

# **Industry Training and Apprenticeships Amendment Bill**

Government Bill

As reported from the Education and Science  
Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Industry Training and Apprenticeships Amendment Bill, and recommends that the amendments set out below be passed. The committee is unable to agree on whether the bill should be passed.

### **Introduction**

The bill seeks to amend the Industry Training Act 1992 and repeal the Modern Apprenticeship Training Act 2000. The bill is intended to establish a comprehensive apprenticeship system that provides the same amount of support to all apprentices, to focus industry training organisations (ITOs) on setting skills standards for their industries and arranging training, to clarify the functions and powers of the New Zealand Qualifications Authority (NZQA) in relation to ITOs, and to establish criteria for quality assurance in the process by which the responsible Minister recognises an organisation as an ITO.

This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

### **Recognition of Industry Training Organisations**

We recommend amending clause 11, new section 5, so that the Minister could impose or amend conditions on the recognition of an ITO only as reasonably necessary to maintain the quality and effectiveness of industry training. New section 5 would give the Minister the power to recognise ITOs, including the power to impose conditions as the Minister sees fit.

We consider that the power to impose conditions on recognition should be subject to a test of reasonableness and limited to the need to maintain the quality and effectiveness of industry training. Conditions on an ITO's recognition are intended to underpin compliance with the requirements for recognition, or to respond to poor performance or non-compliance.

### **Governance assessment**

We recommend amending clause 16, new section 13B, to allow NZQA's quality assurance requirements for ITOs to relate to the quality of governance only where governance is relevant to the quality of industry training and assessment. We heard concern expressed by some submitters that the bill as introduced might allow NZQA to take a larger role in the governance of ITOs, but this was not the intention and the proposed amendment should make this clear.

We also recommend amendments to new section 13B and elsewhere throughout the bill, including new section 1A in clause 7, to clarify that ITOs are responsible for maintaining skill standards, as well as developing them. We also recommend that the quality assurance requirements should include requirements relating to the ITO's ability to maintain approval by the NZQA for the ITO's programmes or training schemes, and to assess students against skill standards.

### **Compliance notices**

We recommend amending clause 15, new sections 11C and 11D, to allow NZQA to issue a compliance notice to an ITO if the ITO does not act upon a quality assurance improvement notice. The bill as

introduced would allow NZQA to issue a quality assurance improvement notice to an ITO, containing instructions for a particular course of action. However, it does not provide for any consequences if the ITO fails to address such a notice. These amendments would allow the Minister to cancel an ITO's recognition or impose conditions on that recognition if it fails to comply with the quality assurance improvement notice and a compliance notice.

### **Apprenticeship training code**

The bill as introduced would allow the Minister, by notice in the *Gazette*, to issue an apprenticeship training code setting out the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training. We recommend amending clause 17, new section 13F, to make it clear that compliance with the code is mandatory. We also recommend amending new section 13F to allow the Minister to consult any person or organisation he or she considers appropriate before issuing an apprenticeship training code. We also recommend a further amendment requiring the notice to specify the date the code comes into force.

We recommend amending clause 17, new section 13I, to clarify that apprenticeship training codes would be a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

### **Functions of the Tertiary Education Commission**

We recommend amending clause 16, new section 13, to make the Tertiary Education Commission (TEC) responsible for monitoring the compliance of all persons carrying out apprenticeship training activities with the apprenticeship training code. The bill as introduced would require the TEC to monitor ITOs' compliance with the apprenticeship training code, but not that of other persons carrying out apprenticeship training activities, who would be obliged to comply with the code. We therefore consider the TEC should have wider oversight of compliance.

### **Annual fee**

The bill seeks to introduce a requirement for ITOs to pay an annual fee to NZQA. We recommend amending clause 25, to introduce into the Education Act 1989 the necessary authorisation for the NZQA to charge that fee. We also recommend amending clause 15, new section 11F(2), to allow the annual fee prescribed by the NZQA to cover reasonable costs it incurs in issuing quality assurance improvement notices, in addition to covering other costs. The bill as introduced would not allow NZQA to recover from ITOs costs relating to quality assurance improvement notices.

### **Application fee**

Clause 6, new section 11 as introduced allows ITO applications for recognition to include a prescribed application fee to be paid to NZQA. We recommend amending clause 11, new section 6(2), to specify the relevant statutory power for the NZQA to charge the application fee.

### **Consequential amendments**

#### **Changes to Schedule 1AA**

We recommend adding new clause 1A to Schedule 1AA to clarify that the bill would apply to all ITOs recognised before the bill came into force. The bill is intended to apply to all ITOs, but Schedule 1AA as introduced does not make this clear.

### **Minority view**

#### **New Zealand Labour Party, the Green Party of Aotearoa New Zealand, and the New Zealand First Party**

While there are aspects of this bill that we can support and that will improve the operations of the apprenticeship and industry training system, it has two fundamental flaws that mean we cannot support its further progress.

The major problem with the bill is the proposal to allow organisations other than industry training organisations to be directly funded by the Government to organise and undertake industry training. We believe that this process allows for the de-facto privatisation of in-

dustry training. There was virtually no support for this proposal from submitters to the select committee and we believe it has the potential to damage the provision of quality industry training in New Zealand. One of the underlying reasons for government funding of industry training is that it will equip workers with skills that are transferable across an industry nationwide. Directly funding individual businesses to organise and run training risks compromising that principle and could lead to training that is business specific rather than industry applicable. It also opens up the possibility that the Government will end up funding training that would and should be done by the business itself. Direct funding will also only work for large businesses which will undermine the effectiveness of ITOs and potentially lead to higher costs for smaller businesses who have to rely on ITOs to organise training.

ITOs have undergone a significant period of restructuring, which submitters made clear is making a real difference to the performance and services they offer. Putting in place a system that will undermine this is short-sighted and could erode the growing confidence of businesses in ITOs.

The second significant area of concern is the proposal to remove the skills leadership function from the purpose of ITOs. We were told that having this as a legislated role for only one part of the industry training system meant that others were not involved. Leaving it open with no organisation specifically responsible would, we were told, see more people step up. This is simply a hope, has no evidence to back it up and we do not believe it is a responsible course of action. The skills leadership role is an important component in ensuring that the future skill needs of industry are identified, understood and factored into the provision of training. It is a role ideally suited to ITOs as representative of industry, and taking it away makes no sense.

Without movement on these two issues we are unable to support this legislation.

## **Appendix**

### **Committee process**

The Industry Training and Apprenticeships Amendment Bill was referred to the committee on 5 November 2013. The closing date for submissions was 19 December 2013. We received and considered 30 submissions from interested groups and individuals. We heard 17 submissions.

We received advice from the Ministry of Education and the New Zealand Qualifications Authority.

### **Committee membership**

Dr Cam Calder (Chairperson)

Catherine Delahunty

Hon Jo Goodhew

Colin King

Tim Macindoe

Tracy Martin

Chris Hipkins

Simon O'Connor

Grant Robertson

Dr Megan Woods

David Clendon replaced Catherine Delahunty for this item of business.

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**Industry Training and Apprenticeships  
Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Steven Joyce*

# **Industry Training and Apprenticeships Amendment Bill**

Government Bill

## **Contents**

		Page
1	Title	3
2	Commencement	3
3	Principal Act	4
<b>Part 1</b>		
<b>Amendments to principal Act</b>		
4	Long Title repealed	4
5	Name of principal Act changed	4
6	Section 1 amended (Short Title and commencement)	4
7	New section 1A inserted (Purpose)	4
	1A Purpose	4
8	Section 2 amended (Interpretation)	5
9	Section 3 replaced (Training contracts to have effect as employment agreements)	6
	3 Training contracts and apprenticeship training agreements part of employment agreement	6
10	New section 4A inserted (Savings and transitional provisions relating to amendments to this Act)	6
	4A Savings and transitional provisions relating to amendments to this Act	6
<i>Industry training organisations</i>		
11	Sections 5 to 8 replaced	7

**Industry Training and Apprenticeships  
Amendment Bill**

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5	Minister may recognise industry training organisations	7
6	Application for recognition as industry training organisation	8
7	Matters that Minister must take into account before organisation recognised	8
8	Provisional recognition	9
12	Section 9 amended (Expiry and cancellation of recognition)	10
13	New cross-heading above section 10 inserted	10
14	Section 10 amended (Industry training organisation's proposed plan must identify activities for which it seeks funding)	10
15	New sections 11A to 11F and cross-heading inserted	11
11A	Persons other than industry training organisations may receive funding for industry training	11
	<i>Obligations of industry training organisations</i>	
11B	Obligations of industry training organisations	12
11C	Qualifications Authority may issue quality assurance improvement notice	12
11D	Qualifications Authority may issue compliance notice	13
11E	Industry training organisations not to operate registered private training establishments	14
11F	Annual fee	14
16	Section 13 replaced (Additional functions of Commission)	15
	<i>Functions of Commission and Qualifications Authority</i>	
13	Additional functions of Commission	15
13A	Additional functions of Qualifications Authority	16
13B	Qualifications Authority may prescribe quality assurance requirements	16
17	New Part 2A inserted	17
	<b>Part 2A</b>	
	<b>Apprenticeship training</b>	
13C	Apprenticeship training defined	17
13D	Apprenticeship training activities must be included in proposed plan	17
13E	Obligations of persons carrying out apprenticeship training activities	19

<i>Apprenticeship training code</i>		
	13F Minister may issue apprenticeship training code	20
	13G Availability of apprenticeship training code	20
	13H Apprenticeship training code to be taken into account by mediation personnel, Employment Relations Authority, and Employment Court	21
	13I Application of Legislation Act 2012 to apprenticeship training code	21
18	Part 3 repealed	21
19	Section 29 amended (Purposes for which levy may be required)	21
20	Repeal of Modern Apprenticeship Training Act 2000	22
21	New section 53 and cross-heading inserted	22
<i>Savings and transitional provisions</i>		
	53 Savings and transitional provisions relating to amendments to this Act	22
22	New Schedule 1AA inserted	22
23	Consequential amendments	22
<b>Part 2</b>		
<b>Amendments to Education Act 1989</b>		
24	Principal Act	22
25	Section 253 amended (Rules)	22
26	Section 254 amended (Fees)	23
<b>Schedule 1</b>		
<b>New Schedule 1AA inserted</b>		
<b>Schedule 2</b>		
<b>Consequential amendments</b>		
27		

**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
 This Act is the Industry Training and Apprenticeships Amendment Act **2013**.
- 2 Commencement** 5  
 This Act comes into force on the day after the date on which it receives the Royal assent.

- 3 Principal Act amended**  
This Act amends the Act that was previously called the Industry Training Act 1992 (the **principal Act**).
- Part 1  
Amendments to principal Act** 5
- 4 Long Title repealed**  
Repeal the Long Title.
- 5 Name of principal Act changed**  
As from the commencement of this section,—
- (a) the Industry Training Act 1992 is called the **Industry Training and Apprenticeships Act 1992**: 10
- (b) every reference in any enactment and in any document to the Industry Training Act 1992 must, unless the context otherwise provides, be read as a reference to the **Industry Training and Apprenticeships Act 1992**. 15
- 6 Section 1 amended (Short Title and commencement)**
- (1) In the heading to section 1, delete “**Short**”.
- (2) In section 1(1), replace “may be cited as the Industry Training Act 1992” with “is the **Industry Training and Apprenticeships Act 1992**”. 20
- 7 New section 1A inserted (Purpose)**  
After the Part 1 heading, insert:
- “**1A Purpose**  
The purpose of this Act is to—
- “(a) provide for the recognition and funding of organisations (to be known as industry training organisations) to develop and maintain skill standards for, and administer the delivery of, industry training; and 25
- “(b) encourage and improve industry training; and
- “(c) encourage and help people to take up and complete apprenticeship training; and 30
- “(d) provide for other related matters.”

**8 Section 2 amended (Interpretation)**

- (1) In section 2, repeal the definitions of **apprenticeship contract, technician’s contract, technicians’ determination, and training board**.
- (2) In section 2, definition of **industry**, paragraph (b), delete “5”.
- (3) In section 2, definition of **industry**, delete “and, in relation to any industry training organisation, means the industry in respect of which the organisation is for the time being recognised”.
- (4) In section 2, definition of **industry training**, after “systematic training,”, insert “including apprenticeship training,”.
- (5) In section 2, definition of **qualifications authority**, replace “**qualifications authority**” with “**Qualifications Authority**”.
- (6) In section 2, insert in their appropriate alphabetical order:
  - “**apprentice** means a person receiving apprenticeship training
  - “**apprenticeship training** has the meaning given to it by **section 13C**
  - “**apprenticeship training agreement** means an agreement between an employee and his or her employer that relates to the employee’s receipt of, or that provides for the employee to receive, apprenticeship training
  - “**apprenticeship training code** means the code of practice (if any) for the time being issued under **section 13F**
  - “**condition of recognition** means a condition imposed on an industry training organisation by the Minister under **section 5(2) or (5)(b)**
  - “**Directory of Assessment Standards** means the Directory of Assessment Standards described in section 248A of the Education Act 1989
  - “**funding agreement** means a written agreement entered into under **section 11A** between the Commission and 1 or more persons
  - “**listed skill standard** means a skill standard that is listed ~~as an~~ **assessment standard** on the Directory of Assessment Standards
  - “**prescribed quality assurance requirements** means the quality assurance requirements prescribed by the Quali-

fications Authority under **section 253(1)(ga)(gb)** of the Education Act 1989 (which may relate to the matters in **section 13B**)

“**qualification** means a qualification listed on the New Zealand Qualifications Framework described in section 248 5 of the Education Act 1989

“**specified industry** means—

“(a) in relation to an industry training organisation, the industry or industries in respect of which ~~an~~ the industry training organisation is recognised; or 10

“(b) ~~in the case of~~ relation to a body corporate applying for recognition as an industry training organisation, the industry or industries in respect of which ~~it~~ the body corporate seeks to be recognised

“**training contract** means a contract between an employer and 15 an employee that relates to the employee’s receipt of, or provides for the employee to receive, industry training (whether provided by the employer or by some other person)”.

**9 Section 3 replaced (Training contracts to have effect as employment agreements) 20**

Replace section 3 with:

**“3 Training contracts and apprenticeship training agreements part of employment agreement**

Training contracts and apprenticeship training agreements are part of the employment agreement between the employee and 25 employer concerned.”

**10 New section 4A inserted (Savings and transitional provisions relating to amendments to this Act)**

After section 4, insert:

**“4A Savings and transitional provisions relating to amendments to this Act 30**

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

*Industry training organisations*

**11 Sections 5 to 8 replaced**

Replace sections 5 to 8 with:

**“5 Minister may recognise industry training organisations**

“(1) After receiving an application for recognition under **section 6**, the Minister may, by notice in the *Gazette*, recognise a body corporate as an industry training organisation. 5

“(2) Recognition under **subsection (1)** may be subject to any conditions that ~~the Minister thinks fit~~, in the Minister’s opinion, are reasonably necessary to maintain the quality and effectiveness of industry training in the specified industry. 10

“(3) Before recognising an organisation under **subsection (1)**, the Minister must—

“(a) take into account the matters set out in **section 7**; and

“(b) be satisfied that the organisation has, or will have, the skill and knowledge to be able to carry out the core activities of an industry training organisation under **section 11B(1)(a)**; and 15

“(c) be satisfied, following consultation with the Qualifications Authority, that the organisation has, or will have, and is likely to maintain— 20

“(i) systems and processes to enable the organisation to comply with the prescribed quality assurance requirements; and

“(ii) the capability, knowledge, and experience to enable the organisation to comply with the prescribed quality assurance requirements. 25

“(4) The *Gazette* notice under **subsection (1)** must specify—

“(a) the name of the organisation; and

“(b) the specified industry; and 30

“(c) any conditions of recognition.

“(5) The Minister may,—

“(a) at the request of the industry training organisation, amend the notice to change the description of the specified industry: 35

“(b) at any time, ~~amend or revoke a condition of recognition or impose a new condition.~~—

“(i) revoke a condition of recognition; or

- “(ii) amend a condition of recognition, or impose a new condition, if, in the Minister’s opinion, the amended or new condition is reasonably necessary to maintain the quality and effectiveness of industry training in the specified industry. 5
- “6 **Application for recognition as industry training organisation**
- “(1) A body corporate may apply to the Minister for recognition as an industry training organisation.
- “(2) An application under **subsection (1)** must be accompanied by the ~~prescribed application fee (if any); payable to the Qualifications Authority fee (if any) charged by the Qualifications Authority~~ under **section 254(2)(d)** of the Education Act 1989. 10
- “(3) The Minister need not consider an application if the applicant has failed to provide, within 30 days of receiving a request, any ~~additional~~ information requested by the ~~Qualifications Authority or the Commission~~ in relation to the application by— 15
- “(a) the Qualifications Authority; or
- “(b) the Commission. 20
- “7 **Matters that Minister must take into account before organisation recognised**
- The matters that the Minister must take into account under **section 5(3)(a)** are, without limitation,—
- “(a) whether the organisation provides services to, or will provide services to, a sufficient number of employers in the specified industry; and 25
- “(b) whether the organisation is, or will be, adequately funded by employers in the specified industry; and
- “(c) whether the organisation has in place adequate arrangements for involving employers in the governance of the organisation; and 30
- “(d) whether the organisation has, or will have, the capacity to—
- “(i) monitor demand for training within the specified industry for training; and 35



- “(ii) respond to the demand for industry training at the skill level required by employers in the specified industry; and
- “(e) the need to avoid unnecessary duplication of resources in providing industry training for the specified industry; and 5
- “(f) whether the organisation has, or will have, and is likely to maintain—
- “(i) Qualifications Authority approval for programmes or training schemes for the specified industry; and 10
- “(ii) Qualifications Authority consent, under section 252 of the Education Act 1989, to assess its students against listed skill standards; and
- “(g) whether the organisation has performed satisfactorily at other times when the organisation has been recognised; and 15
- “(h) whether the organisation has taken reasonable steps to avoid fragmentation and to provide a clear and representative industry focus for each organisation. 20
- “8 **Provisional recognition**
- “(1) The Minister may, by notice in the *Gazette*, grant provisional recognition to an industry training organisation that does not satisfy the matters described in **section 5(3)(c)**.
- “(2) Before granting provisional recognition, the Minister must be satisfied that— 25
- “(a) the organisation has, or will have, the skill and knowledge to be able to carry out the core activities of an industry training organisation under **section 11B(1)(a)**; and 30
- “(b) if the applicant completes the actions specified in the *Gazette* notice, the applicant will satisfy the Minister that it should be recognised under **section 5(1)**; and
- “(c) in all the circumstances, it is appropriate that the Commission should be able to fund the applicant via a plan. 35
- “(3) A *Gazette* notice under **subsection (1)** must specify—
- “(a) the name of the organisation; and
- “(b) the specified industry; and

- “(c) any conditions of recognition; and
- “(d) that the applicant has been granted provisional recognition; and
- “(e) the actions that the applicant must take in order to satisfy the Minister that it should be recognised under **section 5(1)**; and 5
- “(f) the period (not exceeding 3 years) for which provisional recognition has been granted.”

**12 Section 9 amended (Expiry and cancellation of recognition)** 10

- (1) In section 9(3), replace “this Act” with “**section 5(1) or 8(1)**”.
- (2) After section 9(3)(ab), insert:
  - “(ac) if it has breached the requirement in **section 11E**; or”.
- (3) Replace section 9(3A)(a) with:
  - “(a) the Minister has issued a notice to the organisation, in accordance with subsection (3B), stating that he or she considers that the organisation’s performance is inadequate for any of the following reasons:
    - “(i) it is not carrying out at least 1 of the core activities set out in **section 11B(1)(a)**: 20
    - “(ii) it is failing to comply with 1 or more conditions of recognition:
    - “(iii) it is failing to comply with a compliance notice issued by the Qualifications Authority under **section 11D**; and”. 25
- (4) In section 9(3B)(b)(i), delete “, with reference to the requirements under section 6(a) to (d)”.

**13 New cross-heading above section 10 inserted**  
After section 9, insert:  
“*Funding of industry training*”. 30

**14 Section 10 amended (Industry training organisation’s proposed plan must identify activities for which it seeks funding)**

- (1) In section 10(2)(a), replace “setting” with “developing and maintaining”. 35

- (2) In section 10(2)(c), replace “qualifications authority” with “Qualifications Authority” in each place.
- (3) Replace section 10(2)(d) and (e) with:
  - “(d) the apprenticeship training activities described in **section 13D(2)** (which, if funded, must be carried out as a package); and”.

**15 New sections 11A to 11F and cross-heading inserted**

After section 11, insert:

- “11A Persons other than industry training organisations may receive funding for industry training”** 10
- “(1) The Commission may enter into funding agreements ~~under this section providing for any persons (other than industry training organisations)—~~ with persons other than industry training organisations to provide for those persons—
- “(a) to make arrangements, in respect of an industry or industries described in the agreement, for the delivery of industry training that will enable trainees to attain listed skill standards, including arrangements accepted by the Qualifications Authority for—
    - “(i) monitoring the training to ensure that it ~~the training~~ enables trainees to attain those standards; and 20
    - “(ii) assessing trainees and the extent to which they have attained those standards; and
  - “(b) to perform, in respect of an industry or industries described in the agreement, the apprenticeship training activities described in **section 13D(2)(c) to (h)** (which, if funded, must be carried out as a package); and 25
  - “(c) to receive funding from the Commission for ~~those purposes~~ the purposes described in **paragraphs (a) and (b)**. 30
- “(2) A funding agreement must—
- “(a) specify agreed levels of performance for the person ~~or organisation~~ receiving funding under the agreement; and
  - “(b) provide for the variation, suspension, and termination of funding, or the funding agreement, or both, if the specified levels of performance are not achieved. 35

*“Obligations of industry training organisations***“11B Obligations of industry training organisations**

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

**“11C Qualifications Authority may issue quality assurance improvement notice**

- “**(1)** The Qualifications Authority may, if satisfied that ~~it~~ such action is reasonably necessary to maintain the quality and effectiveness of industry training in ~~the~~ a specified industry, issue a quality assurance improvement notice to an industry training organisation.
- “**(2)** A quality assurance improvement notice must—
- “**(a)** set out any concerns the Qualifications Authority has about the organisation’s systems, practices, training, or procedures; and

- “(b) specify the time within which the organisation is expected to address the Qualification Authority’s concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
- “(c) ~~specify the possible consequences of not addressing the concerns within the specified time including, if applicable, the Qualifications Authority issuing a compliance notice under **section 11D**.~~ 5
- “(c) state that, if the Qualifications Authority’s concerns are not addressed within the specified time, the Qualifications Authority may issue a compliance notice under **section 11D**; and 10
- “(d) specify the possible consequences of a failure to comply with a compliance notice.
- “**11D Qualifications Authority may issue compliance notice** 15
- “(1) The Qualifications Authority may issue a compliance notice to an industry training organisation requiring the organisation ~~to do, or refrain from doing, a particular thing in relation to a prescribed quality assurance requirement.~~ to do 1 or both of the following things: 20
- “(a) to do, or to refrain from doing, a particular thing in relation to a prescribed quality assurance requirement:
- “(b) to address any concerns set out in a quality assurance improvement notice issued under **section 11C** that were not addressed within the time specified in that notice. 25
- “(2) Section 255(3) to (6) of the Education Act 1989 applies to compliance notices issued under this section.
- “(3) If an industry training organisation fails to comply with a notice issued under **subsection (1)**, the Qualifications Authority may recommend to the Minister that the Minister do 1 or both of the following things: 30
- “(a) ~~issue a notice under **section 9(3A)(a)** in accordance with section 9(3B) (which may lead to cancellation of the organisation’s recognition under section 9(3)):~~ 35
- “(b) impose a new condition of recognition, or amend an existing condition, under **section 5(5)(b)**.

- “(4) A compliance notice may be issued to an industry training organisation whether or not a quality assurance improvement notice has been issued under **section 11C**.
- “(5) Nothing in this section limits the power of the Qualifications Authority to issue a compliance notice to an industry training organisation in accordance with section 255 of the Education Act 1989. 5
- “**11E Industry training organisations not to operate registered private training establishments**
- “(1) An industry training organisation must not operate or hold any interest in a registered private training establishment. 10
- “(2) Despite **subsection (1)**, during the 12 months after the date on which this section comes into force, no action may be taken under section 9 against an industry training organisation if,—
- “(a) before the commencement of this section, the organisation operated or held an interest in a registered private training establishment; and 15
- “(b) the organisation continues to operate, or continues to hold the same interest in, the registered private training establishment. 20
- “(3) In this section, **registered private training establishment** means a private training establishment that has been granted registration by the Qualifications Authority under Part 18 of the Education Act 1989, other than a registration that has been cancelled. 25
- “**11F Annual fee**
- “(1) Every industry training organisation must pay to the Qualifications Authority an annual fee prescribed by or determined under rules made under **section 253(1)(ga)** of the Education Act 1989. 30
- “(2) The annual fee may recover no more than the reasonable costs, excluding those costs that are recoverable through fees charged under section 254 of the Education Act 1989, incurred by the Qualifications Authority for—

- “(a) prescribing quality assurance requirements under **section 253(ga) 253(1)(gb)** of the Education Act 1989; and
- “(b) monitoring compliance, and addressing non-compliance, with those requirements in accordance with its function under **section 13A(a)**; and 5
- “(c) issuing quality assurance improvement notices under **section 11C**.
- “(3) The fee is—
  - “(a) payable by the due date prescribed in the rules; and 10
  - “(b) recoverable as a debt due to the Qualifications Authority.”
  
- 16 Section 13 replaced (Additional functions of Commission)**  
Replace section 13 with:
  - “Functions of Commission and Qualifications Authority”* 15
  
- “13 Additional functions of Commission**  
In addition to the functions given to the Commission by or under enactments other than this Act, the Commission has the following functions: 20
  - “(a) to increase the availability within industry of high-quality industry training that is linked to qualifications: 20
  - “(b) to promote the availability of industry training that is linked to qualifications to people of a kind or description specified in the Commission’s statement of intent as people to whom such training has not traditionally been available (whether within a particular industry or industries, or generally): 25
  - “(c) to administer and disburse public money appropriated by Parliament for the purpose of industry training: 30
  - “(d) to develop and recommend to the Minister an apprenticeship training code for the purposes ~~of~~ described in **section 13F(1)**: 30
  - “(e) to make the apprenticeship training code available, in accordance with **section 13G**: 35
  - “(f) to monitor the performance of ~~industry training organisations~~ persons carrying out apprenticeship training activities (whether via a plan or under a funding agree-

ment) to ensure that they comply with the apprenticeship training code:

“(g) to exercise the powers and perform the functions of the Commission under Part 5.

“Compare: 2000 No 94 s 12

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“**13A Additional functions of Qualifications Authority**

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

“(a) to monitor, through the exercise of its powers under this Act, compliance by industry training organisations with the prescribed quality assurance requirements, and to address non-compliance: 10

“(b) to monitor the quality and results of an industry training organisation’s system and procedures for the moderation of vocational training. 15

“**13B Qualifications Authority may prescribe quality assurance requirements**

“(1) Rules made under **section 253(1)(ga)(gb)** of the Education Act 1989 to prescribe quality assurance requirements for industry training organisations; may include, without limitation other than **subsection (2)**, requirements relating to— 20

“(a) the quality of the management, operation, and governance of industry training organisations; and

“(b) the quality of the skill standards developed and maintained by industry training organisations; and 25

“(c) the quality of the arrangements made by industry training organisations for the delivery of industry training and (including apprenticeship training); and

“(d) the ability of industry training organisations to acquire, and to maintain,— 30

“(i) Qualifications Authority approval for programmes or training schemes for the specified industry; and

“(ii) Qualifications Authority consent, under section 252 of the Education Act 1989, to assess their students against listed skill standards. 35



“(2) Rules made under **section 253(1)(gb)** of the Education Act 1989 may not prescribe quality assurance requirements relating to the governance of industry training organisations unless the quality of governance affects a matter described in **subsection (1)(b),(c), or (d)**.”

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17 **New Part 2A inserted**

After **section 13B**, as inserted by ~~section 16~~ **section 16** of this ~~Act~~ Act, insert:

**“Part 2A**

**“Apprenticeship training**

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**“13C Apprenticeship training defined**

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

“(a) is provided for a person who is working in an industry while undertaking training in that industry; and

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“(b) is provided wholly or partly at the person’s workplace, mainly by or on behalf of the person’s employer; and

“(c) consists of a programme of study or training, or both, leading to a qualification in the skills of an industry that provides entry into an occupation in that industry; and

20

“(d) is facilitated by—

“(i) an industry training organisation that receives funding via a plan; or

“(ii) a person ~~or an organisation~~ that receives funding under a funding agreement.

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**“13D Apprenticeship training activities must be included in proposed plan**

“(1) An industry training organisation that seeks funding for apprenticeship training activities via a plan must specify in its proposed plan how it intends to carry out each of those activities (described in **subsection (2)**).

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“(2) The apprenticeship training activities are—

“(a) to promote apprenticeship training generally through the provision of information, guidance, and advice to employers and prospective apprentices on the benefits of an apprenticeship:

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- “(b) to identify—
- “(i) prospective apprentices; and
- “(ii) employers able to offer apprenticeship training:
- “(c) to arrange training or employment that may lead to apprenticeship training for prospective apprentices: 5
- “(d) to help prospective apprentices enter into apprenticeship training agreements:
- “(e) to produce, and facilitate (in consultation with an apprentice and the apprentice’s employer) the implementation of, individual training plans consistent with an apprentice’s apprenticeship training agreement: 10
- “(f) to monitor individual apprentices to ensure that their apprenticeship training leads them to attain, within a reasonable time, the level of skills necessary to complete a qualification in the skills of the specified industry: 15
- “(g) to ensure, as far as is reasonably practicable, that apprenticeship training, and every apprenticeship training agreement, within the specified industry is consistent with ~~the~~ any apprenticeship training code:
- “(h) to provide or procure appropriate pastoral care and support for apprentices, having regard to the age and experience of the apprentice and the contents of ~~the~~ any apprenticeship training code. 20

“Compare: 2000 No 94 ss 15(1), 16(1)

“**13E Obligations of persons carrying out apprenticeship training activities** 25

- “(1) Persons carrying out apprenticeship training activities (whether via a plan or under a funding agreement) have the following obligations:
- “(a) in performing any of the apprenticeship training activities described in **section 13D(2)**, to comply with every part of the apprenticeship training code that affects the nature or performance of that activity: 30
- “(b) in helping a person who is under the age of 18 years enter into an apprenticeship training agreement, to advise that person that, if he or she is unsure about the effect or implications of the agreement, he or she should not enter into it without first seeking advice about doing so from 35

an independent person (for example, a parent, guardian, caregiver, or lawyer).

- “(2) An industry training organisation carrying out apprenticeship training activities also has an obligation, if it becomes aware that it is impractical for an apprentice under the organisation’s care to continue their training with their current employer, to try to find a new employer with whom the apprentice can complete their training. 5

“Compare: 2000 No 94 ss 15(2), 17(a)

“**13E Obligations of persons carrying out apprenticeship training activities** 10

- “(1) Persons carrying out apprenticeship training activities (whether via a plan or under a funding agreement) must,—  
“(a) in performing any apprenticeship training activity described in **section 13D(2)**, comply with every part of the apprenticeship training code that affects that activity: 15  
“(b) before helping a person under the age of 18 years to enter into an apprenticeship training agreement, advise that person to seek advice about the agreement from an independent person (for example, a parent, guardian, caregiver, or lawyer). 20

- “(2) If an industry training organisation becomes aware that it is impractical for an apprentice under the organisation’s care to continue his or her training with his or her current employer, the industry training organisation must make reasonable endeavours to find a new employer with whom the apprentice can complete his or her training. 25

“Compare: 2000 No 94 ss 15(2), 17(a)

“*Apprenticeship training code* 30

“**13F Minister may issue code**

- “(1) The Minister may, by notice in the *Gazette*, issue an apprenticeship training code to set guidelines, consistent with this Act, about the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training activities under this Act. 35

- “(2) The apprenticeship training code may, but need not, be a code recommended by the Commission.
- “(3) The *Gazette* notice under **subsection (1)** must—
- “(a) set out the apprenticeship training code in full; or
  - “(b) give enough information to identify it and state where copies of it may be obtained. 5
- “(4) The apprenticeship training code comes into force—
- “(a) on the 28th day after the date on which it is issued in the *Gazette*; or
  - “(b) on any later day specified in the code. 10
- “Compare: 2000 No 94 ss 20, 21, 26

“**13F Minister may issue apprenticeship training code**

- “(1) The Minister may, by notice in the *Gazette*, issue an apprenticeship training code that—
- “(a) is consistent with this Act; and 15
  - “(b) sets out the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training activities under this Act.
- “(2) The apprenticeship training code may, but need not, be a code recommended by the Commission. 20
- “(3) Before issuing an apprenticeship training code, the Minister may consult any persons or organisations that the Minister considers appropriate.
- “(4) The *Gazette* notice under **subsection (1)** must—
- “(a) specify the date on which the apprenticeship training code comes into force (which must be at least 28 days after the date on which the notice is published); and 25
  - “(b) either—
    - “(i) set out the apprenticeship training code in full; or
    - “(ii) give enough information to identify the code and state where copies of the code may be obtained. 30

“**13G Availability of apprenticeship training code**

- The Commission must make any apprenticeship training code available—
- “(a) at every office of the Commission, free of charge; and 35

“(b) on the Commission’s Internet site in a format that is readily accessible.

“Compare: 2000 No 94 s 27

**“13H Apprenticeship training code to be taken into account by mediation personnel, Employment Relations Authority, and Employment Court** 5

In exercising or performing, in relation to a matter concerning an apprentice, any power or function under the Employment Relations Act 2000, the following must take into account every applicable element of any apprenticeship training code: 10

“(a) a person providing mediation services under that Act:

“(b) the Employment Relations Authority:

“(c) the Employment Court.

“Compare: 2000 No 94 s 7

**“13I Application of Legislation Act 2012 to apprenticeship training code** 15

An apprenticeship training code is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act. 20

“Compare: 2000 No 94 s 29”.

**18 Part 3 repealed**

Repeal Part 3.

**19 Section 29 amended (Purposes for which levy may be required)** 25

Replace section 29(3) with:

“(3) In specifying how levy funds are to be used, a levy order may specify 1 or more purposes that will benefit the levy group as a whole and that are related to meeting the costs (including infrastructure and administration costs) associated with developing and maintaining skill standards for the specified industry.” 30

- 20 Repeal of Modern Apprenticeship Training Act 2000**  
The Modern Apprenticeship Training Act 2000 (2000 No 94) is repealed.
- 21 New section 53 and cross-heading inserted**  
After section 52, insert: 5  
*“Savings and transitional provisions*
- “53 Savings and transitional provisions relating to amendments to this Act**  
The savings and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after 10  
1 January 2014, have effect for the purposes of this Act.”
- 22 New Schedule 1AA inserted**  
Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.
- 23 Consequential amendments** 15  
The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule.

**Part 2**  
**Amendments to Education Act 1989**

- 24 Principal Act** 20  
This **Part** amends the Education Act 1989 (the **principal Act**).
- 25 Section 253 amended (Rules)**  
After section 253(1)(g), insert:  
“(ga) prescribing the amount of, or the method for determining, the annual registration fee required under **section 11F** of the **Industry Training and Apprenticeships Act 1992**, and when and how that fee is payable; 25  
“(gagb) prescribing quality assurance requirements for industry training organisations, including, without limitation, requirements relating to the matters described in **section 13B** of the **Industry Training and Apprenticeships Act 1992**.” 30

**26 Section 254 amended (Fees)**

Replace section 254(2)(c) with:

- “(c) charge fees to any person or institution for any quality assurance activities undertaken by the Authority (including quality assurance activities undertaken in accordance with ~~its~~ the Authority’s functions under the **Industry Training and Apprenticeships Act 1992**): 5
- “(d) charge an application fee to a body corporate applying for recognition as an industry training organisation under **section 6 of the Industry Training and Apprenticeships Act 1992** ~~for recognition as an industry training organisation.~~” 10
-

	<b>Schedule 1</b>	<b>s 22</b>
	<b>New Schedule 1AA inserted</b>	
	<b>Schedule 1AA</b>	<b>ss 4A, 53</b>
	<b>Application, savings, and transitional provisions relating to amendments made to <u>this Act</u> after 1 January 2014</b>	<b>5</b>
<b>1</b>	<b>Interpretation</b>	
	In this schedule,—	
	<b>amendment Act</b> means the <b>Industry Training and Apprenticeships Amendment Act 2013</b>	10
	<b>apprenticeship co-ordinator, apprenticeship training agreement, and funding agreement</b> have the meanings given in section 4 of the Modern Apprenticeship Training Act 2000	
	<b>Modern Apprenticeship Training Act 2000</b> means the Modern Apprenticeship Training Act 2000 as it was immediately before its repeal by the amendment Act	15
	<b>transition period</b> means the period beginning on the date on which the amendment Act comes into force and ending with the close of 31 December 2017.	
<b>1A</b>	<b><u>Application</u></b>	20
	<u>The Act applies to all industry training organisations, including those organisations recognised under the Act before the amendment Act comes into force.</u>	
<b>2</b>	<b>Apprenticeship training agreements saved</b>	
(1)	In this clause, an <b>agreement</b> means an apprenticeship training agreement that—	25
	(a) is entered into before the amendment Act comes into force; and	
	(b) on the date on which the amendment Act comes into force, has not ceased to be in force.	30
(2)	During the transition period, for the purposes of an agreement,—	
	(a) the Modern Apprenticeship Training Act 2000, and the code of practice approved or issued under section 20 of that Act, continue to apply to any employee, apprentice-	35



Schedule 1AA—*continued*

- ship co-ordinator, and apprentice who is a party to the agreement; and
- (b) this Act only applies to the employee, apprenticeship co-ordinator, and apprentice to the extent that it applied before the commencement of the amendment Act. 5
- 3 Funding agreements saved**
- (1) In this clause, **funding agreement** means a funding agreement between the Commission and an apprenticeship training co-ordinator that—
- (a) is entered into before the amendment Act comes into force, whether or not it is amended before or after that date; and 10
- (b) on the date on which the amendment Act comes into force, has not ceased to be in force.
- (2) During the transition period,— 15
- (a) every funding agreement continues in force, and may be renewed annually; and
- (b) the Modern Apprenticeship Training Act 2000, and the code of practice approved or issued under section 20 of that Act, continue, for the purposes of the agreement, to apply to the Commission and to the apprenticeship co-ordinator to whom the funding agreement applies; and 20
- (c) the Commission may continue to fund the apprenticeship co-ordinator in accordance with the funding agreement as if the amendment Act had not been passed. 25
- (3) Any funding agreement that has not otherwise ceased to be in force expires at the close of 31 December 2017.
- 4 Commission may make direction to ensure continuation of training** 30
- During the transition period, the Commission may, for the purpose of ensuring that an apprentice can continue his or her apprenticeship training, or undertake suitable alternative training, issue 1 or more of the following directions:

Schedule 1AA—*continued*

- (a) that a specified industry training organisation must make arrangements for the apprentice to continue his or her apprenticeship training in accordance with this Act:
- (b) that a specified apprenticeship co-ordinator must assume, in respect of the apprentice, the responsibilities and functions of an apprenticeship co-ordinator under the Modern Apprenticeship Training Act 2000: 5
- (c) that a specified industry training organisation must assume, in respect of the apprentice, the responsibilities and functions of an apprenticeship co-ordinator under the Modern Apprenticeship Training Act 2000. 10
- 5 Applications for recognition made before commencement**  
Where an application for recognition as an industry training organisation is received by the Minister before the commencement of the amendment Act, the Minister— 15
- (a) must consider the application in accordance with the provisions of this Act as they were before the commencement of the amendment Act; and
- (b) may recognise the organisation under **section 5(1)** or **8(1)** as those sections were before the commencement of the amendment Act. 20
- 6 Notice of cancellation issued before commencement**  
If, ~~prior to~~ before the commencement of the amendment Act, the Minister issues a notice under section 9(3A), the Minister must, after the amendment Act comes into force, decide 25  
whether to cancel recognition of the industry training organisation on the basis of the provisions of this Act as they were before the commencement of the amendment Act.
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**Schedule 2**  
**Consequential amendments**

**s 23**

Part 1

Amendments to Acts

- Education Act 1989 (1989 No 80)** 5  
In section 2(1), definition of **industry training organisation**, replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”.
- In section 2(1), definition of **tertiary component**, replace “section 5 of the Modern Apprenticeship Training Act 2000” with “**section 13C** of the **Industry Training and Apprenticeships Act 1992**”. 10
- In section 159(1), definition of **industry training organisation**, replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”.
- In section 248B(1)(a), replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”. 15
- Maori Housing Amendment Act 1938 (1938 No 17)**  
In section 4A(3), replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”.
- Minimum Wage Act 1983 (1983 No 115)** 20  
Repeal section 9(a).
- Minors’ Contracts Act 1969 (1969 No 41)**  
Repeal section 5(4)(a).
- Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)**  
In section 157(3), replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”. 25
- Real Estate Agents Act 2008 (2008 No 66)**  
In section 12(3), replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”.

**Industry Training and Apprenticeships  
Amendment Bill**

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Part 2

Amendments to regulations

**Real Estate Agents (Licensing) Regulations 2009 (SR 2009/282)**

In regulation 3(1), definition of **industry training organisation**, replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”. 5

**Sale of Liquor Regulations 1990 (SR 1990/61)**

In regulation 21AA(2), replace “Industry Training Act 1992” with “**Industry Training and Apprenticeships Act 1992**”.

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**Legislative history**

26 September 2013  
5 November 2013

Introduction (Bill 151–1)  
First reading and referral to Education and Science  
Committee

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