

Tertiary Education Report: Approval of Student Fee Protection Rules 2013

Date:	12 December 2012	NZQA Priority:	High
Security Level:	In confidence	Report No.	CR10430

Action Sought:

	Action Sought	Deadline
Minister for Tertiary Education, Skills and Employment	Approve <i>Student Fee Protection Rules 2013</i>	By 31 December 2012

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1 st Contact
Tim Fowler	Deputy Chief Executive Quality Assurance	(04) 463 4352 027 221 3266	√
Natalie Bourke	Senior Policy Analyst, DCE Advisory, Quality Assurance Division	(04) 463 4361	

Enclosure: Yes (Appendix)

Minister's Office to Complete:

- Noted Seen Approved
 Needs change Withdrawn Overtaken by Events

Referred to:

Comments:

- That leg change to allow student trust impl in 2013
- Need to work on Agents accountability more

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Recommended Action

It is recommended that you:

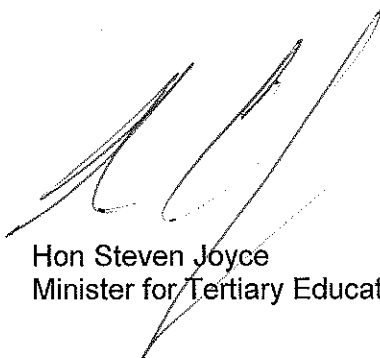
- a. **note** the *Student Fee Protection Rules 2013* presented in **Appendix A**
- b. **note** that consultation feedback from the PTE sector, the Ministry of Education (International) and Public Trust, informed the development of these Rules
- c. **note** that NZQA is seeking legislative change through the Education Amendment Act 2013 to allow static trusts for the refund period and other minor technical changes
- d. **note** that in the interim NZQA has a legally sound management plan in place to manage technical non-compliance of static trusts for the refund period
- e. **note** NZQA has been recently made aware that the responsible Minister is required to table the rules made under section 253 in the House, no later than 16 sitting days after they are approved. Although this did not occur for rules made since the 2011 Amendment Act came into force, their validity is not affected by late tabling. The sets of rules you are approving at present will meet the 16th sitting day requirement. NZQA is making appropriate arrangements for tabling the full set of approved rules in the House, including the rules you approved in 2011 and earlier during 2012
- f. **approve**, under section 253(5) of the Education Act 1989 using section 7 of the Constitution Act 1986, the *Student Fee Protection Rules 2013* (as set out in **Appendix A**).



Karen Poutasi (Dr)
Chief Executive

12 12 12
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Agree / disagree



Hon Steven Joyce
Minister for Tertiary Education, Skills and Employment

15 12 12
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Tertiary Education Report: Approval of Student Fee Protection Rules 2013

Purpose of Report

1. This report seeks your approval of the NZQA *Student Fee Protection Rules 2013* (the Rules). These were developed under section 253 of the Education Act 1989 (the Act).
2. The proposed Rules, attached in **Appendix A**, were approved by the NZQA Board under section 253(5) of the Act on 29 November 2012.

Background

3. Registered private training establishments (PTEs) are required to protect student fees during the statutory withdrawal and refund period, and following the refund period fees must be drawn down in arrears for the remainder of the course or protected by other permitted mechanisms (static trusts, bank bonds, insurance etc). Following the Education Amendment Act 2011, sections in the Education Act setting out student fee protection requirements were changed, including some policy changes.
4. The attached *Student Fee Protection Rules 2013* will replace the existing student fee protection policy, which expires on 31 December 2012.

Comment

5. The Rules align the requirements for student fee protection with the Act. NZQA has used the Rules to remove the ambiguity that was present in the student fee protection policy, and to provide greater clarity on the requirements, including on the role of agents in protecting student fees.
6. Advice from Crown Law on interpreting some of the changes resulted in some parts of NZQA's policy for protecting student fees not being carried through in the legislation, and this has had unintended consequences for PTEs.

Consultation

7. Extensive engagement with stakeholders throughout 2012 has allowed NZQA to communicate changes in the legislation and the Rules. NZQA formally consulted with the PTE sector, the Ministry of Education (International) and Public Trust on the Rules on two separate occasions, in August and October 2011. NZQA received a total of 36 submissions from both consultations, including formal submissions from Public Trust and NZAPEP.
8. Overall, submitters to both consultation rounds were supportive of NZQA's hard line against poor performing PTEs, and agreed that the rules were clear. Many of the strongest consultation submissions, however, were focussed on the requirements of the Act, rather than the Rules, and as such it was not legally possible for NZQA to respond to them in the Rules. The main concerns raised in consultation were:
 - the requirement for agents to also protect fees, with a number of submitters questioning how PTEs or NZQA could enforce such a rule
 - the removal of exemptions – NZAPEP members are especially affected by this, and
 - the requirement for fees to be protected in a standard trust during the statutory withdrawal and refund period. English language schools were particularly anxious

about the move to standard trusts as most use other types of fee protection mechanisms (i.e. static trusts).

9. Some PTEs also commented on the possible impact student fee protection may have on the government's goal to grow the export education market because only the private sector is required to comply with it. Peak bodies representing PTEs with international interests (English NZ, ITI and NZAPEP) were especially concerned that agents may be put off from engaging with private providers in New Zealand because of the barriers created by student fee protection.
10. Over the past year, individual PTEs, including those that made submissions, have been contacted to test ideas for developing Rules that are as workable as possible within the constraints of the legislation. This ongoing work has been especially necessary with the requirement for agents to protect fees. The legislation was changed to include agents in the 2011 amendments because the Ministry of Education was worried that students were at risk of losing their fees in the time between paying their agent and the agent paying the PTE, and noted examples of this having occurred. For NZQA this time period has been difficult to cover in the rules, as most agents are based overseas and not subject to New Zealand law.
11. Issues with the student fee protection rules have also been raised and discussed at PTE peak body forums throughout 2011 and 2012. At these forums, the peak bodies reiterated concerns with the legislation now covering agents, requirements for fees to be protected in a standard trust, and with the possible negative impact student fee protection may have on the private sector.

Legislation change

12. NZQA is pursuing minor legislative change in 2013 to allow static trusts for the initial refund period, and other minor technical changes. Crown Law have advised that static trusts are technically non-compliant although they meet the purposes of the relevant section of the Act.
13. Static trusts provide as good as, or better, fee protection for students, compared to standard trusts. Moving to a standard trust would threaten the financial viability of the 21 PTEs with existing static trusts for the refund period. In addition, there have been no historical collapses of PTEs with static trusts.
14. In the interim, NZQA has developed a legally sound management plan to deal with current static trusts, alongside vigorously pursuing legislative change. NZQA will not take compliance action against, or prosecute PTEs with static trusts as there are, under the Crown Prosecution Guidelines, sufficient public interest considerations against this.
15. NZQA will contact the affected PTEs on a one-to-one basis in December 2012 to point out the technical non-compliance, but note that technical non-compliance is not an enforcement priority for NZQA where there are no other significant quality assurance concerns present. NZQA will satisfy itself the static trusts are being properly managed and closely scrutinise the existing and recent past management of the static trusts of those PTEs, as well as monitor the management of those static trusts into the future.
16. NZQA will provide you with separate advice on the legislative changes it is seeking before the end of the year, some of which respond to concerns raised in consultation. As previously discussed with you, NZQA is also considering the ongoing viability of insurance as an appropriate fee protection mechanism. NZQA is seeking independent external advice as part of this process.

Risks

17. Some parties may still consider that the Rules should have addressed perceived problems in the Act, despite this not being legally possible. Two key changes will have the most significant impact on PTEs.
18. The first is the requirement for PTEs to protect fees during the refund period in a standard trust; 28 PTEs are immediately impacted by this because they are using either a bank guarantee or bank bond to protect fees. Static trusts are being managed separately for the reasons outlined above. During the refund period, it is more suitable if student fees are held in cash, and bank guarantees and bank bonds do not offer this surety.
19. The second key change impacts on all PTEs that must protect fees. The Education Act now states that no student money may be drawn down by a PTE until the end of the refund period. Prior to the changes, PTEs have been entitled to draw down the lesser of 10 per cent or \$500 of student fees on Day 1 of the course. This is no longer allowed under the Education Act. To mitigate this, NZQA has increased the maximum initial draw-down a PTE is entitled to take at the end of the refund period from 15 per cent to 20 per cent (with a maximum of \$3,000).
20. Ongoing consultation with PTE peak bodies, individual PTEs and Public Trust has ensured that PTEs will not be surprised by changes to the Rules for student fee protection. NZQA will send out individualised letters PTEs to explain what they need to do to become compliant with the new Rules, and following your approval, NZQA intends publishing the Rules and related guidance material on its website.

Presenting deemed regulations to the House

21. On 10 December 2012, NZQA was made aware that rules made under section 253 of the Education Act 1989 need to be tabled in House as they are instruments that are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989.
22. Where deemed regulations such as the rules are not published in the Statutory Regulations series, the agency responsible for the rules must arrange for the responsible Minister to present them to the House no later than the 16th sitting day after the day on which they were made.
23. The sets of rules you are being asked to approve at present will meet the 16th sitting day requirement. For rules made since the 2011 Amendment Act came into force, however, this requirement has not been met. NZQA apologises for this oversight, and has already verbally apologised to the Clerk's Office. Late tabling does not, however, affect the validity of the rules so they remain validly made rules. Where the House has concerns with any regulations (usually after an inquiry by the Regulations Review Committee), it can by resolution disallow the rules or provisions of them. The earliest any disallowance can apply is the date the resolution to disallow is made – in other words, it would not be retrospective. NZQA is now making the appropriate arrangements for presenting a full set of all approved rules to the House.

Authority to approve the Rules

24. The Minister of Education holds the Prime Minister's delegation of legislative responsibilities for Part 20 of the Education Act 1989, which includes section 253 under which the rules are made. In a letter dated 12 September 2012 the Minister of Education consented to you, as Minister for Tertiary Education, Skills and Employment, exercising the power under section 253 to approve rules made by NZQA which fall within your portfolio. As these rules fall within your portfolio, your making of them fits within the consent from the Minister of Education.

APPENDIX A

Student Fee Protection Rules 2013

Student Fee Protection Rules 2013

1. Authority

1.1 These Rules are made under section 253 of the Education Act 1989.

2. Commencement

2.1 These Rules commence on 1 January 2013.

3. Interpretation

3.1 In these Rules, unless the context otherwise requires:

“Act” means the Education Act 1989:

“Agent” means a person to whom section 234D(1) of the Act applies, regardless of whether or not that person has been appointed by the Student:

“Alternative Provider” means a university, polytechnic, wānanga, or registered private training establishment:

“Approved Independent Trustee”, for the purposes of section 234E(1)(a), means any of the following persons where that person does not provide any services to the Provider other than the operation of a Mechanism:

- (a) Public Trust;
- (b) A trustee company under the Trustee Companies Act 1967;
- (c) A chartered accountant, or firm of chartered accountants acting through a chartered accountant, who have an established trust account with a registered bank in New Zealand that is used for the sole purpose of receiving and holding deposits of client monies and the withdrawal of client monies, provided that no conflict of interest exists; or
- (d) A lawyer, or a law firm acting through a lawyer, using a regulated trust account (*within the meaning of section 6 of the Lawyers and Conveyancers Act 2006*), provided that no conflict of interest exists:

“Compliant”, in relation to a Provider or Agent and a Mechanism, means the Provider or Agent and Mechanism meet the requirements specified in the Act and under provisions of the Act (*including under these Rules and under sections 235A(1)(c) and 235B of the Act*):

“Conditions Dependent Course” means a Course, or part of it, that is dependent on weather or water conditions, or that involves self-paced learning:

“Course” means a programme or training scheme:

“Course Closure Event” means:

- (a) the provider is no longer delivering or capable of delivering the Course for which students are Enrolled;
- (b) any regulatory closure of the Provider;
- (c) insolvency of the Provider;
- (d) the Provider ceases to operate or loses its body corporate status;
- (e) any cancellation by NZQA of the Provider’s registration;
- (f) any withdrawal by NZQA of the Provider’s accreditation to provide a programme; or
- (g) any withdrawal by NZQA of the Provider’s training scheme approval:

“Enrolled” means (*and Enrol, Enrolling, and Enrolment have corresponding meanings*):

- (a) the Student has accepted an offer from the Provider of entry into a Course at the Provider, and the Provider has received that acceptance; or
- (b) the Student is recorded by the Provider as enrolled with the provider or in a Course of the Provider:

“Mechanism” means any of the Student Fee Protection Mechanisms (*including their requirements*) detailed in **Appendix B**:

“NZQA” means the New Zealand Qualifications Authority:

“Pro Rata Refund” means a refund of Student Fees paid by the student for which services or goods have not been provided to the Student, with the Tuition Fees component of the refund being calculated in accordance with **Appendix C**:

“Provider” means a private training establishment as defined in section 159(1) of the Act:

“Refund Period” means, in relation to -

- (a) international Students on a Course of three months’ duration or more, the Refund Period referred to in section 235A(1)(a) and as specified in a *Gazette* notice made under section 235B of the Act:
- (b) international Students on a Course of less than three months’ duration, the Refund Period specified by NZQA under section 235A(1)(c) of the Act:
- (c) domestic Students on a Course of three months duration or more, the Refund Period defined in section 234C(1) of the Act:

“Student” means any domestic student or international student:

“Student Fees” means any and all funds of the following kinds that are paid by or on behalf of a Student in respect of a Course:

- (a) Tuition Fees:
- (b) accommodation expenses, travel and health insurance, and living

expenses:

(c) any other financial commitments associated with the Course:

"Supplier" means a supplier of a Mechanism approved under Rule 11, and for the avoidance of doubt includes Approved Independent Trustees:

"Tuition Fees" means the gross payment relating to all costs of a Course (*for the avoidance of doubt including commissions, Course expenses, and other financial payments related to the Course*) paid by or on behalf of a Student.

3.2 Other terms used in these Rules that are defined in the Act are: accreditation; polytechnic; private training establishment; programme; training scheme; university; wānanga.

4. Application of these Rules

4.1 These Rules:

- (a) apply to any person who receives money from a Student for the purpose of Enrolling, or helping a Student to Enrol, in a Course at a Provider, including Providers, Agents and Suppliers;
- (b) are in addition to the obligations of any Provider, Agent or Supplier under the student fee protection provisions in the Act;
- (c) reinforce the requirements of section 234E of the Act for payment of Student Fees directly to an Approved Independent Trustee; and
- (d) do not alter the entitlements of any Provider to the relevant payment where a student withdraws during the relevant Refund Period.

5. Provider withdrawal and refund policies

5.1 A Provider must have withdrawal and refund policies that cover:

- (a) Student withdrawal before, during and after the relevant Refund Period;
- (b) the Provider voluntarily ceasing its Course or Courses;
- (c) voluntary closure by a Provider; and
- (d) a Course Closure Event.

5.2 These withdrawal and refund policies can be more beneficial to Students, but must not be less beneficial, than the obligations specified in the Act and under provisions of the Act (*including under these Rules and under sections 235A(1)(c) and 235B of the Act*).

6. Voluntary closure or Course cessation

6.1 Where a Provider voluntarily closes, or ceases to offer a Course in which students are Enrolled, the Provider and Supplier are required to ensure at least the amount of a Pro Rata Refund is made for the affected Students within five working days from the date of the closure or cessation, unless NZQA permits a longer period.

7. Course Closure Event

- 7.1 Where NZQA gives notice to the Supplier and Provider, of a Course Closure Event of a Provider, the Provider's Mechanism(s) will be triggered, requiring Pro Rata Refunds to be made to Students affected by the Course Closure Event.
- 7.2 Where a Course Closure Event is due to a natural disaster any notice by NZQA under Rule 7.1 will not take effect where:
- (a) the Course resumes before the start of the 11th working day after the date of the notice; and
 - (b) each Student is notified by the Provider within five working days from the date of the notice of the right to opt out of the Course, and where the Student does opt out within 20 working days of the date of the notice, a Pro Rata Refund is made to the Student for the remaining Tuition Fees, calculated from the time the Student ceased attending.

8. Student Fee Protection Mechanism(s) for Providers

- 8.1 Providers must have or put in place prior to the Provider or any person acting on behalf of the provider accepting any Student fees from a Student, and keep in place, a Mechanism which meets the criteria for that Mechanism set out in **Appendix B**, and meets the criteria in **Appendix D**.
- 8.2 For the Refund Period the Mechanism must be a standard trust managed by an Approved Independent Trustee (*under Mechanism 1 in Appendix B*).
- 8.3 After the Refund Period, and where no Refund Period applies, one or more of the Mechanisms must be used.

9. Student Fee Protection Mechanism(s) for Agents

- 9.1 For the purposes of section 234E(2) of the Act, an alternative arrangement that is acceptable to NZQA is for the Agent to transfer the Student Fees to the trust account of the Provider's Supplier by the close of business on the working day following the day it is received by the Agent.
- 9.2 Where an Agent does not avail itself of the acceptable alternative arrangement in Rule 9.1, the Agent must use a standard trust (*under Mechanism 1 in Appendix B*) which is managed by an Approved Independent Trustee and which meets the following general criteria:
- (a) it must cover every Student who has paid Student Fees to the Agent or any person acting on behalf of the Agent for Enrolment in a Provider;
 - (b) the Agent must deposit the Student Fees into the trust account of its Approved Independent Trustee by close of business on the working day following the day the Student Fees were received by the Agent or any person acting on behalf of the Agent; and
 - (c) it must require the Agent's Approved Independent Trustee to transfer the Student Fees held in relation to a Student to the Provider's Approved Independent Trustee by close of business on the working day following the day the Student Fees were deposited with the Agent's Approved Independent Trustee.

10. Public Notification of approved Student Fee Protection Mechanism

- 10.1 Unless otherwise agreed by NZQA, a Provider, Agent or Supplier may only use the following words to describe the acceptability of its Mechanism:

This arrangement has been accepted by the New Zealand Qualifications Authority as meeting the requirements of the Education Act 1989 and the Student Fee Protection Rules 2013.

11. NZQA approval of Suppliers

- 11.1 Suppliers must be approved in writing by NZQA before operating a Mechanism.
- 11.2 Where the Mechanism being operated is not a standard trust, NZQA must be satisfied the Mechanism provides equivalent protection to a standard trust.
- 11.3 A Supplier approved under Rule 11.1 may not operate or change a Mechanism without NZQA's written approval.
- 11.4 For the purposes of granting approval under Rules 11.1 and 11.3, NZQA must be satisfied that the Supplier will meet, and continue to meet, its obligations in or under the Act, including under these Rules.
- 11.5 NZQA will take into account any previous performance of a Supplier when deciding whether to grant approval under Rules 11.1 and 11.3.

12. Obligations of Suppliers

- 12.1 Suppliers must:
- (a) ensure that they meet all obligations under their Mechanisms, and in or under the Act, including under these Rules;
 - (b) where funds are held on behalf of Students, manage them prudently and in accordance with the law; and
 - (c) provide NZQA with the information described and pursuant to the timeframes in **Appendix A**, and any of that information outside of those timeframes when reasonably requested by NZQA.
- 12.2 Without limiting a Supplier's obligations under the Act to make refunds to Students withdrawing within the Refund Period, where -
- (a) there is a voluntary closure or Course cessation by a Provider; or
 - (b) NZQA gives notice to the Supplier of a Course Closure Event -
- the Supplier must make Pro Rata Refunds to eligible Students.
- 12.3 Where any payments out of a trust account leave a risk of a shortfall in the amount of a refund to a Student, the Supplier must have appropriate arrangements in place with the Provider or other person to cover that shortfall.

13. Obligations of Providers

- 13.1 Providers are required to provide to a Supplier the information they hold, which is relevant to information that a Supplier must provide to NZQA under **Appendix A**, within five working days of the Supplier's request to the Provider.

13.2 A Provider must supply to NZQA and to its Supplier, before the end of five months following each financial year end of the Provider, and at the Provider's expense:

- (a) an audit opinion from an independent chartered accountant confirming that the provider is Compliant; and
- (b) a further audit opinion from the independent chartered accountant confirming the compliance of the provider's Supplier with these Rules and relevant Mechanisms (*however, if the Supplier is Public Trust, this paragraph (b) does not apply*).

13.3 Providers must request and retain from a Student, who has paid Student Fees to the Provider via an Agent, a copy of the invoice the Student receives from the Agent.

13.4 Where there is -

- (a) a voluntary closure or Course cessation by a Provider; or
- (b) NZQA gives notice of a Course Closure Event under Rule 7.1 -

the Provider must provide the Supplier and NZQA with the information set out in **Appendix A** within five working days, and must ensure Students are paid their refund entitlements.

13.5 Without limiting Rule 11.3, a Provider must not change a Mechanism it has in place unless it seeks NZQA approval by giving at least 20 working days' notice and unless NZQA approves the change.

13.6 Providers must, as a minimum and as part of their Student information obligations under section 234B of the Act, inform Students about:

- (a) the applicable Mechanism(s); and
- (b) when the Mechanism is triggered:
 - (i) the process for the Student's entitlement to any payment for the relevant Refund Period or any Pro Rata Refund;
 - (ii) who the Student should contact;
 - (iii) a list of any documents Students will require; and
 - (iv) instructions to attend any meetings arranged for Students.

13.7 In respect of Providers operating either Mechanism 1 (*standard trust or static trust*) or Mechanism 3 (*bank bond*) in **Appendix B**:

- (a) where the Provider becomes aware that it has drawn down fees of a higher amount than the amount of the tuition actually delivered, the Provider must reimburse to the Supplier, by the close of the next business day, sufficient funds for the trust to cover the Tuition Fees represented by the undelivered tuition;
- (b) where a Course Closure Event, or voluntary closure or Course cessation by a Provider occurs, and the Provider has been paid by the Supplier an amount more than the Provider is entitled to (*based on tuition actually delivered*), the Supplier may withhold further payments due to the Provider to offset that amount of undelivered tuition; and
- (c) where a Student is enrolled in a Conditions Dependent Course, the Provider may only draw down Tuition Fees in relation to the Student upon

confirmation to the Supplier that the tuition for which payment is claimed has been delivered.

13.8 In respect of Providers operating Mechanism 2 (*company or parent body guarantee*) in **Appendix B**, where the Provider becomes aware that the company or parent body might or will be unable to meet its obligations under the guarantee, the Provider must immediately advise NZQA and put in place an alternative Mechanism that is Compliant.

13.9 Providers must:

- (a) ensure that the correct amount of Student Fees is deposited with an Approved Independent Trustee when the Provider or any person acting on behalf of the Provider receives a payment of Student Fees, along with the amount of any deductions made by an Agent prior to the Provider receiving the Fees (*whether that Agent is based overseas or in New Zealand*);
- (b) when aware that the Student has paid Student Fees to an Agent or any person acting on behalf of the Agent but unaware of the actual amount paid, deposit funds that cover the provider's normal advertised price of the Course (*including any expected commission fees if they are not included in that advertised price*), accommodation expenses, travel and health insurance, living expenses, and other financial commitments associated with the Course; and
- (c) advise NZQA where a situation of the kind described in paragraph (b) of this Rule occurs.

13.10 Before a Provider Enrols a student in a Course at the Provider via an Agent, there must be a written contract in place between the Provider and the Agent that properly covers the requirements of these Rules and the Act (*noting that for international Students a contract is required between Providers and Agents under clause 10.3 of the Code of Practice for the Pastoral Care of International Students*).

13.11 Providers must give all reasonable assistance to their Supplier(s) for the purposes of their Supplier(s) meeting their obligations in the Act, these Rules, and any relevant trust deed.

14. Obligations of Agents

14.1 Agents must ensure they have a written contract in place as described in Rule 13.10, before an Agent receives money from a Student for the purpose of Enrolling, or helping the Student to Enrol, in a Course at a Provider.

14.2 Where there is -

- (a) a withdrawal by a Student within the relevant Refund Period or a withdrawal after the Refund Period where the Provider's withdrawal and refund policies allow a refund; or
- (b) a voluntary closure or Course cessation by a Provider; or
- (c) NZQA gives notice to the Supplier of a Course Closure Event -

and the Agent or any person acting on behalf of the Agent holds any Student Fees (*whether through a Supplier or in a trust account or otherwise*), the Agent must ensure Students are paid their full refund entitlements.

14.3 Agents must retain records demonstrating they are Compliant and provide those records to NZQA on request under section 255A of the Act.

14.4 Where an Agent has not availed itself of the alternative arrangements acceptable to NZQA as set out in Rule 9.1 above, the Agent must obtain NZQA approval for any change to their Mechanism and/or Supplier prior to that change occurring.

15. Failure of Provider or Agent to comply with Rules

15.1 Should a Provider or Agent fail to put in place or act under a Mechanism in a manner that complies with these Rules, NZQA may, without prejudice to its rights under the Act or Rule 17.1, direct the Provider or Agent to arrange an alternative or specific alternative Mechanism that is Compliant.

16. Withdrawal of Mechanism by Supplier

16.1 Where a Supplier withdraws its product from the market, or ceases to provide the Mechanism to a Provider or Agent, the Supplier must give at least 20 working days' notice to the Provider or Agent and copy that notice to NZQA.

16.2 Where the Supplier gives notice under Rule 16.1, each Provider or Agent affected must take immediate steps to put in place an alternative Mechanism that is Compliant, and the alternative Mechanism must be in place by the end of the period of notice given by the Supplier.

17. Failure of Supplier to comply with Rules

17.1 If a Supplier of a Provider or Agent does not put in place a Mechanism that is Compliant:

- (a) NZQA may immediately withdraw approval of the Supplier and/or its Mechanism; and
- (b) NZQA may appoint an alternative Supplier and/or require a particular Mechanism.

17.2 Where NZQA has appointed an alternative Supplier and/or required a particular Mechanism under Rule 17.1(b), the Provider or Agent must take immediate steps to move to the appointed alternative Supplier and use the required Mechanism.

18. Transitional matters

18.1 Where issues arise regarding the transition from the Student Fee Protection Policy (*deemed by section 44(1)(a) of the Education Amendment Act to be rules made under section 253 of the Act until 31 December 2012*) to these Rules, NZQA will discuss individual situations with Providers and Suppliers with a view to reaching a workable outcome which takes the interests of students into account.