

Protocol

Parties

The Associate Minister of Education (Tertiary Education) [*Minister*]

and

The New Zealand Association of Private Education Providers an incorporated society, at Wellington [*Association*]

Background

A Consistent with the objects of the tertiary sector reform as set out in clause 1 below and the desire to as far as possible provide greater certainty and to enable longer term planning by the parties, this Protocol acknowledges:

- desire for certainty by the *Association* [due to an understanding that business decisions made by *Association* members will be based on the Government's current statement of tertiary education priorities at any relevant time] in respect of resourcing, information, and consultation in the tertiary sector; and
- desire by the *Minister* to underpin the position of the private providers as stakeholders in the new statutory framework;¹

The *Minister* and the *Association* have agreed to this Protocol.

B While this Protocol is intended to be binding on both parties in honour only, the *Minister* and the *Association* have agreed to record this Protocol in writing.

Acknowledgements

1. The *Association* acknowledges the Government's intentions for the entire tertiary sector as stated in the *Object* provision of the *Education Act 1989* (as inserted by section 6 *Education (Tertiary Reform) Amendment Act 2002*²), and the continued prerogative of the

¹ *The Education (Tertiary Reform) Amendment Act 2002*, and the *Industry Training Amendment Act 2002* were enacted by Parliament on 11 December 2002 and, for the purposes of this Protocol, with respect to a relationship with the Tertiary Education Commission to come into force on 1 January 2003

² Section 159AAA

government to make decisions for the sector in the national interest and according to the availability of national resources.

2. The *Minister* acknowledges that the *Association* is a valued participant in enabling the government to achieve its strategies for the sector based on the principles of excellence, relevance and access.
3. The parties jointly acknowledge the published strategy and priorities of the government, the statutory role of the Tertiary Education Commission including the distribution of funding appropriated by Parliament for tertiary education, and the new legislative framework for the tertiary sector under the *Education (Tertiary Reform) Amendment Act 2002* and *Industry Training Amendment Act 2002*.
4. The parties jointly acknowledge that this Protocol will provide a strong base for a strategic partnership.

Commitments by the Minister

5. For the purpose of ensuring that the Government's tertiary education strategy and its current statement of tertiary education priorities [at any relevant time] are supported by an informed and responsive private sector, and to confirm the strategic partnership with the *Association* by promoting stability for the sector within the period of the current priorities³, the Minister commits to the following approach in his relationship with the Association:

5.1. The Minister will, except where he believes that it would be inappropriate or not reasonably practicable to do so, **consult** with the Association when the Government proposes policy changes that will affect the tertiary education sector [including private sector providers] in any of the following ways:

- a any proposed decision that would have the effect of reducing student access to higher or further education through private providers;
- b any proposed decision in the nature of a moratorium or limitation on access to courses or programmes [in whole or in part], or government funding within Ministerial funding mechanisms⁴;
- c any proposed decision that is likely to have a significant or unplanned effect on the business viability of private sector providers [eg to charter and profile requirements]⁵;

³ Section 159AC

⁴ Section 159ZA

⁵ This paragraph does not apply to individual private sector providers by virtue of sections 159J(4) and 159ZA(3)

- d any decision covered by paragraphs a, b, or c which is proposed to apply during the period of the Government's current priorities, rather than at the beginning of the next period of such priorities.
- 5.2. Where the Minister believes that it would be inappropriate or not reasonably practicable to consult, he will **inform** the Association when the Government proposes policy changes that will affect private sector providers;
- 5.3. Where the Minister believes that it would be inappropriate or not reasonable practicable to consult or inform, he will advise the Association of any policy changes that will affect private sector providers; such advice will be given in a timely manner and before any such policy changes take effect, except where he believes that it would be inappropriate or not reasonably practicable to do so, in which case the Minister shall advise the Association as early as it is appropriate and reasonably practicable to do so.
- 5.4. In view of the importance of the Ministry of Education, the Tertiary Education Commission , the New Zealand Qualifications Authority and the Studylink service of the Ministry of Social Development to the relationship between the *Minister* and the *Association*, the Minister will **ensure** that open dialogue is maintained between these agencies and the *Association*;
- 5.5. Nothing in clauses 5.1 or 5.3 [inclusive] requires the *Minister* to consult, inform, or advise the *Association* where the government proposes policy changes that will affect the public tertiary education sector, but which do not affect private sector providers.

Commitments by the Association

6. The *Association*, for the purpose of supporting the Government's tertiary education strategy and its strategic priorities, and to confirm the strategic partnership with the Government, will:
- 6.1. **ensure** that all its members are fully informed of any information provided to it by the Government by way of consultation, information, advice, or through dialogue;
- 6.2. **ensure** that any Government information it receives is provided to its members in a full, fair, and balanced way;
- 6.3. **ensure** that any responses requested by the Government as part of an exercise of consultation are a coordinated response of its members, provided in a timely way, and consist of constructive comment;

- 6.4. **ensure** that it advises the Government in a full, open and timely manner of any matter that will affect its strategic partnership with the *Minister* in terms of this Protocol.

Status of this Protocol

7. To avoid doubt, the parties confirm that this Protocol is intended to bind both the *Minister* and *Association* to use all reasonable endeavours to honour their respective commitments. The commitments of either party are not intended to be enforceable by either party against the other in a court of law.

Review of this Protocol

8. The *Minister* and the *Association* will review this Protocol on or about 1 July 2005 for the purpose of assessing its effectiveness in underpinning the strategic partnership between the parties.

Dated at Wellington on _____ 2003

Signed in 2 originals:

by **Steve Maharey** Associate Minister of Education
(Tertiary Education)

For and on behalf of the **New Zealand
Association of Private Education Providers**

by

Kevin Smith, President

and

Sandra McKersey, Vice President
