

Education Report: **Draft Cabinet Paper: Vocational education and training redesign – key policy decisions**

To:	Hon Penny Simmonds, Minister for Tertiary Education and Skills		
Date:	15 March 2024	Priority:	Medium
Security Level:	In-Confidence	METIS No:	1324161
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Seen by the Communications Team:	No	Round Robin:	No

Purpose of Report

This report provides you with a draft Cabinet paper setting out key policy decisions for the Education (Vocational Education and Training System) Amendment Bill 2024 (the Bill), which will form the basis for drafting instructions to the Parliamentary Counsel Office (PCO).

Alignment with Government priorities

The attached draft Cabinet paper seeks decisions to progress the Government's commitment in the 100-day action plan to begin disestablishing Te Pūkenga.

Recommended Actions

The Ministry of Education recommends you:

- a. **review** the attached draft Cabinet paper (Annex 1) and indicate any changes you wish us to make ahead of Ministerial consultation by Tuesday 19 March.

Indicated

- b. **note** that we have asked for your feedback by Tuesday 19 March so that we can return an updated draft for your office to send out for Ministerial consultation on Friday 22 March.

Noted

- c. **indicate** your preference for the size of Institutes of Technology and Polytechnic (ITP) councils (all options include 4 Ministerial appointments within the total or range):

- i. 8 members

Yes / No

ii. 8, 9 or 10 members

Yes / No

iii. 8, 9, 10, 11 or 12 members

Yes / No

- d. **note** that the Industry Training Board (ITB) establishment provisions drawn from section 363 of the Education and Training Act 2020 will not include the requirement for representation of Māori employers in section 363(3)(b), for consistency with your decision not to require representation of Māori employers in ITB governance arrangements [in METIS 1322890].

Noted

- e. **note** that we are preparing a regulatory impact statement (RIS), and this will be attached to the Cabinet paper when you receive a version for Ministerial consultation.

Noted

Proactive Release:

- f. **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


James Campbell
(Acting) Policy Director
Tertiary and Evidence Group

15/03/2024


Hon Penny Simmonds
Minister for Tertiary Education and Skills

16/3/24

Background

1. The attached draft Cabinet paper (**Annex 1**) is the second of two Cabinet papers on the redesign of the vocational education and training (VET) system.
2. You are currently consulting with your Ministerial colleagues on the first Cabinet paper: Implementing your commitment to disestablish Te Pūkenga [METIS 1324166 refers]. That paper is to be lodged with Cabinet Office by 10am on Thursday 21 March, for SOU on 27 March.
3. This second paper seeks agreement to the key policy decisions for VET legislative change, and to issuing drafting instructions to PCO. We are currently consulting with other agencies on this paper and will provide you with a version for Ministerial consultation next week.

Drafting and timeframes

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

Date	Cabinet paper stage
Tuesday 19 March	Your feedback on this draft Agency feedback will also be received, and incorporated into the next draft
Friday 22 March – Monday 1 April	Ministerial consultation Note that the ten days for Ministerial consultation includes the Easter public holidays
Thursday 4 April	Lodgement of final Cabinet paper
Wednesday 10 April	SOU considers the paper
Monday 15 April	Confirmation by Cabinet
Tuesday 16 April	Full drafting instructions sent to PCO

The draft Cabinet paper includes your decisions to date

5. The attached draft Cabinet paper reflects policy decisions you have already made through the following reports:
 - a. Vocational education and training redesign: Work-based learning [METIS 1321446 refers]
 - b. Use of existing provisions for ITPs [METIS 1323047 refers]
 - c. Advice on Industry-led Training Organisations [METIS 1321429 refers]
 - d. Advice on legislative change for Industry Training Boards [METIS 1322890 refers]
 - e. Remaining legislation design matters for ITPs [METIS 1323890 refers]
 - f. Transition process to a new VET system [TEC AM-24-00116 refers].
6. We are preparing further advice to confirm some elements of your proposed model for work-based learning and standard setting, to ensure we understand how all of the key elements of the system would operate. We expect to provide you with this advice next week, with any necessary changes to the Cabinet paper being made following Ministerial consultation.

We are seeking a further decision for the Cabinet paper

7. We have included a placeholder in the draft Cabinet paper on the size of ITP councils based on our understanding of your directions in written feedback [METIS 1323047 signed copy refers] and discussions with us. We have also noted one instance where we have added legislative instructions into the draft Cabinet paper to align with another decision you have made.

Size of ITP Councils (decision sought)

8. Your initial preference was for councils of 8 members, including 4 Ministerial appointments [METIS 1323047 signed copy refers]. You later confirmed that councils would not be required to have staff or student representatives [METIS 1323890 signed copy refers]. This replicates the long-standing previous settings for ITP councils (although there was a brief period just before the establishment of Te Pūkenga when the ITP council size was 8 to 10 members).
9. Our understanding from recent discussions with you is that you may still be considering provision for councils to have more than 8 members (e.g., up to 10 or 12). Therefore, the draft Cabinet paper proposes (as a placeholder, paragraphs 33 and 34) that ITP councils have between 8 and 10 members, and that 4 members will be Ministerial appointees.
10. We will adjust this setting in the Cabinet paper to the option you indicate in the recommendations for this report. The following options would all have 4 Ministerial appointments, and no requirements for student or staff representatives:
 - a. 8 members - this was the size of ITP councils from 2010 until 2018.
 - b. Between 8 to 10 members (recommended), with a number in this range to be set by constitution – this was the range for ITPs from 2018 to 2020, when a requirement for staff and student representation on council was also introduced.
 - c. Between 8 to 12 members, with a number in this range to be set by constitution – this is the range provided for TELs currently, with student and staff representation required.
11. If you prefer a range in the size of the council, the number of members and manner of appointment for council appointees (e.g., by election, direct appointment, or ex officio) would be set through each ITP's constitution. The number could therefore be changed by a council through an amendment to its constitution within the legislated range. In practice, the Minister would receive advice on any proposed changes to an ITP's constitution before amending it by notice published in the Gazette as per the legislated process. (For an 8-member council, only the manner of appointment for council appointees would be set through the constitution).
12. A range would have the advantage of giving more flexibility to ITP councils, for example, to bring perspectives to council that are important for the region (which would not be required, but which they could choose to do).
13. A range of 8 to 10 members is our recommended option. This would provide some flexibility for councils to bring more perspectives onto council and aligns with council sizes for ITPs after 2011. In contrast, providing for a range of 8 to 12 members would give ITP councils the same range as universities and Crown-entity Wānanga (where members must include student and staff representatives). However, this would reduce the ability of the

Minister to ensure the quality of membership is high, which is likely to be important in the first years of the ITPs' establishment.

14. We also note that if you decide on a council size of 8 (which was the ITP setting until 2018), a council could still opt to commission external advice to bring in particular areas of expertise or experience.

Representation on ITBs (noting)

15. You have agreed to use the past settings in section 11B(1)(d) of the Industry Training and Apprenticeships Act 1992, which would require ITBs to develop and maintain arrangements for collective representation of employees in governance. You also decided not to require ITBs to develop and maintain arrangements for representation of Māori employers, and noted that Ministerial appointments could provide for this [METIS 1323890 signed copy refers].
16. In the same report, you agreed to draw on the settings in section 363 of the Education and Training Act 2020 for the establishment of ITBs. Section 363 includes a requirement that the governance arrangements allow for the representation of Māori employers.
17. In line with your earlier decision, we have drafted the Cabinet paper (paragraph 57) to reflect that the new governance requirements will not include representation of Māori employers.

We are also preparing a regulatory impact statement

18. The Ministry is required to prepare a regulatory impact statement (RIS) to accompany the Cabinet paper. The RIS is required to set out our analysis of the problems that the redesign is seeking to address, the options for addressing them and their impacts, and the proposed arrangements for implementation and review. Unlike the Cabinet paper, the RIS sets out the Ministry's view, including where it differs from that put forward in the Cabinet paper.
19. We are currently in the process of finalising the RIS and have submitted it for review by the Ministry's internal quality assurance panel and agency consultation. While the document is still in draft, it is likely to highlight that while the Ministry acknowledges many of the problems and risks with Te Pūkenga, on balance we would favour allowing more time for Te Pūkenga to attempt to develop and implement a sustainable operating model over a return to separate ITPs.
20. If Te Pūkenga is disestablished in favour of separate ITPs, the RIS notes that the Ministry's view that it would be preferable that its WBL function be split off to operate as one or more independent providers (while retaining the ability of other providers to enter into WBL) rather than ITBs taking on an arranging training function. Our preferred model for standard setting and skills leadership would be to retain a version of the current model, with potentially some consolidation and/or narrowing of functions to reduce costs to the Crown.
21. The RIS will also include a Te Tiriti o Waitangi analysis, considering both the status quo and your proposed package of reforms. The key concern highlighted in this analysis is likely to be the lack of opportunity for consultation or engagement with Māori stakeholders on the reforms, and the risk that reducing Māori representation and explicit Te Tiriti obligations for ITPs and ITBs (compared to the current system) will lead to the system being less responsive to the needs of Māori employers and learners.

Next Steps

22. Following your feedback on this report and on the attached draft Cabinet paper, we will provide you with a revised version for Ministerial consultation, alongside a draft of the RIS.

The revised version will also reflect feedback received from agencies, and we will highlight any significant feedback in our cover briefing to you.

Annexes to this paper

Annex 1: Draft Cabinet Paper: Vocational education and training redesign – key policy decisions

Proactively Released

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