



Education Report: **Draft Cabinet Paper for Ministerial consultation: Legislative proposals for implementing our commitment to disestablish Te Pūkenga**

To:	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
Date:	21 March 2024	Priority:	High
Security Level:	In-Confidence	METIS No:	1325146
Drafter:	Lisa Sengelow	DDI:	04 463 7696
Key Contact:	Vic Johns	DDI:	9(2)(a)
Seen by the Communications Team:	No	Round Robin:	No

Purpose of Report

This report provides you with an updated draft Cabinet paper seeking agreement to legislative changes for the vocational education and training (VET) system. This is due to be sent for Ministerial consultation on Friday 22 March.

The report also seeks your decisions on some further policy settings for Industry Training Boards and workplace-based learning, which we have added to this version of the draft Cabinet paper.

Alignment with Government priorities

The attached draft Cabinet paper seeks agreement to key policy decisions for legislation that will progress the Government's commitment in the 100-day action plan to begin disestablishing Te Pūkenga.

Recommended Actions

The Ministry of Education recommends you:

- agree** to undertake Ministerial consultation on the attached draft Cabinet paper (Annex 1) between Friday 22 March and Monday 1 April
- note** that the Cabinet paper needs to be lodged on Thursday 4 April for it to be considered by the Cabinet Social Outcomes Committee (SOU) on Wednesday 10 April, and then to Cabinet on Monday 15 April

Agree / Disagree

Noted



Duties on Institutes of Technology and Polytechnic Councils

- c. **note** that we have removed recommendation 7.3 from the initial draft Cabinet paper (which would have required Institutes of Technology and Polytechnic councils to consider "the need to support Māori-Crown relationships in order to respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū and iwi, and employers") as it appears to be inconsistent with your policy decision in METIS 1323890 [signed copy refers]

Noted

Industry Skills Leadership

- d. **agree** that Industry Training Boards will have a statutory function to support strategic workforce analysis and planning

Agree / Disagree

Fees

- e. **agree** that Industry Training Boards will be able to charge learners and/or employers fees for arranging workplace training

Agree / Disagree

- f. **agree** that, as they will be funded for standards-setting, Industry Training Boards will not be able to charge fees for services associated with this function

Agree / Disagree

Standards-setting: Programme Endorsement, Capstone Assessments, and National Curricula

- g. **agree** that legislation will not specify Industry Training Boards' functions relating to programme endorsement, national curricula, or capstone assessments, and that these can be established in NZQA rules

Agree / Disagree

- h. **agree** that officials will provide further advice on the potential role of Industry Training Boards in programme approvals for providers

Agree / Disagree

Regulatory impact statement

- i. **note** that we have attached a draft regulatory impact statement to the Cabinet paper (as required by Cabinet Office circular CO (20) 2) so that it is available for Ministerial consultation

Noted

Proactive Release

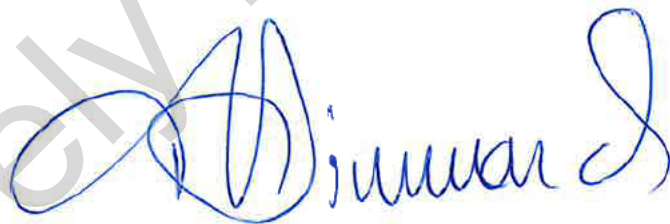
- j. **agree** that the Ministry of Education release this paper only after full Cabinet consideration of the issues, and as part of a communications strategy associated with Government announcements on the proposed vocational education and training (VET) changes.

Agree / Disagree



Vic Johns
Policy Director
Tertiary and Evidence Group

21/03/2024



Hon Penny Simmonds
Minister for Tertiary Education and Skills

23/24

Background

1. This is the second of two Cabinet papers on the vocational education and training (VET) redesign. You have recently consulted with your Ministerial colleagues on the first Cabinet paper: Implementing your commitment to disestablish Te Pūkenga [METIS 1324166 refers], which outlines your plans for the VET system. That Cabinet paper is due to be considered by SOU on 27 March.
2. We provided you with an initial draft of the attached Cabinet paper on 15 March [METIS 1324161 refers], seeking agreement to key policy decisions required for the Education (Vocational Education and Training System) Amendment Bill. At the same time, we began departmental consultation on the draft Cabinet paper.
3. We have revised our initial draft to incorporate your feedback, and to reflect agencies' feedback through departmental consultation. We attach the revised draft (**Annex1**) for you to carry out Ministerial consultation.

Drafting and timeframes

4. The timeframe for the attached draft Cabinet paper is as follows:

Date	Cabinet paper stage
Friday 22 March – Monday 1 April	Ministerial consultation Note that the 10 days for Ministerial consultation include the Easter public holidays
Thursday 4 April	Lodgement of final Cabinet paper
Wednesday 10 April	Consideration by SOU
Monday 15 April	Confirmation by Cabinet
Tuesday 16 April	Full drafting instructions sent to PCO

Summary of feedback from departmental consultation

5. We received feedback on the draft Cabinet paper from the Department of Prime Minister and Cabinet, the Treasury, the Ministry of Social Development, the Tertiary Education Commission, the Ministry for Women, the Ministry for Primary Industries, the Office of the Auditor-General, the Ministry for Pacific Peoples, Te Arawhiti – The Office for Māori Crown Relations, and the New Zealand Qualifications Authority.
6. Agencies' concerns were generally similar to those raised for the first Cabinet paper. These centred on:
 - a. the compressed timeframes for legislation which do not allow for consultation on the proposals;
 - b. potential negative impacts on equitable access for Māori, Pacific peoples, women, and rural communities including primary sector apprentices and trainees;
 - c. potential negative impacts on the Crown's Te Tiriti o Waitangi obligations; and
 - d. the importance of minimising disruption to learners through the VET system redesign.
7. Agencies suggested a small number of specific changes to the draft Cabinet paper:
 - a. Strengthening expectations on ITPs to develop meaningful partnerships at a local level (in paragraph 39 of the draft Cabinet paper) by including that these partnerships will support the Crown to meet its responsibilities under te Tiriti o

Waitangi. We have not incorporated that into the paper, as it would be counter to decisions you have already made.

- b. Some minor changes or additions to more accurately represent parts of the VET system, which we have incorporated into the draft Cabinet paper.

Summary of revisions

8. We have made the changes to the Cabinet paper that you requested in your comments on our initial draft [METIS 1324161 signed copy refers].
9. We have made some further changes to the Cabinet paper for completeness, consistency with previous decisions, or to include additional policy settings in some areas, which are set out below. We are seeking your agreement to the additional policy settings, which cover industry skills leadership, fees, and standards setting.

9(2)(h)

Annex removed

11. The previous draft of the Cabinet paper included an annexed summary table of the policy settings for ITPs and ITBs to be carried over from previous legislation, and any exceptions (such as the interventions framework, for which Te Pūkenga settings are proposed). As most of that information was already in the Cabinet paper, we have removed the summary table and added some additional content into the body of the paper and recommendations for completeness.

Duties on ITP Councils

12. We have identified part of a recommendation that appears to be inconsistent with your decisions from METIS 1323890 [signed copy refers].
13. We have therefore removed the proposed requirement on ITP councils to consider the need to support Māori-Crown relationships in order to respond to the needs of, and improve outcomes for, Māori learners, whānau, hapū and iwi, and employers.
14. The revised recommendation 7 refers only to consideration of:
 - a. the need for collaboration with other ITPs to avoid duplication of effort and use of resources, and to identify opportunities for shared services; and
 - b. the need to develop meaningful partnerships with communities at a local level, including hapū and iwi, and Pacific communities, and local industries.

Industry Skills Leadership

15. Based on earlier discussions with you [METIS 1320755 refers] the broad industry skills leadership function of Workforce Development Councils (WDCs) will not be carried through into the new system. However, you have indicated in feedback on the draft Cabinet paper that ITBs should continue to have some strategic functions for the industries they cover [METIS 1324166 signed copy refers]. This will permit some current activities of WDCs that are valued by industries to continue in the new system, and also support good practice in arranging training and standards-setting.
16. We are recommending that this function is referred to as 'strategic workforce analysis and planning'. This would encompass activities for ITBs such as labour market analysis and forecasting, examining skills and qualifications supply, and ITBs working with their

industries to develop plans that support effective training investment and workforce pipelines. Paragraph 66 and recommendation 18.5 in the draft Cabinet Paper reflect this wording.

17. We recommend that legislation phrases this function as carrying out 'activities that support' this strategic work. This will preserve some flexibility in the specific actions covered by this function – while ensuring these are linked to an industry's strategic workforce concerns – and allows for situations where an industry may not want an ITB to undertake these types of activities.

Fees

18. We propose to clarify that ITBs may charge fees for the training programmes they arrange. This is the case for other tertiary education organisations, including current workplace-based learning (WBL) providers and previous Industry Training Organisations (ITOs). These may be paid by learners themselves, by employers, or through mixed arrangements (e.g., an employer paying the upfront costs and the learner repaying these). The details of payment arrangements can be determined on a case-by-case basis between the employer and the learner.
19. ITBs will be funded directly for standards-setting, and income from arranging training can supplement this ring-fenced funding. We therefore recommend that ITBs should not be permitted to charge fees for activities associated with these functions. This would include moderation and consent to assess processes.
20. We have added text (paragraph 70) and a recommendation (27) to the draft Cabinet paper to clarify that ITBs may charge fees to learners and/or employers for the arranging of training.

Standards-setting: Programme Endorsement, Capstone Assessments, and National Curricula

21. There are three WDC standards-setting powers that we initially proposed could be specified in primary legislation, but on further reflection we propose they should be addressed through other settings (most likely, NZQA rules). These are:
 - a. programme endorsement, in which providers' VET programmes must be endorsed by a WDC before they will be approved by NZQA;
 - b. the ability to set national curricula (New Zealand programmes) for their qualifications; and
 - c. the ability to set mandatory capstone assessments.
22. The previous ITO legislation did not go into this level of detail, so we do not consider it necessary to specify them in the new legislation. In addition, they would benefit from an opportunity to test the best approach with industry and providers.
23. These powers were appropriate for WDCs because WDCs do not directly offer training and do not compete with the providers they regulate. However, ITBs will be competing with ITPs' provider-based programmes for market share of the overall pool of VET learners. ITOs had some powers in this area, but they were more nuanced, and we think it would appropriate (and feasible) to take more time to work this through.
24. As we have previously advised [METIS 1320755] it is appropriate that ITBs have, as ITOs did, powers to moderate assessments and manage consents to assess for their standards and qualifications. This supports consistency of training across the VET network, which is a key requirement for industries and employers. It would also be appropriate for ITBs to have some role in programme approval processes, even if full programme endorsements

are not appropriate. We would work with NZQA to provide advice on appropriate approaches to this.

Regulatory impact statement

25. As outlined in our cover advice on the previous version of this Cabinet paper [METIS 1324161 refers], we have prepared a regulatory impact statement (RIS) for these changes. Cabinet Office circular CO (20) 2 requires that any Cabinet papers proposing changes to primary or secondary legislation are accompanied by a RIS setting out the relevant government agency's view of the impact of these regulatory changes. The RIS must be published on the websites of the Ministry and the Treasury when the Bill is introduced into the House, and provided to the Select Committee considering the Bill.
26. The RIS outlines the Ministry's assessment of the problems that the changes are intended to resolve, the objectives for the changes and assesses options for addressing the problems.
27. As we previously noted, the RIS outlines our assessment that, on balance, we would not recommend disestablishing Te Pūkenga, although it acknowledges the problems in this area and notes that this would also come with significant risks. The RIS also reflects our assessment that if Te Pūkenga is disestablished it would be preferable to split off its WBL functions into separate entities and retain a version of WDCs, rather than giving ITBs responsibility for arranging training and standard setting.
28. The RIS highlights that the lack of engagement or consultation to date is a significant caveat on our analysis, in particular engagement with industry on WBL and with Māori on their interests in VET. The latter point is a key part of our Te Tiriti analysis in the RIS.
29. We have attached the draft RIS to the Cabinet paper so that it is available for the Ministerial consultation process, which is usual practice. The RIS has yet to receive a final assessment from the Ministry's internal panel, but initial feedback suggests that it will be assessed as meeting the quality assurance requirements.

Next steps

30. Please advise as early as possible tomorrow, if you want to make further amendments to the attached Cabinet paper. We will make those changes as quickly as possible, so that your office can circulate the draft Cabinet paper for Ministerial consultation, to be carried out between Friday 22 March and Monday 1 April.
31. Your office will provide changes arising from Ministerial consultation to officials, who will return a revised Cabinet paper ready for you to lodge with Cabinet office on Thursday 4 April.

Annexes to this paper

- Annex 1: Draft Cabinet Paper: Legislative proposals for implementing our commitment to disestablish Te Pūkenga

**Annex 1: Draft Cabinet Paper: Legislative proposals for implementing our
commitment to disestablish Te Pūkenga**

Proactively Released