



## Report: **VET system redesign – Legislation design**

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| To:             | Hon Penny Simmonds, Minister for Tertiary Education and Skills |           |                    |
| Date:           | 25 October 2024  | Deadline: | 29 October 2024    |
| Security Level: | In-Confidence  | Priority: | High               |
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### Why are we sending this to you?

- You are receiving this report as part of the process for giving effect to policy decisions on the VET system redesign.
- This report outlines the scope of the proposed amendments to the Education and Training Act 2020 and describes how these give effect to your decisions on the VET system redesign.
- Your feedback on proposed amendments will assist us in preparing your paper to Cabinet in December, seeking approval to issue drafting instructions to Parliamentary Counsel Office.

### What action do we need, by when?

- Provide your comments or feedback on the legislation design proposals as set out in this report at your meeting with officials on 29 October 2024.

## Alignment with Government priorities

1. This report is a part of the Vocational Education and Training (VET) system redesign, which is one of your key priorities.

## Background

2. The Government is committed to reforming the VET system by disestablishing Te Pūkenga NZIST, and re-establishing a network of regional ITPs, and industry skills boards (ISBs) to replace workforce development councils (WDCs). This will also include the transfer of work-based training co-ordination and pastoral care functions to ISBs.
3. Cabinet decisions are required for all substantial amendments to primary legislation. You can, however, also seek approval for delegated authority to progress some of the other decisions on any additional policy matters required to support (and that are consistent with) the Cabinet decisions, along with minor and technical changes. Because there are a number of consequential decisions likely to be needed following the further cost-out work and once PCO has worked through the initial drafting, we propose a two-stage approach to seeking Cabinet decisions on the legislation.
4. This report outlines the legislation design of the statutory framework for establishing new ITPs as tertiary education institutions (TEIs), forming a federation of ITPs, establishing industry skills boards (ISBs), and disestablishing Te Pūkenga NZIST and WDCs.
5. Stage one will seek high level decisions on the operating framework for ITPs, the federation and ISBs and most transitional matters, and stage two will seek decisions on any additional transitional provisions that may be required. Approval for these stage two decisions can be sought in your Legislation Cabinet paper seeking approval to introduce the Bill, expected to be late April/early May.
6. The statutory framework will include detailed provisions for enabling the transfer of education and training programmes from Te Pūkenga NZIST to new ITPs or other providers, and the transfer of work-based learning co-ordination and pastoral care functions to ISBs. The division of functions under the hybrid model would need to be reflected through the legislation relating to apprenticeship training activities. It will also include transfer of assets (which includes learning systems and programmes etc) and liabilities.
7. The stage two transitional provisions will include arrangements for transfer of employees from Te Pūkenga NZIST to another provider or to an ISB, and from a WDC (if required) to an ISB.

## Objectives

8. The objectives in the legislation for the system redesign are to -
  - a. set out the operating framework for a federation of ITPs that need access to programme design, development or delivery and shared services to support their success and long-term viability;
  - b. amend the training levy provisions in the Act to provide for levies to be prescribed by regulations where there is adequate industry support, without the need to ballot industry members who would be required to pay a levy;

- c. set out the operating framework for the ISBs to take over a streamlined set of standards-setting functions from WDCs, and the pastoral care function from current providers of work-based learning (WBL);
  - d. enable the transfer of programmes, rights, assets, liabilities, staff, and student or trainee enrolments from Te Pūkenga NZIST to new ITPs, ISBs and other tertiary education organisations responsible for continuing the education and training programmes, activities or functions of Te Pūkenga NZIST;
  - e. enable the transfer of qualifications, standards, rights, assets, liabilities, and staff (if required), from WDCs to ISBs with corresponding coverage for the specified industries.
9. The object of the transitional provisions is to enable different configurations of the VET system driven by final Government policy decisions in 2025 on:
- a. the number of ITPs to be established either as standalone TEIs or as members of a federation;
  - b. the number and specified industry coverage of ISBs that will replace the existing WDCs and take responsibility for the coordination of training and pastoral care functions;
  - c. the allocation and transfer of education or training programmes and related activities to a continuing organisation that can be either a TEI (ITP, wānanga, or university), or a PTE (under local authority or private ownership);
  - d. the allocation and transfer of pastoral care responsibilities to ISBs.

### ***Drafting considerations***

10. Based on the policy decisions, we estimate a bill comprising 100 clauses or more, covering substantive amendments to the Act, transitional provisions, minor and technical amendments, and consequential amendments to other Acts (for example, the Crown Entities Act 2004 and Ombudsmen Act 1975). PCO has advised that a bill of this size and complexity may take up to 5 months to draft, taking into account PCO's forward drafting commitments and the Christmas closedown.
11. Drafting is an iterative process between the Ministry, PCO, and you (for decisions on any additional policy matters under an authority to act). We would expect to see multiple working drafts of the bill before it is ready for the scheduled date of introduction in May 2025.
12. The proposed legislation for transitional provisions to implement the new statutory framework is premised on essential planning and pre-establishment processes having been completed well in advance of the date of enactment, in time for new ITPs, ITP federation, and ISBs to be established and operational on the commencement date.
13. We note that this may not allow for an adequate statutory transition period as is usual practice in a system change of this scope and complexity.

# Key decision 1: Outline of statutory framework for VET system reform

## *Proposed statutory framework*

14. The proposed amendments to the Education and Training Act 2020 (subject to PCO drafting conventions for the design of legislation) are contained in the following parts:
  - a. Commencement;
  - b. Establishment, governance, and administration of ITPs;
  - c. Operating framework for ITP federation;
  - d. Interventions for ITPs;
  - e. Establishment, governance, and administration of ISBs;
  - f. Disestablishment of Te Pūkenga NZIST;
  - g. Transitional provisions for transfer of education and training programmes and related activities from Te Pūkenga NZIST to TEOs (including ITPs, wānanga or PTEs);
  - h. Transitional provisions for transfer of co-ordination of training and pastoral care activities for specified industries from existing providers (WBL divisions and PTEs) to ISBs;
  - i. Transitional provisions for transferring functions and specified industry coverage from WDCs to various ISBs, or NZQA as may be required;
  - j. Disestablishment of WDCs and transitional provisions for transfer of functions to ISBs;
  - k. Other minor, technical and consequential amendments.
15. The main elements in each of these parts are discussed in the corresponding sections below.

## *Commencement*

16. The proposed commencement date for the amendments to the Act to come into force is 1 January 2026, being the operative date on which the new ITPs are established as TEIs, the federation is operational and new ISBs are established. Te Pūkenga NZIST is re-established by another name as a transitional entity.
17. While most of the implementation planning will be undertaken prior to enactment of the bill, there are a number of statutory processes that require the necessary legislation to be in place. These include -
  - a. TEC's statutory guidance for, and approval of Te Pūkenga NZIST's transition plan for allocating programmes and activities to a continuing organisation;
  - b. Ministerial directions for allocation and transfer of programmes and activities to a continuing organisation, if required;
  - c. orders in council for establishing ITPs and establishing new ISBs;
  - d. ITP council constitutions for new ITPs (for appointing members of the council);
  - e. appointments to the first councils of ITPs and ISB boards;

- f. notifying the criteria for designating federation ITPs;
  - g. notifying and consulting (in good faith) affected staff of Te Pūkenga NZIST and WDCs, presenting offers of employment, processing acceptances, or notifying redundancies.
18. Because the empowering legislation is a prerequisite for these procedural requirements to be completed, there is a very small window of time available between the date of enactment (when the legislation is passed by Parliament - likely to be in the last quarter of 2025) and the intended date of commencement (1 January 2026 - when the amendments are brought fully into force). This creates significant risk given the scale and complexity of these structural reforms. A flexible commencement date may be appropriate to mitigate against this risk, given the unusually short transition period in which to formalise the arrangements for implementing the system redesign.
19. While it remains a matter for your final decision, we recommend a commencement date that is the earlier of a date specified by Order in Council or a 'backstop date'. This would give the Government the ability to bring the amendments into force on 1 January 2026, or a date later in 2026, if necessary.

### ***Establishment, governance, and administration of ITPs***

20. These amendments provide, firstly, for the characteristics of an ITP which reflect its role, as agreed by you [METIS1336882 refers], as a provider of core vocational education and training programmes to the communities in the region served by the ITP. The characteristics are the foundation principles of an ITP, which the Minister for Tertiary Education and Skills (the 'Minister') must take into account when deciding whether to recommend that an ITP be established as a TEI by Order in Council. To this end the Minister would need to be satisfied that a proposed ITP is capable of fulfilling the characteristics and is viable for that purpose. This in turn will drive the decisions on possible ITP mergers and closures that may need to occur within Te Pūkenga NZIST prior to the date of commencement.
21. An order establishing an ITP may specify the region or regions served by the ITP, and must specify if the ITP is an 'anchor polytechnic' responsible for providing services to the federation. The Open Polytechnic is earmarked as the initial anchor polytechnic, but the establishment process would enable one or more ITPs to be assigned as an anchor polytechnic to the federation. An anchor polytechnic can be replaced at any time by amending the establishment orders for the ITPs concerned.
22. The council of an ITP must have 8 members (including 4 members appointed by the Minister) as provided by its constitution. Under Schedule 11 of the Act as it would apply to ITPs, the Minister would need to specify the constitution of the council of a new ITP, based on the recommendation of a committee of 3 persons appointed by them. A constitution states how members are appointed (for example, elected, directly appointed, or appointed ex officio).
23. The matters to be considered when making appointments to an ITP council include the need to have regard to the principle that a council should as far as reasonably practicable reflect the industries and commercial activity, the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of the communities it serves, and should also include Māori. This reflects your earlier decision on legislative policy proposals for the April 2024 Cabinet paper (not considered at Cabinet), which differs from the incorrect formulation in

the table annexed to our recent Report: ITP Policy Decisions (Metis No. 1336882 refers). We apologise for the error in that report.

24. Other amendments to give effect to your decisions are for –
  - a. the Minister to appoint a chairperson and deputy chairperson;
  - b. duties of an ITP council (in addition to the duties of the councils of all TEIs);
  - c. various machinery provisions required for the operation and governance of an ITP.

### ***Operating framework for ITP federation***

25. These amendments are for the establishment and operation of the federation of ITPs.
26. The federation will consist of the ITPs the Minister designates as members of the federation, a statutory board, and an anchor polytechnic as specified by the order in council establishing the ITP.
27. The federation as a whole is an operating framework built around a set of statutory rights, duties and functions for each of its constituents, acting together in accordance with the purposes of the federation.
28. The main amendments for implementing the federation model are for -
  - a. specifying the purposes of the federation, which underpin the duties and functions of the federation ITPs and the federation board;
  - b. a ministerial power to designate a polytechnic as a member of the federation, if necessary or expedient, to support the ITP in the performance of its functions or its long-term viability;
  - c. a power to specify the criteria for designating a federation ITP, or for removing a designation, which regulate entry and exit into (or out of) the federation;
  - d. specifying the duties of the council of a federation ITP to use the relevant services available through an anchor ITP to the extent necessary to achieve efficiency gains or economies of scale, or to support the ITP to remain viable;
  - e. enabling federation ITPs to have a combined academic committee by agreement with other federation ITPs and/or an anchor polytechnic, or if directed to do so by the Minister;
  - f. establishing a federation board as a body corporate, comprising the CE (or nominee) and Chair (or another council member) of each of the federation ITPs, and an independent chairperson appointed by the Minister;
  - g. specifying the role and duties of the board, to give effect to the purposes of the federation by commissioning or procuring the relevant services from an anchor polytechnic or alternative supplier, as required by each federation ITP to deliver core provision as a minimum;
  - h. a power for an anchor polytechnic to charge for the actual and reasonable costs of providing services to federation ITPs (leaving it open to the parties to agree on other arrangements for funding the cost of procuring or commissioning services);
  - i. a power for the board to charge the federation ITPs for the actual and reasonable costs of procuring or commissioning services from an anchor ITP;

- j. an exemption from the requirement for the board to pay income tax (for example, on fee revenue);
  - k. machinery provisions for the operation and administration of the board for conduct of meetings, collective and individual duties of members, method of contracting, payment of staff and overhead expenses, personal liability of members and staff, appointment of committees, delegations, bank accounts, disputes resolution, and reporting to members.
29. In line with your decisions, these clauses are designed to be as enabling as possible. For example, the federation board could either be a conduit for collection and payment of fees charged by an anchor polytechnic for its services, or the members could decide to pay the anchor polytechnic directly for the services it provides.

### ***Interventions for ITPs***

30. These amendments provide for the same graduated interventions for Te Pūkenga NZIST to apply to an ITP, based on the risk criteria determined by the Secretary, including;
- a. a power for the TEC to require an ITP to provide information to ascertain whether there is a risk to the ITP
  - b. a power for the TEC to require an ITP or related entity to provide information in respect of a particular risk;
  - c. a power for the Minister to appoint a Crown observer;
  - d. a power for the TEC to require an ITP to obtain specialist help;
  - e. a power for the TEC to require an ITP to prepare a performance improvement plan;
  - f. a power for the Minister to appoint a Crown manager for specific purposes;
  - g. a power for the Minister to dissolve a council and appoint a commissioner;
  - h. a power for the council of an ITP to request intervention.

### ***Establishment, governance, and administration of ISBs***

31. These amendments provide for WDCs to be disestablished and replaced by ISBs (and all relevant provisions in the Act modified accordingly).
32. The existing provisions in sections 363 to 372 will be amended to make the changes required for new orders in council to establish ISBs, with new functions, governance and administrative arrangements. The new orders would also reflect the changes to coverage for specified industries relative to the current WDC coverage for specified industries
33. The amendments to section 363 (Establishment of WDCs) will specify the requirement for an ISB to have 8 members including at least 2 members appointed by the Minister, and remove the existing requirement for Māori representation.
34. The amendments to section 367 (Functions of WDCs) will provide for the functions of an ISB for strategic workforce analysis and planning, developing and setting standards, and quality assurance (endorsement and moderation activities). A new function for co-ordination of work-based training and pastoral care of trainees will be added to give effect to your decisions on the 'hybrid option' for work-based learning.

35. The existing WDC function of advising TEC on investment in the vocational education and training needs for specified industries is largely encompassed by the strategic workforce analysis and planning function of an ISB. As a result, the TEC's corresponding duties in section 411 (to have regard to investment advice from a WDC when assessing a proposed plan for funding approval, and to give effect to advice on the mix of vocational education and training in funding decisions) will be repealed.
36. Section 369 (Duties of WDCs) will be amended so that an ISB does not have a specific duty to have regard to the needs of Māori and other population groups identified in the Government's tertiary education strategy (TES). ISBs could still be required by the accountability arrangements in the establishment orders to have regard to the TES when considering the education and training priorities for specified industries. Decisions on the accountability arrangements and other matters for inclusion in the ISB establishment orders would be made next year.

### ***Industry training levy***

37. In line with your decision on options for imposing an industry training levy (Metis 1336871 refers), these amendments remove the requirement for 60% support in a ballot of industry members in order to impose a training levy, and for any levy to instead be prescribed by regulations based on a request by industry. The regulation-making power is predicated on the Minister being satisfied that consultation by an ISB shows there is sufficient industry support for an industry-wide training levy.
38. Schedules 16 and 17 of the Act will be amended to specify the matters to be provided for in the regulations, including the purposes for which the levy may be used, the mechanism for identifying the members of a specified industry (for payment of the levy), collection of levies, record keeping and annual reporting by ISBs, disputes resolution, and appeals.

### ***ISB power to charge fees for standards-setting***

39. Based on recent advice [METIS 1336883 refers], you confirmed that you do not want ISBs to have the ability to charge fees to learners for the pastoral care function, but would support ISBs having the ability to charge fees for standards-setting functions (as NZQA does, and some ITOs used to do so for functions such as moderation).
40. To enable this the amendments provide for a new fee-setting power by which an ISB may, by notice, specify a fee payable by a provider in respect of an ISB's activities in the performance of its standards-setting functions. Fees would be subject to NZQA approval, having regard to the costs incurred by the ISB for the activities for which a proposed fee is payable, and fees (if any) charged by other ISBs for the same activities.

### ***Disestablishment of Te Pūkenga NZIST***

#### *Te Pūkenga NZIST continues after the commencement date as a transitional entity*

41. At the agencies meeting on 22 October you identified the need to ensure continuity of provision for any programmes not allocated to a continuing organisation (ITP, wānanga, university or PTE) on the date of commencement, pending further decisions on the transfer of provision to another provider. The aim is to avoid the potential for unallocated provision to lapse in circumstances where there may not be a suitable entity immediately available to be the continuing organisation.

42. To this end the legislation would provide for Te Pūkenga NZIST to continue after the date of commencement as a transitional entity, until any remaining unallocated provision and associated rights, assets, liabilities, staff, and student or trainee enrolments had been transferred, or alternative arrangements had been made.
43. The name, functions, and charter provisions for Te Pūkenga NZIST could be amended to reflect the purposes of the transitional entity, and it would then continue to operate under the existing statutory framework for the time being.
44. There are significant advantages to this approach, in that it avoids the need to establish a new entity solely for transitional purposes. A transitional entity would also be more likely to retain council members and essential staff, and provide greater certainty and continuity for students and trainees.
45. Once all unallocated provision had been transferred out the transitional entity would be disestablished by Order in Council, or otherwise by a date specified in the legislation. The Order would provide for, amongst other things, the following:
  - a. the disestablishment of Te Pūkenga NZIST;
  - b. the distribution of any residual assets and liabilities (including for outstanding tax obligations and redundancies);
  - c. for members of the council to go out of office without compensation for loss of office;
  - d. any students and trainees still enrolled in a partially completed programme (and not yet transferred to another provider under the transitional provisions) to transfer to another provider; the final report of the transitional entity up to the date of disestablishment;
  - e. any other matters necessary or expedient for the orderly winding up of the entity
46. Once the transitional entity is disestablished then the provisions in the Act relating to Te Pūkenga NZIST would be repealed by statute under the transitional provisions.
47. We will provide you with further policy advice on the specific amendments needed to convert Te Pūkenga NZIST to a transitional entity with revised purposes, functions, and charter obligations.

#### *Dual sector entity*

48. At the agencies meeting on 22 October, you also discussed with officials having a mechanism by which an ITP could be merged or incorporated into a university, which would in effect become a 'dual sector' TEI.
49. One option is that under the proposed transitional arrangements in the bill, any of Te Pūkenga NZIST's ITP provision could be allocated to a university as the continuing organisation. After the commencement date, the relevant programmes and associated rights, assets, liabilities, staff, and students or trainee enrolments would transfer to the university concerned.
50. Alternatively, once an ITP is established as a TEI, it could be subsequently merged with a university, as provided in section 270 of the Act. For example, once a 'Waikato Institute of Technology' is established as a TEI, it could be merged with the University of Waikato.
51. In both of these scenarios, the ITP provision (or TEI as a whole) is in effect being absorbed by the university, which has no ongoing obligation to maintain the same type or range of VET provision as the merged entity. To that extent, while there is no legal impediment to a

university undertaking VET provision (by way of allocation of ITP programmes or a merger with an ITP), it is not a genuinely 'dual sector' entity with a statutory mandate for VET provision. As a consequence, there may need to be legislated safeguards against the possible loss of core VET provision under the control and management of a university.

52. Another potential barrier to a dual sector entity is that, under the proposed transitional arrangements, a university is not compelled to take over any ITP provision allocated to it under a transition plan. You could consider including a provision in the bill giving you the power to require a TEI (e.g. a university) to be a continuing organisation for the purpose of any ITP provision allocated to it under Te Pūkenga NZIST's transition plan. However, that would be a significant encroachment on the institutional autonomy of universities to regulate their own affairs and likely to be highly controversial.
53. A similar issue arises with mergers by Order in Council under section 270. While it is a legislative power (for secondary legislation), in deciding whether to recommend that an ITP be merged with a university, the Minister would need to balance the reasons for the merger against the institutional autonomy of a university to determine the range and type of provision in terms of section 260 of the Act. In these circumstances, there is some doubt whether a merger could be imposed on a university that disagreed with it.
54. There is nonetheless scope for 'dual sector' provision through a university, as long as the risks are managed appropriately, and it may be an option where there is no viable ITP option for the region.
55. If dual sector entity arrangements are likely to form a significant part of the VET system redesign then we can provide you with further policy advice, setting out the risks and benefits in more detail. This will enable you to make a fully informed decision about whether to initiate discussions with the universities concerned to explore the possibility of an allocation of ITP provision (or merger) by agreement.

### ***Transitional provisions for transfer of programmes and functions from Te Pūkenga NZIST to continuing organisation or an ISB***

56. These amendments set out the machinery provisions for transferring the rights, assets, liabilities, agreements, staff, and student, apprentice, or trainee enrolments to a continuing organisation or an ISB<sup>1</sup> with effect on the commencement date.
57. Under these provisions Te Pūkenga NZIST is required to prepare a transition plan for -
  - a. identifying and allocating current ITP and WBL programmes of study or training, and the associated rights, assets and liabilities, and staff and student/trainee enrolments to another tertiary education organisation ('continuing organisation');
  - b. identifying and allocating the rights, assets and liabilities, and staff required for co-ordinating training and pastoral care of trainees in specified industries to the responsible ISB.
58. The TEC may give guidance to Te Pūkenga NZIST on transition matters relating to the allocation of programmes and activities to a continuing organisation or an ISB (consistent

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<sup>1</sup> In cases where an ISB does not have coverage, relevant staff and in some cases Intellectual Property may also move from a WDC to NZQA.

with Government decisions on establishment of ITPs and ISBs), and must approve the transition plan.

59. The Minister will have a temporary power of direction for clarifying the arrangements or requirements for allocating or transferring programmes and associated rights, assets, liabilities, staff and student or trainee enrolments to a continuing organisation or an ISB.
60. Following on from Government decisions on ITP mergers or closures prior to enactment of the bill, the continuing organisation for transferring the education and WBL programmes and activities of an ITP division may be a TEI (ITP, wānanga, or university), or a PTE (in public, private, local authority<sup>2</sup>, or mixed ownership).
61. Other amendments are for the machinery provisions required to implement transfers of education and training programmes and related activities to a continuing organisation or an ISB, including -
  - a. transfer of programmes, rights, assets, liabilities and agreements;
  - b. substitution of Te Pūkenga NZIST for a continuing organisation or an ISB as a party to any unresolved legal proceedings;
  - c. transfer of student and trainee enrolments;
  - d. continuation of visas held by staff, students or trainees for the purpose of study or employment at Te Pūkenga NZIST;
  - e. continuation of TEC funding for programmes and activities;
  - f. continuation of NZQA approvals, accreditations and consents for programmes and activities;
  - g. the selection and transfer of employees by way of an offer and acceptance process.

*Transfer of property assets to a PTE may be subject to offer-back and rights of first refusal*

62. The transfer of Te Pūkenga NZIST's programmes and assets to a PTE, as envisaged by these transitional arrangements, is in effect the privatisation of public education provision. As such, the transfer of any associated property assets (by sale and purchase of land and buildings) to a PTE, in particular, may trigger the requirements under the Public Works Act 1981 (for offer-back to previous owners) and any applicable Treaty settlement legislation (for pre-emptive rights of first refusal, or ROFR). This could limit the scope for transfer of programmes and assets to a PTE.
63. Leasing of Crown land and buildings is an alternative to the sale and purchase of property to a continuing organisation, but this could also trigger the Public Works Act 1981 requirements and ROFR, depending on the terms of the lease.
64. If you expect the sale and purchase, or leasing of property assets to PTEs to be a significant part of the VET system redesign then we can provide you with further advice on this aspect of the reforms, noting that it raises complex issues that would require specialist property and legal advice. These matters are highly unlikely to be resolvable within the current timeframes and are matters for external statutory processes outside of the Ministry's control.

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<sup>2</sup> Note that the ability of a local authority to own or control a PTE may be constrained by local government legislation

*Transfer of employees to a continuing organisation or an ISB*

65. Based on your earlier decisions and subsequent discussions, there are five possible transfer of employment scenarios that would need to be addressed by the transitional provisions -
- a. transfer of Te Pūkenga NZIST (ITP & WBL divisions) administration and academic staff required by a TEI (ITP, wānanga or university);
  - b. transfer of Te Pūkenga NZIST (ITP & WBL divisions) administration and academic staff required by a PTE;
  - c. transfer of Te Pūkenga NZIST (WBL coordination of training and pastoral care) staff required by an ISB;
  - d. transfer of any relevant WDC standards-setting and workforce planning staff if required by an ISB;
  - e. transfer of WDC standards-setting staff (where no ISB industry coverage) to NZQA.
66. Under the transitional provisions, each continuing organisation (ITP, wānanga, or PTE), or ISB selects the Te Pūkenga NZIST or WDC employees needed to continue the programmes and activities, or functions being transferred. The selected employees may be offered employment by the continuing organisation that is on the same terms and conditions (including any service-related benefits or entitlements, and superannuation), or on new terms and conditions.
67. The question whether employment offers should be made on the same or modified terms and conditions could either be specified by legislation for each scenario (based on your decisions), or otherwise be determined by the continuing organisation. Either way, this involves a trade-off between, on the one hand, giving a new employer the opportunity to reduce existing terms and conditions of employment and, on the other hand, the potential for redundancies with associated costs payable by the current employer.
68. In general, under the transitional arrangements employees who either accept or decline an offer of employment by a new employer on the same or equivalent terms and conditions of employment would not be entitled to redundancy compensation by reason only of a change of employer ('technical redundancy'). Conversely, employees who accept or decline an offer of substantially reduced terms and conditions would be contractually entitled to redundancy compensation under their existing employment agreements.
69. Any employees of Te Pūkenga NZIST or a WDC who are not offered employment by a continuing organisation or ISB, as the case may be, would be eligible for redundancy compensation as provided for in their employment agreements.
70. The table attached as Annex 1 shows some possible settings for transfer of employment in each of the scenarios in paragraph 65, depending to whether the employees concerned transfer to a TEI, a PTE, an ISB or NZQA. The scenarios in paragraph 65(b) to (e) in particular might entail offers of employment on reduced terms and conditions, with corresponding potential for redundancies.
71. Decisions on these transitional arrangements are not required for the December Cabinet paper and can be made at a later date. We can provide you with further advice on the options for transfer of employment to a continuing organisation or an ISB, and any other transitional matters arising from the legislative proposals, following Cabinet's high level

decisions. Any decisions required for drafting purposes can then be made under an authority to act.

### ***Disestablishment of WDCs and transitional provisions for transfer of functions to ISBs***

72. These amendments provide for WDCs to be disestablished by Orders in Council, made on the recommendation of the Minister. The Orders would specify the date of disestablishment and provide for the distribution of any residual assets and liabilities (including any outstanding liability for redundancy payments).
73. On the date of disestablishment, the members of a WDC would cease to hold office and neither the Crown nor the WDC would be liable to pay compensation to members for loss of office.

#### *Transitional provisions*

74. These amendments provide transitional arrangements for the transfer of functions from a WDC to an ISB with relevant industry coverage, as follows:
  - a. Each WDC must prepare a transition plan for approval by the TEC, which provides for-
    - b. the allocation of qualifications and standards, rights, assets, liabilities, and staff (if any) to new ISBs and, where relevant, NZQA; and
    - c. the disposal of any assets not relevant to the transfers above.
75. TEC may give guidance to a WDC on matters that must be addressed by the transition plan, and the Minister has a temporary power to give directions to a WDC if necessary for the transfer of functions and activities to an ISB;
76. On the date of commencement, the relevant qualifications, standards, rights, assets, liabilities and agreements and statutory consents or approvals transfer to a corresponding ISB.
77. The transitional arrangements would need to provide for any employees of a WDC required by an ISB to carry out its functions to transfer to the ISB (by way of an offer and acceptance process). The transfer provisions would also need to specify the terms of an offer of employment, for example, whether on the same terms and conditions, or as determined by the ISB.

### **Next steps**

78. You have a meeting with officials on 29 October 3-6pm where we can work through the details of the legislation design and transitional arrangements with you.

### **Recommended Actions**

The Ministry of Education recommends you:

- a. **agree** that, to correct an error in the Report: ITP Policy Decisions (Metis No. 1336882 refers) and consistent with your earlier decision, the matters to be considered when making appointments to an ITP council include -

- i. the need to have regard to the principle that a council should as far as reasonably practicable, reflect the industries and commercial activity, the ethnic, gender, and socio-economic diversity, and the diversity of abilities, of the communities it serves; and
- ii. should include Māori

**Agree** disagree

- b. **note** there is a very small window of time available of approximately two months between the date of enactment and the intended date of commencement of 1 January 2026 creating significant implementation risks.

**Noted**

- c. **agree** that the commencement date for the amendments to the Act to come into force be specified by Order in Council (1 January 2026 ~~or a later date if required~~)

**Agree** disagree

- d. **agree** that the transitional arrangements should provide for Te Pūkenga NZIST to continue as a transitional entity after the date of commencement with modified purposes, functions and charter obligations for continuing any unallocated provision

**Agree** disagree

- e. **note** that the transitional arrangements for the transfer of employees to new employers involves a trade-off between the need to modify existing terms and conditions of employment and potential for redundancies

**Noted**

- f. **note** that the transfer of VET programmes and assets from Te Pūkenga NZIST to a PTE enabled by the transitional arrangements is a form of privatisation and may trigger offer-back rights and Treaty settlement rights of first refusal

**Noted**

- g. **note** that a 'dual sector' TEI is enabled by way of -
  - i. the allocation and transfer of current ITP provision to another TEI (university) under the proposed transitional provisions; or
  - ii. after the date of commencement by way of a merger between an ITP established as a TEI and another TEI (university)

**Noted**

h. **agree** that the legislation proposals should include a fee-setting power by which an ISB may charge a fee to a provider for standards-setting functions

**Agree** / disagree

i. **note** that officials will provide you with further advice on options for transitional arrangements needed to transfer employees to a new employer, and any other transitional matters to inform your decisions on the necessary legislative proposals

**Noted**

**Proactive Release:**

a. **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

Rachel Dillon

**Programme Manager**

**Tertiary Education & Evidence**

25/10/2024

Hon Penny Simmonds

**Minister for Tertiary Education and Skills**

27/10/24



**Te Tāhuhu o  
te Mātauranga**  
Ministry of Education

## **Annexes**

The following are annexed to this paper:

Annex 1: Indicative settings for transfer of employees to a continuing organisation

## Annex 1: Indicative settings for transfer of employment to a continuing organisation

| Current employer              | Category of employees   | New employer                               | Offers made to selected employees | Collective (CEA) or individual employment agreement (IEA)? | Service-related benefits or entitlements, and superannuation  | Redundancy  |
|-------------------------------|---|--|-----------------------------------|--|---|---|
| Te Pūkenga NZIST              | ITP divisional staff required for administration, management, or delivery of education and WBL programmes | TEI (ITP or wānanga)                       | Same terms & conditions           | CEAs continued by new employer                             | Service-related benefits or entitlements, superannuation, including membership in GSF, are maintained                     | No compensation for employees who accept or decline an offer ('technical redundancy') - Employees who are not made an offer are entitled to redundancy compensation |
| Te Pūkenga NZIST              | ITP divisional staff required for administration, management, or delivery of education and WBL programmes | PTE (private or local authority ownership) | New terms and conditions          | CEAs not continued by new employer – offer based on IEA    | Service-related benefits or entitlements, and superannuation (including membership in GSF) can be maintained, if required | Employees who are not made an offer, or who decline an offer on reduced terms and conditions are entitled to redundancy compensation                                |
| Te Pūkenga NZIST              | WBL unit employees required for coordination of training and pastoral care of trainees                    | Industry Skills Board                      | Same terms & conditions           | CEAs continued by new employer                             | Service-related benefits or entitlements, superannuation, including membership in GSF, are maintained                     | No compensation for employees who accept or decline an offer ('technical redundancy') - Employees who are not made an offer are entitled to redundancy compensation |
| Workforce development council | WDC employees required for standards-setting and workforce planning functions of ISBs                     | Industry Skills Board                      | New terms and conditions          | CEAs not continued by new employer – offer based on IEA    | Service-related benefits and entitlements, and superannuation including membership in GSF can be maintained, if required  | Employees who are not made an offer, or who decline an offer on reduced terms and conditions are entitled to redundancy compensation                                |

|                               |   |      |                          |   |   |  |
|-------------------------------|---|------|--------------------------|---|---|--|
| Workforce development council | WDC employees required for standards-setting and workforce planning functions where no ISB coverage for relevant industry | NZQA | New terms and conditions | CEAs not continued by new employer – offer based on IEA | Service-related benefits and entitlements, superannuation, including membership in GSF may be maintained, if required | Employees who are not made an offer, or who decline an offer on reduced terms and conditions are entitled to redundancy compensation |
|-------------------------------|---|------|--------------------------|---|---|--|