

*Submission*

by

Business|NZ

to the

**Education and Science Select Committee**

on the

**Tertiary Education Reform Bill**

**8 March 2002**

PO Box 1925  
Wellington  
Ph: 04 496 6555  
Fax: 04 496 6550

## Tertiary Education Reform Bill

### 1. Introduction

- 1.1. This submission is made on behalf of Business New Zealand, incorporating regional employers' and manufacturers' organisations. The regional organisations consist of the Employers' and Manufacturers' Association (Northern), the Employers' and Manufacturers' Association (Central), Canterbury Manufacturers' Association, Canterbury Employers Chambers of Commerce, and the Otago-Southland Employers' Association. Business New Zealand represents business and employer interests in all matters affecting the business and employment sectors.
- 1.2. One of Business New Zealand's key goals is to see the implementation of policies that would see New Zealand retain a first world national income and to regain a place in the top ten of the OECD in per capita GDP terms. This is a goal that is shared by the Government. It is widely acknowledged that consistent, sustainable growth in real GDP per capita of well in excess of 4% per annum (and probably closer to 7-8%) would be required to achieve this goal. Continued growth of around 2% (our long-run average) would only continue New Zealand's relative decline.
- 1.3. The effective use of the \$1.5 billion dollars expended on post-compulsory education and training is a critical part of achieving these objectives. Achieving consistently high growth rates will require significant improvements in productivity. Improving the skill levels of the existing workforce, and those entering it, is likely to be the most critical factor in this. This submission is made in this light.
- 1.4. Business New Zealand would appreciate the opportunity to present our submission orally to the Committee.

## 2. Summary of recommendations

- 2.1. Business New Zealand recommends a range of changes to the Bill as drafted, in order to better achieve the objectives of the Government's tertiary education reforms. In particular we submit that there is a need for a clear set of guiding principles for the exercise of the powers contained in the proposed Part 13A of the Education Act 1989.
- 2.2. We have also made a number of recommendations that we hope will improve the effectiveness of the proposed changes to the Industry Training Act 1992. We have indicated that we have serious concerns with the proposed Part 5 of that Act, and have recommended major changes to it.
- 2.3. Business New Zealand recommends the following in respect of the Education Act 1989:
  - a) the addition of a new section, section 159JA, as follows:

### **"159JA Exercise of powers under this Part**

(1) In the exercise of powers under this Part of the Act, including the appointment of Commissioners, the approval of a Tertiary Education Strategy, the determination of tertiary education priorities, the identification of funding mechanisms, the development of criteria to guide the allocation of funding, the determination of the content and criteria for the approval of charters, and the criteria for the approval of profiles, the Minister and the Commission must:

- (a) meet society's education needs by fostering the provision of quality education at least cost, directing resources to those areas that contribute most to society, and create innovative ways to meet individuals', enterprises' and communities' needs over time.
- (b) work closely with the stakeholders of tertiary education providers and industry training organisations; and
- (c) work closely with tertiary education providers and industry training organisations."

- b) the amendment of the definition of ‘stakeholder’ in new section 159B as follows:

“**stakeholder**, in relation to a tertiary education provider, includes the staff and students of the provider, and members of, or groups and businesses in, the communities served by the provider.”

- c) the deletion of new section 159G, should our recommendation a) above be accepted;

- d) the addition of a new sub-section 159H (4), as follows:

“**159H Minister may review performance of Commission**

...

(4) Any process of review of the performance of the Commission must involve the participation of stakeholders of tertiary education providers and industry training organisations.”

- e) the amendment of new sub-section 159J (2), as follows:

“**159J Minister may direct Commission**

...

(2) The Minister may not, under this section or any other section, direct the Commission to fund, or refuse funding to, any particular organisation or type of organisation.”

- f) the addition of a new sub-section 159P (aa), as follows:

“**159P What is a Charter?**

...

(aa) identifies the organisation’s stakeholders and their needs; and”

g) the addition of a new sub-section 159ZA (1) (aa), as follows:

**“159ZA What is a Profile?**

(1) An organisation’s profile is a document that -

...

(aa) identifies how the organisation intends to meet the needs of its stakeholders, as identified in its Charter; and”

h) the addition of a new sub-section 159ZD (1) (aa), as follows:

**“159ZD Preparation and approval of profiles**

(1) An organisation that wishes, or is obliged, to have a profile must -

...

(aa) consult with the stakeholders identified in its Charter over its proposed profile; and”

i) the amendment of new sub-section 159ZH (4) (c), as follows:

**“159ZH Minister must identify funding mechanisms**

(4) When specifying the mechanisms that must be used, the Minister –

...

(c) may not specify a mechanism that would have the effect of making funding available to a specific organisation, or denying funding to a specific organisation or type of organisation.”

j) the amendment of new sub-section 159ZJ (1), as follows:

**“159ZJ Grants of funding**

(1) Any organisation may apply to the Commission for funding. There is a presumption that an organisation which has met quality assurance requirements, and has an approved Charter and Profile, will be eligible for funding under the terms of relevant funding mechanisms.”

- k) the addition of a new sub-section 180 (ba) as follows:

**“180 Functions of Councils**

The functions of the Council of an institution are –

...

- (ba) to meet the needs of stakeholders identified in the institution’s charter. “

- l) the amendment of new sub-section 236(1A), as follows:

**“236 Grant or refusal of application**

- (1A) The Authority may make a grant of registration subject to conditions that are specific to that establishment, provided such conditions are reasonable and relate to ensuring the quality of provision or service by the establishment. The establishment is obliged to comply at all times with those conditions.”

- m) the amendment of new sub-section 258(3A), as follows:

**“258 Approval of courses**

- (3A) When granting approval of a course, the Authority may impose conditions on the approval, provided that the conditions are reasonable, relate to the quality of the course, and that the imposition of conditions does not constitute a lowering of the standards for approval.”

- n) the amendment of new sub-section 259(3A), as follows:

**“259 Accreditation to provide approved courses**

- (3A) When granting accreditation to an institution the Authority may impose conditions on the approval, provided that the conditions are reasonable, relate to the quality of delivery of the course, and that the imposition of conditions does not constitute a lowering of the standards for accreditation.”

- o) the addition of a new section 162A, as follows:

**“162A Minister may require audit of institutions**

- (1) The Minister may direct the Qualifications Authority to audit any institution, or all institutions, established under this Act to ensure that it continues, or they continue, to demonstrate relevant characteristics as specified under section 162 (4).”

- p) the amendment of new sub-section 264A (4), as follows:

**“264A Minister may consent to registered establishment using certain terms in their names**

...

- (4) The Minister may direct the Qualifications Authority to audit any registered establishment, or all registered establishments, that has, or have, been given consent to use one of the terms in subsection (1) for continuous compliance with the requirements for consent to use the term.”

- q) the deletion of clause 36 of the Bill;

2.4. Business New Zealand recommends the following in respect of the Industry Training Act 1992:

- r) the amendment of new sub-section 7 (fb), as follows:

**“7 Matters to which Minister is to have regard before approving charters**

...

- (fb) whether the organisation has considered the desirability of amalgamating with other recognised organisations or entering into other joint arrangements with other recognised organisations to avoid undue fragmentation and improve the quality and accessibility of industry training.”

- s) the deletion of proposed sub-section 10 (2A) (b); and
- t) the deletion of clause 46 of the Bill; or
- u) alternatively, the amendment of new section 27 (1), as follows:

## **“27 Restrictions on Making Levy Orders**

- (1) The Minister must not recommend the making of a levy order unless he or she is satisfied that –
  - (a) the industry training organisation to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with sections 31 to 38, in relation to a proposal that the levy should be imposed on members; and
  - (b) a minimum of 51% of all firms eligible to pay the levy (levy payers), by number of levy payers, support the imposition of the levy; and
  - (c) a minimum of 51% of all eligible levy payers, by proportion of levy expected to be paid, support the imposition of the levy; and
  - (d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and
  - (e) the details specified in the order are acceptable to the Minister; and
  - (f) the industry training organisation has or will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
  - (g) any persons or organisations opposing the imposition of the levy have had reasonable opportunity to put their views to the Minister; and
  - (h) all other relevant matters known to the Minister have been properly considered.”



## **3. Amendments to the Education Act 1989 (Part 2)**

### **General**

- 3.1. Business New Zealand supports the establishment of a unitary body to fund all post-compulsory education and training, including industry and pre-employment training. It also supports the development of a clear strategy for tertiary education, and the allocation of a portion of funding on the basis of a set of national priorities.
- 3.2. In general, therefore, Business New Zealand recommends that the Bill proceed. There are, however, a number of areas in which Business New Zealand submits that significant improvements could be made to the Bill, which would improve the quality of the framework for the operation of the tertiary education system as envisaged by the reports of the Tertiary Education Advisory Commission (TEAC).

### **Clause 6 – Exercise of Powers under Part 13A**

- 3.3. The Bill provides a framework for the development of a strategy for tertiary education, a set of priorities for tertiary education, for the development of funding mechanisms, the development and approval of charters, and the development and approval of profiles.
- 3.4. It does not, however, provide a clear set of principles to guide decision makers, in particular the Minister and the Commission, in carrying out these functions. TEAC recommended that the operation of the tertiary education system be guided by clear principles, to ensure quality, non-arbitrary decision making. Business New Zealand supports this recommendation.
- 3.5. Business New Zealand therefore recommends the addition of a new section, section 159JA, as follows:

## **“159JA Exercise of powers under this Part**

(1) In the exercise of powers under this Part of the Act, including the appointment of Commissioners, the approval of a Tertiary Education Strategy, the determination of tertiary education priorities, the identification of funding mechanisms, the development of criteria to guide the allocation of funding, the determination of the content and criteria for the approval of charters, and the criteria for the approval of profiles, the Minister and the Commission must:

- (a) meet society's education needs by fostering the provision of quality education at least cost, directing resources to those areas that contribute most to society, and create innovative ways to meet individuals', enterprises' and communities' needs over time.
- (b) work closely with the stakeholders of tertiary education providers and industry training organisations; and
- (c) work closely with tertiary education providers and industry training organisations.”

## **Clause 6 – Preliminary provisions (new sections 159A-159B)**

3.6. The definition of stakeholder under new section 159B specifically identifies 'staff and students', but does not specifically mention businesses or enterprises. Business New Zealand recommends that that the definition of stakeholder be altered to read:

“**stakeholder**, in relation to a tertiary education provider, includes the staff and students of the provider, and members of, or groups and businesses in, the communities served by the provider.”

## **Clause 6 – Establishment of the Commission (new sections 159C-159E)**

3.7. New section 159D sets out the composition of the Commission, and the process for their appointment. It provides for consultation only with the Minister of Maori Affairs. Business New Zealand submits that the Minister should be required to consult much more widely in the process of appointing Commissioners. Our recommendation in paragraph 3.5 above would require

the Minister to work closely with stakeholders, providers and industry training organisations (ITOs) in appointing Commissioners.

## **Clause 6 – Functions of the Commission (new sections 159F-159J)**

3.8. Business New Zealand submits, that if our recommendation in paragraph 3.5 is adopted, new section 159G is not required.

3.9. New section 159H provides for the review of the Commission by the Minister. This clause provides for the Minister to consult with the Commission, but does not provide for the involvement of stakeholders in the review process. Business New Zealand recommends that a new sub-section be added:

### **“159H Minister may review performance of Commission**

...

(4) Any process of review of the performance of the Commission must involve the participation of stakeholders of tertiary education providers and industry training organisations.”

3.10. New section 159J provides for the Minister to be able to direct the Commission. Business New Zealand does not oppose this power in principle, but suggests that further safeguards may be required. One solution may be to extend the guiding principles recommended in paragraph 3.5 to this provision.

3.11. Specifically, Business New Zealand recommends that sub-section (2) of new section 159J be amended as follows:

### **“159J Minister may direct Commission**

...

(2) The Minister may not, under this section or any other section, direct the Commission to fund, or refuse funding to, any particular organisation or type of organisation.”

- 3.12. Business New Zealand submits that the Minister should not have the power to direct the Commission not to fund, for example, Colleges of Education, or Industry Training Organisations. Decisions of such magnitude should require Parliamentary approval by the amendment of legislation.

## **Clause 6 – Accountability of the Commission (new sections 159K-159M)**

- 3.13. Business New Zealand supports the accountability provisions in the Bill.

## **Clause 6 – Fundamental documents of the sector (new sections 159N-159O)**

- 3.14. As noted above, and in earlier submissions, Business New Zealand supports the development of a Tertiary Education Strategy which focuses the post-compulsory education and training system on the achievement of outcomes critical to our national development and well-being.
- 3.15. Business New Zealand has also indicated it supports the identification of a limited number of areas of priority, provided clear net benefit can be identified. We have also indicated that such priorities should be linked to wider Government and industry strategies, rather than stand alone within tertiary education policy.
- 3.16. In principle, therefore, Business New Zealand supports new sections 159N and 159O. We are concerned, however, that neither clause makes provision for consultation and participation by stakeholders, including businesses and enterprises, in the process of developing the Tertiary Education Strategy and the tertiary education priorities. This is a serious deficiency. Business New Zealand has supported the recommendations of TEAC on the basis of the principles outlined in TEAC's first report, *Shaping a Shared Vision*. An essential part of that vision was greater engagement by the tertiary education system with its stakeholders. It is therefore critical that the Bill reflect that vision.
- 3.17. If the recommendation in paragraph 3.5 above is adopted, then Business New Zealand's concerns in this area will be addressed. Alternatively, new

sections 159N and 159O should be amended to require the Minister to work closely with the stakeholders of tertiary education providers and industry training organisations in the development of the Tertiary Education Strategy and the tertiary education priorities.

## **Clause 6 – Charters (new sections 159P-159Z)**

3.18. Business New Zealand supports the extension and clarification of the purpose and application of Charters. In particular, Business New Zealand supports the recommendations of the Working Party on Charters and Profiles.

3.19. In this respect, Business New Zealand submits that the description of the function and purpose of a Charter under new section 159P omits a vital element – the role of Charters in identifying the stakeholders of a provider or ITO and their needs. Business New Zealand therefore recommends the addition of a new sub-section as follows:

“159P **What is a Charter?**

...

(aa) identifies the organisation’s stakeholders and their needs; and”

3.20. New section 159Q describes the process for establishing requirements for the content of Charters and criteria for their assessment. The proposed new section simply requires the Minister to consult with the Commission, but not with stakeholders on these matters. Business New Zealand’s recommendation in paragraph 3.5 would address our concerns in this respect.

3.21. Business New Zealand has some concern that new sub-section 159Q(2) would permit the Minister to prescribe different content and assessment criteria for different types of organisation, based simply upon their legal form. While we support allowing differentiation on the basis of function, we have concerns that such a provision may reinforce arbitrary distinctions between

education and training organisations, reducing their ability to offer programmes and services which respond to the nation's and their communities' needs.

- 3.22. Business New Zealand also has some concern that new sub-section 159R(2) would give the Commission the power to require certain organisations to develop Charters earlier than others. Business New Zealand can see no justification for selectively imposing a greater obligation on some organisations than others, unless this was simply to stage the administrative workload of the negotiations. In such a case there should be no discrimination based upon type of provider.
- 3.23. Business New Zealand supports the provisions in new section 159S relating to the preparation of Charters, particularly consultation with stakeholders.

## **Clause 6 – Profiles (new sections 159ZA-159ZG)**

- 3.24. Business New Zealand supports the development of Profiles as statements of the services providers and ITOs intend to offer to their stakeholders over a 3 year period, and which identify how these organisations intend to meet the needs of those stakeholders identified in their Charters.
- 3.25. In this respect, Business New Zealand recommends that sub-section 195ZA(1) be amended by the addition of the following sub-section:
- “159ZA What is a Profile?**
- (1) An organisation's profile is a document that -
- ...
- (aa) identifies how the organisation intends to meet the needs of its stakeholders, as identified in its Charter; and”
- 3.26. This proposed addition creates an important link between the organisation's Charter and its Profile, and provides assurance that Profiles are focused on meeting the needs of stakeholders (which may include, in some cases, the nation as a whole).

- 3.27. Business New Zealand is concerned with the content of new section 159ZD, which sets out the process for the preparation and approval of Profiles. This clause includes no requirement on providers to consult with their stakeholders on the content of profiles. This conflicts with the recommendations of the Working Party on Charters and Profiles, which Business New Zealand supports.
- 3.28. Business New Zealand therefore recommends the addition of a new sub-section under sub-section 159ZD(1).

**“159ZD Preparation and approval of profiles**

(1) An organisation that wishes, or is obliged, to have a profile must -

...

(aa) consult with the stakeholders identified in its Charter over its proposed profile; and”

**Clause 6 – Funding by the Commission (new sections 159ZH-159ZM)**

- 3.29. Business New Zealand supports a unified, transparent funding system for all post-compulsory education and training. While Business New Zealand supports flexibility in the design of funding systems, we have concerns that the provisions of the Bill as set out in new sections 159ZH – 159ZI provide no guarantees that the funding system for tertiary education will be integrated and transparent as between the funding of different activities, programmes, and organisations.
- 3.30. Once again, Business New Zealand submits that in such a critical area, it is essential that stakeholders, and indeed providers and ITOs, are involved in the development of policy and criteria for the allocation of funding. To do otherwise would undermine the very rationale for the strategy underpinning the Bill, of a more connected, engaged and strategic sector. We therefore re-iterate our recommendation in paragraph 3.5, that the Minister and the Commission be required to work towards achieving a broad set of principles, and work closely with stakeholders, providers and ITOs.

- 3.31. In new sub-section 159ZH (4) (c), the Minister is prohibited from specifying a funding mechanism which would have the effect of funding a particular organisation. Business New Zealand supports this provision, but submits that it should be extended to prevent the Minister from specifying a funding mechanism which would have the effect of denying funding to a specific organisation, or type of organisation. Business New Zealand therefore recommends that new sub-section 159ZH (4) (c) be amended as follows:

**“159ZH Minister must identify funding mechanisms**

(4) When specifying the mechanisms that must be used, the Minister –

...

(d) may not specify a mechanism that would have the effect of making funding available to a specific organisation, or denying funding to a specific organisation or type of organisation.”

- 3.32. In respect of sub-section 159ZI (4), we reiterate our concern over the ability of the Commission to establish different criteria and mechanisms for different types of organisations. We would prefer that any differentiation occurred on the basis of the function or activity funded, rather than the legal form of an organisation or group of organisations.
- 3.33. Business New Zealand is concerned that the Bill creates uncertainty as to whether a provider or ITO will be funded, even if it has met all of the quality requirements, and had a Charter and Profile approved. We submit, that in order to create certainty for learners, stakeholders, providers and ITOs, that there should be a presumption that where an organisation has met all of these requirements, they will be eligible for funding.
- 3.34. Business New Zealand therefore recommends that sub-section 159ZJ (1) be amended as follows:

**“159ZJ Grants of funding**

(1) Any organisation may apply to the Commission for funding. There is a presumption that an organisation which has met quality assurance



requirements, and has an approved Charter and Profile, will be eligible for funding under the terms of relevant funding mechanisms.”

## **Clauses 7 & 8 – Establishment and disestablishment of institutions**

- 3.35. Business New Zealand supports the introduction of a new type of tertiary education institution (TEI), the ‘specialist college’. This will enable greater specialisation and differentiation within the public tertiary education system.

## **Clauses 9-14 – Administration of institutions**

- 3.36. Business New Zealand submits that the first obligation of the Council of a tertiary education institution is to meet the needs of the stakeholders identified in its Charter. This should be reflected in the functions of Councils under existing section 180.
- 3.37. Business New Zealand therefore recommends that the following new sub-section be introduced to existing sub-section 180:

### **“180 Functions of Councils**

The functions of the Council of an institution are –

...

- (ba) to meet the needs of stakeholders identified in the institution’s charter. “

## **Clauses 15-17 – Private training establishments**

- 3.38. Clause 15 provides for the New Zealand Qualifications Authority to establish conditions specific to a particular private training establishment seeking registration. These are over and above the requirements already specified in section 236 of the Act.
- 3.39. Business New Zealand is concerned to ensure that any such conditions are reasonable, and relate to quality of provision, and not any other arbitrary factors. We are concerned to ensure that a quality assurance measure is not

used inappropriately to stifle innovation, prevent provision in particular subjects or localities, and so forth.

- 3.40. Business New Zealand therefore recommends that the proposed new sub-section 236(1A) be amended as follows:

**“236 Grant or refusal of application**

- (1A) The Authority may make a grant of registration subject to conditions that are specific to that establishment, provided such conditions are reasonable and relate to ensuring the quality of provision or service by the establishment. The establishment is obliged to comply at all times with those conditions.”

**Clauses 18-19 – Approvals & accreditation**

- 3.41. Business New Zealand has similar concerns with respect to the imposition of conditions by the Authority under the proposed sub-sections 258(3A) and 259(3A). We note, however, that the proposed sub-sections do seek to place limits on the exercise of these powers by the Authority, by providing that such conditions may not constitute a lowering of the standards for approval or accreditation, which supports our views in paragraph 3.39.

- 3.42. Business New Zealand submits the new sub-sections 258(3A) and 259(3A) could be improved by amending them to read:

**“258 Approval of courses**

- (3A) When granting approval of a course, the Authority may impose conditions on the approval, provided that the conditions are reasonable, relate to the quality of the course, and that the imposition of conditions does not constitute a lowering of the standards for approval.”

**“259 Accreditation to provide approved courses**

- (3A) When granting accreditation to an institution the Authority may impose conditions on the approval, provided that the conditions

are reasonable, relate to the quality of delivery of the course, and that the imposition of conditions does not constitute a lowering of the standards for accreditation.”

## Clause 20 – Use of protected terms

3.43. Business New Zealand has no objection to the transfer of the power to grant the use of protected terms to the Minister. We are concerned, however, that the provisions of new sub-sections 264A (4) and (5) will only apply to registered establishments, not to institutions. Business New Zealand is concerned that there be processes in place to ensure that public tertiary education institutions are complying with the requirements of the use of protected terms to the same extent as private registered establishments.

3.44. Business New Zealand therefore recommends the addition of a new section of the Act, section 162A, as follows:

### “162A Minister may require audit of institutions

(1) The Minister may direct the Qualifications Authority to audit any institution, or all institutions, established under this Act to ensure that it continues, or they continue, to demonstrate relevant characteristics as specified under section 162 (4).”

3.45. We also recommend that in the exercise of his or her powers under new sub-section 264A (4), the Minister make use of the NZ Qualifications Authority to carry out any audit in respect of compliance with requirements for consent to use a protected term. Business New Zealand therefore recommends that this new sub-section be amended as follows:

### “264A Minister may consent to registered establishment using certain terms in their names

...

(4) The Minister may direct the Qualifications Authority to audit any registered establishment, or all registered establishments, that has, or have, been given consent to use one of the terms in

subsection (1) for continuous compliance with the requirements for consent to use the term.”

## **Clauses 21 – Repeal of part XXI**

- 3.46. Business New Zealand, as noted above, supports the establishment of a unified funding body and funding system for post-compulsory education and training. We therefore support the repeal of the provisions relating to the organisation currently known as Skill New Zealand.

## **Clauses 22-24 – Recognition and funding of other services**

- 3.47. Business New Zealand supports the amendments to Part XXVII of the Act, which remove the anomalies that enabled a number of post-compulsory education and training organisations to receive funding outside of the generally applicable quality assurance and accountability regime. Business New Zealand strongly supports transparency in the funding and quality assurance of post-compulsory education and training, and these changes improve this.

## **Clauses 25-37 – Transitional provisions**

- 3.48. The transitional provisions set out in the Bill appear to ensure that the important programmes and activities funded and regulated by Skill New Zealand will be able to smoothly move towards the more integrated, transparent arrangements under the Tertiary Education Commission.
- 3.49. Business New Zealand does, however, find clause 36 of the Bill to be somewhat unusual. This clause provides that the chief executive officer of the Tertiary Education Commission *may* be called the General Manager, but only for the *first three years* after the Commission’s establishment. Business New Zealand can see no rationale for this clause, and recommends it be deleted.

## 4. Amendments to the Industry Training Act (Part 3)

- 4.1. Business New Zealand considers the Industry Training Strategy to be crucial to supporting New Zealand's economic development. We are a nation with historically low levels of post-compulsory education and training, and this is reflected in the qualifications and skill levels of our existing workforce. 27% of our population aged 25-64 have no qualification, and 49% have no qualification higher than a school qualification<sup>1</sup>. Conservatively, 80% of the workforce of 2010 are already in the workforce – as are 60% of the workforce of 2020. Even if all these individuals had the skills necessary to meet today's challenges, changes in technology and work practices will undoubtedly require ongoing skill development.

### Clause 40-42 – recognition of ITOs

- 4.2. Business New Zealand supports the application of regulatory arrangements for industry training organisations consistent with those for other organisations in post-compulsory education and training. We therefore support the contents of clause 40, which apply the requirements of charters to ITOs, but continue to require ITOs to meet specific requirements as set out in section 7 of the Industry Training Act 1992.
- 4.3. Business New Zealand supports the transfer of responsibility for the recognition of ITOs from the Board of Skill New Zealand to the Minister (clause 41), in line with the process for the approval of charters for other organisations in post-compulsory education and training.
- 4.4. Business New Zealand also supports the addition of the new role for ITOs in the provision of leadership within an industry on matters relating to skill development, including skills forecasting. We note that this activity will require funding which is linked to the size of the industry the ITO represents, rather than the numbers of trainees they arrange training for.

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<sup>1</sup> Statistics New Zealand (2001), *Labour Market Statistics 2001*, Table 5.02.

- 4.5. It is Business New Zealand's submission that it is unhelpful to specify a requirement for any organisation, type of organisation, or group of persons to form a part of the governance structures of an industry training organisation. This is as relevant for business and industry associations, suppliers, customers, and trainees (collectively or individually), as it is for employees (collectively or individually). The means by which ITOs are governed should be able to vary with the needs of the industry or sector that the ITO serves, and should not be stipulated in legislation. We therefore cannot support clause 42 (3) of the Bill.
- 4.6. Business New Zealand notes that while in many cases it may be desirable to 'avoid undue fragmentation of industry training', the key criteria in respect of the arrangements for industry training should be whether the needs of an industry are being met. Business New Zealand therefore recommends that new sub-section 7 (fb) be amended as follows:

**"7 Matters to which Minister is to have regard before approving charters**

...

- (fb) whether the organisation has considered the desirability of amalgamating with other recognised organisations or entering into other joint arrangements with other recognised organisations to avoid undue fragmentation and improve the quality and accessibility of industry training."

**Clause 44 – Expiry and cancellation of recognition of ITOs**

- 4.7. Business New Zealand supports the accountability arrangements set out in clause 44 of the Bill.

**Clause 45 – Funding of industry training**

- 4.8. New sub-section 10(2A) provides for the Commission to agree to fund an ITO to provide training to an employer outside of their industry, where that employer has applied in writing, and where the Commission is satisfied that the ITO in that employer's industry doesn't have the capacity or the employer

faces considerable costs because its industry is covered by more than one ITO.

- 4.9. Business New Zealand submits that employers should be able to freely choose the industry training organisation which best meets their needs. We can see no need for the Commission to have to make a determination on the employer's behalf of the suitability or otherwise of a particular ITO to meet their enterprises' training needs.
- 4.10. Business New Zealand therefore recommends that proposed sub-section 10 (2A) (b) be deleted.

## **Clause 46 – New Part 5: Training Levies**

- 4.11. Business New Zealand submits that the regime proposed by clause 46 would be counter-productive to the purpose of the Bill, namely 'improving the effectiveness and responsiveness of the industry training system'. The Industry Training strategy is designed to promote a training culture amongst New Zealand businesses. This requires businesses, their employees, managers and shareholders to understand and be convinced of the benefits of training.
- 4.12. Education and promotion of the benefits of training are much more likely to be successful than punitive measures in overcoming resistance to engaging in training. Compulsory training levies are likely to result in many coming to view training as a compliance cost and activity, rather than as a positive investment in the future of their business and employees. This is particularly so for the 260,000 small enterprises with less than 10 employees for whom training is a difficult and relatively costly activity. These enterprises need support and encouragement to become involved in industry training, not what will be perceived by many as punitive levies.
- 4.13. Business New Zealand can see no purpose in establishing an administratively complex statutory regime for 'voluntary' training levies. It is already within the power of industry training organisations to establish

membership fees, subscriptions and fees for services. The proposed regime is likely to result in considerable cost for ITOs and even litigation – which will detract from a focus on training and productivity improvement. The definition of an ‘industry’ and who is a member of it is likely to be highly contentious.

- 4.14. If the Government believes that it is in the public interest to promote certain aspects of industry training & development, such as the specification of skill standards or skills forecasting, then these should be funded from general taxation, not a special levy which, as noted above, will simply have the effect of turning ‘training’ into a compliance cost, rather than a positive investment.
- 4.15. In summary, we have very real concerns that the provisions of the proposed Part 5 of the Industry Training Act 1992 will be counterproductive to the objective of increasing the skill levels of our workforce. Business New Zealand therefore recommends that clause 46 of the Bill be deleted.

## **Clause 46 – Restrictions on making levy orders (new section 27)**

- 4.16. In the event that the Committee should not agree with our recommendation in paragraph 4.15 that Clause 46 of the Bill (covering new Part 5, "Training Levies" of the Act) be deleted, Business New Zealand would strongly recommend a tightening of the restrictions on the making of levy orders under new section 27 of the Industry Training Act 1992.
- 4.17. The current provisions of proposed Part 5 would enable 36% of the firms in any identified levy group to impose a levy on the remainder of that levy group. This is because clause 27 (1) (c) requires only that 60% of **valid, returned ballots** be in favour of the imposition of a levy – which is potentially only 36% of those balloted.
- 4.18. Such a requirement compares unfavourably with the provisions of similar legislation, such as the Commodity Levies Act 1990. That Act requires that that **considerably more than half** an industry or sector support a levy before it can be imposed. Furthermore, the levy must be supported by **both** considerably more than half of the number of firms the relevant industry or



sector, **and** by firms representing considerably more than half of the total value, volume, area, or other measure relevant to the industry. That Act also provides for those opposing the imposition of such a levy to have a reasonable opportunity to present their concerns to the Minister. Business New Zealand strongly suggests that similar principles should apply in the case of industry training levies.

- 4.19. Business New Zealand therefore recommends that the following changes be made to new section 27:

**“27 Restrictions on Making Levy Orders**

- (1) The Minister must not recommend the making of a levy order unless he or she is satisfied that –
- (a) the industry training organisation to which the levy will be payable has, within the previous 12 months, balloted all known members of the levy group, in accordance with sections 31 to 38, in relation to a proposal that the levy should be imposed on members; and
  - (b) a minimum of 51% of all firms eligible to pay the levy (levy payers), by number of levy payers, support the imposition of the levy; and
  - (c) a minimum of 51% of all eligible levy payers, by proportion of levy expected to be paid, support the imposition of the levy; and
  - (d) the details specified in the order do not differ in any material way from those specified in the ballot paper; and
  - (e) the details specified in the order are acceptable to the Minister; and
  - (f) the industry training organisation has or will have in place adequate systems for accounting to qualifying members of the levy group for the expenditure of levy funds; and
  - (g) any persons or organisations opposing the imposition of the levy have had reasonable opportunity to put their views to the Minister; and
  - (h) all other relevant matters known to the Minister have been properly considered.”

## 5. Conclusion

- 5.1. Business New Zealand supports the general direction of the Government's strategy for post-compulsory education and training, towards a more strategically focused, stakeholder responsive, and integrated system. We support the creation of a unitary body for the funding of post-compulsory education and training, and the promulgation of a clear set of outcomes and priorities for the system.
- 5.2. We submit, however, that there are number of areas where the Bill as introduced could be improved to better achieve those shared objectives. In particular we submit that there is a need for a clear set of guiding principles for the exercise of the powers contained in the proposed Part 13A of the Education Act 1989.
- 5.3. While we support many of the proposed changes to the Industry Training Act 1992, which will better integrate industry training with the rest of the post-compulsory education and training system, we have serious concerns about the proposed Part 5 of that Act. We believe that this Part will be counterproductive to the vital need to improve the skill levels of our workforce, particularly for those working in the 260,000 enterprises with fewer than 10 employees.