



Education Report: Vocational Education and Training: Remaining legislation design matters for ITPs

To:	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
Date:	1 March 2024	Priority:	High
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Purpose of Report

This report provides options for substantive legislative settings for Institutes of Technology and Polytechnics (ITPs) to be included in the proposed Bill to re-establish ITPs. A report advising you about clauses with no policy implications for you to agree was provided on 22 February [METIS 1323047 refers].

Summary

1. A significant amount of the legislative framework that applied to ITPs in the earlier legislation was able to be agreed to by you. However, we have considered the previous and existing legislative provisions and identified several areas that can be improved for the future system. Those are:
 - Characteristics of ITPs, Duties on Councils regarding breadth of mission and Te Tiriti o Waitangi | The Treaty of Waitangi (the Treaty)
 - Council composition
 - Shared services
 - Interventions for ITPs at risk
2. On the characteristics of ITPs one principle of the legislation design is the extent to which the Government wants the new ITPs to behave as a system or network. For example, would it potentially limit competition between ITPs (and between ITPs and ITBs) or does it see competitive behaviour as being a positive force in driving quality and access. This choice will help to shape how to establish the ITPs and what communities they are expected to serve, as well as options around shared services, e.g. the design of which could incentivise particular behaviours.

9(2)(g)(i)



3. A way to support strong regional connections is through the description of ITPs in the Act. Their characteristics and the associated duties on the councils of ITPs from the earlier legislation could be modified to ensure ITPs are accountable to the regions in which they are based (e.g. if an ITP is established to cover the upper South Island and most of its assets are located there). Clarity would be required on what mechanism ensures ITPs and communities have the same understanding about coverage, because the duty in the current legislation is general in nature and the orders in council may not be the best mechanism to determine this. While this could be managed operationally and with goodwill, any understandings may not hold over time.
4. The Education and Training Act (2020) sets out a number of Treaty-related requirements on Te Pūkenga, and the tight timeframes we are working to means that any repeal of these provisions will be done without consultation with Māori. In these circumstances, and to mitigate legal risks, we strongly recommend that the existing provisions be reinstated in relation to the new entities where it makes sense to do so. This will provide ITPs with a clear articulation of what is expected of them in relation to the Treaty, with the flexibility to implement as makes sense to their particular region/communities.
5. On council composition, our analysis shows that the current Tertiary Education Institution (TEI) and earlier ITP provisions for what those appointing Council members need to consider are both fairly weak against the objectives agreed for the new system. Some of the wording in the current Act for the *matters to be considered when appointing* Te Pūkenga council members would better support the councils to have the needed range of perspectives available to them for good quality decision making.
6. In regard to shared services, until the new ITPs have been set up and can consider what would be most useful to them, it is difficult to propose mandatory functions for a shared services entity. We therefore propose that a provision is included in the legislation in the characteristics or duties of councils, that incentivises ITPs to collaborate over shared services. If, however, you decide that a shared services entity should be set up at or near the outset of the new system. Annex 2 provides options for discussion. 9(2)(g)(i)
7. In response to your request, this briefing also provides further advice on our proposal to apply the interventions settings for Te Pūkenga to the new ITPs. We consider that the viability of the new ITPs will be better protected if the interventions settings for Te Pūkenga, including additional information-gathering powers of the TEC, are used for them.

Recommended Actions

The Ministry of Education recommends you:

- a. **discuss** adding language into the characteristics of ITPs (section 268) and duties of councils (section 281) so they are responsible for meeting the needs of the regions and areas in which they are based (or part of the system they cover if configured a different way, including specialist distance providers)

9(2)(g)(i)

Agree / Disagree

9(2)(g)(i)

b. **agree** to incorporate the following language into the characteristics of ITPs and duties on their councils (exact drafting subject to PCO drafting decisions):

i. develop meaningful partnerships with communities at a local level, including hapū and iwi, and Pacific communities

Agree / Disagree

ii. reflect Māori-Crown relationships in order to—

b.ii.1. ensure that its governance, management, and operations give effect to the principles of te Tiriti o Waitangi | the Treaty of Waitangi; and

b.ii.2. recognise that Māori are key actors in regional social, environmental, and economic development; and

b.ii.3. respond to the needs of and improve outcomes for Māori learners, whānau, hānū and iwi, and employers

9(2)(g)(i)

Agree / Disagree

c. **note** that drafting by PCO will incorporate the provisions in a way that manages overlaps in language

d. **agree** to either:

i. include elected staff and student members within the eight members you have decided should constitute an ITP council (practically reducing the members appointed by the council itself to 1-2)

Agree / Disagree

OR

ii. elected staff and student members are additional to the eight members appointed by the Minister or the council (recommended option)

9(2)(g)(i)

Agree / Disagree

e. **agree** to include the following provisions as matters that the Minister or council must consider when appointing members (exact wording subject to PCO drafting instructions):

i. The Minister or council must, as far as possible, ensure that an ITP's council reflects the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of the communities it serves

Agree / Disagree

ii. When appointing members of an ITP's council, the Minister or council must have regard to subsection (1) and must appoint people who (in the Minister's opinion)—

e.ii.1. have relevant knowledge, skills, and experience in relation to governance, 9(2)(g)(i) cultural competency, and the importance of diversity, and

Agree / Disagree

e.ii.2. are likely to be able to fulfil their individual duties to the council, and

Agree / Disagree

e.ii.3. together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions

Agree / Disagree

f. **agree** not to require in legislation a student, staff or Māori advisory committee for each ITP

Agree / Disagree

g. **agree** to give a duty to ITP councils about considering how they should approach operating as a single network or system, phrased in such a way that incentivises them to support a shared-services entity and supports collaboration

Agree / Disagree

h. **agree** that that the legislated interventions and associated risk levels for Te Pūkenga will be applied to ITPs.

Agree / Disagree

i. **agree** that the provision that Te Pūkenga must provide information that is reasonably required by the chief executive of the TEC to determine whether there is risk in certain areas will be retained to apply to ITPs

Agree / Disagree

Proactive Release:

j. **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

Eleonora Sparagna
Senior Policy Manager
Te Pou Kaupapahere
01/03/2024

Hon Penny Simmonds
Minister for Tertiary Education and Skills
13/24

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-boards (working title; ITBs).
2. This paper is part of a suite of advice on legislative design, which will be completed with further advice on transition provisions. These decisions will allow us to provide you a first draft of a legislation Cabinet paper in the week of 11 March.
3. You received advice on 22 February about which settings could be used from existing (or recently past) legislation for new ITPs without any policy implications being raised [METIS 1323047 refers]. That paper identified three areas where more advice was required. Subsequently you asked for further advice about Crown interventions. This paper provides that advice; the areas are:
 - Characteristics of ITPs, Duties on Councils regarding breadth of mission and te Tiriti o Waitangi | the Treaty of Waitangi (Treaty)
 - Council composition
 - Shared services
 - Interventions for institutions at risk.
4. You agreed to the following objectives for the VET reforms:
 - i. return decision-making to the regions and industries, to respond to local communities, conditions, and workplaces
 - ii. support learner success and equitable access to all forms of VET
 - iii. ensure the system structure and settings deliver coherence, efficiency, and value for money for now and into the future.
5. We have assessed options in this paper against these objectives. Your decisions on this paper will inform the legislation Cabinet paper and advice on how the new system operates.

Characteristics of ITPs, Duties on councils regarding breadth of mission and te Tiriti o Waitangi | the Treaty of Waitangi

Characteristics of ITPs and duty on Councils with respect to broad based institutions

6. The Education and Training Act (2020) (section 268) provides for the Minister to recommend the establishment of a Tertiary Education Institution (TEI). To do so, the Minister must consider the characteristics of the institution type – i.e., universities, Wānanga and, upon the legislation passing, ITPs. The current provision would need to add in a description of the characteristics of an ITP and a power for the Minister to recommend the establishment of ITPs.
7. The Education Act 1989, as at 2019, characterised ITPs (Polytechnics in the legislation) as:



a polytechnic is characterised by a wide diversity of continuing education, including vocational training, that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning, and

by research, particularly applied and technological research, that aids development.

8. This overall description works alongside the duties of councils set out in section 281 of the Act, including:

- ✓ • to acknowledge the principles of te Tiriti o Waitangi | the Treaty of Waitangi
- ✓ • 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.
- ✓ • 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.

These characteristics and duties are silent on how TEIs operate as a network

9. ITP councils, in part because ITPs (some in previous corporate forms) pre-dated the Education Act 1989, largely understood what communities the legislation referred to for them and their accountability to those communities.

10. Some of this historic memory will be retained in the new ITPs (and they will have assets based in physical locations that establish facts on the ground about what their coverage areas are). However, this may not be sufficient as ITPs become reestablished in different regional configurations. The current legislation does not provide guidance about how communities are served by an individual ITP, or the rights to access service that communities should have – and how to manage areas of overlap between different ITPs.

✓ 11. The TEC investment plan process can provide information about how the ITPs are managing gaps and overlaps in the geographic and other delivery boundaries between them.

You have the option of adding language to the duties that encourage a regional or area focus

12. You have the option of amending the clauses that will apply to ITPs to ensure they have responsibility for meeting the needs of communities in the regions and areas in which they are based (or part of the system they cover if they have a non-geographic focus). This could also connect back to a description in their foundational documentation and would give some clarity that they owe duties to the local area (or part of the system they serve).

This would ensure that ITPs' public purpose is rooted in and meet the needs of the regions in which they were established, without locking them to those (for example they would still be able to offer international education, collaborate with other ITPs to give effect to their responsibilities, or even compete with other ITPs, depending on your view about how they operate within the national network). In this way government could be clear that it expected the duty to apply in areas where economies of scale have historically been difficult to achieve.

14. The alternative option is to remain silent about how communities come to be served by ITPs and allow this, and out of region provision, to evolve through discussion between providers and communities and by the TEC. Under this option it would be acceptable that all ITPs set up Queen Street campuses to compete for international

students. We seek your views about how to approach this and will draft the Cabinet paper accordingly.

- ✓ 15. If the legislation gives ITPs duties to work together in a way that would encourage shared services (see section from paragraph 39), this could balance duties to the region or part of the system with duties to the system as a whole, such as collaboration.

Duties relating to te Tiriti o Waitangi | the Treaty of Waitangi

16. The duty to acknowledge the principles of Te Tiriti o Waitangi | the Treaty of Waitangi (the Treaty) in section 281 applies to all TEIs. ~~Te Pūkenga has additional Treaty-related requirements set out in the Act. These were developed during the creation of Te Pūkenga, and informed by consultation with Māori.~~

17. Relevant language from the functions and charter includes:

- ✓ [Charter clause 4(b)(ii)] develop meaningful partnerships with communities at a local level, including hapū and iwi, and Pacific communities

~~[Charter clause 4(d)] reflect Māori-Crown partnerships in order to—~~

- ~~a. ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi; and~~
- ~~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, and employers.~~

The provisions for ITPs could be strengthened to support Māori-Crown relationships

18. It is important that new ITPs establish strong relationships with Māori, iwi, and hapū to understand their interests in the system overall and how to meet their educational and economic development needs in their region. Adding language currently in Te Pūkenga's charter and functions to the characteristics of ITPs and/or duties would support continuity of expectations and accountability in this regard.
19. The Charter provisions referred to above are cross-referenced in section 9 of the Act, and described as some of the "main provisions...that recognise and respect the Crown's responsibility to give effect to te Tiriti o Waitangi". This gives these provisions a special status within the legislation.
20. A key issue is the extent to which any repeal of the Treaty-related provisions in the Charter and functions of Te Pūkenga will reduce the likelihood that Treaty | Te Tiriti interests are met in the system, and that the ITPs meet the expectations and aspirations of Māori.
21. We recognise your timing imperative for the legislation to be in place by 1 January 2025. We have previously outlined the risks with this approach, including repealing the Te Pūkenga Charter. In these circumstances we strongly recommend that, at a minimum, the provisions cross-referenced in section 9 of the Act are reinstated in relation to new entities where possible. This will provide ITPs with clear expectations in relation to the Treaty (with flexibility to implement as makes sense to their particular region / communities / etc). It may help mitigate the risks of a lack of consultation with

Māori during current policy development by providing for a lift and shift of provisions that were the result of a recent policy process that included consultation with Māori.

9(2)(g)(i)

Council composition

Council size

22. You have decided to have councils of 8 members with 4 being Ministerial appointments [METIS 1323047 refers].

9(2)(g)(i) 23. The earlier ITP provisions required ITPs to include 2-3 members elected from staff and students. The flexibility they had to vary the number of members (eight, nine or ten) helped to ensure there was still sufficient scope to appoint other members drawn from the region. We would favour ensuring that the Council could appoint more than 1-2 regional members because effective councils will include a range of perspectives and key links via their membership.

It is therefore an option to consider the staff and student members to be in addition to the eight appointed members, which would make ITP councils typically members. We have therefore provided an option in the recommendations.

9(2)(g)(i)

Matters to consider when appointing members

25. Governance in the tertiary system is a hybrid of skills and representative models. For TEIs, including ITPs under the settings as they were in 2019, appointments based on skills tend to outnumber those designed to represent specific communities or perspectives by right.

26. Annex 1 sets out the provisions that applied to ITPs in 2019, that apply to universities and Wānanga now, and that apply to appointments to the Te Pūkenga Council.

9(2)(g)(i) 27. The Te Pūkenga settings had slightly more detailed requirements for what to consider when appointing council members than the more general TEI framework or earlier ITP framework, particularly by including the disabled community. It is an option to retain some of this language, as the current timeline leaves no time to engage with the communities in question.

✓ 28. The provisions for the earlier ITPs, the current TEIs, and Te Pūkenga all include requirements to appoint people with relevant skillsets. The provisions for Te Pūkenga have cultural competency requirements and requirements to understand the importance of diversity that the earlier ITP and current TEI requirements are silent on. There is some literature that supports the need for diverse views in a board or council for it to be effective¹. This is particularly the case with ITPs given the focus on communities in their characteristics and council duties. The number of staff and student representatives were common between the ITPs and the current TEI framework.

29. What is included in the legislative setting for appointing council members is a judgement about the extent to which guidance is deemed necessary to ensure ITPs will be well positioned to give effect to this duty.

¹ For example see <https://www.mckinsey.com/industries/education/our-insights/shaping-university-boards-for-21st-century-higher-education-in-the-us>, which notes that “diverse boards by measure of age, gender, ethnicity, and geographic diversity tend to see stronger operating results”. Also [Home | OECD iLibrary \(oecd-ilibrary.org\)](#): “There is also evidence that diverse boards are more independent and take better decisions”

30. At a minimum councils need to seek information about these perspectives, e.g., through consultation or establishing committees. In practice, open council meetings assist in ensuring all perspectives are considered in decision making – past ITP councils have been welcoming of views from the floor and have taken them into account in making resolutions. However, it remains important that members understand the importance of doing so, and diversity of appointments helps in this regard.
31. Many of the provisions are tick-through standard ones, but the following ones are varied and there are choices to the framework. Table 1 below compares the earlier ITP provisions and the current TEI ones.

Table 1: Analysis of provisions about matters to be considered when appointing council members

Provision	Description of the provision	Objective for the VET system		
		Regional/local decision making	Learner success / equitable access	Coherence/efficiency/ value for money
ITPs from Education Act 1989 (as at 2019)	<ul style="list-style-type: none"> It is desirable in principle that the council includes Māori It is desirable in principle that the council reflects ethnic, socio economic diversity of communities served Relevant skills, knowledge and experience 	<p>Medium to weak</p> <ul style="list-style-type: none"> Likely to result in Māori voice on council but not linked to Treaty relationship Diversity requirements are in principle only and do not include gender or disability perspectives Relies on individual skills and capacity to ensure all regional perspectives are considered. 	<p>Medium to weak</p> <ul style="list-style-type: none"> Leaves consideration of learner needs and perspectives to skills and capacity of council that will not necessarily include these (although it may choose to do so) 	<p>Medium (but weaker than alternative)</p> <ul style="list-style-type: none"> Although capable of making trade-offs, risks doing so with less information than ideal, could lead to less coherence and weaker position in longer term
TEIs from Education and Training Act 2020	<ul style="list-style-type: none"> Ethnic, socio economic diversity of communities served, fact that approx. half the population is male and half female 	<p>Medium</p> <ul style="list-style-type: none"> Council more likely to reflect the region Māori voice not linked to Treaty relationship Disability perspectives 	<p>Medium</p> <ul style="list-style-type: none"> Council has more capacity to seek diversity of voices, and more are on council Disabilities bring practical issues e.g., for access and 	<p>Medium</p> <ul style="list-style-type: none"> Capable of making trade-offs and has more capacity to get relevant information Understanding disability perspectives will impact on how trade-offs are made

	<ul style="list-style-type: none"> • At least one member is Māori • Relevant skills, knowledge and experience 	<p>are left more to chance or skills of members</p> <ul style="list-style-type: none"> • [other gender diverse perspectives are also missing so prefer TP's framing] 	<p>success that council may not consider fully</p>	
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32. None of the provisions on matters to consider when appointing council members comes out as being strong against the objectives.

33. We recommend therefore to strengthen the provisions around matters to be considered by using the following wording from the Te Pūkenga provisions in the current Act for ITPs so it would read (subject to PCO drafting):

✓ *The Minister or council must, as far as possible, ensure that an ITP's council reflects the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of the communities it serves.*

When appointing members of an ITP's council, the Minister or council must have regard to subsection (1) and must appoint people who (in the Minister's opinion)—

- *have relevant knowledge, skills, and experience in relation to governance, cultural competency, and the importance of diversity; and*
- *are likely to be able to fulfil their individual duties to the council; and*
- *together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.*

Student, staff and Māori advisory committees

34. The repeal of the Te Pūkenga provisions will remove the provisions related to three standing committees. These committees consist of student representatives, staff representatives, and a Māori advisory committee. The Māori advisory committee is made up of staff, and people nominated by Māori and iwi, to advise its council on matters of interest to Māori.

35. A repeal of these provision is likely to be commented on. This is particularly the case for the provision requiring a Māori advisory Committee, which the legislation notes "provide[s] for Māori contribution to decision making in tertiary education and vocational education and training" (see section 9(2)(c)).

36. ✓ We do not recommend these legislated requirements be retained for ITPs. While workable for a national body, requiring each ITP to have multiple standing committees would likely be costly and inflexible.

37. ✓ Well performing and governed ITPs will make arrangements to involve Māori, students and staff beyond the set council membership. There is nothing that would prevent ITPs from establishing such committees if this is the best model for them and the iwi and hapū they have relationships with, either alone or in collaboration with other ITPs.

38. However, because the Māori advisory committee is intended to provide for Māori contribution to decision making, and is specifically recognised in section 9 as Treaty-

✓ relevant, we recommend retaining a variation of this responsibility. In the absence of consultation with Māori to develop an appropriate provision, we suggest the council of each entity be required to make its own arrangements for involving iwi, hapū and Māori into decision-making of the Council.

Shared services

39. Shared services were identified by the ITP sector in 2019 as an opportunity to:

- improve efficiency and help smaller ITPs to operate viably.
- reduce unnecessary duplication
- increase access to capability (including in asset management and for learner success).

40. However, they also need to be weighed-up against what can be large up-front investments, and whether the intended benefits occur in practice.

9(2)(g) 41. (g) The usefulness of shared services (particularly back office) is related to the number of
9(2)(g)(i) entities. Having fewer entities means capability is already stronger, so gains from an additional shared entity are marginal.

42. We have advised you about possibly mandating functions for a shared-services entity to ensure it would have stability of purpose and income sufficient for it to operate viably in its early stages [METIS 1321512 refers]. Other functions could come in based on demand from the sector. You noted a preference for something minimal, if anything, to be mandatory, so that what might be delivered through shared services would be determined by regions.

43. We have discussed some possible functions a shared-services entity could offer with you. Some of these, e.g., distance education and international branding, would ensure a shared services entity is used, and you have indicated that these should not be included. However, you have indicated interest in common programmes or programme elements being a function the shared-services entity could provide from the start.

We do not recommend the legislation mandate a shared services entity

9(2)(g)(i)

44. We advise against setting a shared-services entity in legislation directly or turning Te Pūkenga into a shared services body via legislative change. These are both legislatively complex, and unnecessary because there is no driving need for a shared services entity to be a statutory body – as it is merely providing services to a group of organisations rather than functions with a strong public interest or regulatory power. Adding such significant complexity to the legislation will risk being able to achieve more core policy changes.

But legislation could create the possibility of establishing or incentivising one

45. Legislation could however do one of the following things (presented from most to least prescriptive):

- a. hard-wire in ~~one~~ or more functions that must be delivered via a shared services model (e.g. ~~shared~~ programme design)
- b. provide powers to the Minister or TEC to direct that ITPs set up and participate in a shared services body

- ✓ c. give a duty to ITP councils about how they should approach operating as a single network or system (e.g., to collaborate with the other ITPs over common programme design), phrased in such a way as to incentivise them to support such an entity. This could be the same as the possible duty suggested in paragraph 12
 - ✓ d. simply include a provision to the effect that ITPs may deliver some of the functions inherent in being a TEI through shared services arrangements with other ITPs.
46. ✓ Provisions such as this would be significantly less complex and would leave the details of the entity to the sector to largely determine. In each case the likely model that would emerge would be jointly owned by participating ITPs, or they would choose service providers to operate the entity.
47. ✓ Shared services may prove to be useful in supporting viability but are unlikely in themselves to create it. In most cases it would also take time before the benefits of shared services are gained, and mandatory arrangements are by definition inflexible so ITPs may be stuck with arrangements that no longer suit them over time. Having said that, knowing up front that such an entity will exist and what it will do could be influential as decisions are made about viable offerings in regions in the future.
48. Whether to choose one of the mandatory options (a or b) depends on
- Whether the shared services entity must exist near or at the outset of the new provider network. Without mandating some services, there is a chance that ITPs would not set anything up in the future.
 - Whether to use a shared services entity as a lever to ensure the ITPs are operating together as a system (even one with competitive elements) or alternatively to allow ITPs to operate more in competition with each other – and with ITBs.
49. Examples of ITPs working more as a system include avoiding the proliferation of programmes with individual provider branding, recognise each other's assessments to facilitate ease of movement within the system, and quality improvements through common programme elements and moderation.
50. ✓ Legislation could incentivise shared services while stopping short of mandating that ITPs use a shared services entity, creating a lever to improve quality in the system while providing time for the ITPs to determine most of the details themselves (options c or d). While a weaker lever, these are more flexible and do not require up-front decisions about what services should be mandated.
51. ✓ On balance we recommend option c: to give a duty to ITP councils about how they should approach operating as a single network or system. Despite the risks that a shared services entity that could assist the sector may not come about under this option, this risk is outweighed by the risk of inflexibility that would result from mandating in the legislation, and issues of accountability if the Minister can direct functions that are to be delivered by way of shared services. It would also be preferable for ITPs to have options to leave the arrangement if its performance became poor.

What could be mandated?

52. However, if you consider options a or b above, Annex 2 sets out some possible options for shared services that could be mandated and assesses them against the objectives for the system. We have drawn these from the discussions with you so far and from advice the TEC provided in 2019 on how the ITP network as it was then could be

fortified. We have not included a set of common business processes and workflows, which was in the TEC advice, because you indicated back-office functions like this should not be part of shared services. We have kept shared learner and student management systems in the table, but neither is likely to be ready for day 1 rollout.

53. The annex also provides analysis that could inform the design of option c) if you choose that. If you are interested in mandating any of the possible options from Annex 2 in legislation, we will test them further including with the Special Advisors at Te Pūkenga and report back².
54. A number of the possible functions would need to be developed further, either to develop the evidence base for enabling quality improvements, or to undertake cost-benefit or similar work. If functions were going to be mandated at the outset, the ones most likely to have benefit would enable better or more consistent quality without significant loss of regional decision making. One (credit recognition services) could drive some system coherence:
- a. Learning and assessment design
 - b. Data analytics capability
 - c. Credit recognition and transfer services
 - d. Common programme elements and moderation
 - e. Professional and learning development frameworks.
- 9(2)(g)(i)

Interventions for ITPs at risk – further advice on using Te Pūkenga settings

55. You indicated that you would like some more advice on our proposal to apply the interventions settings for Te Pūkenga to the new ITPs [METIS 1323047 refers].
56. The purpose of the interventions framework under the Act is to manage risk to individual TEIs (and by extension the Crown), and to the system of which they are a part, by enabling the Crown to intervene if necessary. Under the interventions framework, each intervention must be based on an assessment that a TEI 'may be at risk'; is 'at risk'; or is 'at serious risk'.
57. Three interventions – providing information (may be at risk), Crown observer (at risk), and Commissioner (serious risk) – were introduced for all TEIs, including ITPs, in 2001.³ These still apply to universities and Crown-entity Wānanga.
58. In 2009, three additional interventions were introduced for the ITP sector: specialist help (may be at risk); performance improvement plan (may be at risk); and Crown Manager (serious risk).⁴ These were introduced because of the financial difficulties the ITPs were in at the time and to provide more tools to address issues before they became so serious that provision would be disrupted or cash injections required. The introduced interventions also provided for a focus on broader risks (e.g., organisation, financial and education risk) than the interventions for other TEIs, which were focussed more on financial risk. This was seen by Parliament at the time as a reasonable reset

² Cabinet may feel comfortable delegating this level of detail to you to determine, which could be incorporated into drafting instructions after Cabinet or in the Departmental Report at the Select Committee stage.

³ These were inserted by section 47 of the Education Standards Act 2001 (2001 No 88).

⁴ These were inserted by section 15 of the Education (Polytechnics) Amendment Act 2009 (2009 No 70)

of the relationship between autonomous institutions and the Crown's need to manage risk.

59. The six interventions for ITPs were applied to Te Pūkenga (and its subsidiaries until December 2022), with modification to the risk levels to the Crown observer and Crown manager interventions, and with additional information-gathering powers granted to the TEC.
60. The key rationale for these changes was that Te Pūkenga was a large, single provider, and risks needed to be better managed to avoid widespread, national impacts to provision and learners. However, the changes were also based on the TEC's experience in monitoring and intervening in the ITP sector, where interventions were only able to be used after the financial stability of some ITPs became significantly compromised. **Annex 3** shows the difference between the previous settings for ITPs and those for Te Pūkenga, particularly how the steps through the levels of risk were changed for Te Pūkenga.
61. The key changes were:
- a. *Crown observer*: The risk level was lowered for Te Pūkenga from 'at risk' to 'may be at risk' to provide the opportunity for early intervention when risks emerged and allow for greater understanding of the risks being faced and how Council was managing them. It was considered this would increase the chance of turning an emerging risk situation around, allow a better information flow, and support earlier decisions to be made when stronger interventions were necessary.
 - b. *Crown manager*: The risk was lowered from 'serious risk' to 'at risk' so that a Crown manager could be appointed before Te Pūkenga or a subsidiary started to fail, and allow time for the situation to be resolved. Under the previous framework, a Crown manager could only be appointed where a serious risk is reached, which is when an institution is already failing and has been unable to remedy it, e.g., unable to pay debts, breaching borrowing consent conditions, in default of a loan.
 - c. *Additional information gathering power*: This requires Te Pūkenga to provide any information that the Chief Executive of the TEC considers is "reasonably required" to determine whether there is risk. (This is in contrast to the information intervention, which requires the Chief Executive of the TEC to believe that an institution may be at risk before requiring information related to that risk). This additional power is not classed as an intervention and is grouped with TEC provisions.

62. Given the current financial state of the ITPs and our concerns around future financial sustainability when they are re-established (in whatever configuration), it is integral that the Crown maintains all powers that it currently has available in legislation to help manage these risks. We therefore recommend that the current intervention settings for Te Pūkenga are retained for ITPs, as well as the additional information-gathering power. If in the future there is a case for moving the settings more in line with other TEIs, this could be reviewed and changes made in a future legislative vehicle.

Use of interventions

63. Over the past 20 years, there have been eight occurrences of interventions implemented, primarily in the institute of technology and polytechnic sector, but also once for a Wānanga. These interventions primarily relate to financial performance. No formal interventions have been made in the university sector.

64. Like all sanctions, that formal interventions exist at all, and their possible use can be raised in any discussion about the consequences of ongoing poor performance, is a very useful tool.
65. Outside of the formal legislative interventions, several other interventions/appointments have been utilised by the TEC to help manage Crown risk. Sometimes these appointments have been made as conditions of borrowing consents or Crown funding agreements, while in other times the TEC has reached agreement directly with the TEI. The roles usually relate to supporting financial matters and providing objective advice to the relevant council/commissioner as well as to the TEC. Such appointments have been made at Lincoln University and Manukau Institute of Technology, in addition to the eight formal interventions that have been made.

Next Steps

66. 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 provide for drafting-instructions to PCO.
67. The TEC has provided you with advice on the actions required to transition to the new system [AM-24-00116 refers]. The discussion with you about the pathways in this advice will inform the first draft of the Cabinet paper referred to above, which will include draft detailed recommendations for the transition.

Annexes

The following are annexed to this paper:

- Annex 1: Legislative provisions
- Annex 2: Possible shared services
- Annex 3: Interventions and risk levels

Annex 1: Legislative provisions

Relevant provisions for ITPs from Education Act 1989, as at 2019

4 Purpose of Act

The purpose of this Act is to establish and regulate an education system that—

- (a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and
- (b) supports their health, safety, and well-being; and
- (c) assures the quality of the education provided and the institutions and educators that provide and support it; and
- (d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

7 Tertiary education strategy

(1) The Minister must, by notice in the Gazette, issue a tertiary education strategy that sets out the Government's—

- (a) long-term strategic direction for tertiary education, which must include—
 - (i) economic goals:
 - (ii) social goals:
 - (iii) environmental goals:
 - (iv) the development aspirations of Māori and other population groups;

and

- (b) current and medium-term priorities for tertiary education.

(2) The Minister may, by notice in the Gazette, withdraw and replace, or amend, a tertiary education strategy.

(3) Before issuing, withdrawing and replacing, or significantly amending the strategy, the Minister must consult—

- (a) the persons or bodies that the Minister thinks fit to consult in the circumstances; and
- (b) TEC.

(4) An amendment forms part of the tertiary education strategy it amends.

(5) A tertiary education strategy remains in place until it is withdrawn or replaced.

222ADMatters to be considered when appointments made

(1) It is desirable in principle—

- (a) that the council of a designated polytechnic should include Māori; and
- (b) that, so far as is possible, the council of a designated polytechnic should reflect the ethnic and socio-economic diversity of the community it serves.

(2) The Minister—

- (a) must have regard to the principles in subsection (1) when appointing members of the council of a designated polytechnic; but
- (b) must appoint people who (in the Minister's opinion) have enough experience of governance to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.

(2A) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.

(3) The council of a designated polytechnic must appoint as members people who (in the council's opinion)—

- (a) have relevant knowledge, skills, or experience; and

- (b) are likely to be able to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.
- (4) When appointing members of a council, the council must ensure that—
- (a) at least—
- (i) 1 member is a permanent member of the teaching or general staff of the designated polytechnic that the permanent members of the teaching and general staff of the designated polytechnic have elected to represent them; or
- (ii) 1 member is a permanent member of the teaching staff of the designated polytechnic that the permanent members of the teaching staff of the designated polytechnic have elected to represent them and 1 member is a permanent member of the general staff of the designated polytechnic that the permanent members of the general staff of the designated polytechnic have elected to represent them; and
- (b) at least 1 member is a student—
- (i) who is enrolled in the designated polytechnic; and
- (ii) whom the students of the designated polytechnic have elected to represent them.
- (5) An elected person specified in subsection (4)—
- (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
- (b) must be appointed unless the person is ineligible for appointment under section 222AA(2).
- (6) A designated polytechnic or its council may not specify who is eligible to stand for election as a representative of—
- (a) permanent members of the teaching or general staff of the designated polytechnic; or
- (b) students of the designated polytechnic.

Relevant provisions for TEIs from the Education and Training Act 2020

278 Matters to be considered when appointing council members

- (1) An institution's council should, as far as is reasonably practicable, reflect—
- (a) the ethnic and socio-economic diversity of the communities served by the institution; and
- (b) the fact that approximately half the population of New Zealand is male and half the population is female.
- (2) When appointing council members, the Minister or council must have regard to subsection (1), but—
- (a) must ensure that at least 1 council member is Māori; and
- (b) must appoint people who (in the Minister's or council's opinion)—
- (i) have relevant knowledge, skills, or experience; and
- (ii) are likely to be able to fulfil their individual duties to the council; and

- (iii) together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.
- (3) When appointing council members, the council must ensure that—
- (a) at least—
- (i) 1 member is a permanent member of the teaching or general staff of the institution that the permanent members of the teaching and general staff of the institution have elected to represent them; or
- (ii) 1 member is a permanent member of the teaching staff of the institution that the permanent members of the teaching staff of the institution have elected to represent them and 1 member is a permanent member of the general staff of the institution that the permanent members of the general staff of the institution have elected to represent them; and
- (b) at least 1 member is a student—
- (i) who is enrolled at the institution; and
- (ii) whom the students of the institution have elected to represent them.
- (4) Subsection (3) does not apply to the membership of the council of a wānanga.
- (5) An elected person specified in subsection (3)—
- (a) is to be treated as meeting any relevant knowledge, skills, or experience requirements; and
- (b) must be appointed unless the person is ineligible for appointment under section 277(1).
- (6) An institution or its council may not specify who is eligible to stand for election as a representative of—
- (a) the permanent members of the teaching or general staff of the institution; or
- (b) the students of the institution.
- (7) Before making an appointment under this section, the Minister must seek, and consider, nominations from the relevant council.

Relevant provisions relating to Te Pūkenga (Education and Training Act 2020)

320 Membership of Te Pūkenga—New Zealand Institute of Skills and Technology's council

(1) Te Pūkenga—New Zealand Institute of Skills and Technology's council must have at least 8, but not more than 12, members, as follows:

- (a) 1 member who is a member of, and elected by, its staff committee; and
- (b) 1 member who is a member of, and elected by, its students' committee; and
- (c) 1 member who is a member of, and elected by, its Māori advisory committee; and
- (d) the rest of the members must be appointed by the Minister.
- (2) A person is not eligible for appointment under subsection (1) if—
- (a) the person is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
- (b) a personal order has been made under that Act in respect of the person that reflects adversely on their—

- (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare; or
 - (c) the person has been adjudicated bankrupt and has not obtained an order of discharge, or whose order of discharge has been suspended for a term that has not yet expired or is subject to any conditions that have not yet been fulfilled; or
 - (d) the person has been removed from office as a member of the council.
- (3) An act or a proceeding of Te Pūkenga—New Zealand Institute of Skills and Technology's council, or of any member or any committee of Te Pūkenga—New Zealand Institute of Skills and Technology's council, is not invalid because of—
- (a) a defect in the appointment or election of a member of the council or committee; or
 - (b) a disqualification of a member of the council or committee; or
 - (c) a defect in the convening of a meeting; or
 - (d) a vacancy in the membership of the council or committee.
- (4) For the purposes of this section,—
- (a) a person referred to in subsection (1)(a) is a member of the council only while the person is a permanent member of the staff of Te Pūkenga—New Zealand Institute of Skills and Technology or an Te Pūkenga—New Zealand Institute of Skills and Technology subsidiary:
 - (b) a person referred to in subsection (1)(b) is a member of the council only if the person is a student enrolled at Te Pūkenga—New Zealand Institute of Skills and Technology or an Te Pūkenga—New Zealand Institute of Skills and Technology subsidiary, but may continue to be a member of the council for a period of up to 12 months after the date on which their enrolment ends.
- (5) To avoid doubt,—
- (a) all permanent members of Te Pūkenga—New Zealand Institute of Skills and Technology's or an Te Pūkenga—New Zealand Institute of Skills and Technology subsidiary's staff are eligible for appointment under subsection (1)(a):
 - (b) all students enrolled at Te Pūkenga—New Zealand Institute of Skills and Technology or an Te Pūkenga—New Zealand Institute of Skills and Technology subsidiary are eligible for appointment under subsection (1)(b), regardless of the delivery mode by which the student receives education or training (for example, on-campus learning, distance learning, or work-based training).

321 Matters to be considered when Minister appoints members to Te Pūkenga—New Zealand Institute of Skills and Technology's council

(1) The Minister must, as far as possible, ensure that Te Pūkenga—New Zealand Institute of Skills and Technology's council reflects—

- (a) the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of New Zealand's population; and
- (b) the fact that New Zealand is made up of a number of regions.

(2) When appointing members of Te Pūkenga—New Zealand Institute of Skills and Technology's council, the Minister must have regard to subsection (1) and must appoint people who (in the Minister's opinion)—

(a) have relevant knowledge, skills, and experience in relation to governance, cultural competency, and the importance of diversity; and

(b) are likely to be able to fulfil their individual duties to the council; and

(c) together with the other members of the council, are capable of undertaking its responsibilities, duties, and functions.

(3) A person specified in section 320(1)(a) and (b) is appointed by the council in accordance with the council's statute unless the person is ineligible for appointment under section 320(2).

Proactively Released

Annex 2: Possible shared services

Service	Description	Regional/local decision making	Learner success / equitable access	Coherence/efficiency/ value for money
Shared Learning Management System	<p>Providers use Learning Management System (LMS) software to administer, document and track learning within the provider.</p> <p>Would be available to replace existing LMS as they come up for replacement.</p> <p>Shared services entity would provide staff training on the LMS as well as ongoing technical support.</p>	<p>Medium to strong in theory</p> <ul style="list-style-type: none"> No impact so long as fit for purpose for any region. 	<p>Medium</p> <ul style="list-style-type: none"> Potential to enable good quality as input into good learner management systems. Maintains the gains that have been made to support learner movement across the system. 	<p>Medium to Strong</p> <ul style="list-style-type: none"> Greater market power to gain cost advantages.
Shared Student Management System	<p>Could explore this but would need to identify the risks and opportunities through further work.</p>	<p>n/a</p> <ul style="list-style-type: none"> To be explored 	<p>n/a</p> <ul style="list-style-type: none"> To be explored 	<p>n/a</p> <ul style="list-style-type: none"> To be explored
Learning and assessment design	<p>A pool of highly skilled learning and assessment designers to support programme design at ITPs.</p>	<p>Medium to strong</p> <ul style="list-style-type: none"> Support capability to focus regional capacity on what is needed. 	<p>Medium to strong</p> <ul style="list-style-type: none"> Improves quality and consistency. 	<p>Medium to strong</p> <ul style="list-style-type: none"> Savings from single programme design instead of duplication at each entity, significant savings in this regard at degree level provision. Some middle office cost savings over time.
Specialist capability in data analytics and	<p>Data analytics, including learner analytics, was identified during sector engagement in 2019 as an area in which all ITPs need or</p>	<p>Strong</p>	<p>Strong</p> <ul style="list-style-type: none"> Overseas examples, e.g., Georgia State, shows use of 	<p>Medium</p> <ul style="list-style-type: none"> Upfront investment required.

reporting, including learner analytics	<p>want to grow their capability, but ideally would make the necessary investments in expertise and software collectively once or a few times.</p> <p>These investments may be in software packages hosted and administered by the entity itself, software-as-a-service approaches, or contracted service provision by an external provider.</p> <p>Cost benefit analysis would be needed.</p>	<ul style="list-style-type: none"> • Support detailed understanding of learners in region. • To be explored. 	<p>strong analytic capability supports improvements in learner outcomes,.</p> <ul style="list-style-type: none"> • To be explored. 	<ul style="list-style-type: none"> • If performance improves, system will be more efficient (lower attrition and non-completion, better life outcomes) – over time. • To be explored
Central expertise in asset management;	<p>Most likely a service ITPs could choose to call on to supplement their own capability.</p> <p>Would be designed to ensure ITPs have high capability at their disposal given risks of getting capital investment decisions wrong.</p>	<p>Medium to weak</p> <ul style="list-style-type: none"> • Councils would need to retain accountability, but shared service may not understand region itself. 	<p>Medium</p> <ul style="list-style-type: none"> • Additional capability could lead to better decisions on accessibility and suitability of capital, but shared entity may not have strong local understandings. 	<p>Strong in theory</p> <ul style="list-style-type: none"> • Downside consequences of very poor capital asset management are very high.
Professional learning and development (PLD) frameworks and programmes for ITP staff	<p>To partner with Ako Aotearoa and, where necessary, other training providers (potentially including ITPs themselves) to design, maintain and deliver a structured programme of core PLD programmes for ITP academic and general staff, including entry-level management training.</p>	<p>Strong in theory</p> <ul style="list-style-type: none"> • Excellent PLD should improve capability to be strong regional provider. 	<p>Strong</p> <ul style="list-style-type: none"> • Generic professional skills can be adapted to different learner needs. 	<p>Strong</p> <ul style="list-style-type: none"> • Better market power to source excellent provision for PLD.
Credit recognition and transfer services	<p>Services to recognise credits from each ITP for the purpose of learners shifting between providers more easily.</p>	<p>Medium</p> <ul style="list-style-type: none"> • Some marginal restrictions over ITPs 	<p>Strong</p>	<p>Medium to strong</p>

	Especially for areas for which common skill standards do not apply.	offering very distinct products and responsibility to recognise other ITPs' quality and relevance.	<ul style="list-style-type: none"> • Learners who move between providers would not need to repeat learning. • Could encourage some competition over service quality if moving providers is relatively costless (e.g., for distance delivery). 	<ul style="list-style-type: none"> • Better efficiency in the system and lower cost through scale. • More coherent system through consistent quality and relevance.
Common programme elements and moderation	<p>Production of elements of programmes that do not need to be developed in every ITP.</p> <p>Common moderation of assessments.</p>	<p>Medium to strong</p> <ul style="list-style-type: none"> • No impact on regional decision making if the programme elements are genuinely common. • Potential strengthened quality allows focus on meeting regional needs. 	<p>Strong</p> <ul style="list-style-type: none"> • Allows teachers to focus more on learners and programme elements that need to be tailored. • Confidence in quality systems across the system supports learner mobility within the system. 	<p>Strong</p> <ul style="list-style-type: none"> • Core “middle office” functions done once and well.
Infrastructure and training to power up the “student voice”	Common frameworks, policies and processes for students and institutions to follow, and by training tertiary students to act as expert assessors and collectors of student feedback.	<p>Strong in theory</p> <ul style="list-style-type: none"> • Improved capability for students to input into decisions about academic and learner support matters will be aligned to region students are in. 	<p>Needs development</p> <ul style="list-style-type: none"> • Advice on the ITP Roadmap in 2019 stated that student participation in decision making, if properly structured and supported, is a driver of quality improvements. Evidence for this would need to be updated and confirmed. 	<p>Strong in theory</p> <ul style="list-style-type: none"> • More efficient outcomes through better teaching and learning.

Annex 3: Interventions and risk levels

Education Act 1989 ITP interventions				Education and Training Act 2020 interventions				Why we propose the same risk levels for new ITPs as for Te Pūkenga
Intervention	For	Risk level – old ITPs	Risk level – other TEIs	Intervention	For	Risk level – Te Pūkenga	Risk level – other TEIs*	
Specialist help (222A)	ITPs only	May be at risk	N/A	Specialist help (332)	Te Pūkenga only	May be at risk	N/A	No change from previous ITP settings
Performance Improvement Plan (222B)	ITPs only	May be at risk	N/A	Performance Improvement Plan (333)	Te Pūkenga only	May be at risk	N/A	
Provide information (195B)	All TEIs	May be at risk	May be at risk	Provide information (288; 330)	TEIs; Te Pūkenga	May be at risk	May be at risk	
Crown observer (195C)	All TEIs	At risk	At risk	Crown observer (289; 331)	TEIs; Te Pūkenga	May be at risk	At risk	Retains the ability to put in a Crown observer as an early intervention <u>before</u> risk crystallises. This gives a greater chance of early mitigation and turn around, or knowledge of a need for further interventions.
Crown manager (section 222C)	ITPs only	Serious risk	N/A	Crown manager (334)	Te Pūkenga only	At risk	N/A	Retains the ability to put in a Crown manager <u>before</u> an ITP starts to fail, and therefore a chance the situation can be turned around (where serious risk is reached, the institution is already failing and unable to remedy it, e.g., unable to pay debts, breaching borrowing consent conditions, in default of a loan – see risk assessment criteria)

Education Act 1989 ITP interventions				Education and Training Act 2020 interventions				Why we propose the same risk levels for new ITPs as for Te Pūkenga
Commissioner (195D)	All TEIs	Serious risk	Serious risk	Commissioner (290; 337)	TEIs; Te Pūkenga	Serious risk	Serious risk	No change from previous ITP settings
				Power	For	Risk level		
				Information - not an intervention per se, so in different section (406)	Te Pūkenga only	To determine risk, and therefore to be better positioned to intervene in a timely manner		<p>This is crucial to enabling early intervention while risks are still crystallising.</p> <p>The interventions all require “belief on reasonable grounds” (or similar wording) that the institution may be at risk / is at risk / is at serious risk.</p> <p>This power took into account the TEC’s experience in monitoring the polytechnic sector, where TEC could only request information about identified risks, and interventions were not able to be effected early enough, before the financial stability of ITPs became compromised.</p>

*Excluding non-Crown entity Wānanga, where interventions sit with the responsible iwi or Māori organisation.