

## Education Report: Vocational Education and Training – Use of existing provisions for ITPs

<b>To:</b>	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
<b>Date:</b>	22 February 2024	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1323047
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<b>Seen by the Communications Team:</b>	No	<b>Round Robin:</b>	No

### Purpose of Report

1. This report seeks your agreement to straightforward administrative provisions used in current legislation for tertiary education institutions (TEIs) that can be easily applied to re-established ITPs, and which are largely technical in nature. Once agreed, these provisions can be included in a table for Cabinet decisions on policy and drafting instructions to Parliamentary Counsel Office (PCO).

### Summary

2. The decisions in this paper will support cabinet policy decisions and PCO drafting instructions about legislation settings for ITPs. The decisions focus on the current TEI administrative provisions that can be applied to ITPs, in line with your direction to use the former ITP settings as much as possible unless there is a good reason to put forward other options.
3. This approach is based on decisions you have already made, that the broad system, regulatory and funding settings that apply to TEIs will apply to ITPs (as they did prior to 2020), including the NZQA quality assurance provisions for ITPs and the TEC Investment Plan provisions.

### Recommended Actions

The Ministry of Education recommends you:

- a. **note** that Annex 1 of this paper proposes a large number of existing administrative provisions for TEIs, which are of a minor or technical nature, be applied to ITPs

**Noted**

- b. **note** that you will receive further advice on more complex matters related to the legislative settings for ITPs (and Annex 1 notes some of these)

**Noted**

- c. **indicate** your decisions in relation to the recommendations in Annex 1 in the far right hand side column of the table

**Indicated**

- d. **agree** that we will add the proposals that you indicate agreement with into a table for Cabinet decisions on policy and drafting instructions to Parliamentary Counsel Office (PCO)

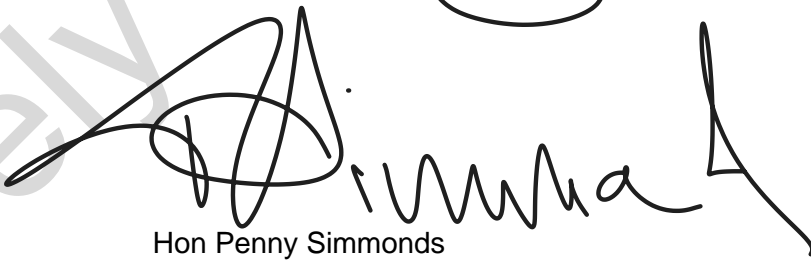
**Agree / Disagree**

Proactive Release:

- e. **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

25/2/24

## Background

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1. Three streams of work are progressing the disestablishment of Te Pūkenga and Workforce Development Councils, and 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, about 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. 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.
4. 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.

Date	ITP	ITO-type body
22 February	This paper: A 'check through' of the ITP clauses to use from previous or current legislation	Core design parameters for ITO-type organisations
29 February	Remaining legislation 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

## You have made decisions about the direction of legislation for setting up ITPs

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5. On 13 February you received advice on a legislation process for ITPs [METIS 1321512 refers]. Among other decisions in that paper, you agreed in principle that ITPs will be:
  - a. Tertiary Education Institutions (TEIs) that are Crown Entities on the same general basis as universities;
  - b. subject to standard TEC and NZQA processes, as are other TEIs (with NZQA retaining responsibility for quality assurance unless this is delegated to the sector in the future); and
  - c. have academic freedom and institutional autonomy settings mirroring those of universities, subject to decisions about programme endorsement and shared services.
6. Accordingly, the broad system, regulatory and funding settings that apply to TEIs will apply to ITPs (as they did prior to 2020), including the NZQA quality assurance

provisions for ITPs and the TEC Investment Plan provisions. We do not seek further clarification of these in this paper.

7. Overall, we have applied your general aim of using the former ITP settings as much as possible, unless there is a good reason to put forward other options.
8. We have also worked on the expectation that the Te Pūkenga clauses will be repealed and that the provisions that apply to TEIs generally will apply to ITPs (as they did prior to 2020).
9. There is a group of administrative provisions for TEIs that cover establishment, governance, and administration of TEIs. The table in Annex 1 seeks your decisions on applying these settings to ITPs. Your decisions here will enable us to provide more precise drafting instructions to Parliamentary Counsel Office (PCO) following Cabinet decisions, and support the truncated drafting process.
10. We have also identified some Te Pūkenga administrative settings that may be useful for ITPs, and seek your decisions on retaining these.

This paper identifies straightforward provisions that can be easily transferred into the new settings for ITPs

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11. The table in **Annex 1** seeks your approval to 'tick through' straightforward administrative provisions that are in current or previous legislation and that align with your feedback so far regarding re-establishing ITPs. Your decisions will be included in a table in the Cabinet paper, to support drafting-instructions to PCO.
12. Most of the provisions in **Annex 1** are technical in nature. Our recommendations for the most part are about which legislative provision should apply where there are similarities between the provisions in the Education Act 1989 that applied previously to ITPs, the provisions that apply to all TEIs in the current Education and Training Act 2020, and in some cases the Crown Entities Act 2004.
13. Where the 1989 and 2020 Acts have similar provisions we have recommended the 2020 Act, as it reflects current legislation for Crown Entities and TEIs and current drafting conventions.
14. The table in **Annex 1** also identifies a small number of more complex legislation design matters. We will provide separate advice on these in the coming weeks.

## Next Steps

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15. We intend to provide you with a first draft of the Cabinet paper in the week of 11 March for agreement to policy decisions that will achieve your objectives for the VET sector, and to provide for drafting instructions to PCO. This draft will be informed by your decisions in this paper, and the papers following it.

## Annexes

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The following are annexed to this paper:

Annex 1: Proposed use of existing provisions for ITPs

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Colour key
We consider this to be a straightforward provision to apply to ITPs.
We will provide further advice on all or part of this provision, OR, we are proposing to use a Te Pūkenga setting.

Note: The provisions are presented in the order they appear in the Education and Training Act 2020

Section	No change recommended – these settings apply to all TEIs, and therefore will apply to ITPs once established  (note that in some cases disapplication to Te Pūkenga will be removed)	Change recommended – to retain some current settings for Te Pūkenga, or to remove provisions	Our recommendation	Please indicate your agreement/disagreement in this column:  For example • Agree • Disagree • Other
<i>Education and Training Act 2020 Part 4 Subpart 3 – Administration of institutions</i>  267 – Academic Freedom  This reflects the intention of Parliament that the academic freedom and the autonomy of TEIs are preserved and enhanced. It defines academic freedom in relation to TEIs.	X		Apply settings for all TEIs to ITPs	✓
268 – Establishment of Institutions  This provides for TEIs to be established by Order in Council on recommendation of the Minister. It sets out the characteristics of each type of TEI, which the Minister must take into account before making a recommendation to establish a TEI.	X		Include ITPs in this section as a type of TEI that may be established.  We will provide further advice on the characteristics of ITPs.	✓
269 – Constitution of institutions  This specifies that an Order in Council must make provision for determining the people who are to constitute the TEI.	X		Apply settings for all TEIs to ITPs.	✓
270 – Disestablishment of institutions  This provides for TEIs to be disestablished by Order in Council on the recommendation of the Minister. It sets out the procedural requirement including what the Minister must consider.	X		Apply settings for all TEIs to ITPs regarding what the Minister must consider before making a recommendation.	✓
271-274 – Institutions to be governed by Councils / Incorporation / Common Seal / Method of Contracting  This group of sections sets out that TEIs are governed by Councils, what they may do as body corporates, that they may adopt a common seal, and how they may enter into contractual obligations.	X		Apply settings for all TEIs to ITPs	✓

275-276 Constitution to provide for membership of council / Membership of council	No recommendation yet – this will be included in further advice		<p>We will provide further advice on governance arrangements.</p> <p>You have indicated a preference to apply settings from the 1989 Act, which limited ITPs to 8,9 or 10 members with 4 Ministerial appointments.</p> <p>We think that there would be value in some further consideration of options for the constitution of ITP councils, whether that is previous settings, current settings for TEIs (up to 12 members) or something else.</p>	9(2)(g)(i)
<p>277-279 – Certain people disqualified from appointment / Matters to be considered when appointing members / Statutes relating to appointment of member by councils of institutions</p> <p>(Except for 278(1) and 278(2), see below)</p> <p>These cover things that would prevent a person being appointed such as mental capacity and bankruptcy, having relevant knowledge skills and experience, and staff and student representation. Statutes relating to appointment provide for the Councils to make their own rules within these settings, such as ex officio appointments.</p>	X		Apply settings for all TEIs to ITPs	
278(1) and 278(2) – Matters to be considered when appointing members: considerations around councils broadly reflecting the communities served by the TEI	No recommendation yet – this will be included in further advice		We will provide further advice on the composition of councils and the skills expected of members.	9(2)(g)(i)
<p>280 – Functions of councils</p> <p>These cover: appointing a chief executive, preparing plans for TEC funding, determining policies for management of the TEI, and long-term strategic direction planning</p>	X		Apply settings for all TEIs to ITPs	✓
<p>281 – Duties of Councils</p> <p>These are duties of the Council in performing its functions and exercising its powers. This is a significant section regarding expectations of TEIs, so we have included the subsections here in full:</p> <p>(a) to strive to ensure that the institution attains the highest standards of excellence in education, training, and research:</p> <p>(b) to acknowledge the principles of Te Tiriti o Waitangi:</p> <p>(c) to encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities, with particular emphasis on groups in those communities that are under-represented among the students of the institution:</p> <p>(d) to ensure that the institution does not discriminate unfairly against any person:</p> <p>(e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:</p> <p>(f) to ensure that proper standards of integrity, conduct, and concern for the public interest and the well-being of students attending the institution are maintained.</p>	X (in part)		<p>We recommend applying 281(1) (a), (d), (e) and (f) to ITPs.</p> <p>We will provide further advice on 281(1) (b) and (c) as these are substantive decisions related to Te Tiriti o Waitangi and obligations to the communities served by a TEI.</p>	<p>✓</p> <p>9(2)(g)(i)</p>

<p>282-284 – Powers of institutions / Powers of councils / Statutes</p> <p>This sets out the powers of institutions, the purposes for which they may be used, and areas in which consent is required <b>before</b> they are used.</p> <p>The consent of the Secretary for Education is required before TEIs exercise their powers to:</p> <ul style="list-style-type: none"> <li>• sell or otherwise dispose of assets or interests in assets;</li> <li>• mortgage or otherwise charge assets or interests in assets;</li> <li>• grant leases of land or buildings or parts of buildings;</li> <li>• borrow, issue debentures, or otherwise raise money</li> </ul>	X		<p>Apply settings for all TEIs to ITPs</p> <p>(Note that the current requirement for the Secretary to approve capital projects for Te Pūkenga is not proposed to be transferred to ITPs)</p>	✓
<p>285-286 – Delegation of council's functions and powers / further provisions relating to delegation</p> <p>These provide for Councils to delegate functions and powers to the chief executive or a committee, and processes for doing this. There is provision for further delegation by the chief executive to staff.</p>	X		<p>Apply settings for all TEIs to ITPs</p>	✓
<p>287-293 – Institutions at risk / Interventions</p>		X	<p>Do <u>not</u> apply settings for all TEIs to ITPs.</p> <p>We recommend that these sections are <b>not</b> applied to ITPs, and instead that the corresponding sections for Te Pūkenga are applied to ITPs (i.e. sections 329-338 and section 406).</p> <p>Interventions for ITPs at risk have been different to those for other TEIs since 2009, with additional interventions available in recognition of different viability issues for ITPs.</p> <p>These interventions were transferred, with minor modifications, to apply to Te Pūkenga.</p> <p>The modifications put in lower thresholds for interventions depending on the risk assessment: 'may be at risk'; 'at risk' and 'at serious risk'. They include an additional information-gathering power for the CE of the TEC to help determine whether Te Pūkenga may be at risk (s406) – this was in response to the Crown not being able to intervene early with ITPs until they had begun to fail, due to lack of information that might have indicated that risks were crystallising.</p>	9(2)(g)(i)
<p>294-296 – Chief Executives of Institutions</p> <p>Sets out duties of chief executives to manage the academic and administrative affairs of a TEI, the titles that they can hold, and provision to delegate their functions and powers.</p>	X		<p>Apply settings for all TEIs to ITPs</p>	✓
<p>297-308 – Financial matters and application of the Crown Entities Act 2004</p>	X		<p>Apply settings for all TEIs to ITPs</p>	✓

These are administrative provisions, such as the use of bank accounts, keeping proper accounts, using income and capital, use of gifted money or property, use of common funds for investment purposes, investment of funds, income and capital, and application of money.  Section 305 establishes that TEIs are Crown entities and sets out parts of the Crown Entities Act 2004 and Public Finance Act 189 that apply to them. Sections 306-308 cover requirements for annual reporting				✓
309-10 – Miscellaneous provisions  Section 309 covers requirements for TEIs to keep records showing each student's progress in their programme of study, and allowance, grants or other payments received by each student.  Section 310 covers the provision to the Secretary of statistical information held by the TEI in relation to students generally or a particular class of students.	X		Apply settings for all TEIs to ITPs	✓
Schedule 11 Councils (except for clause 15, see below)  This covers the machinery provisions for Council operation including constitutions, limit on repeated appointments, term of office, individual duties of members, removal of members, chairperson and deputy chairperson, meetings, fees and allowances, personal liability and trust property.	X		Apply settings for all TEIs to ITPs	✓
Schedule 11 clause 15 Chairperson and Deputy Chairperson  This sets out how the Council elects its own chairperson and deputy chairperson. This is same as in pre-2020 settings for ITPs, and the current settings for TEIs.	X		Apply settings for all TEIs to ITPs  (Note that under these settings the Minister would not have the power to appoint the Chair and Deputy Chair, which was a provision for Te Pūkenga)	9(2)(g)(i)
Crown Entities Act 2004, schedule 4 part 1	X		Apply settings for all TEIs to ITPs	
Crown Entities Act 2004, schedule 4 part 2		X	Disapply schedule 4 part 2, as this is not needed. Its function is to backfill settings for TEIs that had been disappplied to Te Pūkenga.	✓