Te Tāhuhu o te Mātauranga
Ministry of Education

Education Report:	Vocational Education and Training Redesign - Further advice on Industry-led Training Organisations		

To:	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
Date:	22 February 2024	**Priority:**	High
Security Level:	In Confidence	**METIS No:**	1321429
Drafter:	Nyk Huntington	**DDI:**	9(2)(a)
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Seen by the Communications Team:	No	**Round Robin:**	No

Purpose of Report

1.   This report seeks confirmation of your key design decisions for returning to a system of Industry-led Training Organisations (ITOs), and direction on your preferred approach to creating them.

Summary

2.   From our earlier advice [METIS 1321446 and 1320755 refer] and discussions with you, we have identified four core decisions you have made that together form the basis of a new, ITO-based system for Workplace-based Learning (WBL) and standards-setting. We understand these to be:

   a.   Workplace-based learning will be overseen by ITOs.

   b.   Providers will not be able to offer workplace-based learning.

   c.   There will be a distinction between 'arranging' and 'delivering' training.

   d.   ITOs will take over standards-setting from Workforce Development Councils.

3.   These decisions involve potential risks to a well-functioning system. These include a greater likelihood of gaps in industry coverage, financial implications for providers that are not able to offer WBL programmes across economic cycles, lack of choice for learners and employers, and a re-emergence of issues such as definitions of delivery, and conflicts between the roles of standards-setter and training arranger.

4.   We understand that you intend to further engage with stakeholders, including industry, on your redesign programme. We would like to discuss with you how we can support you in this process, and whether it is possible to capture the feedback you receive so that it can inform policy work.

5.   There are two approaches to how ITOs themselves can be created, and we are seeking your preferred option.

    a.   **Ministerial Recognition:** Industry sets up an organisation which you decide to recognise as an ITO. Each ITO will be a private, industry-controlled entity that has been granted specific powers and responsibilities within the system.

    b.   **Ministerial Establishment:** You set up an ITO through an Order in Council (and following consultation with industry). Each ITO will be an independent statutory body with requirements for industry involvement in governance and accountability structures.

6.   A Ministerial Establishment model will allow you (and future ministers) greater control over ITOs and their work, and will likely be faster to implement than a Ministerial Recognition model. A Ministerial Recognition model provides industry with significant power to determine the ITO model that works for them but is likely to result in a longer and more complex transition period and gaps in provision. The previous industry training system used a Recognition model, while WDCs were set up through a process similar to Ministerial Establishment.

7.   On balance, we recommend pursuing a Ministerial Establishment model, given that it should enable a shorter and more straightforward transition to the new WBL and standards-setting system. If you decide to proceed with a Ministerial Recognition model, with the disestablishment of Te Pūkenga and WDCs, an interim body will need to be established by an Order in Council to manage standards-setting and management of apprentices and trainees until industry-specific ITOs can be set up and recognised.

Recommended Actions

The Ministry of Education recommends you:

a.   **Confirm** the key design decisions for re-establishing ITOs as described in this paper:

    i.   Workplace-based learning will be overseen by ITOs

                                    Yes / No

9(2)(g)(i)

    iii.   There will be a distinction between 'arranging' and 'delivering' training

                                      Yes / No

    iv.   ITOs will take over standards-setting from WDCs

                                      Yes / No

b.   **Indicate** your preferred approach to creating ITOs:

    i.   Ministerial Recognition   **Yes / No**

        <u>OR</u>

    ii.   Ministerial Establishment (*Recommended*)   **Yes / No**

Proactive Release:

c.   **agree** that the Ministry of Education proactively release this paper only after full Cabinet consideration of the issues, and as part of a communications strategy associated with Government announcements on the proposed VET changes.

Agree / Disagree

Vic Johns
Policy Director
Tertiary and Evidence

22/02/2024

Hon Penny Simmonds
Minister for Tertiary Education and Skills
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Background

1. Work is progressing on the disestablishment of Te Pūkenga and Workforce Development Councils, and the establishment of Institutes of Technology and Polytechnics (ITPs) and Industry Training type Organisations (ITOs).

2. Changes to funding are progressing through the Budget, and through a redesign of the Unified Funding System (through a Cabinet paper in March). As the next step in this work, you will receive a draft Cabinet paper for your review on 29 February. We are currently working through how to expand this paper to include more information about the vocational education system, your underlying objectives for the reforms, and the process for change.

3. Change on the ground is being overseen by the Tertiary Education Commission (TEC), who are working with Te Pūkenga, and will begin similar work with Workforce Development Councils once the process for reform is agreed.

4. You will receive an initial paper on 29 February which will outline the operational steps needed to disestablish Te Pūkenga and WDCs and move to the new system. This paper will include some views on possible ITP groupings and the future of work-based learning. We also intend to provide you regular updates from Te Pūkenga and the special advisors as required.

5. The third area is legislative change. In anticipation of the approval of your legislative bid, we are preparing for Cabinet decisions in April. You will be receiving papers as set out in the table below. This will allow us to provide you a first draft of the Cabinet paper in the week of 11 March.

Table 1: Current and Future VET Redesign Papers

Date	ITP	ITO-type body
22 February	A 'check through' of the ITP clauses to use from previous or current legislation	Core design parameters for ITO-type organisations (This paper)
29 February	Remaining design matters for ITPs (e.g., shared services)	A 'check through' of the ITO clauses to use from previous or current legislation
Early March	Transition provisions in legislation	Transition provisions in legislation

6. In this paper, we are confirming key elements of your vision for Workplace-based Learning (WBL) and standards-setting. These will enable us to progress design work, including legislation, that appropriately reflects your desired new vocational education and training (VET) system.

7. We have previously provided you with advice on the future of standards-setting [METIS 1320755] and WBL [METIS 1321446]. In your responses and discussions with us, you have indicated your preference for an industry-led model similar to the pre-reform industry training system, to govern these two elements.

8. Legislation setting up the new VET system is intended to be in place by 1 January 2025. We will therefore be using prior legislation – mainly the Industry Training and Apprenticeships Act 1992 (the ITA Act) – as the basis for amendments to the Education and Training Act 2020. Future advice will discuss our proposed approach to this.

9. In keeping with your intentions, this paper uses the term Industry-led Training Organisation (ITO) to refer to new WBL and standards-setting entities. This is a placeholder term, and in future advice we may suggest using a different name.

Returning to an Industry-led System

10. From our earlier advice and discussions with you, we have identified four core decisions you have made that together form the basis of a new, ITO-based, WBL and standards-setting system. Table 2 below shows each decision, and our understanding of what that will mean in practice.

Table 2: Key Design Decisions for ITOs

Your Decision	We understand this to mean…
Workplace-based learning will be overseen by ITOs	• A new type of tertiary education organisation will exist that draws on the previous ITO model. • These entities will have coverage for a specific industry or group of industries. • These entities will receive Te Pūkenga's current WBL activity, as offered through the WBL-TP business unit. • ITO powers and responsibilities will be confined to non-degree vocational education on the NZ Qualifications and Credentials Framework. 9(2)(g)(i)
Providers will not be able to offer workplace-based learning	• Only ITOs will be able to offer workplace-based apprenticeship and traineeship programmes. 9(2)(g)(i) • Providers will be able to offer primarily campus-based programmes that partly use the workplace as a learning environment (e.g., placements, practicums).
There will be a distinction between 'arranging' and 'delivering' training.	• Workplace-based training will be arranged by ITOs, and delivered by the trainee's employer. • Where the employer is unable to deliver the training, or specialist delivery is required (e.g., literacy and numeracy), ITOs must contract providers to deliver it. 9(2)(g)(i) • ITOs will not be able to own or have an interest in providers. • ITOs will still be able and expected to provide support to their apprentices and trainees.
ITOs will take over standards-setting from WDCs	• ITOs will develop and maintain skills standards, credentials, and qualifications related to their industry coverage area. • ITO skill standards, credentials, and qualifications will be used by all VET providers. • Providers will be able to develop (or jointly develop) their own programmes leading to ITO-developed credentials, and qualifications 9(2)(g)(i) • ITOs will contribute to the quality assurance of the standards, credentials, and qualifications ITOs develop. 9(2)(g)(i)

11. Future advice will address legislation to implement your decisions, and the process for transitioning to a new ITO-based system. Our primary focus is on delivering key 9(2)(g)(i) legislative changes by 1 January 2025, but, where time permits, we will explore improvements to address known issues with the previous ITO system. 9(2)(g)(i) 9(2)(g)(i)

12. In some areas, issues may remain that there is not sufficient time to address in legislation. For these matters, we will focus on using other levers such as funding, monitoring and quality assurance rules as our main method for improving on the previous system. 9(2)(g)(i)

13. We understand that following Cabinet Committee discussion, you intend to further engage with stakeholders on your redesign of VET. A full consultation process that would meet relevant legal standards and definitions is not possible in the timeframe necessary for legislation to proceed; we have identified this as a risk later in this paper.

However, targeted engagement with key groups, especially industry, will support successful implementation of your vision for WBL and standards-setting. We would like to discuss with you possible key targets, audiences, and messages for this engagement.

'Arranging' versus 'Delivering' Training

9(2)(g)(i) The split between arranging and delivering training was historically a source of confusion, tension, and debate around the industry training system. Given the timeframe for legislation, we propose continuing with the high-level approach to this from the previous Industry Training and Apprenticeships Act 1992 (ss 11B, 11E). This will be a key area for further work on funding and operational settings. We will also consider the merits of including expectations around ITO engagement with other parts of the VET system in legislation.

15. In keeping with this approach, we do propose to re-introduce the previous legislative ban on ITOs owning or having an interest in a Private Training Establishment (PTE).

ITO monopoly on apprenticeships and traineeships

9(2)(g)(i) As discussed in our earlier advice [METIS 1321446], returning to a state in which only ITOs may offer WBL programmes is a key source of risk, reducing options for learners and employers. It will have significant financial implications for the new ITPs and for Wānanga and PTEs who offer WBL programmes or have been intending to do so. Eleven PTEs currently offer WBL programmes which, according to interim data, accounted for approximately 20% of 'industry training' (apprenticeships and 9(2)(g)(i) traineeships) learner volume in 2023.[1] Historical 9(2)(g)(i) 'managed' apprenticeships that competed with ITOs

9(2)(g)(i)

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9(2)(g)(i)

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[1] Some of these (e.g. MAST Academy and Skills Active Te Mahi Ako) are specifically established to receive former ITO programmes and learners, and several were subsidiaries of the overarching Skills Group. Te Pūkenga transferred some WBL to PTEs in 2023, leading to an increase in PTE WBL volumes from 3,189 EFTS in 2022 to 10,261 (interim figures) in 2023.

20. Prior to the 2020 reforms, the restraint on providers offering WBL programmes was enabled through funding and quality assurance levers rather than through legislation. We propose to return to this approach. This not only avoids the need to create new legislation and allows for greater flexibility that may be needed during the redesign's transition phase but will also enable further work and sector engagement on operational settings. 9(2)(g)(i)

21. Current PTE delivery of WBL programmes will need to be transitioned to ITOs over time. We intend that current WBL providers will have the opportunity to redesign their programmes to be provider-based with workplace components, although this redesign may be difficult in practice. Depending on your preferred creation model (see below), some providers could also form the core of a new ITO. 9(2)(g)(i)

22. You have indicated that you want to allow employers some flexibility if an ITO is not meeting their needs. Relevant provisions existed in the ITA Act, although they were very infrequently used. We will discuss this further in our advice on legislation.

Standards-setting

23. Connecting standards-setting to arranging WBL in a single entity allows for strong feedback loops between these two systems. However, it can also lead to these functions competing for resources and priority, especially if there is a cost-to-revenue imbalance between the two. For example, in our view some previous ITOs did not invest sufficiently in standards-setting and instead concentrated primarily on generating income through WBL. 9(2)(g)(i)

24. As the standards-setter will be competing in a market for students with other providers, there is a significant risk of anti-competitive behaviour. This is exacerbated by the monopoly ITOs hold over WBL. For example, there is an incentive for ITOs to create qualifications with elements that providers will inherently find it difficult to teach. It may be difficult to distinguish cases where such requirements are justified from those that are intended to advantage ITOs. 9(2)(g)(i)

25. Powers to moderate and manage consent to assess for non-ITOs are appropriate for a standards-setter given the quality assurance role. However, these powers need to be carefully calibrated to avoid misuse. We intend to work with NZQA on relevant Rules to govern this process appropriately.

26. The ITA Act contained very little description of what was expected from ITOs with respect to standards-setting. We will explore whether this can be strengthened in legislation.

27. An ITO-based approach to standards-setting may result in some industry areas not having a standards-setting body. These coverage gaps would need to be overseen by NZQA, leading to the Authority taking responsibility for directly managing a larger range of standards, credentials, and qualifications. This would have implications for NZQA's required staffing and resources. It is likely that emerging industries would fall 9(2)(g)(i) into this category (e.g., the Gaming or Cyber-security industries). 9(2)(g)(i)

Creation and Industry Leadership

28. In addition to the matters set out above, the remaining key issue is how the new ITOs will be established. The Minister for Tertiary Education and Skills should have final control over whether an ITO exists. This is critical as ITOs will have an effective monopoly over WBL and system-level powers through their standards-setting functions. 9(2)(g)(i)

9(2)(g)(i)

29. There are two broad options for creating ITOs: **Ministerial Recognition** or **Ministerial Establishment**. The first of these was the process used for ITOs prior to RoVE. The second is more similar to the process used to create WDCs.

30. Under the previous Recognition regime, industries would establish an organisation and the Minister would recognise that as being an ITO. This process broadly followed these steps:

   a. An industry group would propose establishing an ITO, garner industry support, and establish a body corporate (often a Charitable Trust) that applied to be recognised as an ITO.

   b. The Minister would assess that organisation's application according to criteria set out in the ITA Act (including coverage, capability, and industry support).

   c. If approved, that organisation's status as an ITO (including coverage) would be published in the Gazette.

   d. Each ITO had to re-apply to the Minister for recognition at least every five years, and conditions could be placed on their future operation.

31. A Ministerial Establishment model would draw on our experience in setting up WDCs. In this model, officials would work with industry to provide advice to the Minister on the form of the new ITO, to be established via an Order in Council (OiC). Each ITO would be a statutory entity, with purposes, obligations, and similar requirements directly established by that OiC.

32. Pursuing a Ministerial Recognition model will likely result in a longer transition period. Under this model, the pace of transition will be affected by each industry's pace of engagement, and also any complexities where WBL is currently offered by PTEs. Some form of interim entity could be created (using the Ministerial Establishment model) to hold WBL and standards-setting functions until ITOs could be created and recognised. If you decided to proceed with a recognition model, we will provide you with advice on this as part of our advice on transitions.

33. Table 3 below compares broad features of the two models.

Table 3: Comparison of Recognition and Establishment Models

	Ministerial Recognition	Ministerial Establishment
Process	• Organisations apply to the Minister for recognition as an ITO.	• The Minister establishes ITOs through Orders in Council.
Organisation Type	• Private, industry-owned body (e.g., Charitable Trust).	• Independent Statutory Body.
Industry involvement	• Industry determines when they wish an ITO to exist. • Industry determines business and governance model. • Industry is responsible for the ongoing operation of an ITO.	• Industry consulted on/ may propose creation of an ITO. • Industry involved in an ITO through governance and any other requirements set out in OiC. 9(2)(g)(i)
Key Central Levers	• The Minister controls if/ when an ITO comes into existence. • Recognition criteria and operational policies set government expectations and requirements an ITO must meet.	• The Minister determi... 9(2) wish an ITO to exist. 9(2)(g)(i) • The Minister controls if/when an ITO comes into existence. • The Minister sets governance and key operation elements via OiC.

Number and coverage	• Industries determine, subject to Ministerial agreement and negotiation via recognition process.	• The Minister determines, following engagement with industry.
Legislative Implications	• Allows re-use of recognition sections in the 1992 Act, with refinements and improvements.	• Relevant WDC establishment in current 9(2)(g)(i) Act can be re-used, with adaptions and improvements. 9(2)(g)(i)
Transition Implications	• Industry initiates the recognition process, and setting up ITOs will require negotiation. • Transition timelines will likely be different for each ITO. • A longer transition with an interim arrangement will be necessary. • Public assets (from WBL-TP and WDCs) will be transferred to private entities. • Some PTEs may be able to transition into a recognised ITO.	• The Minister fully controls ITO transitions, including re-allocation of WBL-TP and WDC assets. • ITOs can be set up on a timetable determined by the Minister. • Public assets (from WBL-TP and WDCs) will be retained in public ownership. • PTEs will not be able to transition into an ITO, but may transfer assets, staff, and learners.
Primary Strengths	• Allows for very strong industry leadership of WBL and standards-setting. • Encourages very strong industry buy-in and relationships. • Industry has greater responsibility for an ITO's financial status and viability.	• Allows for very strong ministerial control over establishment process. • Strong potential for Government to shape ongoing activity. • Permits a faster, simpler transition. • Key system function and powers (standards-setting) held by public entity. 9(2)(g)(i)
Primary Weaknesses	• Requires a strong recognition process to avoid undesirable proliferation. • Potential for gaps in WBL caused by low government control over initiation and coverage. • Gaps in standards-setting coverage may require NZQA to exercise this role for some industries, moving the role further away from industry leadership in these cases. • A longer transition process that is heavily reliant on industry support. • Key system function and powers (standards-setting) held by private entities. • Potential for capture by a subset of employers or industry sectors.	• ITOs may be seen as primarily government bodies, rather than industry entities, and as continuing the WDC model. • Potential for industry priorities to have lower priority than government priorities. • Industry cash contribution to the ITO (beyond training fees) may be less justifiable and industry less willing to pay. • Government has greater responsibility for financial status and ongoing viability of an ITO.
Key Success Requirements	• Strong recognition criteria and processes.	• Significant engagement with industry before establishment decisions and during OiC design.

	• Significant negotiation with industry before and during transition phase.	• Strong OiC requirements and operational expectations around industry involvement in the ITO.

34. **Ministerial Recognition** places the onus for establishing, operating, and maintaining an ITO on the industry. Each ITO is essentially a private, industry-controlled entity that has been granted specific powers and responsibilities within the system by the Minister. Government influence on ITO nature and activity is exercised primarily through the recognition process and ongoing operational settings (e.g., investment plans and the quality assurance system). This has sometimes been referred to as an 'industry ownership' form of industry leadership.

35. **Ministerial Establishment** allows for significantly greater government power over ITOs, as a detailed OiC can have a strong influence over how an ITO operates, matters to which it must have regard, and the like. Industry leadership will consist of including requirements for industry involvement in governance and accountability structures. This can be referred to as an 'industry governance' form of industry leadership.

36. A Ministerial Establishment model will be less complex and faster to implement, and allow you (and future ministers) greater control over ITOs and their work. This comes 9(2)(g)(i) at the risk of perceived weaker industry leadership, and creates a greater expectation 9(2)(g that government (rather than industry) will financially support an ITO's operation.

37. A Ministerial Recognition model provides industry with a very high level of power to determine the ITO model that works for them. This encourages industry buy-in, but ministers and agencies conversely have less power to shape how ITOs are created and operate. The recognition process (including negotiation with industry) and operational policy settings become key for ensuring a coherent, high-quality system. This means that fully transitioning to an ITO-based model will take more time than in an Establishment approach.

38. If you prefer Ministerial Recognition we will explore improvements to relevant provisions of the ITA Act to address governance, ensuring quality outcomes, and organisational capability.

39. On balance, we recommend adopting the Ministerial Establishment model. This model will enable you to move to a new system at a faster pace and through a more structured process than a Recognition model. This will provide the sector with more certainty and stability. We consider that the risk of weaker industry leadership and buy-in can be managed through ensuring industry involvement in the development of each OiC, and strong requirements around industry governance and engagement for each ITO.

Risks

40. The discussion above includes specific risks associated with moving to an ITO-based model for WBL and standards-setting.

41. Given the need for rapid development of advice, we have not been able to test likely reactions to options for the future with major stakeholders. We therefore have not been able to advise you on how industry and current WBL providers are likely to react to these proposals. As an ITO-based model will have major implications for business models, and potential expectations on industry 9(2)(h)
We have also not

been able to undertake a Treaty of Waitangi | Te Tiriti o Waitangi analysis of these proposals within the tight timeframe.

42. We understand that you intend to discuss the reforms more widely with industry stakeholders. We would like to discuss with you how we can support you in this process, and whether it is possible to capture the feedback you receive so that it can inform policy work.

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Financial Implications

9(2)(g)(i)

44. We are considering whether the current funding rates for WBL are appropriate for an ITO-based system and will provide further advice on this.

45. Allowing only ITOs to offer WBL programmes will reduce the potential income base for the ITPs that will be created from Te Pūkenga. Potential contracts for delivery of off-job components of training from ITPs will not substitute for this income. This will affect decisions about the number and regional base of these new providers.

46. Adopting a Ministerial Recognition model will likely require the creation of an interim entity to hold functions until ITOs can be set up. This would be factored into our further advice on funding and transitions.

47. Any changes that require NZQA to take on additional standards-setting functions will require sufficient funding for the Authority. 9(2)(g)(i)

Next Steps

48. Once you have confirmed your decisions and decided on your preferred creation model, we will prepare advice for you on legislative design and transition arrangements for moving to an ITO-based system.