

Education and Training Amendment Bill (No 3)

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education and Training Amendment Bill (No 3) and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The bill would amend the Education and Training Act 2020. Most notably, it would establish a new governance framework for wānanga that better recognises their mana and rangatiratanga. The bill would enable existing wānanga, by Order in Council, to reconstitute themselves as a Crown entity, or convert to a non-Crown entity. The bill would amend the Act to:

- articulate the characteristics that collectively define wānanga
- set out establishment and disestablishment provisions
- set out what must, and may, be covered within an Order in Council
- provide for new accountability and monitoring arrangements for wānanga that are not Crown entities.

The bill would also amend the Act to:

- permit the Ministry of Education to access early childhood service data from Statistics New Zealand in order to implement the new equity index
- alter school board ineligibility criteria, including by:
 - making people convicted of an offence specified in Schedule 2 of the Children's Act 2014 ineligible to serve on a school board (unless the Secretary for Education provides an exemption)

- enabling the Secretary for Education to audit school board members to determine whether they meet eligibility requirements
- requiring board members to permit the Secretary for Education to obtain any relevant information to enable an audit to be conducted
- change election processes for school boards, including by:
 - moving the timing of the next mid-term elections
 - stating that school boards, as far as is reasonably practicable, should reflect the genders, sexualities, and sexes of their students and school community, and the diversity of disabled students at the school and of the school's disability community
 - allowing schools to fill vacancies in student representative positions
- alter the status of Kura Kaupapa Māori so they are no longer treated simply as designated character schools
- ensure employers of licensed early childhood services and schools consider the results of Police vetting for non-teaching employees and contractors before employees begin work or before contractors have unsupervised access to children
- restrict the chief executive for Te Aho o Te Kura Pounamu to a term of up to 5 years, with the ability to reappoint for further terms
- require universities and wānanga to include in their annual report information on employee (including the chief executive) remuneration of \$100,000 or more per year
- allow members of the governing council of Te Pūkenga to remain in their positions until they are either reappointed or replaced, as is the case for other Crown entities such as universities
- make a number of minor and technical amendments.

Legislative scrutiny and proposed amendments

As part of our consideration of the bill, we have examined its consistency with principles of legislative design. We initially had some queries, but are satisfied that they have been addressed.¹

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

¹ Our queries are outlined and addressed in the departmental report prepared by the Ministry of Education.

New Part 4A—Wānanga

Provisions related to tertiary education and vocational education and training are dealt with in Part 4 of the Education and Training Act. Clause 9 of the bill would insert Part 4A (proposed sections 398A to 398ZF). This new part concerns wānanga and their establishment, modification, and administration.

Te Wānanga o Aotearoa expressed concern about having provisions related to wānanga in a separate part of the legislation. It considered that this would risk creating a perception that wānanga are moving away from being tertiary education institutions. We acknowledge this concern.

For the avoidance of doubt, we wish to state that wānanga would continue to be tertiary education institutions, with the same legal status as universities and Te Pūkenga, if they are dealt with in their own part of the Act. Wānanga would continue to meet the definition of tertiary education institution contained in section 10(1) of the Act.

Whether “wānanga” should be a protected term

Section 390 of the Act protects the use of the terms “university”, “polytechnic”, and “institute of technology”. It is an offence for a person to use these terms unless they meet certain requirements. All three wānanga told us the term “wānanga” should similarly be a protected term.

We agree, in principle, that “wānanga” should be a protected term. It is plainly inequitable for the terms “university”, “polytechnic”, and “institute of technology” to be protected, but not “wānanga”. However, there has not been adequate consultation and robust policy development for this proposal. Without that work, we risk producing unclear or inconsistent legislation that could give rise to legal challenges or other unintended consequences. We also understand that the wānanga would prefer that the bill be passed into law without legal protections for the term “wānanga”, rather than slow the process.

For these reasons, we recommend that, as a matter of priority, the Government undertake full consultation and policy work with the aim of legally protecting the term “wānanga”.

Alternative terms for “Crown entity wānanga” and “non-Crown entity wānanga”

Te Wānanga o Aotearoa recommended replacing the terms “Crown entity wānanga” with “Wānanga Tāhūhono”, and “non-Crown entity wānanga” with “Wānanga Tāhūtahi”. Te Wānanga o Aotearoa felt the constant use of the English terms throughout the legislation would unduly emphasise the relationship wānanga have with the Crown, to the detriment of the relationship wānanga have with their founding iwi and the communities they serve. It felt this would be inconsistent with the aims of the bill.

We were advised that, while they supported changing the English terms, not all wānanga supported the specific alternatives proposed by Te Wānanga o Aotearoa. One wānanga wanted to consult its founding iwi and mātanga reo (language experts).

There is insufficient time at this stage of the legislative process to reach consensus about alternative terms for Crown entity wānanga and non-Crown entity wānanga. Therefore, as a first step, we recommend amendments to refer to:

- wānanga that are Crown entities as category A wānanga
- wānanga that are not Crown entities as category B wānanga
- existing wānanga that have not been reconstituted or converted by an Order in Council as category C wānanga.

These placeholder terms would mean that emphasis was not placed on the Crown and its relationship with wānanga.

We accept, however, that these placeholder terms lack depth of meaning or any symbolism. We therefore also recommend inserting a regulation-making power into the bill that would allow the placeholder terms to be replaced by terms specified in an Order in Council made on the recommendation of the Minister (proposed Schedule 1 clause 89(6)). The Minister's recommendation would itself be based on a recommendation from Te Taihū o Ngā Wānanga (an association of representatives from the three wānanga).

This provision would allow the wānanga time to agree on terms that they deem appropriate. Once agreed, the legislation could be amended to use the new terms.

We acknowledge that it is generally undesirable to allow primary legislation to be amended using secondary legislation (commonly referred to as a Henry VIII clause). We believe it is justified in this case given the symbolic importance of the terms to wānanga, and because replacing the placeholder terms would not change their legal meaning.

We note that there is precedent for this type of provision. A similar provision exists in section 314 of the Act, which was used to rename the New Zealand Institute of Skills and Technology as Te Pūkenga—New Zealand Institute of Skills and Technology.

Annual reporting for wānanga that are not Crown entities

Proposed section 398J would allow the Governor-General, by Order in Council, to establish a wānanga as an institution that is not a Crown entity (a category B wānanga). Proposed section 398J(3) sets out what must be contained in an order, including what the wānanga must do to ensure adequate accountability for effective governance and administration (398J(3)(h)).

We recommend expanding this provision so that an order must require wānanga to prepare annual financial statements and audited statements of performance. These documents should be prepared in accordance with generally accepted accounting practice, within the meaning of section 8 of the Financial Reporting Act 2013. We recommend similar amendments to new Part 5 of Schedule 1 of the Act, which clause 36 would insert.

We also recommend inserting new paragraph (l) into proposed section 398J(3). This would require the wānanga to publish an annual report on an Internet site, including

remuneration data. The report must include the number of employees or former employees (including the chief executive) who received remuneration of \$100,000 or more. This should include compensation or other benefits, and be reported in brackets of \$10,000 increments.

Accountability to Māori when disestablishing a wānanga

Proposed section 398Y would allow the Governor-General to disestablish a wānanga, by Order in Council made on the recommendation of the Minister of Education. Proposed section 398Y(4) would not allow the Minister to recommend the disestablishment of a wānanga that is not a Crown entity (a category B wānanga) unless certain requirements are met.

We recommend amending proposed section 398Y(4) so that the iwi, hapū, or Māori organisations that are primarily accountable for the wānanga are instrumental in the Minister's decision whether to disestablish a wānanga.

Requirement for a final report from disestablished wānanga that are not Crown entities

Section 573 of the Act sets out provisions related to the disestablishment of institutions. These requirements were carried over into the bill for wānanga that are Crown entities (category A), but not for wānanga that are not Crown entities (category B). To remedy this oversight, we recommend:

- inserting section 398Y(5A)(b)(i) so disestablishment orders must require wānanga that are not Crown entities to provide a final annual report to the Minister
- inserting section 398Y(5A)(b)(ii) so disestablishment orders must specify the required content of this final annual report
- inserting section 398ZE(2) to allow the council of a disestablished wānanga that was not a Crown entity to continue to exist for the purposes of complying or facilitating compliance with disestablishment orders.

Vesting property of disestablished wānanga

Section 40 of the Public Works Act 1981 sets certain conditions whereby land must be offered back to the person from whom it was acquired (or to the successor of that person) if it is no longer required for a public work (in this case, tertiary education).

Proposed section 398ZC of the bill concerns the vesting of property of disestablished wānanga. To avoid ambiguity, we recommend inserting subsection (7). This would provide that, if property is vested in iwi or Māori under section 398ZC, they would be responsible for any obligations under section 40 of the Public Works Act.

We also recommend amending proposed section 398ZC to refer to property being vested in the Crown, rather than the Minister. This would be more accurate.

Public Audit Act

Proposed section 398S provides that a wānanga that is not a Crown entity (a category B wānanga) is a public entity as defined in section 4 of the Public Audit Act 2001. We understand that the usual process would be to amend Schedule 1 of the Public Audit Act, which lists classes of public entities. We therefore recommend inserting “wānanga that are not Crown entities” into Schedule 1 of the Public Audit Act.

Remuneration reporting

Section 306 of the Act requires universities and wānanga to give the Minister of Education an annual report. Subsection (4) sets out what must be included in it. Clause 25 would insert paragraph (g), requiring universities and wānanga to also report the number of employees (including the chief executive and former employees) who received remuneration of \$100,000 or more in the year to which the report relates.

Universities and wānanga already report information to the Public Service Commission about high employee salaries. This proposed change would make reporting requirements for universities and wānanga consistent with those for Te Pūkenga, schools, and other Crown entities.

In the bill as introduced, compensation or other benefits given to employees would have been excluded from reporting. To increase transparency, we believe they should be included in the reporting, and recommend amending clause 25 to this effect.

Disclosing early childhood education data

Section 54 of the Data and Statistics Act 2022 imposes requirements on each individual who works at a public sector agency and is authorised to access Statistics New Zealand data. One requirement imposed on these individuals is to “take all reasonable steps to ensure that they do not publish or otherwise disclose data in a form that could reasonably be expected to identify any individual or organisation” (section 54(1)(c)).

Clause 31 of the bill would insert section 548A into the Education and Training Act. This section would enable the individuals at the Ministry of Education who are authorised to access Statistics New Zealand data to disclose data to the wider ministry, despite section 54(1)(c) of the Data and Statistics Act. We understand that the data to be disclosed would be the equity index number of each early childhood service. This number is a measure of socio-economic circumstance and would be used by the wider ministry to determine how much funding each service would receive.

We understand that it is not intended that data about individual children or families would be disclosed under this proposal. To prevent this possibility, we recommend amending clause 31, proposed section 548A(1), to specify that the ministry could only publish or disclose data at the level of an early childhood service.

We also recommend amending proposed section 548A(1)(b) so that data containing personal information (as defined in section 7(1) of the Privacy Act 2020) could not be published or disclosed unless a service provider, who is an individual, has consented.

This change would account for sole traders, about whom any information is considered to be personal information, even when it relates to the service they operate.

We consider that our above recommendations would strengthen the bill from a privacy perspective.

Regulations for school opening hours

Clause 34 would replace section 638(2)(e) of the Act. This would allow regulations to be made that authorise the Minister of Education to determine, by notice, matters relating to school opening hours. We recommend inserting clause 34(2) into the bill, which would insert standard language into the Act specifying that a notice issued by the Minister would be secondary legislation.

Vetting non-teaching and unregistered employees and contractors

Schedule 4 of the Act requires early childhood education service providers, boards of State schools and kura, and managers of private schools to obtain a Police vet for non-teaching and unregistered employees and contractors who are not children's workers. Clause 37 of the bill would amend the Act to explicitly require service providers and schools to consider the information contained in the Police vet to assess whether the person would pose a safety risk to children.

We acknowledge concerns expressed about a lack of guidance or criteria to be used when considering the Police vet and assessing risk. To address these concerns, we recommend amending clause 37 to require service providers, boards, and managers to take into account guidelines issued by the Ministry of Education when they undertake a risk assessment.

This would be similar to the Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015, which require decision-makers to take into account any guidelines on risk assessments issued by a key agency.

School board co-option and appointment criteria

School boards can choose to supplement their elected membership by co-opting additional members. In 2020, roughly 5 percent of board members were co-opted. A board cannot co-opt a member if it would mean that there were more co-opted and appointed members than parent representatives.

Schedule 23 clause 1 of the Act sets out a list of criteria that, as far as is reasonably practicable, every school board should reflect. Clause 38 of the bill would amend the listed criteria to also include:

- “the genders, sexualities, and sexes of the student body of the school and within the community served by the school” (proposed clause 1(1)(a)(ii))
- “the diversity of disabled students at the school and of the school's disability community” (proposed clause 1(1)(a)(ia)).

Most submissions we received on this bill were about school board co-option and appointment. Most were opposed to the proposed changes. We wish to stress that co-

option has been and would continue to be optional. Schools have the flexibility to use co-option in ways that suit their communities. We do not consider that co-option has undermined democratic accountability, nor would this bill.

Terminology for school community

Some submitters expressed concern that the references to school community in proposed clauses 1(1)(a)(ii) and (ia) are inconsistent, with possible implications for the scope of the provisions. While the criteria for genders, sexualities, and sexes refer to the entire “community served by the school”, the criteria for disability refers only to “the school’s disability community”. The current provision in the Act relating to ethnic and socio-economic diversity refers to the student body only, and does not include the community of the school or special institution.

For consistency, we recommend amendments so that all criteria in clause 1 of Schedule 23 (except for disability) apply to “the community of the school or special institution”. We note that the Act defines school community to mean:

- the parents, families and whānau of the school’s students
- the Māori community associated with the school
- any other person, or group of persons, who the board considers is part of the school community for the purposes of the relevant provision.

Ethnicity and socio-economic diversity

Schedule 23 clause 1(1)(a)(i) states that it is desirable, as far as is reasonably practicable, that every board should reflect the ethnic and socio-economic diversity of the student body. A submitter suggested that ethnicity and socio-economic status should be split into two separate criteria, as they are not always linked. We agree, and recommend an amendment to this effect.

National Party and ACT Party differing view

National Party and ACT Party members of the committee believe that the make-up of school boards should be skills based and reflect their community and that this should be set out in legislation. However, attempting to list every possible characteristic, as this bill does, is not appropriate and can in fact be problematic.

The legislation should simply state that, as far as is reasonably practicable, every board should reflect “the diversity of their students and school community”.

These members also believe the bill should have been delayed in order for the wānanga to agree on alternative terms for Crown entity wānanga and non-Crown entity wānanga. These members are also concerned about the proposed Order in Council mechanism that would be used to replace the placeholder terms.

These members are disappointed that the term “wānanga” is not being protected as part of this bill.

Appendix

Committee process

The Education and Training Amendment Bill (No 3) was referred to us on 28 March 2023. We called for submissions on the bill with a closing date of 1 May 2023.

We received and considered written submissions from 1,124 interested groups and individuals. We heard oral evidence from 55 submitters at hearings held in Wellington and by videoconference. We invited the Minister of Education and the Associate Minister of Education (Māori Education) to make the first oral submission on the bill. They did so on 3 May 2023.

We received advice on the bill from the Ministry of Education. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee wrote to us about clause 34 of the bill, proposed sections 398E, 398J, 398Y, and new clause 94 of Schedule 1.

Committee membership

Camilla Belich (Chairperson)

Chris Baillie

Jan Logie

Ibrahim Omer

Angela Roberts

Dan Rosewarne (until 3 May 2023)

Penny Simmonds

Lemauga Lydia Sosene (from 3 May 2023)

Erica Stanford

Teanau Tuiono also participated in our consideration.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jan Tinetti

Education and Training Amendment Bill (No 3)

Government Bill

Contents

	Page
1 Title	4
2 Commencement	4
3 Principal Act	5

Part 1

Amendments to principal Act relating to wānanga

4	Section 9 amended (Te Tiriti o Waitangi)	5
<u>4A</u>	<u>Section 10 amended (Interpretation)</u>	<u>5</u>
5	Section 266 amended (Object)	5
6	Section 268 amended (Establishment of institutions)	5
7	Section 271 replaced (Institutions to be governed by councils)	6
	271 Institutions to be governed by councils	6
8	Section 272 amended (Incorporation)	6
9	New Part 4A inserted	7

Part 4A

Wānanga

398A	Outline of Part 4A	7
398B	Purpose of Part 4A	7
	Subpart 1—Preliminary matters	
398C	Application	7
398D	What wānanga are (characteristics)	10
	Subpart 2—Administration of wānanga that are Crown <u>entities category A wānanga</u>	
398E	Establishment of <u>category A wānanga</u> that are Crown <u>entities</u>	11

Education and Training Amendment Bill (No 3)

	398F	Appointment of council members	12
	398G	Certain people ineligible to be appointed	12
	398H	Statutes relating to appointment	13
	398I	Conversion of wānanga that are Crown entities to wānanga that are not Crown entities	13
		Subpart 3—Administration of wānanga that are not Crown entities <u>category B wānanga</u>	
	398J	Establishment of <u>category B wānanga</u> that are not Crown entities	14
	398K	Appointment of council members	16
	398L	Certain people ineligible to be appointed	16
	398M	Membership of more than 1 council	17
	398N	Statutes relating to appointment	17
	398O	Acts and proceedings not invalidated by certain defects	18
	398P	Amendments to constitutions	18
	398Q	Application of Local Authorities (Members' Interests) Act 1968	18
	398R	Application of Public Records Act 2005	18
	398S	Application of Public Audit Act 2001	18
	398T	Office holders and employees are officials	19
	398U	Disclosure of interest	19
	398V	Fees and allowances	20
	398W	Personal liability of council members	20
	398X	Trust property	20
		Subpart 3A—Conversion to category B wānanga	
	398XA	<u>Conversion of category A wānanga or category C wānanga to category B wānanga</u>	<u>20</u>
		Subpart 4—Disestablishment of wānanga	
	398Y	Disestablishing wānanga	21
	398Z	Effect of disestablishing wānanga	22
	398ZA	Disestablished wānanga and their councils cease to exist	22
	398ZB	Entitlements of certain persons for certain awards	22
	398ZC	Vesting of property of disestablished wānanga	23
	398ZD	Treatment of certain contracts, instruments, and proceedings	24
	398ZE	Continuation of disestablished wānanga for certain purposes	25
	398ZF	Restriction on subsequent distribution of surplus assets	25
10		Section 405 amended (Chief executive must monitor and report on institutions)	25
11		Section 424 amended (Criteria for assessing proposed plans)	25
12		Section 574 amended (Taxes and duties where disestablished institution incorporated into another institution)	26

Education and Training Amendment Bill (No 3)

13	Section 575 amended (Taxes and duties in other cases)	26
14	New section 575A inserted (Taxes and duties where assets and liabilities of disestablished institution vested in iwi or Māori)	26
	575A Taxes and duties where assets and liabilities of disestablished institution vested in iwi or Māori	26
15	Section 611 amended (Conditions of employment of chief executive)	27
16	Schedule 11 amended	27
Part 2		
Other amendments to principal Act		
17	Section 5 amended (Minister may issue statement of national education and learning priorities)	28
18	Section 10 amended (Interpretation)	28
19	New section 94A inserted (Appointment of chief executive of Te Aho o Te Kura Pounamu)	29
	94A Appointment of chief executive of Te Aho o Te Kura Pounamu	29
20	Section 115 amended (When State schools must be open)	29
21	Section 189 amended (Overview: classifications and types of State schools)	29
22	Section 201 replaced (Kura Kaupapa Māori)	29
	201 Kura Kaupapa Māori	29
23	Section 203 amended (Protection of term Kura Kaupapa Māori)	30
24	Sections 204 and 205 replaced	30
	204 Designated character schools	30
	205 Process for establishing designated character schools	31
25	Section 306 amended (Annual report)	32
26	Section 323 amended (Term of office)	32
27	Section 527 amended (Requirements that private training establishments must comply with before enrolling international students)	32
28	Section 528 amended (Exemptions)	32
29	Section 535A amended (Appointment and functions of code administrators)	32
30	Section 540 amended (How export education levy may be applied)	32
31	New section 548A inserted (Data accessed by Ministry under Data and Statistics Act 2022)	33
	548A Data accessed by Ministry under Data and Statistics Act 2022	33
32	Section 594 repealed (Senior positions at institutions)	33
33	Section 617 amended (Minister must issue eligibility criteria relating to appointment of principals)	33
34	Section 638 amended (Regulations relating to how schools must be run)	33

35	Section 659 amended (Power of boards to close schools)	34
36	Schedule 1 amended	34
37	Schedule 4 amended	34
38	Schedule 23 amended	36

Part 3

Amendments to other legislation

Amendment to Crown Entities Act 2004

39	Principal Act	37
40	Section 7 amended (Meaning of Crown entity and categories of Crown entities)	37

Amendment to Income Tax Act 2007

41	Principal Act	37
42	Section YA 1 amended (Definitions)	37

Amendment to Local Government Official Information and Meetings Act 1987

43	Principal Act	37
44	Schedule 2 amended	38

Amendment to Ombudsmen Act 1975

45	Principal Act	38
46	Schedule 1 amended	38

Amendment to Public Audit Act 2001

<u>46A</u>	<u>Principal Act</u>	<u>38</u>
<u>46B</u>	<u>Schedule 1 amended</u>	<u>38</u>

Amendment to Tax Administration Act 1994

47	Principal Act	38
48	Section 32E amended (Applications for RWT-exempt status)	38

Schedule

39

New Part 5 inserted into Schedule 1

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education and Training Amendment Act **(No 3) 2023**.

2 Commencement

- (1) **Section 38(2) to (4)** come into force on the day that is 6 months after the date on which this Act receives the Royal assent. 5
- (2) 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 and Training Act 2020.

Part 1

Amendments to principal Act relating to wānanga

4 Section 9 amended (Te Tiriti o Waitangi)

5

In section 9(1)(f), replace “Part 4, which provides” with “Part 4 and **Part 4A**, which provide”.

4A Section 10 amended (Interpretation)

(1) In section 10(1), replace the definition of **wānanga** with:

wānanga means an institution established as a wānanga,—

10

(a) before the commencement of **Part 4A**, under section 268;

(b) after the commencement of **Part 4A**, under that Part

(2) In section 10(1), insert in their appropriate alphabetical order:

category A wānanga means a wānanga that—

(a) is established under **section 398E(1)** or reconstituted under **clause 90(1) of Schedule 1**; and

15

(b) is a Crown entity

category B wānanga means a wānanga that—

(a) is established under **section 398J(1)** or converted under **clause 94(2) of Schedule 1**; and

20

(b) is not a Crown entity

category C wānanga means a wānanga that—

(a) was established under section 268; and

(b) has not been reconstituted under **clause 90(1) of Schedule 1** or converted under **clause 94(2) of Schedule 1**; and

25

(c) is a Crown entity

5 Section 266 amended (Object)

In section 266, replace “institutions” with “institutions, including those established under **Part 4A**,”.

6 Section 268 amended (Establishment of institutions)

30

(1) Repeal section 268(2)(d)(ii)(B) and (3).

(2) Renumber section 268(2A) as section 268(3).

7 Section 271 replaced (Institutions to be governed by councils)

Replace section 271 with:

271 Institutions to be governed by councils

Te Pūkenga—New Zealand Institute of Skills and Technology

- (1) The governing body of Te Pūkenga—New Zealand Institute of Skills and Technology is its council, the members of which are appointed under section 320. 5

Wānanga

- (2) The governing body of a wānanga that is a Crown entity is its council constituted in accordance with—

- (a) this Part; or 10
(b) the order establishing the wānanga under **Part 4A**; or
(c) the order made under **clause 90(1) of Schedule 1** reconstituting the council of the wānanga.

- (3) The governing body of a wānanga that is not a Crown entity is its council constituted in accordance with— 15

- (a) the order establishing the wānanga under **Part 4A**; or
(b) the order made under **clause 94(2) of Schedule 1** converting a wānanga that is a Crown entity to a wānanga that is not a Crown entity.

Other institutions

- (4) The governing body of every other institution is its council constituted in accordance with this Part. 20

References to, and actions of, councils

- (5) A reference in any enactment to the council or other governing body of an institution referred to in **subsections (2) to (4)** must be construed as a reference to the council of the institution. 25

- (6) Subject to section 283(2), all acts or things done in the name of, or on behalf of, an institution with the authority of, or of a delegate of, the council or the chief executive are to be treated as being done by the institution.

Further provisions relating to councils

- (7) **Part 4A** provides for the constitution, appointment, and operation of councils of certain wānanga, and for related matters. 30

- (8) Schedule 11 provides for the constitution, appointment, and operation of councils of Te Pūkenga—New Zealand Institute of Skills and Technology and other institutions, and for related matters.

8 Section 272 amended (Incorporation)

35

In section 272(1), replace “and Te Pūkenga—New Zealand Institute of Skills and Technology as continued by section 314,” with “Te Pūkenga—New Zea-

land Institute of Skills and Technology as continued by section 314, and each wānanga established under **Part 4A**”.

9 New Part 4A inserted

After Part 4, insert:

Part 4A Wānanga

5

398A Outline of Part 4A

- (1) This Part, which concerns wānanga, is divided into 4 subparts.
- (2) **Subpart 1** deals with various preliminary matters.
- (3) **Subpart 2** concerns the administration of ~~wānanga that are Crown entities~~ category A wānanga. 10
- (4) **Subpart 3** concerns the administration of ~~wānanga that are not Crown entities~~ category B wānanga.
- (5) **Subpart 4** concerns the disestablishment of wānanga.

398B Purpose of Part 4A

15

The purpose of this Part is to provide for the establishment, modification, and administration of wānanga in a manner that gives effect to the principles of Te Tiriti o Waitangi and supports Māori-Crown relationships and, in particular, that—

- (a) better reflects the unique characteristics, functions, and purposes of wānanga in the tertiary education system for delivering the best possible education outcomes for ākonga; and 20
- (b) recognises the interests of iwi or Māori in ensuring the effective governance and administration of wānanga; and
- (c) enables direct accountability to iwi or Māori for the performance of wānanga. 25

Subpart 1—Preliminary matters

398C Application

- (1) This Part applies ~~only~~ to a wānanga that—
 - (a) is established on or after the date on which this Part commences; or 30
 - (b) existed immediately before the date on which this Part commences, and on or after that date,—
 - (i) reconstitutes its governance or administration to become a category A wānanga; or

(ii)	converts to a wānanga that is not a Crown entity <u>category B wānanga</u> .	
	<i>Provisions that do not apply to category A wānanga and category B wānanga</i>	
(2)	On or after commencement of this Part,—	
(a)	the following provisions of this Act do not apply to a <u>category A wānanga or category B wānanga</u> :	5
(i)	section 268 (establishment of institutions):	
(ii)	section 269 (constitutions of institutions):	
(iii)	section 270 (disestablishment of institutions):	
(iv)	section 573 (effect of the disestablishment of institutions):	10
(b)	the following provisions of this Act do not apply to councils of <u>category A wānanga or category B wānanga</u> :	
(i)	section 275 (constitution to provide for membership of councils):	
(ii)	section 276 (membership of councils):	
(iii)	section 277 (disqualifications):	15
(iv)	section 278 (appointment criteria):	
(v)	section 279 (statutes relating to appointments):	
	<i>Provisions that do not apply to category A wānanga</i>	
(c)	the following provisions in Schedule 11 of this Act do not apply to a wānanga that is a Crown entity <u>category A wānanga</u> :	20
	<u>(iaaa) clause 1 (constitutions of councils of new institutions):</u>	
	<u>(iaab) clause 2 (amendment of constitution):</u>	
(i)	clause 3 (limit on number of occasions on which members may be appointed):	
(ii)	clause 6 (term of office):	25
(iii)	clause 9 (casual vacancies):	
(iv)	clause 12 (removal of members):	
(v)	clause 13 (process for removal):	
(vi)	clause 15 (chairpersons and deputy chairpersons):	
(vii)	clause 16 (meetings of councils):	30
(viii)	clause 18 (determination of policy):	
	<i>Provisions that do not apply to category B wānanga</i>	
(d)	the following provisions of this Act do not apply to a wānanga that is not a Crown entity <u>category B wānanga</u> :	
(i)	section 273 (common seals):	35
(ii)	section 274 (methods of contracting):	

(iii)	section 280 (functions of councils):	
(iv)	section 281 (duties of councils):	
(v)	section 282(4) to (7) (powers of institutions):	
(vi)	section 287 (criteria for risk assessment of institutions (other than Te Pūkenga—New Zealand Institute of Skills and Technology)):	5
(vii)	section 288 (institutions to provide information to TEC if required):	
(viii)	section 289 (ministerial appointment of Crown observers for institutions):	
(ix)	sections 290 to 293 (ministerial dissolution of councils and appointments and processes to appoint commissioners):	10
(x)	section 294 (duties of chief executives):	
(xi)	section 295 (delegation of functions and powers of chief executives):	
(xii)	section 296 (further provisions applying to delegation):	15
(xiii)	section 297 (bank accounts):	
(xiv)	section 298 (accounts to be kept):	
(xv)	section 300 (gifts):	
(xvi)	section 305 (institutions are Crown entities):	
(xvii)	section 306 (annual reports):	20
(xviii)	section 307 (requirements to prepare statements or reports):	
(xix)	section 308 (availability of annual reports for inspection):	
(xx)	section 597 (good employer principles):	
(xxi)	section 602 (duty to act independently):	
(xxii)	section 603 (appointments on merit):	25
(xxiii)	section 604 (notification of vacancies):	
(xxiv)	section 608 (chief executives of institutions):	
(xxv)	section 609 (appointment of chief executives):	
(xxvi)	section 610 (reappointment of chief executives):	
(xxvii)	section 611 (conditions of employment of chief executives):	30
(xxviii)	section 612 (removal from office):	
(xxix)	Schedule 11 (council procedures).	
	<i>Provisions that apply to category A wānanga, category B wānanga, and category C wānanga</i>	
(2A)	Despite anything in subsection (1) , the following sections of this Part apply to category A wānanga, category B wānanga, and category C wānanga:	35

(a)	section 389B (purpose of Part 4A):	
(b)	section 398D (what wānanga are (characteristics)):	
(c)	section 398Y (disestablishing wānanga):	
(d)	section 398Z (effect of disestablishing wānanga):	
(e)	section 398ZA (disestablished wānanga and their councils cease to exist):	5
(f)	section 398ZB (entitlements of certain persons for certain awards):	
(g)	section 398ZC (vesting of property of disestablished wānanga):	
(h)	section 398ZD (treatment of certain contracts, instruments, and proceedings):	10
(i)	section 398ZE (continuation of disestablished wānanga for certain purposes):	
(j)	section 398ZF (restriction on subsequent distribution of surplus assets):	
	<i>Relationship of this Part with other provisions</i>	15
(3)	If a provision in this Part conflicts with a provision in subpart 3 of Part 4 or Schedule 11, the provision in this Part prevails.	
398D	What wānanga are (characteristics)	
	Wānanga are institutions that—	
(a)	Māori, primarily iwi, have been instrumental in establishing; and	20
(b)	are concerned with a wide diversity of teaching and intellectual endeavour (including research) that is—	
(i)	closely interdependent; and	
(ii)	associated with higher learning; and	
(c)	are kaitiaki of mātauranga Māori, te reo Māori, and tikanga Māori within the tertiary education sector; and	25
(d)	have a role in the promotion and maintenance of social, spiritual, cultural, political, and economic well-being in the community; and	
(e)	follow practices that are consistent with mātauranga Māori and tikanga Māori at all levels of governance and operations; and	30
(f)	accept a role as a critic and conscience of society from a mātauranga Māori, te reo Māori, and tikanga Māori perspective; and	
(g)	position themselves within the networks of indigenous tertiary institutions across the world and contribute to the setting of international indigenous standards of teaching and intellectual endeavour, including research.	35

Subpart 2—Administration of ~~wānanga that are Crown entities~~ category A wānanga

398E Establishment of category A wānanga that are Crown entities

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, establish a ~~wānanga as an institution that is a Crown entity~~ category A wānanga. 5
- (2) Before making a recommendation to establish a wānanga under **subsection (1)**, the Minister must—
 - (a) seek advice from NZQA on education quality assurance matters and consider any advice given; and 10
 - (b) seek advice from Te Taihū o Ngā Wānanga on whether the proposed wānanga would have the characteristics of a wānanga, and take that advice into account; and
 - (c) consult iwi or Māori who are instrumental in its establishment, and take their views into account; and 15
 - (d) consult other persons or bodies that the Minister thinks fit; and
 - (e) be satisfied that any additional functions and purposes of the proposed wānanga and of its council specified under **subsection (3)(f)** are consistent with the characteristics of a wānanga; and
 - (f) be satisfied that the establishment of the proposed wānanga is in the interests of the tertiary education system and the nation as a whole. 20
- (3) An order made under **subsection (1)** must do all of the following:
 - (a) revoke and replace a previous order, if any, establishing the wānanga; and
 - (b) state the name of the wānanga; and 25
 - (c) provide for determining the people who are to constitute the wānanga; and
 - (d) set out the governance arrangements for the council of the wānanga, including the constitution of the council and arrangements for the appointment, suspension, and removal of members; and 30
 - (e) set out the procedures for conducting meetings of the council; and
 - (f) specify any functions and purposes of the wānanga and its council that are in addition to any functions and purposes of an institution or its council set out in this Act; and
 - (g) specify the manner in which policies of the wānanga are to be determined; and 35

(h)	provide for the establishment and membership of an academic committee to advise the council on matters relating to courses of study or training, awards, and other academic matters; <u>and</u>	
(i)	provide for any other matters that are necessary or desirable—	
	(i) for the good governance of the wānanga; or	5
	(ii) to clarify the arrangements for the administration of the wānanga.	
(4)	An order made under subsection (1) may do 1 or both of the following:	
(a)	set out by way of preamble the historical background to the establishment of the wānanga and any Crown acknowledgments:	
(b)	impose conditions on the performance or exercise of the powers of the wānanga.	10
(5)	An order made under this section is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
398F	Appointment of council members	
	When appointing members to the council of a wānanga that is a Crown entity <u>category A wānanga</u> , the council, or any other person or body making the appointments, must appoint people who (in the opinion of the council, person, or body making the appointment)—	15
(a)	have relevant knowledge, skills, or experience; and	
(b)	are likely to be able to fulfil their individual duties to the council; and	20
(c)	together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.	
398G	Certain people ineligible to be appointed	
	A person is not eligible for appointment to the council of a wānanga that is a Crown entity <u>category A wānanga</u> if—	25
(a)	the person is subject to a property order under the Protection of Personal and Property Rights Act 1988; or	
(b)	a personal order has been made under that Act in respect of the person that reflects adversely on their—	
	(i) competence to manage their own affairs in relation to their property; or	30
	(ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or	
(c)	the person has been adjudicated bankrupt and has not obtained an order of discharge, or their order of discharge has been suspended for a term that has not yet expired or is subject to any conditions that have not yet been fulfilled; or	35

- (d) the person has been removed from office as a member of the council of any institution.

398H Statutes relating to appointment

- (1) The council of a ~~wānanga that is a Crown entity~~ category A wānanga may make statutes relating to the appointment of members under its constitution. 5
- (2) The statutes may—
 - (a) provide for direct appointment by the council of a member chosen by the council; or
 - (b) require the council to appoint a member—
 - (i) of a stated description; or 10
 - (ii) holding a stated office; or
 - (iii) nominated by a stated person or body or by a person or body of a stated description; or
 - (iv) elected by people of a stated description.
- (3) To the extent that the statutes require the council to appoint— 15
 - (a) a 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;
 - (b) a member nominated by a stated person or body or a body of a stated description, they must also provide for the process by which nominations may be called for and must be considered. 20
- (4) For an appointment under a statute providing for any of the matters set out in **subsection (2)(b), section 398F** is complied with if, when making the statute concerned, the council is satisfied that compliance with the statute is likely to result in the appointment of a person who— 25
 - (a) has relevant knowledge, skills, or experience; and
 - (b) is likely to be able to fulfil the person's individual duties to the council; and
 - (c) together with the other members of the council, is capable of undertaking its responsibilities, functions, and duties. 30
- (5) This section does not limit section 284.

398I ~~Conversion of wānanga that are Crown entities to wānanga that are not Crown entities~~

~~Wānanga that are Crown entities may be converted to wānanga that are not Crown entities in accordance with **clauses 94 to 108 of Schedule 1**.~~ 35

Subpart 3—Administration of ~~wānanga that are not Crown entities~~
category B wānanga

398J Establishment of category B wānanga ~~that are not Crown entities~~

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, establish a ~~wānanga as an institution that is not a Crown entity~~ category B wānanga. 5
- (2) Before making a recommendation to establish a wānanga under **subsection (1)**, the Minister must do all of the following:
 - (a) seek advice from NZQA on education quality assurance matters and consider any advice given; and 10
 - (b) seek advice from Te Taihū o Ngā Wānanga on whether the proposed wānanga would have the characteristics of a wānanga and take that advice into account; and
 - (c) consult iwi or Māori instrumental in its establishment; and
 - (d) consult other persons or bodies that the Minister thinks fit; and 15
 - (e) be satisfied that—
 - (i) the functions and purposes of the proposed wānanga and its council are consistent with the characteristics of a wānanga; and
 - (ii) the accountability arrangements set out in **subsection (3)(g) and (h)** are sufficient for the effective governance and administration of the wānanga; and 20
 - (f) be satisfied that the person or body identified under **subsection (3)(g)** as the iwi or Māori to whom the wānanga is accountable—
 - (i) accepts responsibility for ensuring that the wānanga and its council are accountable; and 25
 - (ii) has access to the skills and resources reasonably necessary to ensure that the wānanga and its council are accountable; and
 - (g) be satisfied that the establishment of the proposed wānanga is in the interests of the tertiary education system and the nation as a whole.
- (3) An order made under **subsection (1)** must do all of the following: 30
 - (a) state the name of the wānanga; and
 - (b) specify the people who are to constitute the wānanga; and
 - (c) set out the governance arrangements for the council of the wānanga, including the constitution of the council and arrangements for the appointment, suspension, and removal of members; and 35
 - (d) specify the functions, duties and purposes of the wānanga and its council; and
 - (e) set out the procedures for conducting the meetings of the council; and

- (f) specify the collective and individual duties of the members of the council and the manner in which members will be accountable for the performance of their duties; and
- (g) specify the iwi or Māori to whom the wānanga is accountable for the effective governance and administration of the wānanga, and the things for which the wānanga is accountable (for example, the progress made towards achieving the purposes of the wānanga, the financial management of the wānanga, and the educational performance of the wānanga); and 5
- (h) set out what the wānanga must do to ensure adequate accountability for the effective governance and administration of the wānanga, including— 10
 - (i) ~~any~~ requirements for the efficient and prudent financial management of the wānanga; and
 - (ii) ~~any~~ requirements for financial reporting and reporting on other matters; and, including (without limitation) requiring wānanga to prepare, in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013),— 15
 - (A) an audited statement of performance; and
 - (B) annual financial statements; and 20
 - (iii) the means by which risk to the operation and long-term viability of the wānanga is to be managed, including the range or type of interventions available to address those risks; and
 - (iv) ~~any~~ requirements for setting the long-term strategic direction and objectives of the wānanga in respect of the performance of its functions; and 25
- (i) provide for the appointment of a chief executive, including—
 - (i) the functions and duties of the chief executive; and
 - (ii) the delegation of any functions or duties of the chief executive; and 30
- (j) set out the requirements relating to the appointment of employees of the wānanga; and
- (k) set out the things that the wānanga must do to ensure the fair and proper treatment of employees in all aspects of their employment; and
- (l) require the wānanga to publish an annual report on an Internet site maintained by or on behalf of the wānanga that includes (without limitation) a statement of the number of employees or former employees of the wānanga who, in their capacity as employees, received remuneration of \$100,000 or more (including compensation or other benefits) in the year 35

to which the report relates and the number of those employees or former employees in each bracket of remuneration in \$10,000 increments.

- (4) An order made under **subsection (1)** may do all or any of the following:
- (a) set out, by way of a preamble, the historical background to the establishment of the wānanga and any acknowledgements by the Crown: 5
 - (b) specify the means by which the council of the wānanga is to engage with the people who constitute the wānanga, and the iwi or Māori to whom the wānanga is accountable for its effective governance and administration: 10
 - (c) impose conditions on the performance or exercise of the functions, duties, or powers of the wānanga and its council: 10
 - (d) specify the manner in which policies of the wānanga are to be determined:
 - (e) provide for the establishment and membership of an academic committee to advise the council on matters relating to courses of study or training, awards, and other academic matters: 15
 - (f) provide for any other matters that are necessary or desirable—
 - (i) for the good governance of the wānanga; or
 - (ii) to clarify the arrangements for the administration of the wānanga.
- (5) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 20

398K Appointment of council members

When appointing members of the council of a ~~wānanga that is not a Crown entity~~ category B wānanga, the council or any other person or body making the appointments must appoint people who (in the opinion of the council or other person or body making the appointment)— 25

- (a) have relevant knowledge, skills, or experience; and
- (b) are likely to be able to fulfil their individual duties to the council; and
- (c) together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions. 30

398L Certain people ineligible to be appointed

A person is not eligible for appointment to the council of a ~~wānanga that is not a Crown entity~~ category B wānanga if—

- (a) the person is subject to a property order under the Protection of Personal and Property Rights Act 1988; or 35
- (b) a personal order has been made under that Act in respect of the person that reflects adversely on their—

- (i) competence to manage their own affairs in relation to their property; or
- (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or
- (c) the person has been adjudicated bankrupt and has not obtained an order of discharge, or whose order of discharge has been suspended for a term that has not yet expired or is subject to any conditions that have not yet been fulfilled; or
- (d) the person has been removed from office as a member of the council of any institution.

398M Membership of more than 1 council

A person who is a council member of a ~~wānanga that is not a Crown entity~~ category B wānanga may be appointed as a council member of another institution (whether or not they are institutions of the same kind).

398N Statutes relating to appointment

- (1) The council of a ~~wānanga that is not a Crown entity~~ category B wānanga may make statutes relating to the appointment of members under its constitution.
- (2) The statutes may—
 - (a) provide for direct appointment by the council of a member chosen by the council; or
 - (b) require the council to appoint a member—
 - (i) of a stated description; or
 - (ii) holding a stated office; or
 - (iii) nominated by a stated person or by a body or person of a stated description; or
 - (iv) elected by people of a stated description.
- (3) To the extent that the statutes require the council to appoint—
 - (a) a 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:
 - (b) a member nominated by a stated person or body or a body of a stated description, they must also provide for the process by which nominations may be called for and must be considered.
- (4) For an appointment under a statute providing for any of the matters set out in **subsection (2)(b), section 398K** is complied with if, when making the statute concerned, the council is satisfied that compliance with the statute is likely to result in the appointment of a person who—
 - (a) has relevant knowledge, skills, or experience; and

(b) is likely to be able to fulfil the person's individual duties to the council; and (c) together with the other members of the council, is capable of undertaking its responsibilities, functions, and duties.	
(5) This section does not limit section 284.	5
398O Acts and proceedings not invalidated by certain defects	
No act or proceeding of the council, or any council committee, of a wānanga that is not a Crown entity <u>category B wānanga</u> is invalidated by—	
(a) a defect in the appointment of a council member or of the committee; or	
(b) a defect in the nomination of a council member or committee for appointment as a council member; or	10
(c) a defect in the election of a council member or committee for appointment as a council member; or	
(d) a disqualification of a council member or committee member; or	
(e) a vacancy in the membership of the council or committee; or	15
(f) a defect in the convening of any meeting.	
398P Amendments to constitutions	
If the council of a wānanga that is not a Crown entity <u>category B wānanga</u> recommends to the Minister that the constitution of the council be amended in a manner that complies with the requirements of the Order in Council establishing the wānanga, the Minister must amend the constitution in accordance with the recommendation by notice published in the <i>Gazette</i> .	
398Q Application of Local Authorities (Members' Interests) Act 1968	
The council of a wānanga that is not a Crown entity <u>category B wānanga</u> is not a local authority for the purposes of the Local Authorities (Members' Interests) Act 1968.	
398R Application of Public Records Act 2005	
An institution that is a wānanga that is not a Crown entity <u>category B wānanga</u> is a public office for the purposes of the Public Records Act 2005.	
Compare: 2022 No 30 s 28	
398S Application of Public Audit Act 2001	
(1) An institution that is a wānanga that is not a Crown entity <u>category B wānanga</u> is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.	
(2) The wānanga must forward to the Auditor-General,—	35
(a) within 3 months after the end of each financial year,—	

- (i) the annual financial statements of the wānanga; and
 - (ii) any other information that the Auditor-General has agreed, or is required, to audit; and
- (b) the annual report of the wānanga in a timely manner to enable the Auditor-General to review that report before providing the audit report required under **subsection (3)(b)**. 5
- (3) The Auditor-General must—
 - (a) audit the statements and information referred to in **subsection (2)(a)**; and
 - (b) provide an audit report to the wānanga within 4 months after the end of each financial year. 10

398T Office holders and employees are officials

- (1) This section applies to office holders and employees of a ~~wānanga that is not a Crown entity~~ category B wānanga or a subsidiary that it owns solely or together with 1 or more other institutions or Crown entities. 15
- (2) Individuals working for the wānanga or its subsidiary as contractors or secondees and performing or exercising a function, duty, or power of the wānanga are to be treated as if they are employees.
- (3) This section also applies to a person who was formerly an employee or office holder in respect of any acts or omissions or decisions made while that person was an employee or office holder of the wānanga or its subsidiary. 20
- (4) A person to whom this section applies is an official for the purposes of sections 105 and 105A of the Crimes Act 1961.
- (5) This section does not limit the meaning of official in section 99 of the Crimes Act 1961. 25

Compare: 2004 No 115 s 135

398U Disclosure of interest

- (1) A council member of a ~~wānanga that is not a Crown entity~~ category B wānanga, or a council committee member, who has an interest in a matter being considered or about to be considered by the council or the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council or the committee. 30
- (2) A disclosure under **subsection (1)** must be recorded in the minutes of the meeting of the council or committee, and the member may not, unless the council decides otherwise,— 35
 - (a) be present during any deliberation of the council or the committee with respect to that matter; or

(b) take part in any decision of the council or the committee with respect to that matter.

- (3) For the purposes of this section, a person **has an interest in a matter** if, and only if, the matter relates to the conditions of service of the person as the chief executive or a member of the staff of the wānanga concerned or the person has any other direct or indirect pecuniary interest in the matter.

Compare: 1989 No 80 s 175

398V Fees and allowances

- (1) A member of the council of a ~~wānanga that is not a Crown entity category B~~ wānanga (other than the chief executive) may be paid fees at the rates, not exceeding the maximum rates fixed by the Minister in accordance with the fees framework, that the council determines. 10
- (2) A council member is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the wānanga, for actual and reasonable travelling and other expenses incurred in carrying out the member's office as a member. 15
- (3) In this section, **fees framework** means the framework determined by the Government for the classification and remuneration of statutory and other bodies in which the Crown has an interest, including statutory entities and their subsidiaries and institutions. 20

398W Personal liability of council members

A council member of a ~~wānanga that is not a Crown entity category B~~ wānanga is not personally liable for any act done or omitted by the council member or by the council—

- (a) in good faith; and 25
- (b) in the performance or intended performance of the functions of the wānanga or of the council.

398X Trust property

Despite anything to the contrary in this Act or any other enactment, any real or personal property held upon trust by a ~~wānanga that is not a Crown entity category B~~ wānanga must be dealt with in accordance with the powers and duties of the wānanga as trustee. 30

Subpart 3A—Conversion to category B wānanga

398XA Conversion of category A wānanga or category C wānanga to category B wānanga

A category A wānanga or category C wānanga may be converted to a category B wānanga in accordance with **clauses 94 to 108 of Schedule 1**. 35

Subpart 4—Disestablishment of wānanga

398Y Disestablishing wānanga

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) disestablish a wānanga and provide for the distribution of its assets and liabilities: 5
 - (b) disestablish a wānanga and incorporate the disestablished wānanga into another wānanga or other institution, whether the wānanga or other institution is an existing wānanga or other institution or a new wānanga or other institution that is established for the purpose: 10
 - (c) provide for the distribution of the assets and liabilities of a wānanga that is to be disestablished.
- (2) Before making a recommendation, the Minister must—
- (a) give to the council of the wānanga, and any other institution that the Minister considers is likely to be directly affected, written notice— 15
 - (i) setting out the action that the Minister is considering whether to take and the reasons for that action; and
 - (ii) inviting the council and institutions to make a written submission to the Minister in relation to the matter; and
 - (b) consult iwi or Māori instrumental in the establishment of the wānanga and take those views into account; and 20
 - (c) consult any other person or body that the Minister thinks fit; and
 - (d) publish, in the *Gazette*, the notices that the Minister thinks fit inviting members of the public to make written submissions in relation to the matter; and 25
 - (e) consider any submissions made within a reasonable period in response to the notices.
- (3) The Minister may not recommend the disestablishment of a ~~wānanga that is a Crown entity~~ category A wānanga or category C wānanga, or its disestablishment and incorporation into another wānanga or other institution, unless the Minister is satisfied— 30
- (a) on reasonable grounds that there is good reason to do so; and
 - (b) that disestablishing the wānanga, or disestablishing the wānanga and incorporating the disestablished wānanga into another wānanga or other institution, is in the interests of the tertiary education system and the nation as a whole. 35
- (4) The Minister may not recommend the disestablishment of ~~wānanga that is not a Crown entity~~ a category B wānanga, or its disestablishment and incorporation in another wānanga or other institution, unless—

- (a) the iwi or Māori instrumental in the establishment of the wānanga has determined that there is good reason to do so; and
- (b) the Minister is satisfied that disestablishing the wānanga, or disestablishing the wānanga and incorporating the disestablished wānanga in another wānanga or other institution, is in the interests of the tertiary education system and the nation as a whole; and 5
- (c) the iwi, hapū, or Māori organisation that are primarily accountable for the wānanga are instrumental in the Minister's disestablishment decision.
- (5) The Minister must specify in the recommendation the reasons for the proposed disestablishment of a wānanga or proposed disestablishment of a wānanga and its incorporation into another wānanga or other institution. 10
- (5A) An order made under this section must,—
- (a) in respect of the disestablishment of any wānanga, be consistent with the provisions of this Act regarding the distribution of assets and liabilities, including (without limitation) **sections 398ZC** (vesting of property of disestablished wānanga) and **575A** (taxes and duties where assets and liabilities of disestablished institutions vested in iwi or Māori); 15
- (b) in respect of the disestablishment of a category B wānanga,—
- (i) require the wānanga to provide a final report to the Minister; and 20
- (ii) specify the required content of the final report and the date or dates by which the contents of the report must be provided.
- (6) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 398Z Effect of disestablishing wānanga** 25
- Sections **398ZA to 398ZF** apply if a wānanga is disestablished.
- 398ZA Disestablished wānanga and their councils cease to exist**
- The disestablished wānanga and its council cease to exist.
- 398ZB Entitlements of certain persons for certain awards**
- (1) A person who would, but for the disestablishment of the wānanga, have been entitled to be granted an award of the wānanga is entitled to be granted an equivalent award at— 30
- (a) the institution into which the wānanga is incorporated; or
- (b) any other institution that the Secretary directs.
- (2) A person who has partially completed a programme at the disestablished wānanga leading to an award is entitled— 35
- (a) to enrol in a similar programme at—

- (i) the institution into which the wānanga is incorporated; or
- (ii) any other institution that the Secretary directs; and
- (b) to be granted the status, and the credit for work performed at the disestablished wānanga, as the council of the institution referred to in **paragraph (a)(i) or (ii)**, after consulting NZQA, thinks fit.

5

398ZC Vesting of property of disestablished wānanga

- (1) If the disestablished wānanga is, immediately upon its disestablishment, incorporated into another institution,—
 - (a) all real and personal property that, immediately before the disestablishment, was vested in the disestablished wānanga (including property held on trust) is vested in the other institution subject to all charges, encumbrances, estates, and interests, and any enactment, affecting that property; and 10
 - (b) the other institution becomes liable to pay and discharge all the debts, liabilities, and obligations of the disestablished institution that existed immediately before its disestablishment. 15
- (2) The following provisions apply to a ~~wānanga that is a Crown entity~~ category A wānanga or category C wānanga:
 - (a) if the disestablished wānanga is not immediately upon its disestablishment incorporated into another institution, all real and personal property that, immediately before the disestablishment, was vested in the council of the disestablished wānanga (including property held on trust) is vested in the ~~Minister Crown~~, subject to all charges, encumbrances, estates, or interests, and any enactment, affecting that property: 20
 - (b) despite **paragraph (a)**, the Minister may, by written notice, direct that any specified real or personal property of the wānanga that is— 25
 - (i) derived from the settlement of a claim under Te Tiriti o Waitangi in relation to the wānanga; or
 - (ii) gifted to the wānanga by iwi or Māori instrumental in the establishment of the wānanga, 30

is vested in the iwi or Māori concerned subject to all charges, encumbrances, estates, or interests, and any enactment, affecting that property:
 - (c) before issuing a direction under **paragraph (b)**, the Minister must consult the iwi or Māori concerned and any other person or body the Minister thinks fit: 35
 - (d) the Minister is liable to pay and discharge all the debts, liabilities, and obligations of the council of the disestablished wānanga that existed immediately before its disestablishment other than in relation to any property vested in iwi or Māori under **paragraph (b)**. 40

- (3) If any real or personal property that was held by a disestablished wānanga on trust vests in the ~~Minister~~ Crown under **subsection (2)(a)**, the Minister may appoint another institution or body to be the trustee of that property.
- (4) In the case of a ~~wānanga that is not a Crown entity~~ category B wānanga, if the disestablished wānanga is not, immediately upon its disestablishment, incorporated into another institution,— 5
- (a) all real and personal property that, immediately before the disestablishment, was vested in the council of the disestablished wānanga (including property held on trust) is vested in the iwi or Māori to whom the wānanga is accountable, subject to all charges, encumbrances, estates, or interests, and any enactment, affecting that property; and 10
- (b) the iwi or Māori concerned becomes liable to pay and discharge all the debts, liabilities, and obligations of the council of the disestablished wānanga that existed immediately before its disestablishment.
- (5) If any real or personal property that was held by a disestablished wānanga on trust vests in an iwi or Māori under **subsection (4)(a)**, the iwi, or Māori concerned may appoint another institution or body to be the trustee of that property. 15
- (6) If any land vests in an institution, or in the Minister or iwi or Māori under this section, the Registrar-General of Land, on the deposit with the Registrar-General of the plans and documents that the Registrar-General may require, must make the entries in the register and generally do all the other things necessary to give full effect to this section. 20
- (7) If property is vested in iwi or Māori under this section, the iwi or Māori concerned are responsible for any obligations under section 40 of the Public Works Act 1981 in relation to the vested land (as if they were a local authority). 25

398ZD Treatment of certain contracts, instruments, and proceedings

Any contract or other instrument (other than a contract of, or instrument relating to, employment) subsisting, or any proceeding pending, immediately before the disestablishment of a wānanga to which the wānanga was a party has effect after the disestablishment as if— 30

- (a) the institution into which the disestablished wānanga is incorporated or the Minister or iwi or Māori concerned is substituted for the disestablished wānanga as a party to the contract, other instrument, or proceeding; and 35
- (b) any reference in the contract or other instrument, or in a pleading, affidavit, or other document in the proceeding, to the disestablished wānanga in its capacity as a party to the contract, other instrument, or proceeding is (except in relation to matters that occurred before the disestablishment) a reference to the wānanga in which the disestablished wānanga is incorporated or the Minister or iwi or Māori concerned. 40

398ZE Continuation of disestablished wānanga for certain purposes

(1) Despite **section 398ZA**, the council of a disestablished wānanga that was a Crown entity continues in existence for the purpose of complying, or facilitating compliance, with Part 4 of the Crown Entities Act 2004 and section 306 of this Act in relation to any academic year of the wānanga and,—

5

(a) if the wānanga is incorporated into another institution, the council of the other institution; or

(b) otherwise, the Secretary—

must give to the council of the disestablished wānanga any assistance that the council requires for the purpose of complying with its obligations under those provisions and is responsible for paying any expenses incurred by the council (including remuneration and expenses of members of the council or governing body) in so complying.

10

(2) Despite **section 398ZA**, the council of a disestablished wānanga that was category B wānanga continues in existence for the purpose of complying, or facilitating compliance, with an order made under **section 398Y**.

15

398ZF Restriction on subsequent distribution of surplus assets

If a wānanga is disestablished, any surplus assets vested in the iwi or Māori concerned under **section 398ZC** may only be used for a public or charitable purpose to advance Māori tertiary education.

20

10 Section 405 amended (Chief executive must monitor and report on institutions)

In section 405, insert as subsections (2) and (3):

(2) In the case of an institution that is a wānanga that is not a Crown entity, the chief executive of TEC—

25

(a) may, along with the council of the wānanga, establish a framework for monitoring risk to the operation and long-term viability of the wānanga, having regard to the purpose set out in **section 398B** and, in particular, the accountability of the wānanga to iwi or Māori; and

(b) must undertake any monitoring activity in relation to the wānanga in accordance with the framework; and

30

(c) may report on the outcome of risk monitoring in relation to the wānanga to the Minister and to the iwi or Māori to whom the wānanga is accountable for the operation and long-term viability of the wānanga.

(3) Nothing in **subsection (2)** limits or affects the duty of the chief executive to monitor institutions at risk under this section.

35

11 Section 424 amended (Criteria for assessing proposed plans)

After section 424(2)(d), insert:

- (e) how, in the case of a wānanga, the activities of the wānanga (other than those activities that contribute towards the Government's priorities set out in the tertiary education strategy) support the functions and purposes of the wānanga.
- 12 Section 574 amended (Taxes and duties where disestablished institution incorporated into another institution) 5**
- (1) In section 574(1)(a), replace “section 573(5) and the other institution referred to in that section” with “~~section 398Z(5)~~ **398ZC(1)** or section 573(5) and the other institution referred to in those provisions”.
- (2) In section 574(1)(b) and (4), replace “section 573(5)” with “~~section 398Z(5)~~ **398ZC(1)** or section 573(5)”.
- 13 Section 575 amended (Taxes and duties in other cases)**
- In section 575(1), (2), and (4), replace “section 573(6)” with “~~section 398Z(6)~~ **398ZC(2)** or section 573(6)” in each place.
- 14 New section 575A inserted (Taxes and duties where assets and liabilities of disestablished institution vested in iwi or Māori) 15**
- After section 575, insert:
- 575A Taxes and duties where assets and liabilities of disestablished institution vested in iwi or Māori**
- (1) For the purposes of the Acts specified in Schedule 1 of the Tax Administration Act 1994, and of any other enactment that imposes, or provides for the collection of, a tax, duty, levy, or other charge,—
- (a) a disestablished wānanga referred to in ~~section 398Z(8)~~ **398ZC(4)** and the iwi or Māori concerned must be treated as being the same person with effect on and from the date on which the real and personal property of the disestablished wānanga vests in the iwi or Māori under that section; and
- (b) in respect of the liability under 1 or more of those enactments for, and the assessment, determination, or imposition of, taxes, duties, levies, or other charges accruing on and from the day on which the real and personal property of the disestablished wānanga vests in the iwi or Māori concerned, all transactions entered into by, and acts of, the disestablished wānanga before the vesting under ~~section 398Z(8)~~ **398ZC(4)** must be treated as having been entered into by, or to be those of, the iwi or Māori concerned and to have been entered into or performed by those iwi or Māori at the time when they were entered into or performed by the disestablished wānanga.
- (2) For the purposes of determining a matter referred to in **subsection (3)**, shares held by a disestablished wānanga in any company (whether directly or through

any 1 or more interposed companies) immediately before the vesting under **section ~~398Z(8)~~ 398ZC(4)** must be treated as having been acquired by the iwi or Māori concerned at the time when they were acquired by the disestablished wānanga.

- (3) The matters are whether— 5
- (a) any taxpayer satisfies the requirements of section IA 5(2) of the Income Tax Act 2007:
 - (b) any taxpayer is included in a group of companies or a wholly-owned group for the purposes of section IA 6 of the Income Tax Act 2007:
 - (c) any debit arises to be recorded in a taxpayer's imputation credit account under section OB 41 of the Income Tax Act 2007. 10
- (4) The vesting of all the real and personal property of a disestablished wānanga in the iwi or Māori concerned under **section ~~398Z(8)~~ 398ZC(4)** may not be treated as a supply of any goods or services for the purposes of the Goods and Services Tax Act 1985, or as a disposition of property for the purposes of the Estate and Gift Duties Act 1968. 15
- (5) Nothing in **subsection (2) or (4)** limits **subsection (1)**.
Compare: 1989 No 80 s 219

15 Section 611 amended (Conditions of employment of chief executive)

Replace section 611(3) with:

- (3) Except where specific conditions of employment for a chief executive are provided in this Act, the conditions of employment for a chief executive must be determined in each case by agreement between the council of the institution and the chief executive, but,— 20
- (a) in the case of a wānanga that is a Crown entity, the council must consult the Public Service Commissioner on the conditions of employment before finalising them with the chief executive or amending any or all of the conditions once they have been finalised: 25
 - (b) in the case of any other institution, the council must obtain the written agreement of the Public Service Commissioner to the conditions of employment before finalising them with the chief executive or amending any or all of the conditions once they have been finalised. 30

16 Schedule 11 amended

- (1) In the Schedule 11, heading, replace “271(5)” with “**271(8)**”.
- (2) In Schedule 11, clause 1(1), after “section 268(1)”, insert “or under **section 398E**”. 35
- (3) In Schedule 11, clause 1(2), after “section 276”, insert “or under **section 398E**”.

- (4) In Schedule 11, clause 2(1), replace “section 276,” with “section 276 or the requirements of an Order in Council made under **section 398E** in relation to the constitution of the council of a wānanga.”
- (5) In Schedule 11, after clause 11(2), insert:
- (2A) Despite anything in subclause (2), a council member of a wānanga who does not comply with their individual duties may be removed from office under the provisions for removal of members set out in an Order in Council for the reconstitution or establishment of the wānanga.

5

Part 2

Other amendments to principal Act

10

17 Section 5 amended (Minister may issue statement of national education and learning priorities)

In section 5(6)(c), after “schools”, insert “and Kura Kaupapa Māori”.

18 Section 10 amended (Interpretation)

- (1) In section 10(1), definition of **domestic student**, paragraph (b), after “2009”, insert “who satisfies the criteria (if any) prescribed by regulations made under subsection (2)”.

15

- (2) In section 10(1), replace the definition of **wānanga** with:

wānanga means an institution established as a wānanga,—

(a) before the commencement of **Part 4A**, under section 268:

20

(b) after the commencement of **Part 4A**, under that Part

- (3) In section 10(1), insert in their appropriate alphabetical order:

Kura Kaupapa Māori means a school designated in accordance with **section 201**

Te Taihū o Ngā Wānanga means the body incorporated as Te Taihū o Ngā Wānanga Incorporated, or its successor, to represent the collective interests of wānanga established under this Act

25

- (4) In section 10(2), replace “paragraph (a)(ii) of the definition of domestic tertiary student” with “paragraph (b) of the definition of domestic student or paragraph (a)(ii) of the definition of domestic tertiary student”.

30

- (5) After section 10(4), insert:

- (4A) For the purposes of **Part 4A** and **Part 5 of Schedule 1**, iwi or Māori includes an organisation, an entity, or a body authorised to act on behalf of the iwi or Māori constituency concerned.

19 New section 94A inserted (Appointment of chief executive of Te Aho o Te Kura Pounamu)

After section 94, insert:

94A Appointment of chief executive of Te Aho o Te Kura Pounamu

The chief executive of Te Aho o Te Kura Pounamu is appointed for a term of not more than 5 years, but may be reappointed for 1 or more terms. 5

20 Section 115 amended (When State schools must be open)

In section 115, replace “Schedule 21 and any regulations made under this Act” with “regulations made under section 638”.

21 Section 189 amended (Overview: classifications and types of State schools) 10

Replace section 189(b)(ii) with:

- (ii) designated character school:
- (ia) Kura Kaupapa Māori:

22 Section 201 replaced (Kura Kaupapa Māori)

Replace section 201 with:

15

201 Kura Kaupapa Māori

- (1) When establishing a State school, the Minister may, by notice in the *Gazette*, designate the school as a Kura Kaupapa Māori.
- (2) The Minister may, in the Minister’s absolute discretion, refuse to establish a school as Kura Kaupapa Māori. 20
- (3) The Minister may not establish a school under this section unless satisfied that—
 - (a) te reo Māori is to be the main language of instruction at the school:
 - (b) the school is to operate in accordance with Te Aho Matua:
 - (c) it is desirable for students whose parents want them to do so to get such an education: 25
 - (d) students at the school are to receive an education of a kind that differs significantly from the education they would receive at an ordinary State school.
- (4) A Kura Kaupapa Māori may have other special characteristics that give it a particular character (its **special characteristics**). 30
- (5) The Minister may not establish a State school as a Kura Kaupapa Māori unless the Minister has first consulted te kaitiaki o Te Aho Matua on the ability of the school to operate in accordance with Te Aho Matua.
- (6) A notice under **subsection (1)** must— 35

- (a) specify the name of the school, which must at all times begin with the words “Te Kura Kaupapa Māori o”; and
 - (b) state that the school will operate in accordance with Te Aho Matua; and
 - (c) summarise any special characteristics of the school; and
 - (d) specify the constitution of the board of the school. 5
- (7) After consultation with the board, the Minister may from time to time, by notice in the *Gazette*, amend the name of the school (but not so as to omit the words “Te Kura Kaupapa Māori o”), its special characteristics, or the constitution of the board.
- (8) The board of a school established under this section must ensure that— 10
- (a) te reo Māori is the principal language of instruction at the school; and
 - (b) the school operates in accordance with Te Aho Matua.
- (9) The board may refuse to enrol any person whose parents do not accept that the school operates in accordance with Te Aho Matua.
- (10) The Secretary must, by written notice to a Kura Kaupapa Māori, fix a maximum roll of the school, and the board must ensure that the number of students enrolled at the school is not more than the maximum roll. 15
- (11) Except as provided in this section, clause 16 of Schedule 20, and any regulations made under this Act regarding enrolment schemes for Kura Kaupapa Māori, this Act applies to every Kura Kaupapa Māori as if it were not a Kura Kaupapa Māori. 20
- Compare: 1989 No 80 s 155

23 Section 203 amended (Protection of term Kura Kaupapa Māori)

In section 203(1), replace “section 204” with “**section 201**”.

24 Sections 204 and 205 replaced

Replace sections 204 and 205 with:

204 Designated character schools

- (1) When establishing a State school, the Minister may designate the school as a designated character school in accordance with this section and **section 205**.
- (2) The Minister may, in the Minister’s absolute discretion, refuse to establish a designated character school. 30
- (3) The Minister may not establish a school as a designated character school unless satisfied that, if the school is established,—
 - (a) the school is to have a character that is in some specific way or ways different from the character of ordinary State schools (its **different character**): 35

- (b) it is desirable for students whose parents want them to do so to get such an education:
- (c) students at the school are to receive an education of a kind that differs significantly from the education they would receive at an ordinary State school. 5
- (4) The board of a designated character school must ensure that—
- (a) the aims, purposes, and objectives of the school's different character are set out in the school's strategic plan; and
- (b) the school operates consistently with its different character.
- (5) A board of a designated character school may refuse to enrol students whose parents do not accept that the school operates consistently with its different character. 10
- (6) The Secretary must, by written notice to a designated character school, fix a maximum roll of the school, and the board must ensure that the number of students enrolled at the school is not more than the maximum roll. 15
- (7) Except as provided in this section, clause 16 of Schedule 20, and any regulations made under this Act regarding enrolment schemes for designated character schools, this Act applies to every designated character school as if it were not a designated character school. 20
- Compare: 1989 No 80 s 156
- 205 Process for establishing designated character schools**
- (1) The Minister may, by notice in the *Gazette*, when establishing a State school, designate the school as a designated character school.
- (2) Before doing so, the Minister must be satisfied of the matters in **section 204(3)**. 25
- (3) The notice establishing a designated character school must—
- (a) describe the different character of the school (as defined in **section 204(3)(a)**):
- (b) state the constitution of the school's board.
- (4) The notice establishing a designated character school may also name a body that has a special affiliation with the school or has responsibility for the different character of the school. 30
- (5) The Minister may, after consultation with the board of a designated character school, by notice in the *Gazette*,—
- (a) amend the description of the different character of the school: 35
- (b) name a body that has a special affiliation with the school or has responsibility for the different character of the school:
- (c) amend the statement of the constitution of the board.

- (6) The Minister must consult any body named under **subsection (4) or (5)(b)** before amending the description of the school's different character.

Compare: 1989 No 80 s 156AA

25 Section 306 amended (Annual report)

- (1) After section 306(4)(f), insert: 5
- (g) in the case of an institution that is a university or a wānanga, a statement of the number of employees or former employees of the university or wānanga who, in their capacity as employees, received remuneration of \$100,000 or more (~~excluding~~ including compensation or other benefits) in the year to which the report relates and the number of those employees or former employees in each bracket of remuneration in \$10,000 increments. 10
- (2) After section 306(9), insert:
- (10) To avoid doubt, the employees of a university or wānanga referred to in **subsection (4)(g)** include the chief executive appointed by the council of the university or wānanga. 15

26 Section 323 amended (Term of office)

After section 323(2), insert:

- (3) If a member's term of office expires before their successor is appointed, the member continues in office until their successor's appointment takes effect. 20

27 Section 527 amended (Requirements that private training establishments must comply with before enrolling international students)

In section 527(2)(c), replace "training scheme" with "approved micro-credential".

28 Section 528 amended (Exemptions) 25

In section 528(1)(b), replace "section 527(2)(b)(ii)" with "section 525(2)(b) or 527(2)(b)(ii)".

29 Section 535A amended (Appointment and functions of code administrators)

Repeal section 535A(7).

30

30 Section 540 amended (How export education levy may be applied)

- (1) Repeal section 540(5).
- (2) In section 540(6), replace "this section" with "section 641".
- (3) Renumber section 540(6) as section 540(5).

31 New section 548A inserted (Data accessed by Ministry under Data and Statistics Act 2022)

After section 548, insert:

548A Data accessed by Ministry under Data and Statistics Act 2022

- (1) Despite section 54(1)(c) of the Data and Statistics Act 2022, the Ministry may publish or otherwise disclose, at the level of an early childhood service, data relating to the socio-economic status of children attending early childhood services and their families accessed under Part 5 of that Act in a form that may identify an individual or organisation if—
- (a) the publication or other disclosure is for the purpose of assisting the Ministry to develop or use tools relating to the provision of funding to early childhood services under this Act; and
- (b) the data does not include personal information within the meaning of, as defined in section 7(1) of the Privacy Act 2020, unless the individual has consented to the publication or disclosure an early childhood service provider, who is an individual, has consented to the publication or disclosure of information regarding the service they operate.
- (2) In **subsection (1), organisation** has the same meaning as in section 6 of the Data and Statistics Act 2022.

32 Section 594 repealed (Senior positions at institutions)

Repeal section 594.

33 Section 617 amended (Minister must issue eligibility criteria relating to appointment of principals)

In section 617(2)(c), after “schools”, insert “and Kura Kaupapa Māori”.

34 Section 638 amended (Regulations relating to how schools must be run)

- (1) Replace section 638(2)(e) with:

- (e) provide for when schools must or may be open and closed for instruction, including (without limitation) by—
- (i) specifying term dates and the number of half-days on which schools must be open and providing for exceptions in particular cases:
- (ii) allowing boards to vary the time at which any 1 or more half-days take place subject to any specified preconditions or requirements:
- (iii) allowing boards to run multiple timetable arrangements unconditionally or subject to any specified preconditions or requirements:
- (iv) authorising the Minister, by notice, to determine the matters set out in **subparagraphs (i) to (iii)**, and authorising the Minister to

delegate the power to determine those matters to the Secretary in relation to any individual school:

(2) After section 638(4), insert:

(5) If the regulations authorise the Minister to determine matters referred to in **subsection (2)(e)**—

5

(a) an instrument that determines those matters is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements); and

(b) the regulations must contain a statement to that effect.

35 Section 659 amended (Power of boards to close schools)

(1) In section 659(1), replace “Schedule 21” with “regulations made under **section 638(2)(e)**”.

10

(2) In section 659(2), replace “clause 1 of Schedule 21” with “regulations made under **section 638(2)(e)**”.

36 Schedule 1 amended

In Schedule 1,—

15

(a) insert the Part set out in **Schedule 1** of this Act as the last Part; and

(b) make all necessary consequential amendments.

37 Schedule 4 amended

(1) In Schedule 4, replace clause 1(2) with:

(2) The service provider must—

20

(a) obtain the Police vet required by subclause (1) before the person begins work at the early childhood service; and

(b) consider the information contained in the Police vet to assess whether the person would pose a risk to the safety of children if the person were to carry out work at the service.

25

(2A) In carrying out an assessment under **subclause (2)(b)**, the service provider must take into account any guidelines on risk assessments issued by the Ministry.

(2) In Schedule 4, replace clause 2(1A) with:

(1A) The service provider must—

30

(a) obtain the Police vet required by subclause (1) before the contractor, or employee of a contractor, has, or is likely to have, unsupervised access to children at the service; and

(b) consider the information contained in the Police vet to assess whether the contractor, or employee of a contractor, would pose a risk to the safety of children if they had unsupervised access to children at the service.

35

- (1B) In carrying out an assessment under **subclause (1A)(b)**, the service provider must take into account any guidelines on risk assessments issued by the Ministry.
- (3) In Schedule 4, replace clause 6(2) with:
- (2) The service provider must— 5
- (a) obtain the Police vet required by subclause (1),—
- (i) in the case of a home to be used as a licensed home-based education and care service, before the home is used as a licensed home-based education and care service: 10
- (ii) in the case of a home that is being used as a licensed home-based education and care service, before the adult begins to live in the home; and
- (b) consider the information contained in the Police vet to assess whether the person would pose a risk to the safety of children to whom the service is provided. 15
- (2A) In carrying out an assessment under **subclause (2)(b)**, the service provider must take into account any guidelines on risk assessments issued by the Ministry.
- (4) In Schedule 4, replace clause 9(2) with:
- (2) The board or managers must— 20
- (a) obtain the Police vet required by subclause (1) before the person begins work at the school; and
- (b) consider the information contained in the Police vet to assess whether the person would pose a risk to the safety of children if the person were to carry out work at the school. 25
- (2A) In carrying out an assessment under **subclause (2)(b)**, the board or managers must take into account any guidelines on risk assessments issued by the Ministry.
- (5) In Schedule 4, replace clause 10(1A) with:
- (1A) The board or managers must— 30
- (a) obtain the Police vet required by subclause (1) before the contractor, or employee of a contractor, has, or is likely to have, unsupervised access to children at the school; and
- (b) consider the information contained in the Police vet to assess whether the contractor, or employee of a contractor, would pose a risk to the safety of children if they had unsupervised access to children at the school. 35
- (1B) In carrying out an assessment under **subclause (1)(b)**, the board or managers must take into account any guidelines on risk assessments issued by the Ministry. 40

38 Schedule 23 amended

(1) In Schedule 23, replace clause 1(1)(a)(ii) with:

- (ii) ~~the genders, sexualities, and sexes of the student body of the school and within the community served by the school; and~~
- (iia) ~~the diversity of disabled students at the school and of the school's disability community; and~~

5

(1) In Schedule 23, replace clause 1(1)(a) with:

- (a) that every board should reflect—
 - (i) the ethnic diversity of the student body and the community of the school or special institution; and
 - (ii) the socio-economic diversity of the student body and the community of the school or special institution; and
 - (iii) the genders, sexualities, and sexes of the student body and the community of the school or special institution; and
 - (iv) the diversity of disabled students and the school's or special institution's disability community; and
 - (v) the character of the school, or special institution, it administers; and
 - (vi) the character of the community of the school or special institution (whether geographical or otherwise) that the school or special institution serves; and

10

15

20

(1A) In Schedule 23, after clause 1(2), insert:

(3) For the purposes of **subclause (1)(a)(i) to (iii) and (vi), community of the school or special institution—**

- (a) means—
 - (i) the parents, families, and whānau of the students of the school or special institution; and
 - (ii) the Māori community associated with the school or special institution; and
- (b) includes any other person, or group of persons, who the board considers is part of its community.

25

30

(2) In Schedule 23, after clause 9(1)(f), insert:

- (fa) a person who has been convicted of a specified offence identified in Schedule 2 of the Children's Act 2014, unless that person has obtained a pardon or been granted an exemption under **subclause (5)**.

35

(3) In Schedule 23, after clause 9(4), insert:

(5) The Secretary may, on application, grant an exemption under this subclause to a person described in **subclause (1)(fa)** that allows the person to serve as a

- board member if the Secretary is satisfied that the person would not pose an undue risk to the safety of children.
- (6) The Secretary may, from time to time, audit an elected, appointed, or co-opted board member's continuing eligibility under subclause (1) to be a board member. 5
- (7) For the purposes of **subclause (6)**, the board member must permit the Secretary to obtain any relevant information to enable the Secretary to conduct the audit.
- (4) In Schedule 23, after clause 12(1)(e), insert:
- (f) fails to provide permission under **clause 9(7)** to enable the Secretary to obtain relevant information for the purpose of auditing the board member's continuing eligibility to be a board member. 10
- (5) In Schedule 23, clause 13(1), replace "A casual" with "Subject to subclauses (3) to (9), a casual".
- (6) In Schedule 23, repeal clause 13(2). 15

Part 3

Amendments to other legislation

Amendment to Crown Entities Act 2004

- 39 **Principal Act**
- Section 40** amends the Crown Entities Act 2004. 20
- 40 **Section 7 amended (Meaning of Crown entity and categories of Crown entities)**
- In section 7(1)(e), second column, replace "2020" with "2020, excluding an institution that is a wānanga that is not a Crown entity".

Amendment to Income Tax Act 2007 25

- 41 **Principal Act**
- Section 42** amends the Income Tax Act 2007.
- 42 **Section YA 1 amended (Definitions)**
- In section YA 1, definition of **tertiary education institution**, paragraph (a), after "subpart 3 or 4 of Part 4", insert "or **Part 4A**". 30

Amendment to Local Government Official Information and Meetings Act 1987

- 43 **Principal Act**
- Section 44** amends the Local Government Official Information and Meetings Act 1987.

44 Schedule 2 amended

In Schedule 2, Part 2, insert in its appropriate alphabetical order:

Councils of wānanga established under **Part 4A** of the Education and Training Act 2020

Amendment to Ombudsmen Act 1975

5

45 Principal Act

Section 46 amends the Ombudsmen Act 1975.

46 Schedule 1 amended

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Wānanga established under **Part 4A** of the Education and Training Act 2020

10

Amendment to Public Audit Act 2001

46A Principal Act

Section 47B amends the Public Audit Act 2001.

46B Schedule 1 amended

In Schedule 1, after the item “Trustees as defined in section 2 of the Burial and Cremation Act 1964”, insert “wānanga that are not Crown entities”

15

Amendment to Tax Administration Act 1994

47 Principal Act

Section 48 amends the Tax Administration Act 1994.

48 Section 32E amended (Applications for RWT-exempt status)

20

In section 32E(2)(kc), after “subpart 3 of Part 4”, insert “or **Part 4A**”.

Schedule

New Part 5 inserted into Schedule 1

s 36

Part 5	
Provisions relating to Education and Training Amendment Act (No 3) 2023	
Subpart 1—Provisions for Part 4A (wānanga)	
89 Wānanga continued	
(1) Wānanga in existence immediately before the commencement of this clause are continued.	10
(2) Those wānanga Wānanga established under section 268—	
(a) are Crown entities for the purposes of section 7 of the Crown Entities Act 2004 and their councils are boards for the purposes of that Act; and	
(b) are to be treated as if they were established as Crown entities under Part 4A section 398E.	15
(3) A wānanga that is reconstituted under clause 90(1) is to be treated as if it were established under Part 4A section 398E as a wānanga that is a Crown entity category A wānanga.	
(4) A wānanga that is converted to a wānanga that is not a Crown entity under clause 94(2) is to be treated as if it were established under Part 4A section 398J as a wānanga that is not a Crown entity category B wānanga.	20
(5) The Crown Entities Act 2004—	
(a) applies to those wānanga except to the extent that this Act expressly provides otherwise; and	
(b) ceases to apply to those wānanga that are—	25
(i) converted to wānanga that are not Crown entities category B wānanga under clause 94(2) ;	
(ii) established as wānanga that are not Crown entities category B wānanga under Part 4A section 398J.	
(6) <u>The Governor-General may, by Order in Council made on the recommendation of the Minister given after receiving a recommendation from Te Taihū o Ngā Wānanga, amend this Act or any other enactment by—</u>	30
(a) <u>omitting from it the term “category A wānanga” and substituting some other term;</u>	
(b) <u>omitting from it the term “category B wānanga” and substituting some other term;</u>	35

	(c) <u>omitting from it the term “category C wānanga” and substituting some other term.</u>	
(7)	<u>To avoid doubt, a wānanga does not cease to be an institution merely because a term used to refer to it is changed under subsection (6).</u>	
(8)	<u>An order made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</u>	5
<i>Reconstitution of wānanga council</i>		
90	Wānanga council may be reconstituted	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, reconstitute the council of a wānanga continued under clause 89 established under section 268.	10
(2)	Before making a recommendation to reconstitute the council of a wānanga under subclause (1) , the Minister must—	
	(a) consult the council of the wānanga being considered for reconstitution; and	15
	(b) consult iwi or Māori instrumental in the establishment of the wānanga; and	
	(c) consult any other persons or bodies that the Minister thinks fit; and	
	(d) be satisfied that any additional functions and purposes of the wānanga that are specified under subclause (4)(a) are consistent with the characteristics of a wānanga set out in section 398D .	20
(3)	An order made under subclause (1) must—	
	(a) revoke and replace any previous order determining the constitution of the council of the wānanga; and	
	(b) state the name of the wānanga as reconstituted; and	25
	(c) make provision for determining the people who are to constitute the wānanga; and	
	(d) set out the governance arrangements for the council of the wānanga, including the constitution of the council and the arrangements for the appointment, suspension, and removal of its members; and	30
	(e) set out the arrangements for conducting meetings of the council; and	
	(f) specify the manner in which the policies of the wānanga are to be determined; and	
	(g) provide for the establishment and membership of an academic committee to advise the council on matters relating to courses of study or training, awards, and other academic matters; and	35
	(h) provide for any other matters that are necessary or desirable—	
	(i) for good governance of the wānanga:	

- (ii) to clarify the arrangements for the administration of the wānanga; and
 - (i) specify how the council is to engage with the Public Service Commissioner on the conditions of employment of the chief executive.
- (4) An order made under **subclause (1)** may— 5
 - (a) specify any functions and purposes of the wānanga and the council that are in addition to any functions and purposes of an institution or its council set out in this Act:
 - (b) impose conditions on the performance or exercise of the powers of the wānanga. 10
- (5) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 91 Initial membership of council of reconstituted wānanga**
- (1) Before the date of reconstitution of the council of a wānanga, each person or body responsible for appointing or electing members to the reconstituted wānanga council may appoint or elect the number of members of the reconstituted wānanga council required by its constitution to be appointed or elected by that person or body. 15
- (2) The appointment or election of a member to a reconstituted wānanga council under **subclause (1)** takes effect on the later of— 20
 - (a) the date on which the appointment or election occurs; and
 - (b) the date of reconstitution.
- (3) If on the date of reconstitution a vacancy in the council of the wānanga as reconstituted exists, the person or body responsible for appointing or electing a person to that vacancy— 25
 - (a) may, by written notice to any person who was a member of the council immediately before that day, authorise that person to act as a member of the council until the vacancy is filled; and
 - (b) must appoint or elect a person to the vacancy within 3 months after the date of reconstitution. 30
- (4) The person or body responsible for appointing or electing a person to the vacancy must give a copy of every notice under **subclause (3)(a)** to the council of the wānanga as reconstituted.
- (5) A person authorised under **subclause (3)(a)** must for all purposes be treated as a member of the council concerned until the vacancy concerned is filled. 35
- (6) A council may, before the date of reconstitution, make the statutes under **section 398H** for the purpose of making appointments or conducting elections of members to the council of the wānanga as reconstituted.

Compare: 2009 No 70 s 19

92 Members of existing council go out of office

- (1) On the date of reconstitution of the council of a wānanga—
- (a) all members of the council of the wānanga immediately before that date go out of office; and
 - (b) all the people appointed or elected as members of the council before that date under **clause 91** take up office. 5
- (2) Neither the Crown, the wānanga, nor the council of the wānanga is liable to make a payment to, or otherwise compensate, a person in respect of the person's going out of office as a member of the council under this clause. 10
- Compare: 2009 No 70 s 20

93 Reconstituted wānanga and council is same institution and council

- On and after the date of reconstitution of the council of a wānanga,—
- (a) the wānanga is the same institution and Crown entity that existed immediately before that date; and
 - (b) the council of the wānanga as reconstituted— 15
 - (i) is the same body as the council of the wānanga concerned that existed immediately before that date; and
 - (ii) has the same rights, duties, and obligations it then had under this Act together with any rights, duties and obligations conferred in the order reconstituting the wānanga. 20
- Compare: 2009 No 70 s 21

*Conversion of wānanga***94 ~~Wānanga that is Crown entity may convert to wānanga that is not Crown entity~~ Category A wānanga or category C wānanga may convert to category B wānanga** 25

- (1) ~~This clause applies to institutions that are wānanga—~~
- ~~(a) established under **section 398E**; or~~
 - ~~(b) continued under **clause 89**.~~
- (1) This clause applies to an institution that is— 30
- (a) a category A wānanga; or
 - (b) a category C wānanga.
- (2) If this clause applies, the Governor-General may, by Order in Council made on the recommendation of the Minister, convert the institution to a ~~wānanga that is not a Crown entity~~ category B wānanga.
- (3) Before making a recommendation to convert an institution to a ~~wānanga that is not a Crown entity~~ category B wānanga, the Minister must— 35
- (a) consult the council of the wānanga being considered for conversion; and

- (b) consult iwi or Māori instrumental in the establishment of the institution; and
- (c) consult other persons or bodies that the Minister thinks fit; and
- (d) be satisfied that the functions and purposes of the wānanga that are specified under **subclause (4)(e)** are consistent with the characteristics of a wānanga set out in **section 398D**; and 5
- (e) be satisfied that the accountability arrangements set out in **subclause (4)(h) and (i)** are sufficient for the effective governance and administration of the wānanga; and
- (f) be satisfied that iwi or Māori specified under **subclause (4)(h)** as the iwi or Māori to whom the wānanga is accountable— 10
 - (i) accept responsibility for ensuring accountability of the wānanga and its council; and
 - (ii) have access to the skills and resources reasonably necessary to ensure accountability of the wānanga and its council. 15
- (4) An order made under **subclause (2)** must—
 - (a) revoke and replace any order establishing the wānanga; and
 - (b) state the name of the wānanga; and
 - (c) provide for determining the people who are to constitute the wānanga; and 20
 - (d) set out the governance arrangements for the council of the wānanga, including the constitution of the council and the arrangements for the appointment, suspension, and removal of members; and
 - (e) specify the functions, duties, and purposes of the wānanga and its council; and 25
 - (f) set out the procedures for conducting the meetings of the council; and
 - (g) specify the collective and individual duties of the members of the council and the manner in which members will be accountable for the performance of their duties; and
 - (h) specify the iwi or Māori to whom the wānanga is accountable to for the effective governance and administration of the wānanga, and the things for which the wānanga is accountable (for example, the progress made towards achieving the purposes of the wānanga); and 30
 - (i) set out what the wānanga must do to ensure adequate accountability for the effective governance and administration of the wānanga, including— 35
 - (i) ~~any~~ requirements for the efficient and prudent financial management of the wānanga; and
 - (ii) ~~any~~ requirements for financial reporting and reporting on other matters; ~~and, including (without limitation) requiring wānanga to~~

	prepare, in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013),—	
	(A) an audited statement of performance; and	
	(B) annual financial statements; and	5
	(iii) the means by which risk to the operation and long-term viability of the wānanga will be managed, including the range or type of interventions available to address risk; and	
	(iv) any requirements for planning the long-term strategic direction and objectives of the wānanga in the performance of its functions; and	10
	(j) provide for the appointment of a chief executive, including—	
	(i) the functions and duties of the chief executive; and	
	(ii) the delegation of any functions or duties of the chief executive:	
	(k) set out any requirements relating to the appointment of employees of the wānanga; and	15
	(l) set out the things that the wānanga must do to ensure the fair and proper treatment of employees in all aspects of their employment; and	
	(m) <u>require the wānanga to publish an annual report on an Internet site maintained by or on behalf of the wānanga that includes (without limitation) a statement of the number of employees or former employees of the wānanga who, in their capacity as employees, received remuneration of \$100,000 or more (including compensation or other benefits) in the year to which the report relates and the number of those employees or former employees in each bracket of remuneration in \$10,000 increments.</u>	20
		25
(5)	An order made under subclause (2) may—	
	(a) set out, by way of preamble, the contextual background for the conversion of the institution to a wānanga that is not a Crown entity <u>category B wānanga</u> , including any acknowledgements by the Crown:	
	(b) specify the means by which the council of the wānanga is to engage with the people who constitute the wānanga, and the iwi or Māori that the wānanga is accountable to for its effective governance and administration:	30
	(c) impose conditions on the performance or exercise of the functions, duties, or powers of the wānanga or its council:	35
	(d) specify limits on the number of times that people may be appointed to the council:	
	(e) specify the term of office of members of the council:	
	(f) specify the manner in which policies of the wānanga are to be determined:	40

	(g) provide for the establishment and membership of an academic committee to advise the council on matters relating to courses of study or training, awards, and other academic matters: (h) provide for any other matters that are necessary or desirable to— (i) provide for good governance of the wānanga; or (ii) clarify the arrangements for the administration of the wānanga.	5
(6)	An order made under this clause is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
95	Members of council cease to hold office on close of day before date of conversion	10
(1)	If an order is made under clause 94(2) , every member of the council of the relevant wānanga that is holding office immediately before the date of conversion ceases to hold office on the close of the day before that date.	
(2)	Neither the Crown, the wānanga, nor the council of the wānanga is liable to make a payment to, or otherwise compensate, a person referred to in sub-clause (1) in respect of the loss of office.	15
96	Rights, assets, and liabilities of converted wānanga	
(1)	This clause applies to all rights, assets, and liabilities that belong to a wānanga immediately before its date of conversion.	
(2)	On and after the date of conversion,—	20
	(a) the rights, assets, and liabilities of the wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> vest in the wānanga that is not a Crown entity <u>category B wānanga</u>; and	
	(b) unless the context otherwise requires, every reference to the wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> in any enactment (other than this Act), instrument, agreement, deed, lease, application, notice, or other document before that date must be read as a reference to the wānanga that is not a Crown entity <u>category B wānanga</u>.	25
(3)	In this clause, assets , liabilities , and rights have the same meanings as in section 10(6).	30
97	Same person for purposes of Inland Revenue Acts	
	For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), a wānanga that is not a Crown entity <u>a category B wānanga</u> must, on and from the date of conversion, be treated as the same person as the wānanga it replaces.	35
98	Employees of converted wānanga	
(1)	On and after the date of conversion, every employee of the wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> becomes an	

- employee of the ~~wānanga that is not a Crown entity~~ category B wānanga on the same terms and conditions that applied to the person immediately before they became an employee of the ~~wānanga that is not a Crown entity~~ category B wānanga.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of that employee,— 5
- (a) the employee’s employment agreement is to be treated as unbroken; and
 - (b) the employee’s period of service with the ~~wānanga that was a Crown entity~~ category A wānanga or category C wānanga, and every other period of service of the employee that is recognised by that wānanga as continuous service, is to be treated as a period of service with the ~~wānanga that is not a Crown entity~~ category B wānanga. 10
- (3) To avoid doubt, the employment by a ~~wānanga that is not a Crown entity~~ category B wānanga of an employee to whom this clause applies does not constitute new employment for the purposes of any service-related benefits, whether legislative or otherwise. 15
- (4) An employee to whom this clause applies is not entitled to receive any payment or benefit from the ~~wānanga that was a Crown entity~~ category A wānanga or category C or the ~~wānanga that is not a Crown entity~~ category B wānanga on the grounds that— 20
- (a) the person’s position in the ~~wānanga that was a Crown entity~~ category A wānanga or category C wānanga has ceased to exist; or
 - (b) the person has ceased to be an employee of that wānanga because of the transfer to the ~~wānanga that is not a Crown entity~~ category B wānanga. 25
- (5) This clause overrides— 25
- (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employment protection provision in any relevant employment agreement.
- 99 Superannuation schemes**
- (1) This clause applies to a person who, immediately before becoming an employee of a ~~wānanga that is not a Crown entity~~ category B wānanga, was— 30
- (a) an employee of a ~~wānanga that was a Crown entity~~ category A wānanga or category C wānanga; and
 - (b) a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956. 35
- (2) For the purposes of the Government Superannuation Fund Act 1956, the person is to be treated as being employed in the Government service as long as the person continues to be an employee of the ~~wānanga that is not a Crown entity~~ category B wānanga.

- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the ~~wānanga that is not a Crown entity~~ category B wānanga were Government service.
- (4) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 5
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the ~~wānanga that is not a Crown entity~~ category B wānanga is the controlling authority.
- (6) On and after the date of conversion, every reference to the wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga as the employer in relation to any superannuation scheme must, unless the context otherwise requires, be read as a reference to the ~~wānanga that is not a Crown entity~~ category B wānanga. 10
- 100 Students of converted wānanga**
- (1) This clause applies to every student enrolled at a wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga immediately before its date of conversion to a ~~wānanga that is not a Crown entity~~ category B wānanga. 15
- (2) On and after the date of conversion, the student must be treated as having been enrolled at the ~~wānanga that is not a Crown entity~~ category B wānanga.
- (3) A student who would, but for the conversion, have been entitled to be granted an award of the wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga is entitled to be granted a like award of the ~~wānanga that is not a Crown entity~~ category B wānanga. 20
- 101 Visas granted under Immigration Act 2009**
- (1) This clause applies to a visa granted under the Immigration Act 2009 in respect of— 25
- (a) a student, for the purposes of enrolment at a wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga; or
- (b) a staff member of a wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga. 30
- (2) On and after the date of conversion, any reference to the wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga in a condition imposed on the visa must be read as a reference to the ~~wānanga that is not a Crown entity~~ category B wānanga.
- 102 Existing NZQA approvals, accreditations, and consents** 35
- (1) This clause applies to the following that were granted to a wānanga that was a ~~Crown entity~~ category A wānanga or category C wānanga by NZQA under this Act and in effect immediately before its date of conversion to a ~~wānanga that is not a Crown entity~~ category B wānanga:

	(a) an approval of a programme under section 439: (b) an accreditation to provide all or part of a programme under section 441: (c) an approval to provide a micro-credential under section 445: (d) a consent to assess against the standards listed in the Directory of Assessment and Skill Standards under section 449: (e) a consent to award a degree or a postgraduate qualification under section 454.	5
(2)	On and after the date of conversion,— (a) the approval, accreditation, or consent (including any conditions imposed on an approval, an accreditation, or a consent) must be treated as if it were granted to the wānanga that is not a Crown entity <u>category B wānanga</u>; and (b) unless the context otherwise requires, every reference to the wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> in the approval, accreditation, or consent must be read as a reference to the wānanga that is not a Crown entity <u>category B wānanga</u>.	10 15
103	Existing funding paid by TEC under funding mechanism	
(1)	This clause applies to funding (including any conditions imposed on the funding) payable by TEC to a wānanga— (a) in accordance with an approval granted under section 425(2); or (b) other than via a plan under section 428.	20
(2)	On and after the date of conversion, — (a) TEC must treat the funding for a wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> as if it were payable to the wānanga that is not a Crown entity <u>category B wānanga</u> unless that funding is earlier suspended, revoked, or withdrawn under clause 16 or 26 of Schedule 18; and (b) for the purposes of paragraph (a), every reference to the wānanga that was a Crown entity <u>category A wānanga or category C wānanga</u> in an approval granted under section 425(2) must, unless the context otherwise requires, be read as a reference to the wānanga that is not a Crown entity <u>category B wānanga</u>.	25 30
104	Other references to converted wānanga that were Crown entities <u>category A wānanga or category C wānanga</u> On and after the date of conversion, every reference to a wānanga that was a Crown entity <u>category A wānanga or a category C wānanga</u> in any enactment (other than this Act) or document must, unless the context otherwise requires, be read as a reference to the wānanga that is not a Crown entity <u>category B wānanga</u>.	35

105 Existing proceedings and other matters

- (1) On and after the date of conversion,—
- (a) any proceedings by or against the wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ may be continued or enforced by or against the ~~wānanga that is not a Crown entity category B wānanga~~ without amendment to the proceedings; and 5
 - (b) a matter or thing that would, but for this clause, have been completed by the wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ may be completed by the ~~wānanga that is not a Crown entity category B wānanga~~; and 10
 - (c) anything done, omitted to be done, or to be done, by or in relation to the wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ is to be treated as having been done, omitted to be done, or to be done by or in relation to the ~~wānanga that is not a Crown entity category B wānanga~~. 15
- (2) In this clause, **proceedings**—
- (a) means civil and criminal proceedings; and
 - (b) includes any enforcement or compliance action by TEC or NZQA.

106 Converted wānanga must provide final report to Minister

- (1) Despite section 45J of the Public Finance Act 1989— 20
- (a) a wānanga that is ~~not a Crown entity a category B wānanga~~ and that is converted from a wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ must provide a final report to the Minister in relation to the wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ in accordance with section 45J(1) of that Act; and 25
 - (b) the Minister may specify the contents of the final report and the date or dates by which the contents of the report must be provided.
- (2) Section 45L of the Public Finance Act 1989 does not apply to a wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ and that is converted into a ~~wānanga that is not a Crown entity category B wānanga~~ under **clause 94(2)**. 30
- (3) The Minister must present a copy of the final report to the House of Representatives as soon as practicable after receiving it.
- (4) In this clause, **Minister** means the Minister responsible for the time being for administering this Part of this schedule. 35

107 Validation of pre-commencement actions and processes for appointments to councils of converted wānanga

- (1) This clause applies to any action or process undertaken by a wānanga that was a ~~Crown entity category A wānanga or category C wānanga~~ before the date of

	conversion when appointing members to the council of the wānanga that is not a Crown entity category B wānanga .	
(2)	An appointment is valid if the action or process substantially complies with this Act and the provisions of the relevant Order in Council establishing the wānanga that is not a Crown entity category B wānanga .	5
108	Membership of councils of wānanga that are not Crown entities category B wānanga reduced	
(1)	The number of members of the council of a wānanga that is not a Crown entity category B wānanga is reduced until the date on which each member referred to in the membership provisions of the relevant Order in Council is appointed to the council.	10
(2)	No action of the council of a wānanga that is not a Crown entity category B wānanga is invalid just because any member referred to in subclause (1) has not been appointed to that council on the date of conversion.	
	Subpart 2—Provision relating to election of board members who are parent representatives	15
109	Timing of mid-term elections of board members who are parent representatives	
(1)	This clause applies to a board that has decided under clause 4 of Schedule 23 to adopt a staggered election cycle in relation to the election of board members who are parent representatives.	20
(2)	Despite clause 4(3) of Schedule 23, the board must hold the next mid-term election of those board members that falls due after the commencement of this clause in November 2023 .	

Legislative history

23 March 2023
28 March 2023

Introduction (Bill 239–1)
First reading and referral to Education and Workforce Committee