

[AS REPORTED FROM THE EDUCATION AND SCIENCE  
COMMITTEE]

*House of Representatives, 3 June 1993.*

**Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.**

*Hon. Dr Lockwood Smith*

**EDUCATION REFORM (NO. 2)**

ANALYSIS

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## A BILL INTITULED

### **An Act to amend certain enactments relating to education**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title**—This Act may be cited as the Education Reform Act (No. 2) 1992. 5

PART I

MISCELLANEOUS AMENDMENTS TO EDUCATION ACT 1989

5     **2. Part to be read with Education Act 1989**—This Part and Parts II and III of this Act shall be read together with and deemed part of the Education Act 1989\* (hereafter in those Parts of this Act referred to as the principal Act).

**3. Accountability of Board of Special Education Service**—The principal Act is hereby amended by repealing section 39, and substituting the following sections:

10     **“39. Function of Board**—(1) The Board’s function is to provide advice, guidance, and support for the benefit of people with difficulties in learning or development.

   “(2) On and after the day on which the Board’s first document of accountability takes effect, it shall not provide any  
15     advice, guidance, or support, otherwise than in accordance with its document of accountability.

   “(3) Before the day on which the Board’s first document of accountability takes effect, it shall not provide any advice, guidance, or support, otherwise than in accordance with—

20     “(a) Agreements from time to time reached with the Secretary; or

   “(b) Where no such agreement is in force, with schemes from time to time notified to it by the Minister.

25     **“39A. Minister may require Board to negotiate document of accountability**—(1) The Minister—

   “(a) May from time to time, of the Minister’s own motion or at the Board’s request; and

30     “(b) Shall at intervals of no more than 12 months,—by written notice to the Board, require the Board to negotiate with the Minister (or any person designated by the Minister for the purpose) for the purpose of preparing a document specifying the nature and extent of the Board’s accountability to the Crown for the exercise of its powers and the performance of its functions.

35     “(2) The requirement shall specify a day (being a day that gives a reasonable time for the preparation of a document to be negotiated) before which the document is to be prepared.

**“39B. Minister may prepare document where no agreement reached**—Where—

\*1989, No. 80

Amendments: 1989, No. 156; 1990, No. 60; 1990, No. 118; 1990, No. 134; 1991, No. 43; 1991, No. 90; 1991, No. 135; 1991, No. 136; 1992, No. 107

“(a) The Minister has given the Board a requirement under section 39A (1) of this Act; and

“(b) The day specified in the requirement as the day before which such a document is to be prepared has passed; and

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“(c) Such a document has not been prepared,—  
the Minister may prepare a document specifying the nature and extent of the Board’s accountability to the Crown for the exercise of its powers and the performance of its functions; and in that case shall, before the day on which it is to come into effect, give a copy to the Board.

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“39c. **Contents of documents**—(1) Every document of accountability shall specify the mechanisms, strategies, and operating principles to be used by the Board in the performance of its function.

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“(2) Every document of accountability shall specify—

“(a) The services that the Board is to provide; and

“(b) The persons for whom or which the services are to be provided; and

“(c) The financial performance that the Board is to achieve; and

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“(d) The kinds of report that the Board is to give the Minister, and the frequency with which they are to be given; and

“(e) The kinds of monitoring to which the Board is to be subject, and the assistance and cooperation that the Board is to provide to the persons carrying it out; and

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“(f) Procedures for negotiating the preparation of future charters; and

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“(g) Procedures for negotiating the preparation of amendments to the (*charter*) document; and

“(h) Procedures for resolving disagreements between the Minister and the Board in relation to the exercise of the Board’s powers or the performance of its functions; and

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“(i) The day on which it is to take effect;—

and may specify any other matters.

“(3) **Subsection (2)** of this section does not limit the generality of **subsection (1)** of this section.

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5 “39D. **Amendments to documents**—(1) Subject to section 39c of this Act and subsection (2) of this section, sections 39A and 39B of this Act shall apply to the amendment of documents of accountability as if the references in those sections to a document of accountability is a reference to amendments to a document of accountability.

10 “(2) The negotiations for the preparation of amendments to a document of accountability shall follow the procedures specified in the document; and the Minister shall not prepare any amendments under section 39B of this Act unless those procedures have been followed.

15 “39E. **Revocation of documents**—On the day on which a document of accountability takes effect, any document of accountability in force immediately before that day shall cease to have effect.

“39F. **Board to comply with document of accountability**—The Board shall take all reasonable steps to comply with any (*accountability document*) document of accountability for the time being in force.

20 “39G. **Non-compliance with document**—(1) If satisfied that the Board—

“*(a)* Has failed or refused to comply with a document of accountability in force at the time of the failure or refusal; or

25 “*(b)* Is failing or refusing to comply with a document of accountability that is in force; or

“*(c)* Proposes to fail or refuse to comply with a document of accountability that will be in force at the time of the proposed failure or refusal,—

30 the Minister may, by written notice specifying the failure or refusal and (except in the case of a proposed failure or refusal) a period of not less than 21 days within which the document is to be complied with, direct the Board to comply with the document.

35 *New*

40 “(2) Nothing in paragraph (h) of section 39c (2) of this Act, and nothing in any document of accountability specifying procedures of the kind referred to in that paragraph, limits or affects the exercise by the Minister of the powers conferred by subsection (1) of this section or section 39H (1) of this Act.

- “39H. Minister may dismiss Board where non-compliance not rectified—**(1) If satisfied that the Board has not done any of the following things:
- “**(a)** Complied with a direction under **section 39G** of this Act: 5
- “**(b)** Satisfied the Minister that in all the circumstances the failure or refusal to which the direction relates was, is, or will be (as the case may be) reasonable: 5
- “**(c)** Satisfied the Minister that the alleged failure or refusal to which the direction relates did not occur, is not occurring, or will not occur (as the case may be),— 10
- the Minister may, by notice in the *Gazette*, dismiss the members of the Board (other than the Board’s chief executive) and appoint a person to act in place of the Board.
- “**(2)** The Minister may, by notice in the *Gazette*, revoke a notice under **subsection (1)** of this section (or this subsection) and appoint some different person to act in place of the Board. 15
- “**(3)** Until a notice under **subsection (1)** or **subsection (2)** of this section is revoked (by notice in the *Gazette*)—
- “**(a)** The Board’s chief executive shall be deemed not to be a member of the Board; and 20
- “**(b)** The person for the time being appointed to act in place of the Board—
- “**(i)** Shall have and may exercise and perform all the powers and functions of the Board; and
- “**(ii)** May affix the Board’s seal to documents accordingly; and 25
- “**(c)** Clauses 5 and 12 of the Second Schedule to this Act shall apply to that person as if that person is a member of the Board.
- “39I. Minister to publish certain documents and directions—**(1) As soon as is practicable after— 30
- “**(a)** Preparing a document of accountability under **section 39B** of this Act; or
- “**(b)** Giving a direction under **section 39G** of this Act,— 35
- the Minister shall lay a copy before the House of Representatives.
- “**(2)** Where, before the end of the period of one calendar month after—
- “**(a)** Preparing a document of accountability under **section 39B** of this Act; or 40
- “**(b)** Giving a direction under **(subsection (1) of this section) section 39G** of this Act,—
- the Minister will be, or may be, unable to lay a copy before the House of Representatives, because the House will not, or is not

expected to, sit during that period, the Minister shall publish a copy in the *Gazette*.”

5       **4. Consequential amendments**—(1) Section 36 of the principal Act is hereby consequentially amended by inserting, after the definition of the term “Board”, the following definition:

10       “ ‘Document of accountability’ means a document prepared pursuant to a requirement under **section 39A (1)** of this Act, or prepared under **section 39B (1)** of this Act; but where a document of accountability has been amended, means the document of accountability in its amended form for the time being:”.

15       (2) Section 40 (1) of the principal Act is hereby consequentially amended by inserting, after the word “Minister”, the words “(to the extent that its document of accountability is relevant to any of those matters, in accordance with the document)”.

20       **5. Accountability of Board of Early Childhood Development Unit**—The principal Act is hereby amended by repealing section 45, and substituting the following sections:

25       “**45. Function of Board**—(1) The Board’s function is to promote and encourage the development and provision of high quality, accessible, and culturally appropriate educational and developmental facilities and services for the benefit of children who have not yet enrolled at a primary school.

30       “(2) On and after the day on which the Board’s first document of accountability takes effect, it shall not promote or encourage the development or provision of any facility or service, otherwise than in accordance with its document of accountability.

35       “(3) Before the day on which the Board’s first document of accountability takes effect, it shall not promote or encourage the development or provision of any facility or service, otherwise than in accordance with—

      “(a) Agreements from time to time reached with the Secretary; or

      “(b) Where no such agreement is in force, with schemes from time to time notified to it by the Minister.

40       “**45A. Minister may require Board to negotiate document of accountability**—(1) The Minister—

“(a) May from time to time, of the Minister’s own motion or at the Board’s request; and

“(b) Shall at intervals of no more than 12 months,—  
by written notice to the Board, require the Board to negotiate  
with the Minister (or any person designated by the Minister for  
the purpose) for the purpose of preparing a document  
specifying the nature and extent of the Board’s accountability  
to the Crown for the exercise of its powers and the  
performance of its function. 5

“(2) The requirement shall specify a day (being a day that  
gives a reasonable time for the preparation of a document to be  
negotiated) before which the document is to be prepared. 10

**“45B. Minister may prepare document where no agreement reached—**Where—

“(a) The Minister has given the Board a requirement under  
**section 45A (1)** of this Act; and 15

“(b) The day specified in the requirement as the day before  
which such a document is to be prepared has  
passed; and

“(c) Such a document has not been prepared,—  
the Minister may prepare a document specifying the nature  
and extent of the Board’s accountability to the Crown for the  
exercise of its powers and the performance of its functions; and  
in that case shall, before the day on which it is to come into  
effect, give a copy to the Board. 20  
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**“45c. Contents of documents—**(1) Every document of  
accountability shall specify the mechanisms, strategies, and  
operating principles to be used by the Board in the  
performance of its function.

“(2) Every document of accountability shall specify— 30

“(a) The services that the Board is to provide; and

“(b) The persons for whom or which the services are to be  
provided; and

“(c) The financial performance that the Board is to achieve;  
and 35

“(d) The kinds of report that the Board is to give the  
Minister, and the frequency with which they are to  
be given; and

“(e) The kinds of monitoring to which the Board is to be  
subject, and the assistance and cooperation that the  
Board is to provide to the persons carrying it out;  
and 40



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“(f) Procedures for negotiating the preparation of future charters; and

5 “(g) Procedures for negotiating the preparation of amendments to the (*charter*) document; and

“(h) Procedures for resolving disagreements between the Minister and the Board in relation to the exercise of the Board’s powers or the performance of its functions; and

10 “(i) The day on which it is to take effect;—

and may specify any other matters.

“(3) **Subsection (2)** of this section does not limit the generality of **subsection (1)** of this section.

15 “**45D. Amendments to documents**—(1) Subject to **section 45c** of this Act and **subsection (2)** of this section, **sections 45A and 45B** of this Act shall apply to the amendment of documents of accountability as if the references in those sections to a document of accountability is a reference to amendments to a document of accountability.

20 “(2) The negotiations for the preparation of amendments to a document of accountability shall follow the procedures specified in the document of accountability; and the Minister shall not prepare any amendments under **section 45B** of this Act unless those procedures have been followed.

25 “**45E. Revocation of documents**—On the day on which a document of accountability takes effect, any document of accountability in force immediately before that day shall cease to have effect.

30 “**45F. Board to comply with document of accountability**—The Board shall take all reasonable steps to comply with any (*accountability document*) document of accountability for the time being in force.

“**45G. Non-compliance with document**—(1) If satisfied that the Board—

35 “(a) Has failed or refused to comply with a document of accountability in force at the time of the failure or refusal; or

“(b) Is failing or refusing to comply with a document of accountability that is in force; or

“(c) Proposes to fail or refuse to comply with a document of accountability that will be in force at the time of the proposed failure or refusal,—  
the Minister may, by written notice specifying the failure or refusal and (except in the case of a proposed failure or refusal) a period of not less than 21 days within which the document is to be complied with, direct the Board to comply with the document. 5

*New*

“(2) Nothing in paragraph (h) of section 45c (2) of this Act, and nothing in any document of accountability specifying procedures of the kind referred to in that paragraph, limits or affects the exercise by the Minister of the powers conferred by subsection (1) of this section or section 45H (1) of this Act. 10

**“45H. Minister may dismiss Board where non-compliance not rectified—**(1) If satisfied that the Board has not done any of the following things: 15

“(a) Complied with a direction under section 45G of this Act:

“(b) Satisfied the Minister that in all the circumstances the failure or refusal to which the direction relates was, is, or will be (as the case may be) reasonable: 20

“(c) Satisfied the Minister that the alleged failure or refusal to which the direction relates did not occur, is not occurring, or will not occur (as the case may be),—  
the Minister may, by notice in the *Gazette*, dismiss the members of the Board (other than the Board’s chief executive) and appoint a person to act in place of the Board. 25

“(2) The Minister may, by notice in the *Gazette*, revoke a notice under subsection (1) of this section (or this subsection) and appoint some different person to act in place of the Board. 30

“(3) Until a notice under subsection (1) or subsection (2) of this section is revoked (by notice in the *Gazette*)—

“(a) The Board’s chief executive shall be deemed not to be a member of the Board; and

“(b) The person for the time being appointed to act in place of the Board— 35

“(i) Shall have and may exercise and perform all the powers and functions of the Board; and

“(ii) May affix the Board’s seal to documents accordingly; and 40

“(c) Clauses 5 and 12 of the Third Schedule to this Act shall apply to that person as if that person is a member of the Board.

5 “45I. **Minister to publish certain documents and directions**—(1) As soon as is practicable after—

“(a) Preparing a document of accountability under **section 45b** of this Act; or

10 “(b) Giving a direction under **section 45g** of this Act,—  
the Minister shall lay a copy before the House of Representatives.

“(2) Where, before the end of the period of one calendar month after—

“(a) Preparing a document of accountability under **section 45b** of this Act; or

15 “(b) Giving a direction under (*subsection (1) of this section*) **section 45g** of this Act,—

20 the Minister will be, or may be, unable to lay a copy before the House of Representatives, because the House will not, or is not expected to, sit during that period, the Minister shall publish a copy in the *Gazette*.”

**6. Consequential amendments**—(1) Section 42 of the principal Act is hereby consequentially amended by inserting, after the definition of the term “Board”, the following definition:

25 “‘Document of Accountability’ means a document prepared pursuant to a requirement under **section 45A (1)** of this Act, or prepared under **section 45b (1)** of this Act; but where a document of accountability has been amended, means the document of  
30 accountability in its amended form for the time being:”.

35 (2) Section 46 (1) of the principal Act is hereby consequentially amended by inserting, after the word “Minister”, the words “(to the extent that its document of accountability is relevant to any of those matters, in accordance with the document)”.

*New*

40 **6A. National education guidelines**—Section 60A of the principal Act (as inserted by section 9 (1) of the Education Amendment Act (No. 4) 1991) is hereby amended by inserting,

*New*

after the word “publish”, the words “(in their entirety, or by way of a general description and an indication of where the full text can be obtained)”.

**6b. Terms**—(1) Section 65B of the principal Act (as inserted by section 17 (1) of the Education Amendment Act 1990) is hereby amended by omitting from subsection (3) the word “consecutive”, wherever it occurs. 5

(2) Section 77 of the Education Act 1964 (as amended by section 8 (2) of the Education Amendment Act (No. 2) 1982) is hereby consequentially amended by omitting the word “consecutive”. 10

**6c. Investment**—The principal Act is hereby amended by repealing section 73, and substituting the following section: 15

“73. (1) A Board may—

“(a) Invest money on deposit with any registered bank, or any subsidiary of a registered bank; or 15

“(b) Otherwise subscribe for or invest in any debt security in any registered bank, or any subsidiary of a registered bank; or 20

“(c) Subscribe for or invest in any public security.

“(2) Except as provided in subsection (1) of this section, a Board shall not invest any money, or subscribe for or invest in any security, without the Minister’s consent.

“(3) In this section,— 25

“‘Public security’ has the meaning given to that term by section 2 (1) of the Public Finance Act 1989:

“‘Registered bank’ has the meaning given to that term by section 2 (1) of the Reserve Bank of New Zealand Act 1989: 30

“‘Security’ (except when preceded by the word ‘public’) and ‘debt security’ have the meanings given to those terms by section 2 (1) of the Securities Act 1978:

“‘Subsidiary’ means a subsidiary as defined by section 158 of the Companies Act 1955.” 35

**6d. Expiry of registration**—(1) Section 127 of the principal Act is hereby amended by repealing subsections (1) to (4), and substituting the following subsection:

*New*

“(1) If it has not already expired under this section or been cancelled, a teacher’s registration expires—

5 “(a) In the case of provisional registration under subsection (1) of section 124 of this Act that has not earlier been confirmed under subsection (3) of that section, after 2 years:

“(b) In the case of the registration of a teacher who has never held a practising certificate, after 5 years:

10 “(c) In the case of provisional registration under subsection (1) of section 123 of this Act that has not earlier been confirmed under subsection (3) of that section, after—

“(i) 5 years; or

15 “(ii) Where, before the expiration of 5 years, the Registration Board has allowed the teacher a further year, 6 years:

“(d) In the case of the registration of a teacher who has held a practising certificate but no longer holds one, on the 5th anniversary of the expiry of the practising certificate most recently issued to the teacher:

20 “(e) When the Registration Board receives a written request, signed by the teacher, that in the Board’s opinion is a request for deregistration:

25 “(f) On the death of the teacher.”

(2) Section 127 (6) (b) of the principal Act is hereby consequentially amended by omitting the words “shall be deemed to have expired”, and substituting the word “expires”.

30 (3) Sections 123 (4) and 124 (4) of the principal Act are hereby consequentially repealed.

**6E. Deregistration**—(1) Section 129 (2) of the principal Act is hereby amended by omitting the words “subsection (3) of this section, the Registration Board may, on the application of the principal or chief executive (or, in the case of an application made in respect of a principal, on the application of the School Board) of a school or educational institution at which a teacher is or has been employed”, and substituting the words “**subsections (2A) and (3)** of this section, the Registration Board may”.

40 (2) The said section 129 is hereby amended by inserting, after subsection (2), the following subsection:

## New

“(2A) The Registration Board shall not consider whether or not a teacher’s registration should be cancelled unless—

“(a) The principal or chief executive (or, in the case of a request made in respect of a principal or chief executive, the School Board or other governing body) of a school or educational institution at which a teacher is or has been employed has requested the Registration Board to do so; or 5

“(b) The Registration Board is satisfied that the teacher has, since registration, been convicted of an offence punishable by imprisonment for 12 months or more.” 10

**6F. Property held in trust**—The principal Act is hereby amended by inserting, after section 156B (as inserted by section 22 of the Education Amendment Act (No. 4) 1991), the following section: 15

“156c. (1) This section applies to any property that, immediately before 2 or more schools merged under section 156A of this Act, was held in trust— 20

“(a) By the Board of one (or more) of those schools; or

“(b) For the benefit of—

“(i) One (or more) of those schools; or

“(ii) The students or former students of one (or more) of those schools,— 25

by any other person or body.

“(2) All property to which this section applies continues to be subject to the trust concerned; but the person or body in whom it is vested may at any time apply to the Public Trustee to devise a scheme to modify the trust in the light of the merger of the schools concerned. 30

“(3) If satisfied that adequate arrangements have been made to meet the costs of doing so, the Public Trustee shall—

“(a) In consultation with the Board concerned, devise; and

“(b) Notify the Solicitor-General of,— 35

a scheme to modify any trust in respect of which the Public Trustee has received an application under this section.

“(4) Where the Public Trustee notifies the Solicitor-General of a scheme under this section,—

“(a) The Solicitor-General may, by written notice to the Public Trustee,— 40

*New*

- 5 “(i) Approve the scheme (as originally notified by the Public Trustee or with amendments agreed by the Public Trustee after consultation with the Board concerned); or
- “(ii) Suggest amendments to it; or
- “(iii) Direct that it should not proceed; and
- 10 “(b) If the Solicitor-General directs that it should not proceed, the matter may be dealt with under the Charitable Trusts Act 1957.
- “5) If, within 90 days of being notified of a scheme under this section, the Solicitor-General does not suggest amendments to it or direct that it should not proceed, the Solicitor-General shall be deemed to have approved it.
- 15 “6) Where the Solicitor-General approves a scheme notified under this section, the trust concerned shall have effect accordingly.
- “7) The Solicitor-General shall not approve a scheme under this section unless satisfied that—
- 20 “(a) It modifies the trust concerned so as best to give effect to the intentions of the testator, settlor, or other person or body by whom or which the trust was established; and
- 25 “(b) Subject to paragraph (a) of this subsection, it effects the minimum change necessary to enable the trust to operate successfully in the light of the merger of the schools concerned.”

**6c. Interpretation**—(1) Section 159 of the principal Act (as inserted by section 35 of the Education Amendment Act 1990) is hereby amended by repealing the definition of the term “government training establishment” (as inserted by section 42 of the Public Finance Amendment Act 1992), and substituting the following definition:

- 35 “‘Government training establishment’ means any establishment that is—
- “a) A Crown entity (within the meaning of the Public Finance Act 1989) for the time being approved by the Minister for the purposes of this definition; or
- 40 “b) A Department (within the meaning of the Public Finance Act 1989) for the time being approved by the Minister for the purposes of this definition; or

## New

“(c) The New Zealand Defence Force constituted by section 11 (1) of the Defence Act 1990; or  
“(d) The New Zealand Police:”.

(2) So much of the Second Schedule to the Public Finance Amendment Act 1992 as relates to section 159 of the principal Act is hereby consequentially repealed.

**7. Disclosure of enrolment information to Department of Social Welfare**—(1) The principal Act is hereby amended by inserting, after section 226 (as inserted by section 38 of the Education Amendment Act 1990), the following section: 10

“226A. (1) In this section, unless the context otherwise requires,—

“ ‘Benefit’ means a sickness benefit under section 54 of the Social Security Act 1964, an unemployment benefit under section 58 of that Act, a training benefit under section 60A of that Act, or an independent youth benefit under section 60F of that Act: 15

“ ‘Department’ means the Department of Social Welfare:

“ ‘Director-General’ means the chief executive of the Department. 20

“(2) The purpose of this section is to facilitate the disclosure of information by institutions to the Department, *(for the purpose of verifying)* in order to verify—

“(a) The entitlement or eligibility of any person to or for any benefit; or 25

“(b) The amount of any benefit to which any person is or was entitled or for which any person is or was eligible.

“(3) For the purpose of this section, the Director-General may from time to time, in accordance with arrangements under the Privacy Commissioner Act 1991 previously agreed between the Director-General and any institution (or, where they are unable to agree, in accordance with arrangements under that Act settled by the Privacy Commissioner appointed under the Privacy Commissioner Act 1991), by notice in writing require the institution to supply, in respect of people who are (or were in any period specified in the notice), enrolled as full-time students at the institution,— 30

“(a) Their full names and addresses; and 35

“(b) Their dates of birth. 40



“(4) As soon as is practicable after receiving a notice under subsection (3) of this section, an institution shall supply the information required to the Director-General or any employee or agent of the Department authorised by the Director-General to receive such information.

“(5) Information supplied by an institution under subsection (4) of this section shall be in a form previously agreed between the institution and the Director-General under the Privacy Commissioner Act 1991 (or, where they are unable to agree, in a form settled by the Privacy Commissioner appointed under the Privacy Commissioner Act 1991).

“(6) Any institution that intentionally fails or refuses to comply with subsection (4) of this section commits an offence punishable by a fine not exceeding \$5,000, and, where the offence is a continuing one, by a fine not exceeding \$500 for each day the offence continues.”

(2) Section 2 of the Privacy Commissioner Act 1991 is hereby amended by inserting in the definition of the term “agency”, after paragraph (g), the following paragraph:

“(ga) An institution within the meaning of section 159 of the Education Act 1989.”

(3) The Privacy Commissioner Act 1991 is hereby further amended by omitting from the second column of the Third Schedule (opposite the reference to the Education Act 1989) the word “Section”, and substituting the expression “Sections 226A,”.

**8. Disclosure of enrolment information to Department of Social Welfare**—(1) The principal Act is hereby amended

*Struck Out*

by inserting, after section 238 (as inserted by section 40 of the Education Amendment Act 1990), the following section:

“238A. (1) In this section, unless the context otherwise

*New*

by inserting, after section 238A (as inserted by section 30 of the Education Amendment Act (No. 4) 1991), the following section:

“238B. (1) In this section, unless the context otherwise

requires,—

“ ‘Benefit’ means a sickness benefit under section 54 of the Social Security Act 1964, an unemployment benefit under section 58 of that Act, a training benefit under section 60A of that Act, or an independent youth benefit under section 60F of that Act: 5

“ ‘Department’ means the Department of Social Welfare:

“ ‘Director-General’ means the chief executive of the Department.

“(2) The purpose of this section is to facilitate the disclosure of information by the governing bodies of private training establishments to the Department, *(for the purpose of verifying)* in order to verify— 10

“(a) The entitlement or eligibility of any person to or for any benefit; or

“(b) The amount of any benefit to which any person is or was entitled or for which any person is or was eligible. 15

“(3) For the purpose of this section, the Director-General may from time to time, in accordance with arrangements under the Privacy Commissioner Act 1991 previously agreed between the Director-General and the governing body of any private training establishment (or, where they are unable to agree, in accordance with arrangements under that Act settled by the Privacy Commissioner appointed under the Privacy Commissioner Act 1991), by notice in writing require the governing body to supply, in respect of people who are (or were in any period specified in the notice), enrolled as full-time students at the private training establishment,— 20 25

“(a) Their full names and addresses; and

“(b) Their dates of birth.

“(4) As soon as is practicable after receiving a notice under **subsection (3)** of this section, the governing body of a private training establishment shall supply the information required to the Director-General or any employee or agent of the Department authorised by the Director-General to receive such information. 30 35

“(5) Information supplied by the governing body of a private training establishment under **subsection (4)** of this section shall be in a form previously agreed between the governing body and the Director-General under the Privacy Commissioner Act 1991 (or, where they are unable to agree, in a form settled by the Privacy Commissioner appointed under the Privacy Commissioner Act 1991). 40

“(6) The governing body of any private training establishment that intentionally fails or refuses to comply with **subsection (4)** of this section commits an offence punishable by a 45

fine not exceeding \$5,000, and, where the offence is a continuing one, by a fine not exceeding \$500 for each day the offence continues.”

5 (2) Section 2 of the Privacy Commissioner Act 1991 is hereby amended by inserting in the definition of the term “agency”, before paragraph (h), the following paragraph:

“(gb) A private training establishment within the meaning of section 159 of the Education Act 1989:”

10 (3) The Privacy Commissioner Act 1991 is hereby further amended by inserting in the second column of the Third Schedule (opposite the reference to the Education Act 1989) before the expression “307A”, the expression “(238A) 238b, and”.

*New*

15 **8A. Approval of courses**—(1) Section 258 of the principal Act (as inserted by section 42 of the Education Amendment Act 1990 and amended by section 29(1) of the Education Amendment Act (No. 4) 1991) is hereby amended, as from its commencement, by omitting from subsection (6)(c) the  
20 expression “subsection (1)”, and substituting the expression “subsection (2)”.

(2) Section 29(1) of the Education Amendment Act (No. 4) 1991 is hereby amended, as from its commencement, by  
25 omitting the expression “subsections (1)”, and substituting the expression “subsections (2)”.

**9. Functions of Agency**—The principal Act is hereby amended by adding to section 271 (as inserted by section 43 of the Education Amendment Act 1990), as **subsections (2) and (3)** the following subsections:

30 “(2) On and after the day on which the Board’s first document of accountability takes effect, the Agency shall not administer any scheme, activity, or programme, otherwise than in accordance with the Board’s document of accountability.

*Struck Out*

35 “(3) Before the day on which the Board’s first document of accountability takes effect, the Agency shall not administer any scheme, activity, or programme, otherwise than in accordance with—

*Struck Out*

- “(a) Agreements from time to time reached by the Board and the Secretary; or  
 “(b) Where no such agreement is in force, with schemes from time to time notified to it by the Minister.”

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*New*

“(3) Before the day on which the Board’s first document of accountability takes effect, the Agency shall not administer any scheme, activity, or programme, otherwise than in accordance with the Board’s charter for the time being.”

10

**10. Accountability of Board of Education and Training Support Agency**—The principal Act is hereby amended by repealing sections 273 to 275, and substituting the following sections:

**“273A. Minister may require Board to negotiate document of accountability—**(1) The Minister—

15

“(a) May from time to time, of the Minister’s own motion or at the Board’s request; and

“(b) Shall at intervals of no more than 12 months,—  
 by written notice to the Board, require the Board to negotiate with the Minister (or any person designated by the Minister for the purpose) for the purpose of preparing a document specifying the nature and extent of the Board’s accountability to the Crown for the exercise of its powers and the performance of the Agency’s functions.

20

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“(2) The requirement shall specify a day (being a day that gives a reasonable time for the preparation of a document to be negotiated) before which the document is to be prepared.

**“273B. Minister may prepare document where no agreement reached—**Where—

30

“(a) The Minister has given the Board a requirement under section 273A (1) of this Act; and

“(b) The day specified in the requirement as the day before which such a document is to be prepared has passed; and

35

“(c) Such a document has not been prepared,—

the Minister may prepare a document specifying the nature and extent of the Board's accountability to the Crown for the exercise of its powers and the performance of the Agency's functions; and in that case shall, before the day on which it is to come into effect, give a copy to the Board.

5 "273c. **Contents of documents**—(1) Every document of accountability shall specify the mechanisms, strategies, and operating principles to be used by the Board in the performance of the Agency's functions.

10 "(2) Every document of accountability shall specify—

"(a) The services that the Board is to provide; and

"(b) The persons for whom or which the services are to be provided; and

15 "(c) The financial performance that the Board is to achieve; and

"(d) The kinds of report that the Board is to give the Minister, and the frequency with which they are to be given; and

20 "(e) The kinds of monitoring to which the Board is to be subject, and the assistance and cooperation that the Board is to provide to the persons carrying it out; and

*Struck Out*

25 "(f) Procedures for negotiating the preparation of future charters; and

"(g) Procedures for negotiating the preparation of amendments to the (*charter*) document; and

30 "(h) Procedures for resolving disagreements between the Minister and the Board in relation to the exercise of the Board's powers or the performance of the Agency's functions; and

"(i) The day on which it is to take effect;—

and may specify any other matters.

35 "(3) **Subsection (2)** of this section does not limit the generality of **subsection (1)** of this section.

"273d. **Amendments to documents**—(1) Subject to section 273c of this Act and **subsection (2)** of this section, **sections 273a and 273b** of this Act shall apply to the amendment of documents of accountability as if the references in those

sections to a document of accountability is a reference to amendments to a document of accountability.

“(2) The negotiations for the preparation of amendments to a document of accountability shall follow the procedures specified in the document of accountability; and the Minister shall not prepare any amendments under **section 273B** of this Act unless those procedures have been followed. 5

“**273E. Revocation of documents**—On the day on which a document of accountability takes effect, any document of accountability in force immediately before that day shall cease to have effect. 10

“**273F. Board to comply with document of accountability**—The Board shall take all reasonable steps to comply with any (*accountability document*) document of accountability for the time being in force. 15

“**273G. Non-compliance with document**—(1) If satisfied that the Board—

“(a) Has failed or refused to comply with a document of accountability in force at the time of the failure or refusal; or 20

“(b) Is failing or refusing to comply with a document of accountability that is in force; or

“(c) Proposes to fail or refuse to comply with a document of accountability that will be in force at the time of the proposed failure or refusal,— 25

the Minister may, by written notice specifying the failure or refusal and (except in the case of a proposed failure or refusal) a period of not less than 21 days within which the document is to be complied with, direct the Board to comply with the document. 30

*New*

“(2) Nothing in **paragraph (h)** of **section 273c (2)** of this Act, and nothing in any document of accountability specifying procedures of the kind referred to in that paragraph, limits or affects the exercise by the Minister of the powers conferred by **subsection (1)** of this section or **section 273H (1)** of this Act. 35

“**273H. Minister may dismiss Board where non-compliance not rectified**—(1) If satisfied that the Board has not done any of the following things:

“(a) Complied with a direction under **section 273G** of this Act: 40

“(b) Satisfied the Minister that in all the circumstances the failure or refusal to which the direction relates was, is, or will be (as the case may be) reasonable:

5 “(c) Satisfied the Minister that the alleged failure or refusal to which the direction relates did not occur, is not occurring, or will not occur (as the case may be),— the Minister may, by notice in the *Gazette*, dismiss the members of the Board (other than the Board’s chief executive) and appoint a person to act in place of the Board.

10 “(2) The Minister may, by notice in the *Gazette*, revoke a notice under **subsection (1)** of this section (or this subsection) and appoint some different person to act in place of the Board.

“(3) Until a notice under **subsection (1)** or **subsection (2)** of this section is revoked (by notice in the *Gazette*)—

15 “(a) The Board’s chief executive shall be deemed not to be a member of the Board; and

“(b) The person for the time being appointed to act in place of the Board—

20 “(i) Shall have and may exercise and perform all the powers and functions of the Board and the Agency; and

“(ii) May affix the Board’s seal to documents accordingly; and

25 “(c) Clauses 5 and 11 of the Sixteenth Schedule to this Act shall apply to that person as if that person is a member of the Board.

“**273i. Minister to publish certain documents and directions**—(1) As soon as is practicable after—

30 “(a) Preparing a document of accountability under **section 273b** of this Act; or

“(b) Giving a direction under **section 273g** of this Act,— the Minister shall lay a copy before the House of Representatives.

35 “(2) Where, before the end of the period of one calendar month after—

“(a) Preparing a document of accountability under **section 273b** of this Act; or

“(b) Giving a direction under (**subsection (1) of this section**) **section 273g** of this Act,—

40 the Minister will be, or may be, unable to lay a copy before the House of Representatives, because the House will not, or is not expected to, sit during that period, the Minister shall publish a copy in the *Gazette*.”

**11. Consequential amendments**—(1) Section 269 of the principal Act is hereby consequentially amended by inserting, after the definition of the term “Board”, the following definition:

“‘Document of accountability’ means a document 5  
prepared pursuant to a requirement under section 273A(1) of this Act, or prepared under section 273B(1) of this Act; but where a document of accountability has been amended, means the document of accountability in its amended form for the time 10  
being.”.

*New*

(2) The Industry Training Act 1992 is hereby consequentially amended by omitting from sections 7 (g), 11 (e), 13 (b), and 13 (d) the word “charter”, and substituting in each case the words “document of accountability”. 15

(3) Before the day on which the first document of accountability of the Board of the Education and Training Support Agency takes effect, every reference in the Industry Training Act 1992 to its document of accountability shall be 20  
read as a reference to its charter for the time being.

**11A. Establishment of Careers Service**—(1) Section 279 (1) of the principal Act (as inserted by section 44 of the Education Amendment Act 1990) is hereby amended by omitting the words “Career Development and Transition 25  
Education”, and substituting the word “Careers”.

(2) The principal Act is hereby consequentially amended—

(a) By omitting from the heading to Part XXII (as inserted as aforesaid) the words “CAREER DEVELOPMENT AND TRANSITION EDUCATION”, and substituting 30  
the word “CAREERS”:

(b) By omitting from the definition in section 278 (as inserted as aforesaid) of the term “Service” the words “Career Development and Transition Education”, and substituting the word “Careers”: 35

(c) By omitting from the heading to the Seventeenth Schedule (as inserted by section 47 of the Education Amendment Act 1990) the words “CAREER DEVELOPMENT AND TRANSITION EDUCATION”, and substituting the word 40  
“CAREERS”.



*New*

5 (3) The Public Finance Act 1989 is hereby consequentially amended by omitting from the Fourth, Fifth, Sixth, and Seventh Schedules (as inserted by section 41 of the Public Finance Amendment Act 1992) the item “Career Development and Transition Education Service”, and substituting in each case the item “Careers Service”.

10 (4) The Ombudsmen Act 1975 is hereby consequentially amended by omitting from Part II of the First Schedule the item “Career Development and Transition Education Service” (as inserted by section 50 (1) of the Education Amendment Act 1990), and substituting the item “Careers Service”.

15 (5) So much of the Second Schedule to the Education Amendment Act 1990 as relates to the Career Development and Transition Education Service is hereby consequentially repealed.

20 **12. Functions of Service**—(1) The principal Act is hereby amended by adding to section 280 (as inserted by section 44 of the Education Amendment Act 1990), as **subsections (2) and (3)** the following subsections:

“(2) On and after the day on which the Board’s first document of accountability takes effect, the Service shall not perform any of its functions otherwise than in accordance with the Board’s document of accountability.

25 *Struck Out*

“(3) Before the day on which the Board’s first document of accountability takes effect, the Service shall not perform any of its functions otherwise than in accordance with—

30 “(a) Agreements from time to time reached by the Board and the Secretary; or

“(b) Where no such agreement is in force, with schemes from time to time notified to it by the Minister.”

*New*

35 “(3) Before the day on which the Board’s first document of accountability takes effect, the Service shall not administer any

*New*

scheme, activity, or programme, otherwise than in accordance with the Board's charter for the time being."

**13. Accountability of Board of Careers Service**—The principal Act is hereby amended by repealing sections 283 to 285, and substituting the following sections: 5

**"283A. Minister may require Board to negotiate document of accountability**—(1) The Minister—

"(a) May from time to time, of the Minister's own motion or at the Board's request; and 10

"(b) Shall at intervals of no more than 12 months,— by written notice to the Board, require the Board to negotiate with the Minister (or any person designated by the Minister for the purpose) for the purpose of preparing a document specifying the nature and extent of the Board's accountability to the Crown for the exercise of its powers and the performance of the Service's functions. 15

"(2) The requirement shall specify a day (being a day that gives a reasonable time for the preparation of a document to be negotiated) before which the document is to be prepared. 20

**"283B. Minister may prepare document where no agreement reached**—Where—

"(a) The Minister has given the Board a requirement under section 283A (1) of this Act; and

"(b) The day specified in the requirement as the day before which such a document is to be prepared has passed; and 25

"(c) Such a document has not been prepared,— the Minister may prepare a document specifying the nature and extent of the Board's accountability to the Crown for the exercise of its powers and the performance of the Service's functions; and in that case shall, before the day on which it is to come into effect, give a copy to the Board. 30

**"283c. Contents of documents**—(1) Every document of accountability shall specify the mechanisms, strategies, and operating principles to be used by the Board in the performance of the Service's functions. 35

"(2) Every document of accountability shall specify—

"(a) The services that the Board is to provide; and

“(b) The persons for whom or which the services are to be provided; and

“(c) The financial performance that the Board is to achieve; and

5 “(d) The kinds of report that the Board is to give the Minister, and the frequency with which they are to be given; and

“(e) The kinds of monitoring to which the Board is to be subject, and the assistance and cooperation that the Board is to provide to the persons carrying it out; and

*Struck Out*

“(f) Procedures for negotiating the preparation of future charters; and

15 “(g) Procedures for negotiating the preparation of amendments to the (*charter*) document; and

“(h) Procedures for resolving disagreements between the Minister and the Board in relation to the exercise of the Board’s powers or the performance of the Service’s functions; and

20 “(i) The day on which it is to take effect;—

and may specify any other matters.

“(3) **Subsection (2)** of this section does not limit the generality of **subsection (1)** of this section.

25 “**283D. Amendments to documents**—(1) Subject to **section 283c** of this Act and **subsection (2)** of this section, **sections 283A and 283B** of this Act shall apply to the amendment of documents of accountability as if the references in those sections to a document of accountability is a reference to

30 amendments to a document of accountability.

“(2) The negotiations for the preparation of amendments to a document of accountability shall follow the procedures specified in the document; and the Minister shall not prepare any amendments under **section 283B** of this Act unless those

35 procedures have been followed.

“**283E. Revocation of documents**—On the day on which a document of accountability takes effect, any document of accountability in force immediately before that day shall cease to have effect.

**“283F. Board to comply with document of accountability**—The Board shall take all reasonable steps to comply with any (*accountability document*) document of accountability for the time being in force.

**“283G. Non-compliance with document**—(1) If satisfied 5  
that the Board—

“(a) Has failed or refused to comply with a document of accountability in force at the time of the failure or refusal; or

“(b) Is failing or refusing to comply with a document of 10  
accountability that is in force; or

“(c) Proposes to fail or refuse to comply with a document of  
accountability that will be in force at the time of the  
proposed failure or refusal,—

the Minister may, by written notice specifying the failure or 15  
refusal and (except in the case of a proposed failure or refusal)  
a period of not less than 21 days within which the document is  
to be complied with, direct the Board to comply with the  
document.

*New*

20

“(2) Nothing in paragraph (h) of section 283c (2) of this Act, and  
nothing in any document of accountability specifying  
procedures of the kind referred to in that paragraph, limits or  
affects the exercise by the Minister of the powers conferred by  
subsection (1) of this section or section 283H (1) of this Act. 25

**“283H. Minister may dismiss Board where non-compliance not rectified**—(1) If satisfied that the Board has  
not done any of the following things:

“(a) Complied with a direction under section 283G of this Act:

“(b) Satisfied the Minister that in all the circumstances the 30  
failure or refusal to which the direction relates was,  
is, or will be (as the case may be) reasonable:

“(c) Satisfied the Minister that the alleged failure or refusal to  
which the direction relates did not occur, is not  
occurring, or will not occur (as the case may be),— 35

the Minister may, by notice in the *Gazette*, dismiss the members  
of the Board (other than the Board’s chief executive) and  
appoint a person to act in place of the Board.

“(2) The Minister may, by notice in the *Gazette*, revoke a 40  
notice under subsection (1) of this section (or this subsection) and  
appoint some different person to act in place of the Board.

“(3) Until a notice under **subsection (1) or subsection (2)** of this section is revoked (by notice in the *Gazette*)—

“(a) The Board’s chief executive shall be deemed not to be a member of the Board; and

5 “(b) The person for the time being appointed to act in place of the Board—

“(i) Shall have and may exercise and perform all the powers and functions of the Board and the Service; and

10 “(ii) May affix the Board’s seal to documents accordingly; and

“(c) Clauses 5 and 11 of the Seventeenth Schedule to this Act shall apply to that person as if that person is a member of the Board.

15 “283i. **Minister to publish certain documents and directions**—(1) As soon as is practicable after—

“(a) Preparing a document of accountability under **section 283b** of this Act; or

20 “(b) Giving a direction under **section 283g** of this Act,—  
the Minister shall lay a copy before the House of Representatives.

“(2) Where, before the end of the period of one calendar month after—

25 “(a) Preparing a document of accountability under **section 283b** of this Act; or

“(b) Giving a direction under (*subsection (1) of this section*) **section 283g** of this Act,—

30 the Minister will be, or may be, unable to lay a copy before the House of Representatives, because the House will not, or is not expected to, sit during that period, the Minister shall publish a copy in the *Gazette*.”

35 **14. Consequential amendment**—Section 278 of the principal Act is hereby consequentially amended by inserting, after the definition of the term “Board”, the following definition:

40 “‘Document of accountability’ means a document prepared pursuant to a requirement under **section 283a (1)** of this Act, or prepared under **section 283b (1)** of this Act; but where a document of accountability has been amended, means the document in its amended form for the time being:”.

## PART II

## REVIEW OF EDUCATIONAL SERVICES

**15. New Part inserted**—The principal Act is hereby amended by inserting, after Part XXVII (as inserted by section 33 of the Education Amendment Act (No. 4) 1991), the following Part: 5

## “PART XXVIII

## “REVIEW OF EDUCATIONAL SERVICES

“323. **Interpretation**—In this Part of this Act, unless the context otherwise requires,— 10

“‘Applicable organisation’ means an institution that provides an applicable service:

“‘Applicable person’, in relation to an applicable organisation, means any body or person who or that administers, controls, governs, manages, operates, or owns, the organisation: 15

“‘Applicable service’ means an educational service to which this Part of this Act applies:

“‘Chief Review Officer’ means the chief executive of the Education Review Office: 20

“‘Minister’ means the Minister of State who, under any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part of this Act:

“‘Review officer’ means a person for the time being designated under section 326 of this Act; and includes the Chief Review Officer. 25

“324. **Educational services to which Part XXVIII applies**—This Part of this Act applies to every educational service (other than a service provided only to or for people over 16 who are not enrolled at a state school within the meaning of section 2 (1) of this Act)— 30

“(a) That is provided by an organisation—

“(i) Owned or operated by the Crown; or

“(ii) Forbidden by law to provide that service (or a service of that kind) unless it holds a licence, permit, or other authority issued by or on behalf of the Crown; or 35

“(b) Whose provision is (wholly or partly)—

“(i) Funded by public money appropriated by Parliament; or 40

“(ii) Regulated by or under statute.

“325. **Chief Review Officer to perform certain functions**—The Chief Review Officer shall—

“(a) Administer—

5                   “(i) When directed by the Minister to do so; or  
                      “(ii) Notwithstanding section 32 of the State  
Sector Act 1988, of the Chief Review Officer’s own  
motion,—

10                   reviews, either general or relating to particular  
                      matters, of the performance of applicable  
                      organisations in relation to the applicable services  
                      they provide; and

“(b) Administer the preparation of reports to the Minister on  
the undertaking and results of such reviews; and

15                   “(c) Give the Minister such other assistance and advice on the  
                      performance of applicable organisations as the  
                      Minister from time to time requires.

“326. **Review officers**—The Chief Review Officer may  
designate any suitably qualified person (whether or not an  
20                   employee of the Chief Review Officer) a review officer; and  
shall ensure that every person for the time being so designated  
has a certificate to that effect, in a form approved by the Chief  
Review Officer.

“327. **Powers of entry and inspection**—For the purposes  
of enabling any functions of the Chief Review Officer to be  
25                   performed, any review officer may, at any reasonable time and  
having given reasonable notice to an applicable organisation or  
any applicable person of the organisation, enter any place  
(other than a dwellinghouse) occupied by the organisation or  
person, and—

30                   “(a) Conduct inspections or inquiries:

                      “(b) Require any person to produce documents or  
                      information relating to—

                                  “(i) An applicable service that the organisation  
                                  provides; or

35                                   “(ii) People to whom such a service is (or has been)  
                                  provided,—

                                  and permit the review officer to make copies or  
                                  extracts of the documents or information:

40                   “(c) Require any applicable person of the organisation, or any  
                      other person—

                                  “(i) Employed by the organisation or any  
                                  applicable person of the organisation; or

                                  “(ii) Involved in the management of the  
                                  organisation,—

to make or provide statements, in any form and manner the review officer specifies, about any matters relating to an applicable service:

- “(d) Inspect the work of any person to whom an applicable service is (or has been) provided: 5
- “(e) Meet and talk with any person to whom an applicable service is being provided.

*Struck Out*

“(2) Notwithstanding subsection (1) of this section, a review officer shall not enter any place— 10

“(a) That is, or is within, a dwellinghouse; or

“(b) Through a dwellinghouse,—

except with the consent of the occupier of the dwellinghouse or pursuant to a warrant issued under subsection (3) of this section.

“(3) A District Court Judge who, on application made on oath, is satisfied that there is reasonable ground for believing that a dwellinghouse— 15

“(a) Is, or has inside it, a place occupied by an applicable organisation or an applicable person; or

“(b) Is the only practicable means through which a place occupied by an applicable organisation or an applicable person may be entered,— 20

may issue to a review officer named in it a warrant to enter any part of the dwellinghouse that is, or is the only practicable means through which the review officer may enter, the place. 25

“328. **Review officers to prove identity**—Every review officer who enters any place under the authority of section (326) 327 of this Act shall, on first entering and, if requested, at any later time, produce to the person apparently in charge the review officer’s certificate of designation, (and, where the review officer is entering a dwellinghouse pursuant to a warrant issued under section 327 of this Act, the warrant).” 30

**16. Consequential amendments and repeals**—(1) Section 159 of the principal Act is hereby consequentially amended by repealing the definition of the term “Chief review officer”. 35

*Struck Out*

(2) The following enactments are hereby consequentially repealed:



*Struck Out*

- 5 (a) Sections 78A (as inserted by section 19 (1) of the Education Amendment Act 1990) and 318 (as inserted by section 49 of the Education Amendment Act 1990), and Part XVII (as inserted by section 39 of the Education Amendment Act 1990), of the principal Act:
- (b) Sections 19 and 39 of the Education Amendment Act 1990.

10 *New*

- (2) Section 220 of the principal Act (as inserted by section 37 of the Education Amendment Act 1990) is hereby consequentially amended by inserting, after subsection (2), the following subsection:
- 15 “(2A) A Council shall include in every annual report—
- “ (a) A summary of its equal employment opportunities programme for the year to which the report relates; and
- 20 “ (b) An account of the extent to which the Council was able, during the year to which the report relates, to meet the equal employment opportunities programme for that year; and
- “ (c) An account of the extent to which the Council has eliminated unnecessary barriers to the progress of
- 25 students; and
- “ (d) An account of the extent to which the Council has avoided the creation of unnecessary barriers to the progress of students; and
- 30 “ (e) An account of the extent to which the Council has developed programmes to attract students from groups in the community—
- “ (i) Under-represented in the institution’s student body; or
- 35 “ (ii) Disadvantaged in terms of their ability to attend the institution.”
- (3) Section 77D (3) of the State Sector Act 1988 (as substituted by section 3 of the State Sector Amendment Act 1989) is hereby consequentially amended by inserting, after the word “employer” where it first occurs, the words “(other than the

*New*

Council of an institution within the meaning of section 159 of the Education Act 1989”.

(4) The following provisions of the principal Act are hereby consequentially repealed: 5

- (a) Subsection (2) (b) of section 78A (as inserted by section 19 (1) of the Education Amendment Act 1990):
- (b) Part XVII (as inserted by section 39 of the Education Amendment Act 1990):
- (c) Subsection (2) (b) of section 318 (as inserted by section 49 10 of the Education Amendment Act 1990).

## PART III

## LEARNING MEDIA LIMITED

**17. New Part inserted**—The principal Act is hereby amended by inserting, after **Part XXVIII** (as inserted by **section 5** of this Act), the following Part: 15

## “PART XXIX

## “LEARNING MEDIA LIMITED

“**329. Interpretation**—In this Part of this Act, unless the context otherwise requires,— 20

“‘The company’ means Learning Media Limited, a company to be formed as a private company under the Companies Act 1955:

“‘The Minister’ means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part of this Act: 25

“‘The Ministry’ means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Part of this Act: 30

“‘The Secretary’ means the chief executive of the Ministry:

“‘The shareholding Ministers’ means— 35

- “(a) The Minister; and
- “(b) The Minister of the Crown who, under any warrant or with the authority of the Prime Minister, is

for the time being responsible for the administration of the Public Finance Act 1989.

5 “330. **Incorporation of company**—(1) Notwithstanding anything in the Companies Act 1955 or any other enactment or rule of law, but subject to **section 331** of this Act, the shareholding Ministers may form and register under the Companies Act 1955 a private company limited by shares called ‘Learning Media Limited’.

10 “(2) On the company’s incorporation, each of the shareholding Ministers shall, on behalf of the Crown, subscribe for half the shares in its capital.

“(3) All shares in the company’s capital subscribed for by a Minister under **subsection (2)** of this section shall be deemed to have been allotted to that Minister as fully paid up.

15 “(4) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments, and prescribes the documents that must be delivered to the Registrar of Companies where shares are allotted for a consideration other than cash) applies to shares deemed by **subsection (3)** of this section to have been  
20 allotted.

“331. **Principal objects of company**—(1) The company’s principal objects are—

25 “(a) To provide, pursuant to contracts with the Secretary, the basic materials and services necessary to support the national education guidelines (within the meaning of section 60 of the Education Act 1989); and

“(b) To maintain the company’s viability as a provider of such materials and services; and

30 “(c) To maintain the value of the Crown’s equity in the company.

*Struck Out*

“(d) All other objects for the time being specified in its memorandum of association.

*New*

35 “(2) There shall not be specified in the company’s memorandum of association any objects incompatible with those specified in **subsection (1)** of this section.

“(3) Nothing in **subsection (1)** or **subsection (2)** of this section—

## New

- |   |   |
|---|---|
| “(a) Affects the application to the company of section 15A of the Companies Act 1955; or  |   |
| “(b) Requires the company to specify in its memorandum of association any objects in addition to those specified in subsection (1) of this section. | 5 |

“332. **Crown shareholding**—(1) The Shareholding Ministers may from time to time, on behalf of the Crown, subscribe for or otherwise acquire equal numbers of additional shares in the company’s capital. 10

“(2) All money required to be paid for shares in the company’s capital subscribed for or otherwise acquired under subsection (1) of this section shall be paid out of public money appropriated by Parliament for the purpose.

“(3) Notwithstanding any other enactment or any rule of law, it is not necessary to complete or register a transfer of shares in the capital of the company if the identity of one (or both) of the shareholding Ministers changes. 15

“333. **Application of Government Superannuation Fund Act 1956**—Section 2A of the Government Superannuation Fund Act 1956 applies to the company. 20

“334. **Application of Public Finance Act 1989**—The company is a (*Crown-owned*) Crown entity for the purposes of the Public Finance Act 1989.

“335. **Auditor**—The Audit Office shall be the company’s auditor. 25

“336. **Application of Companies Act 1955**—Except as provided in subsections (1) to (4) of section 330, section 331, section 334, and section 335 of this Act, and in Part V of the Public Finance Act 1989, the Companies Act 1955 applies to the company; and— 30

“(a) Nothing in section 330 of this Act prevents a change to the company’s name in accordance with that Act; and

“(b) The specification of objects for the company by section 331 of this Act does not limit or affect the application to the company of section 18A of that Act. 35

“337. **Personnel policy**—(1) The company shall operate a personnel policy that complies with the principle of being a good employer. 40

- “(2) For the purposes of **subsection (1)** of this section, a good employer is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- 5 “(a) Good and safe working conditions; and  
“(b) The impartial selection of suitably qualified persons for appointment; and  
“(c) Recognition of—
- 10 “(i) The aims and aspirations of Maori; and  
“(ii) The employment requirements of Maori; and  
“(iii) The need for appropriate involvement of Maori as employees of the company; and  
“(d) Opportunities for the enhancement of the abilities of individual employees; and
- 15 “(e) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and  
“(f) Recognition of the employment requirements of women; and  
20 “(g) Recognition of the employment requirements of persons with disabilities.

“**338. Equal employment opportunities programme—**

- (1) In each financial year, the company shall—
- 25 “(a) Develop and publish an equal opportunities programme for the company; and  
“(b) Ensure that the programme is complied with.  
“(2) For the purposes of **subsection (1)** of this section, an equal opportunities programme is a programme aimed at identifying and eliminating all aspects of policies, procedures, and other
- 30 institutional barriers, that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

*Struck Out*

- “**339. Choice of procedure in relation to certain personal grievances—**(1) Where the circumstances giving rise to a personal grievance by an employee of the company are also such that the employee would (but for this subsection) be entitled to make a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971, the
- 35 employee may take one, and only one, of the following steps in relation to the circumstances:
- 40

## Struck Out

“(a) Invoke the procedures applicable in relation to personal grievances under the employee’s contract of service with the company:

“(b) Make a complaint under the Human Rights Commission Act 1977 or (as the case may be) the Race Relations Act 1971. 5

“(2) For the purposes of **subsection (1) (b)** of this section, a person makes a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971 when the Human Rights Commission or the Race Relations Act Conciliator (as the case may be) accepts the complaint for investigation. 10

“**340. Consultation with State Services Commissioner**—(1) The terms and conditions of employment of the company’s chief executive shall be determined by agreement between the (*enterprise*) company and the chief executive, except that the company shall not finalise those terms and conditions without first consulting the State Services Commissioner. 15 20

“(2) The company shall not enter into a collective employment contract (within the meaning of the Employment Contracts Act 1991) with any of its employees unless the company or its representative has first consulted the State Services Commissioner with respect to the terms and conditions of the contract. 25

“**341. Existing rights, assets, liabilities, and debts**—(1) (*On the commencement of this Part of this Act*) Subject to subsection (2) of this section, on the incorporation of the company,— 30

“(a) All rights and assets of the Crown,—

“(i) Including rights under the Ministry’s (*lease of the premises occupied by the learning media section of the Ministry on that commencement*) leases of premises then occupied by the learning media section of the Ministry; but 35

“(ii) Otherwise excluding interests in land,— formerly exercisable or used, exclusively or substantially, by the learning media section of the Ministry shall become rights and assets of the company; and 40

- 5 “(b) All liabilities and debts of the Crown contracted in relation to, or in relation to activities exclusively or substantially carried on by, the learning media section of the Ministry shall become liabilities and debts of the company.

*New*

- 10 “(2) All patents, trademarks, designs, copyright, and other intellectual property of the Crown (whether enforceable under any enactment or by law) formerly exercisable or used, exclusively or substantially, by the learning media section of the Ministry, all rights exercisable by the Crown in respect of any such intellectual property, and all liabilities of the Crown contracted in relation to any such intellectual property, shall remain assets, rights, and liabilities of the Crown.”

**18. Consequential amendments**—The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

PART IV

20 AMENDMENTS TO EDUCATION ACT 1964

**19. Part to be read with Education Act 1964**—This Part of this Act shall be read together with and deemed part of the Education Act 1964\* (hereafter in this Part of this Act referred to as the principal Act).

\*Reprinted with amendments: 1975, Vol. 3, p. 1699

Amendments: 1976, No. 42; 1977, No. 91; 1978, No. 79; 1981, No. 124; 1982, No. 19; 1982, No. 155; 1982, No. 170; 1983, No. 57; 1985, No. 124; 1987, No. 14; 1987, No. 177; 1989, No. 3; 1989, No. 80; 1989, no. 156; 1990, No. 60; 1990, No. 118

- 25 **20. Delegation of powers and functions in relation to school transport assistance**—Section 201c of the principal Act (as inserted by section 37 of the Education Amendment Act (No. 2) 1974) is hereby amended—

- 30 (a) By omitting from subsection (1) the words “Education Boards”, and substituting the words “persons, bodies of persons (whether incorporated or not), or bodies corporate”; and
- 35 (b) By omitting from subsections (2) and (4) the words “Education Board or designated officer”, and substituting in each case the words “person or body”; and

- (c) By omitting from subsection (2) the words “it or him”, in each place where they occur, and substituting in each case the words “the person or body; and
- (d) By omitting from subsection (2) the words “it or he”, and substituting the words “the person or body”. 5

## PART V

## AMENDMENT TO INDUSTRY TRAINING ACT 1992

**21. Part to be read with Industry Training Act 1992—**  
 This Part of this Act shall be read together with and deemed part of the Industry Training Act 1992\* (hereafter in this Part of this Act referred to as the principal Act). 10

\*1992, No. 55

**22. Interpretation—**Section 2 of the principal Act is hereby amended, as from its commencement, by omitting from the definition of the term “apprenticeship contract” the expression “19”, and substituting the expression “13”. 15

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**SCHEDULE**  
ENACTMENTS AMENDED

## Section 18

Title of Act	Amendment
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the item: "Learning Media Limited".
1976, No. 65—The Income Tax Act 1976 (R.S. Vol. 12, p. 1)	By inserting in the Fourteenth Schedule (as substituted by section 23 (1) of the State Services Conditions of Employment Amendment Act 1987), in its appropriate alphabetical order, the item: "Learning Media Limited".
1982, No. 156—The Official Information Act 1982	By inserting in the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987), in its appropriate alphabetical order, the item: "Learning Media Limited".
	<i>New</i>
1989, No. 44—The Public Finance Act 1989	By inserting in the Fourth, Fifth, Sixth, and Seventh Schedules, in its appropriate alphabetical order, the item "Learning Media Limited".