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or 20
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or 25
 - (e) is otherwise directly or indirectly interested in the matter.
- (2) A member who is interested in a matter relating to the Education Council must disclose to the Education Council details of the interest as soon as practicable after the member becomes aware that he or she is interested. 30
- (3) The details that must be disclosed are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or 35

Schedule 22—*continued*

- (b) the nature and extent of the interest (if the monetary value cannot be quantified).
- (4) A member who is interested in a matter—
 - (a) must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in any activity of the Education Council that relates to the matter; and 5
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter.
- (5) In this clause, **matter** means— 10
 - (a) the Education Council’s performance of its functions or exercise of its powers; or
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Education Council. 15

Legislative history

10 March 2014
13 March 2014

Introduction (Bill 193–1)
First reading and referral to Education and Science Committee
