Te Tāhuhu o te Mātauranga
Ministry of Education

# Report: Update on VET Bill

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| To: | Hon Penny Simmonds, Minister for Vocational Education | | |
| Date: | 18/08/2025 | Deadline: | 19/08/2025 |
| Security Level: | In-Confidence | Priority: | High |
| From: | 9(2)(a)<br>VET Programme Manager | Phone: | 9(2)(a) |
| Drafter: | 9(2)(a) | METIS No: | 1352328 |

## Why are we sending this to you?

- You are receiving this report to advise you of the need for an amendment paper (AP) to the Education and Training (Vocational Education and Training System) Amendment Bill.

## What action do we need, by when?

- We are seeking your decision on a proposed AP now to allow time for PCO drafting.
- Discuss further any of the Ministry's recommendations at your tertiary agencies' officials meeting on 19 August 2025.

## Key facts, issues and questions

- Changes to the Bill by way of an AP are needed to support a smooth transition to the new vocational education and training system by 1 January 2026.
- Bringing forward the commencement date of the Bill to the day after the Bill receives the Royal Assent will enable the exercise of the relevant statutory powers required to implement the reforms by 1 January 2026.
- Other technical changes to the Bill are needed but are outside the scope of PCO's authority to correct drafting errors and minor defects in the Bill. These changes will also need to be made via an AP.

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## Alignment with Government priorities

1. This report supports the redesign of the vocational education and training (VET) system, which is one of your priorities for the Vocational Education portfolio.

## Background

2. The Education and Training (Vocational Education and Training System) Amendment Bill was introduced to Parliament on 13 May 2025, and following its first reading on 20 May 2025, was referred to the Education and Workforce Committee. The Committee has met to consider the Department report and PCO is now producing a revision-tracked version of the Bill.
3. The Ministry of Education and the Tertiary Education Commission are working through the steps required to implement the reforms in the period between the anticipated date of enactment of the Bill and the commencement date in the Bill of 1 January 2026.
4. There are a number of statutory processes required to implement the reforms but these processes can only come into effect once the empowering provisions in the Bill come into force. The current date for the Bill to come into force is 1 January 2026.

## There is a risk that implementation activities may be delayed under the current commencement date

5. There is often ambiguity when planning and implementing legislative change in advance of the passing of a Bill. This can be compounded when there are short timeframes and large-scale system reform.
6. Section 43 of the Legislation Act sets out when powers can be exercised before commencement. This section provides that a power conferred by legislation may be exercised before the legislation comes into force or takes effect if necessary to bring the legislation into operation.
7. 9(2)(h) [redacted]
8. 9(2)(h) [redacted] we propose that the Bill be amended by amendment paper (AP). An AP for the requisite changes may be introduced at the Committee of the Whole House stage so would not impact on the timeline for the Bill.
9. The AP will bring forward the date of commencement to the day after the Bill receives the Royal Assent. On the current timeline, this would bring the legislation into force in late October.

## There are various statutory processes required….

10. For the 10 new polytechnics and 8 new Industry Skills Boards (‘new entities’) to be established and functional by 1 January 2026, there are various statutory processes that would need to be completed after the date of enactment of the Bill and prior to the date of commencement, when the new legislation comes into force.

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11. For example, the powers to approve transition plans for polytechnics and new ISBs, to make Orders in Council (OiCs) establishing the new entities, to determine the constitution of the new polytechnics, and to present binding offers of employment to the staff who will transfer to the new entities, are essential to the successful completion of the transition by 1 January 2026. The preliminary work necessary to underpin these statutory processes is well underway but can only come into effect once the empowering provisions in the Bill come into force on 1 January 2026.

12. 9(2)(h) section 43 of the Legislation Act 2019 9(2)(h) provides that a power conferred by legislation may be exercised before the legislation comes into force or takes effect if necessary to bring the legislation into operation. Section 44 of the Legislation Act then provides that anything that results from the exercise of a power under section 43 may only take effect on or after commencement of the legislation that confers the power, but that limit does not apply if the exercise of the power is necessary or desirable to bring the legislation into operation.

13. The various statutory processes required to implement the reform are set out in **Annex 1 - Table of statutory processes for establishing new polytechnics and ISBs**.

9(2)(h)

14. 9(2)(h)

15. 9(2)(h)

## Bringing forward the commencement date minimises the risk

16. 9(2)(h)

[1] 9(2)(h)



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17. As your expectation is that the new entities will be established and functional on 1 January 2026, 9(2)(h) . To that end we recommend that the commencement date in the Bill is changed to the day following the Royal Assent. This requires an AP.

## Other technical changes need to be made to the Bill

18. We have identified some other technical changes to the Bill that are outside the scope of the Department Report to the Select Committee. The changes relate to the transitional provisions for the second-phase transfer of work-based training from ISBs to another tertiary education provider. These are set out in **Annex 2 – Table of technical changes to the Bill** and would also require an AP.

## The process itself for an AP is straightforward and low risk

19. PCO has advised that amending the commencement date and transitional provisions for the transfer of work-based training are technical changes that give effect to existing policy decisions. This means that you can authorise these changes by way of AP without further reference to Cabinet, unless you prefer to do so.

20. PCO would draft the AP which would then be provided to you for your approval. Once you have approved the AP for printing, PCO prints the AP and the Office of the Clerk holds it until you authorise release. On release, the Office of the Clerk distributes copies to MPs and authorises PCO to publish the AP to legislation.govt.nz.

21. The TEC has confirmed that while the commencement date will be brought forward, the date of transfer will remain 1 January 2026. This would apply to specified rights, assets, liabilities or agreements. Funding, for example, for Establishment Committee appointments would be from the TEC up until then. For financial reporting purposes for the polytechnics, their financial year would commence on 1 January 2026.

## Next Steps

22. Discuss with officials at your Tertiary Agencies meeting on 19 August 2025.

## Annexes

The following are annexed to this paper:

Annex 1 Table of statutory processes for establishing new polytechnics and ISBs

Annex 2: Table of proposed technical changes to the Bill

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## Recommended Actions

The Ministry of Education recommends you:

a. 9(2)(h) [redacted]

**Noted**

b. **agree** to change the commencement date in the Bill to the day after the Royal Assent to support your decision that the new entities be established and functional on 1 January 2026

**Agree** **Disagree**

**c.** **agree** to the proposed technical changes in the transitional provisions in the Bill, as set out in Annex 2, for the transfer of work-based learning from ISBs to new providers

**Agree** / **Disagree**

d. **agree** to authorise instructions to PCO for preparing an amendment paper to give effect to the proposed changes to the Bill

**Agree** / **Disagree**

**Proactive Release:**

e. **agree** that the Ministry of Education release this paper with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982

**Agree** / **Disagree**

9(2)(a) [redacted]

**VET Programme Manager**

**Te Pou Kaupapahere**

18/08/2025

Hon Penny Simmonds

**Minister for Vocational Education**

19/ 8 /25

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## Annex 1 - Statutory processes for establishing new polytechnics and ISBs

| Establishment of new polytechnics | Statutory power | Notes |
|---|---|---|
| 1. Te Pūkenga / NZIST submits its transition plan for transfer of programmes, training activities, assets and liabilities to the new polytechnics | cl 130, Sch 1 | |
| 2. The TEC approves Te Pūkenga / NZIST's transition plan (subject to any changes) | cl 130, Sch 1 | |
| 3. The Minister gives any written directions on transitional matters | cl 132; Sch 1 | |
| 4. The Government makes Orders in Council ('Orders') to establish new polytechnics with effect on 1 January 26 | new section 315 | |
| 5. The Minister appoints an establishment committee to recommend a constitution (the number of members) for each of the new councils | cl 1(1), Sch 11 as amended) | The constitution must specify the number of members (6, 7 or 8) – new section 316 |
| 6. The Minister determines and notifies the new constitution of each new polytechnic in the Gazette | cl 1(3), Sch 11 as amended | |
| 7. The Minister appoints the first members of the new polytechnic councils | Cl 6, Sch 11 as amended | |
| 8. The first councils (comprising the first appointed members) each appoint a provisional CE | section 609 E&TA20 | |
| 9. Te Pūkenga/NZIST identifies those employees who may be required by each new polytechnic and prepares employee information for consideration by CEs of the new polytechnics | cl 138, Sch 1 | |
| 10. The provisional CE of each new polytechnic (The CE is the new employer - see section10(7)) selects the employees who may be required by the new polytechnic, and makes offers of employment to those employees conditional on the establishment of the new polytechnics | cl 139, Sch 1 | On acceptance the offers of employment are binding on the new employer and take effect on the date of transfer (to coincide with the date of establishment) |

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| 11. Assets and liabilities of Te Pūkenga / NZIST transfer to new polytechnics on date of transfer specified in the transition plan (1 January 2026) | cl 133, Sch 1 | |
| 12. Employees of Te Pūkenga /NZIST transfer to new polytechnics on the date specified in the offer of employment (being a date on or after 1 January 2026, when the new polytechnic is established) | | |
| **Establishment of new ISBs** | **Statutory power** | **Notes** |
| 1. Te Pūkenga/NZIST submits its transition plan for transfer of training activities to ISB | cl 131, Sch 1 | |
| 2. The WDCs each submit a transition plan for transfer of WDC functions to an ISB | cl 166, Sch 1 | |
| 3. The TEC approves transition plans for Te Pūkenga/NZIST and WDCs subject to any changes; | Cl 131, Sch 1<br>Cl 166, Sch 1 | |
| 4. The Minister gives any written directions on transitional matters | Cl 167, Sch 1 | |
| 5. The Government makes Orders to establish new ISBs with effect on 1 January 2026 | new section 362 | |
| 6. The TEC oversees provisional appointment of first members of ISBs | new sections 364 & 365 | |
| 7. The ISBs (comprising first members of the board) each appoint a provisional CE / GM | ISB Order in Council | ISBs will have the power to appoint a CE /GM and employee staff under the relevant Order |
| 8. Te Pūkenga/NZIST identifies those employees who may be required by new ISBs and prepares employee information for consideration by provisional CE/GM of each ISB | cl 138, Sch 1 | |
| 9. WDCs identifies those employees who may be required by new ISBs and prepares employee information for consideration by CE / GM of each ISB | cl 172, Sch 1 | |
| 10. CE/GM of each new ISB selects those employees identified by WDCs and Te Pūkenga/NZIST who are required by the ISBs to carry on their functions | cl 172, Sch 1 | |
| 11. Provisional CE/GM of each ISB makes offers of employment to Te Pūkenga/NZIST and WDC employees concerned with effect from date of establishment of the ISB (conditional on their establishment) | cl 173, Sch 1 | Offers of employment are binding on acceptance and take effect on the date of transfer, to coincide with the establishment of each new entity. |

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| 12. Assets and liabilities of Te Pūkenga/NZIST and WDCs transfer to new ISBs on date of transfer specified in the transition plan (being a date on or after 1 January 2026) | cl 133, Sch 1<br>cl 168, Sch 1 | |
| 13. Employees of Te Pūkenga/NZIST and WDCs transfer to new ISBs on date specified in the offer of employment (being a date on or after 1 January | | |

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## Annex 2 – Proposed technical changes to the Bill

| Subject | Change | Reason |
|---|---|---|
| **Amendments to Schedule 1, new Part 7, subpart 2** - Provision of work-based training by industry skills boards for temporary period | Insert a new clause in the transitional provisions for the transfer of training activities for WBL by an ISB to a tertiary education provider (to the same operative effect as C**lause 133 - Transfer of programmes, micro-credentials, and training activities provided by NZIST)** | **Clause 157** in the transitional provisions imposes a duty on an ISB to endeavour to transfer WBL training activities to a tertiary education provider. The new provision is needed to give effect, by operation of statute, to a subsequent transfer of training activities, including the associated assets, liabilities, and agreements relevant to the provision of the training activities.<br><br>Without this provision, the parties would have to procure the transfer by means of private treaty, assignment, or novation as the case may require. This is a labour-intensive process that could delay the timely transfer of WBL, beyond the end of the transition period. |
| **Amendments to Schedule 1, new Part 7, subpart 2** - Provision of work-based training by industry skills boards for temporary period | Insert a new clause in the transitional provisions for the transfer of training activities for WBL by an ISB to a tertiary education provider (to the same operative effect as **Clause 136 - Transfers do not give rise to claims)** | This provision is needed to override the potential for third party claims against an ISB or tertiary education provider arising from the transfer of training activities and associated assets, liabilities, and agreements by law.<br><br>The effect of this clause is to give statutory immunity to the parties to the transfer of WBL against civil liability for technical breaches of contractual and other rights arising from the transfer of training activities, and associated assets, liabilities and agreements by operation of law. |
| **Amendments to Schedule 1, new Part 7, subpart 2** - Provision of work-based training by industry skills boards for temporary period | Insert a new clause in the transitional provisions for the transfer of enrolment in study or training for WBL to a tertiary education (to the same operative effect as **Clause 142 – Students and trainees of NZIST)** | This provision is needed to transfer of enrolment of students and trainees in WBL, by operation of statute, from an ISB to a tertiary education provider as the result of the transfer of training activities to that provider.<br><br>Without this provision, the students and trainees affected by the transfer of training activities would have to withdraw from the existing course of study or training at an ISB and enter into a new contract of enrolment to continue the same course at the tertiary education provider. |

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| **Amendments to Schedule 1, new Part 7, subpart 2** - Provision of work-based training by industry skills boards for temporary period | Insert a new clause in the transitional provisions for the consequences of the transfer of training activity for the purpose of Inland Revenue Acts (to the same operative effect as **Clause 145 – Students and trainees of NZIST)** | This provision is needed to provide for the tax consequences of the transfer of training activities by an ISB to a tertiary education provider.<br><br>The effect of this provision is that the ISB and the tertiary education provider are treated as the same person for tax purposes. This is to help ensure a seamless transition to the new provider.<br><br>*Note: The Ministry is awaiting IRD confirmation of the suitability of this provision for the second phase transfer of WBL, given that the legal identity of the new provider is uncertain*. |

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