



# Report: Treaty of Waitangi / Tiriti o Waitangi considerations for VET redesign

To:	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
Date:	16/10/2024	Deadline:	29/10/2024
Security Level:	In-Confidence	Priority:	Medium
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## Why are we sending this to you?

- You are receiving this report as part of the decision-making process for policy decisions on the Vocational Education and Training (VET) system redesign.
- This report provides you with the necessary information to understand, consider, and weigh all the relevant issues, interests, and risks involved in the VET system redesign from a Treaty of Waitangi / Tiriti o Waitangi (Tiriti) perspective.

## What action do we need, by when?

- We are seeking your feedback on the matters set out in this report at the next officials meeting.
- Decisions are needed by 29 October to be included in the Cabinet paper for consultation.

## Key facts, issues and questions

- During consultation, we consistently heard from iwi and Māori groups that the involvement of Māori in governance and decision-making is critical for achieving equitable outcomes for Māori learners. Māori learners make up a significant and growing proportion of learners in VET, but a lower percentage of those studying higher levels of work-based and provider-based VET than other groups.
- There is a moderate risk that, in the absence of structural representation requirements in legislation, some Institutes of Technology and Polytechnics (ITPs) and Industry Skills Boards (ISBs) are not sufficiently incentivised or guided to meaningfully and consistently engage with Māori. There is also a risk that reducing the Learner Component will not provide sufficient incentives or resources to improve outcomes for Māori learners in the VET system.
- There are several ways to mitigate these risks, including Tiriti-related provisions in the legislation and Ministerial levers. Subject to your agreement, we will provide you with further advice on these mitigations.

## Alignment with Government priorities

1. This report is a part of VET system redesign, which is one of your key priorities.

## Background

2. This report provides you with the necessary information to understand, consider, and weigh all the relevant issues, interests, and risks involved in the VET system redesign from a Tiriti perspective. This supports you to make final decisions based on consideration of relevant material, as per Crown Law guidance on government decision-making and the principles of Te Tiriti.<sup>1</sup>

### *Māori interests in the VET system*

3. There are a variety of Māori rights and interests in the education system generally, including in the VET system. Those with interests in the VET system include Māori learners (and their whānau), Māori staff and leadership, Kaupapa Māori providers (e.g. Wānanga, some Private Training Establishments (PTEs)), Māori employers, and whānau, hapū, and iwi.
4. Māori-owned businesses play a significant role in New Zealand's economy and are particularly important for regional New Zealand, and in the primary and export sectors.<sup>2</sup> In the 2023 financial year, total assets of Māori authorities were \$29.6 billion, up 4.2% from the previous year.<sup>3</sup>
5. In VET, Māori make up a significant and growing proportion of learners (58,480 enrolments or 23% in 2023).<sup>4</sup> Of these learners, approximately 43% are in work-based learning (25,335 tangata Māori), 24% are in provider-based learning through Te Pūkenga (14,165 tangata Māori), and the remainder are in provider-based programmes at PTEs, Wānanga, and some universities (20,095 tangata Māori).<sup>5</sup>
6. Māori learners have been part of a positive trend across all learner groups of increasing participation at higher levels of work-based VET (level 4 and above) and decreasing participation at lower levels (level 3 and below). However, the percentage of Māori learners studying at higher levels of both work-based and provider-based VET is still lower than the percentages for European learners and all learners. Māori are also over-represented in jobs that are likely to be impacted due to technological change and transitions to a low-carbon economy.<sup>6</sup>
7. Tertiary education and training plays a key role in economic and social development and wellbeing within Māori whānau, hapū, iwi and businesses. In particular, the VET system can provide an important pathway to long-term employment and career opportunities for Māori

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<sup>1</sup> Crown Law, 2017, 'Government decision-making and Treaty of Waitangi principles', SOL115/2675.

<sup>2</sup> Te Puni Kōkiri, 2024, 'Understanding the exposure of climate hazards on Māori-owned businesses'.

<sup>3</sup> [Tatauranga umanga Māori – Statistics on Māori businesses: 2023 | Stats NZ](#).

<sup>4</sup> [Education Awa: Education outcomes for Māori](#), August 2019, p.1; [Statistics: Vocational Education and Training](#), updated July 2024.

<sup>5</sup> Learners can enrol in more than one sector, so the numbers per sector add up to more than the total.

<sup>6</sup> Future of Work Tripartite Forum Background Paper: Future of Work Māori Forum, 8 November 2021. [Māori and the Future of Work Tripartite Forum background material - 8 November 2021 \(mbie.govt.nz\)](#).

through skills development.<sup>7</sup> This is particularly relevant as the Māori population is growing and will make up a larger share of the working age population in the future.<sup>8</sup>

### ***Our understanding of the Crown's Tiriti responsibilities in the VET system***

8. Though the Waitangi Tribunal's findings are not legally binding, they articulate an expert view on the Crown's obligations under Te Tiriti and provide guidance on the features of good process.
9. Based on the Tribunal's kāwanatanga guidance<sup>9</sup>, we consider that the Crown's Article 1 responsibilities in the VET system includes specific consideration of, and engagement with, Māori interests (such as Māori employers and Māori learners and their whānau, hapū and iwi) and ensuring these interests are protected in the redesigned VET system. For example, working to retain and build on existing relationships between providers and Māori representatives, iwi and hapū, especially where they are working well.
10. The disparities in participation and outcomes for Māori in VET (as compared to non-Māori), and the importance of higher levels of education in longer-term financial and personal wellbeing,<sup>10</sup> mean that Māori interests in the VET system are compelling and the Crown should partner with Māori in the policy decision-making process. Structural representation requirements in the current legislation (sections 320, 325, 326 and 363(3)(b) of the Act) are intended to give effect to these obligations.
11. The Tribunal has interpreted Article 3 as 'the requirement to address disparities' that specifically requires the Crown 'to remove the many longstanding barriers (especially barriers of the Crown's own creation) that prevent Māori from having a genuinely level playing field with non-Māori'.<sup>11</sup> In the context of the VET system, we understand this to involve activities to increase education participation and improve employment outcomes for Māori, in particular increasing the number of Māori learners training in higher levels of study and as apprentices (who generally have better employment outcomes than trainees).
12. Currently, this requirement is met at least in part through the Learner Component of the Unified Funding System, which allocates funding based on the volume of enrolments a provider has which fall into specific learner groups (including Māori) and is targeted towards supporting learners to succeed and achieve qualifications.

### ***Current landscape of Tiriti responsibilities and partnerships***

13. The Act includes explicit Tiriti requirements alongside broader signals about the role of Te Tiriti in the education system as a whole. The key overarching provision is section 4(d), which provides that a purpose of the Act is to establish and regulate an education system that honours Te Tiriti and supports Māori-Crown relationships. This is a broad, high-level provision that applies across the education system.

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<sup>7</sup> Te Maihāroa, K., Kapa, J. and Tarena, E., 2022. Unleashing Potential – Legitimising Māori Talent Through Capable Māori. In *Reshaping Vocational Education and Training in Aotearoa New Zealand* (pp. 97-112). Cham: Springer International Publishing, p.106.

<sup>8</sup> [Te Ōhanga Māori – The Māori Economy 2018 \(rbzn.govt.nz\)](https://www.rbzn.govt.nz/), p.22.

<sup>9</sup> Waitangi Tribunal, 2024, *Kei Ahotea: Te Aho Matua (WAI 1718)*, p.216; Waitangi Tribunal, 2005, *The Report on the Aotearoa Institute Claim Concerning Te Wānanga o Aotearoa (WAI 1298)*, p.35; *Matua Rautia: The Report on the Kōhanga Reo Claim (WAI 2336)*, p.65.

<sup>10</sup> Recent research has shown that learners with higher VET qualification levels tend to earn more, have greater wage progression, rely less on benefits, and have better wellbeing outcomes (New Zealand Policy Research Institute – Te Kāhui Rangahau Mana Taurite, 2024, [Learner Pathways by Workforce Development Council](#) / [Wellbeing Outcomes for Learner Cohorts by Workforce Development Councils](#)).

<sup>11</sup> Waitangi Tribunal, *Matua Rautia*, p.67; Waitangi Tribunal, 2024, *Ngā Mātāpono: The Principles – The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies (WAI 3300)*, pre-publication version, p.78.

14. Section 9 sets out the main provisions of the Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti. In relation to the VET system, it references structural representation requirements (e.g., the establishment and constitution of Māori advisory committees) and expectations of the sector (e.g., one of the functions of Te Pūkenga is to improve outcomes for Māori learners and Māori communities in collaboration with Māori and iwi partners).

## **There is a risk that the proposals do not uphold Te Tiriti**

### ***We heard strong concerns from iwi and Māori organisations during consultation***

15. During consultation, we consistently heard from iwi and Māori groups that the meaningful involvement of Māori in governance and decision-making is critical for:
- 15.1. consistently achieving equitable systems and outcomes for Māori;
  - 15.2. addressing the unique needs of Māori learners; and
  - 15.3. increasing the relevancy and credibility of VET provision for Māori.
16. We also heard that to consistently achieve equitable systems and outcomes for Māori, what is needed is a balance between local flexibility and system-level oversight and accountability mechanisms (including clear reporting to iwi on the achievement of their members).
17. Some iwi submissions supported regional ITPs, seeing the potential for greater regionally connected leadership to lead to delivery that is more responsive to the diverse needs and aspirations of local hapū, iwi, employers and learners. However, we also often heard from Māori that the proposals do not:
- 17.1. acknowledge the multi-faceted interests and needs of Māori learners and other underserved learner groups, or seek to address the inequities experienced by these learners in the VET system (in particular, there was strong opposition to the reprioritisation of funding away from the learner component); or
  - 17.2. include mechanisms for the Crown to uphold its obligations under the Act to establish an education system that honours Te Tiriti and supports Māori-Crown relationships.

### ***There are risks to Māori interests from the proposals***

#### **Risk that Māori are not meaningfully or consistently engaged**

18. The proposed legislative framework for the redesigned VET system would repeal the provisions unique to Te Pūkenga, including the Tiriti-related provisions, and requirements for Māori employer representation in standards-setting bodies. ITPs would be required to develop meaningful relationships with communities, including hapū and iwi.
19. You have decided not to carry through the statutory requirement for Māori employer representation on Workforce Development Councils (WDCs) to ISBs [METIS 1336883 refers]. In discussions with us, you have also indicated that you do not intend for any provisions relating to co-governance (e.g. co-Chair arrangements) in WDC Orders in Council (OICs) to continue through to the OICs of ISBs. Besides this, it is unclear what Tiriti-related provisions in legislation and in the OICs for WDCs<sup>12</sup> would be carried through to ISBs.

<sup>12</sup> Each OIC provides for iwi-Māori influence on WDCs' performance through consultation on the statements of strategic direction. Some establish co-chair arrangements, and some outline relevant skills and knowledge requirements for their council. Each OIC also includes their own equivalent to section 4(d) of the Act in the provision setting out the performance of their council's functions and duties, giving each WDC their own direct commitment to Te Tiriti and Māori-Crown relationships as well as the overarching effect of the primary legislation.



20. From our analysis of the proposals, supported by what we heard from Māori partners in consultation, there is a moderate risk that, in the absence of structural representation requirements in legislation, some ITPs and ISBs are not sufficiently incentivised or guided to meaningfully and consistently engage with Māori. This engagement is critical to improve outcomes for Māori learners and ensure that VET programmes are relevant and aligned to Māori social, cultural and economic development.
21. Current Te Arawhiti guidance notes that legislative provisions may not be the best way to recognise Te Tiriti and/or specific Māori rights and interests, but this can only be determined through a process of 'identify[ing] the outcomes you are seeking to achieve and how the Treaty is engaged with those outcomes, so you can achieve them in the most meaningful way'.<sup>13</sup> Due to the time constraints and a primary focus on structural changes to ITPs driven by financial considerations, such a process has not been undertaken. It is therefore difficult to assess whether the proposed duty for ITPs to develop meaningful relationships at a local level including hapū and iwi is strong enough, or leaves ITPs' responsiveness to the needs and interests of Māori too much to chance (as is the case for ISBs).

### **Risk of inequitable outcomes for Māori learners**

22. The proposed funding framework will increase provider-based funding rates by reducing funding for work-based learning and/or the Learner Component (subject to your feedback on METIS 1336884).
23. From a Tiriti perspective, it will be important that these changes do not undermine the accessibility or quality of work-based learning, noting that Māori learners are more likely to undertake work-based learning than the general population. Work-based learning can provide a learning context for Māori (and Pacific people) that builds on existing relationships and, as we heard from consultation, may be more accessible given the time and cost implications of undertaking provider-based learning.
24. As noted in our recent advice [METIS 136884 refers] a reduction in the Learner Component is likely to have the following impacts:
  - 24.1. a further reduction in the funding allocated to work-based learning;
  - 24.2. redistribution from providers with more underserved learners, including Māori; and
  - 24.3. providers potentially changing the level of support they provide for underserved learners.
25. Given these impacts, there is a risk that reducing funding for work-based learning and/or the Learner Component will not support the needs of Māori learners to be met, or provide adequate incentives or resources to improve outcomes for Māori learners in the VET system.

### ***These risks could have economic, workforce, and Māori-Crown relationship implications***

26. The Māori population is growing and will make up a larger share of the working age population in the future. If there are barriers to participation and completion for Māori learners in VET (for example, if provision is not relevant or meeting their needs), and/or provision that is not aligned with the skills needed by Māori employers, there is a risk of future skills shortages with few qualified applicants per vacancy and longer training pathways.

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<sup>13</sup> Te Arawhiti, [Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design](#), p.3.

27. Greater educational achievement can significantly improve an individuals' employment opportunities, earning potential and job stability<sup>14</sup>, and at a broader level, would likely have substantial benefits for New Zealand's economic growth.<sup>15</sup> Barriers to participation and completion in VET therefore impact the economic and social development and wellbeing of Māori and their whānau, hapū, and iwi, with flow-on effects for the New Zealand economy.
28. As discussed above, we've had strong feedback from iwi and Māori organisations that Māori involvement in governance of ITPs and ISBs is critical for delivering equitable outcomes for Māori learners. There is a risk that repealing the legislative provisions that directly provide the mechanisms by which Tiriti interests are engaged in the VET system could lead to adverse consequences for Māori with an interest in the VET system (including learners and employers) and for the Māori-Crown relationship. This may be considered by the Waitangi Tribunal in the upcoming WAI 3310 Education Services and Outcomes Inquiry (the scope of which has not yet been determined).

## There are several ways to mitigate these risks

29. 9(2)(g)(i)
30. However, it is important to note that in areas where there is no specific consideration of Māori interests, section 4(d) will apply and a decision maker under the Act would be assessed by the courts with reference to section 4(d). It is unclear how section 4(d) will apply, potentially creating uncertainty and inconsistency relating to how ITPs and ISBs give effect to Te Tiriti.
31. Specifying your expectations of ITPs and ISBs in relation to Te Tiriti will help avoid uncertainty and inconsistency. This does not need to be done in the same way as it was for Te Pūkenga and WDCs. For example, instead of specific Tiriti provisions in the duties of councils, the legislative framework could include a high-level statement of how section 4(d) applies to the VET system, which is descriptive enough to set clear expectations while providing ITPs and ISBs with the flexibility to meet these expectations in the way that makes the most sense for their context.
32. If you decide not to include any Tiriti-related provisions, there are some Ministerial levers for mitigating the subsequent Tiriti risks, as outlined in the following table. Some of these levers could also be used to help mitigate in part the risk of inequitable outcomes for Māori learners, by making clear your expectations in relation to underserved learners, including Māori. These levers do not require changes to the legislation and so are not subject to the same time constraints. As such, there is time for us to work with you and Māori partners on how Tiriti interests are engaged with the outcomes you are seeking to achieve through the redesign, and what combination of levers are best suited to achieving these outcomes.

<sup>14</sup> OECD, 2024, [Equity in education and on the labour market](#).

<sup>15</sup> Jason Timmins, 2022, [The benefits of reducing persistent disadvantage](#), New Zealand Productivity Commission Research Note.

Types of Ministerial levers	Relevant lever for mitigating Tiriti risk	Description
Levers for setting strategic direction and effective governance	Engagement with council & chair	Minister can engage with chair or council on priorities and expectations.
	Letter of expectations	Non-statutory mechanism for Ministers to outline their priorities and expectations of a statutory entity. Can be issued at any time and may focus on long-term strategic priorities or more operational focuses for the short-term.
	Tertiary Education Strategy (TES)	Minister can issue (and withdraw, replace or amend) TES setting out long-term strategic direction and current/medium term priorities for tertiary education.
Levers for incentivising performance and accountability	Criteria for assessing proposed investment plans	TEC sets the criteria it will use to assess proposed plans to determine if they are to receive funding approval (section 424).
	Setting monitoring expectations	TEC monitors the performance of organisations receiving funding through them (sections 405 & s409(1)(h)). The Minister may request the TEC to focus on specific areas to monitor or the frequency of that monitoring.
Levers for identifying and responding to risk	Provision of information	TEC can require this if the Tertiary Education Institution (TEI) may be at risk.
	Specialist help	TEC can require this if the TEI may be at risk.

33. You may decide to include Tiriti provision/s in the legislative framework, as well as pursuing one or more of these Ministerial levers.
34. All of the potential options are included in the recommendation section because it is important that you are on record as having made a decision post-consultation with information about Māori interests in the system in front of you, including the summary of submissions.

## Next Steps

35. Subject to your decisions on this paper, we will provide you with further advice and work with Māori partners (including learners, employers, hapū and iwi) to develop a coordinated approach to supporting ITPs and ISBs to meaningfully engage with Māori.
36. Your decisions on this paper will be reflected in our Tiriti analysis of the proposals in the Regulatory Impact Assessment, a draft of which is due to your office alongside the Cabinet paper on 1 November.

## Recommended Actions

The Ministry of Education recommends you:

- a. **note** that there are a variety of Māori rights and interests in the VET system, and consultation with Māori affirmed our analysis that there is a risk that the proposals do not uphold the Treaty of Waitangi / Te Tiriti o Waitangi.

Noted

- a. **note** that submitters have noted the importance to them of embedding partnerships with Māori at all levels of governance, the importance of connection with mana whenua and integration of their perspectives, equitable access and achievement for Māori learners, and the importance of te ao Māori and mātauranga Māori in VET.

Noted

- b. **record** your decisions following consultation on whether you agree to reinstate the following Tiriti-related provisions cross-referenced in section 9 of the Education and Training Act:

- i. ITPs must operate in a way that allows an ITP to develop meaningful partnerships with Māori employers and communities (clause 4(b) of Schedule 13). ☒ Agree ☐ Disagree

- ii. ITPs must operate in a way that allows an ITP to reflect Māori-Crown relationship to: ☒ Agree ☐ Disagree

- a. ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi;
- b. recognise that Māori are key actors in regional social, environmental, and economic development; and
- c. respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū, and iwi (clause 4(d) of Schedule 13).

- iii. One of the characteristics of ITPs is to improve outcomes for Māori learners and Māori communities in collaboration with Māori and iwi partners and interested persons or bodies (section 315(f)). ☒ Agree ☐ Disagree

- iv. ITPs must have a Māori advisory committee, the size and composition of which must be determined in consultation with Māori (sections 325-326) (not recommended). Agree ☒ Disagree

- v. The Minister must ensure governance arrangements for ISBs provide for representation on the council of Māori employers (section 363(3)(b)). Agree ☒ Disagree



- c. **agree in principle** to a provision in the legislative framework that sets out your expectations for how section 4(d) applies to the VET system, which we can discuss and provide you with further advice on.

☒ **Agree** ☐ **Disagree**


- d. **indicate** if you would like further advice on the following options for mitigating Tiriti risks:

- |                                      |   |
|--------------------------------------|---|
| i. Engagement with council and chair | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| ii. Letter of expectations           | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| iii. Tertiary Education Strategy     | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| iv. Setting monitoring expectations  | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| v. Provision of information          | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| vi. Specialist help                  | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |


**Proactive Release:**

- e. **agree** that the Ministry of Education release this paper after Cabinet has taken policy decisions for the disestablishment and replacement of Te Pūkenga, as part of the communications strategy for the announcement of those decisions, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

☒ **Agree** ☐ **Disagree**

  
Katrina Sutich  
**General Manager**  
**Te Pou Kaupapahere**

16/10/2024

  
Hon Penny Simmonds  
**Minister for Tertiary Education and Skills**

17/10/24