Te Tāhuhu o te Mātauranga
Ministry of Education

Report: Secondary legislation (Orders in Council and Gazette Notices) for Polytechnics to be established

To:	Hon Penny Simmonds, Minister for Vocational Education		
Date:	22/08/2025	Deadline:	26/08/2025
Security Level:	In-Confidence	Priority:	Medium
From:	9(2)(a) VET Programme Manager	Phone:	9(2)(a)
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Why are we sending this to you?

- You are receiving this to support the development of the secondary legislation (Orders in Council and *Gazette* Notices) necessary for the establishment of polytechnics on 1 January 2026.

What action do we need, by when?

- We are seeking your decisions on what to include in the Orders in Council (Orders), an indication of how to approach your consultation obligations, and on timing for the *Gazette* Notices designating federation membership.
- Please return the signed paper by Tuesday 26 August 2025 to support discussion at your tertiary agencies' officials meeting.

Key facts, issues and questions

- The key decision is whether to include regions in the Orders, and depends on the extent to which the Government wants to signal that a polytechnic should be focused on delivery within its region.
- We suggest you issue the *Gazette* Notices for Otago Polytechnic and UCOL designating them as federation members only once all the initial federation members are known next year.
- To meet your consultation obligations as set out in the Education and Training (Vocational Education and Training System) Amendment Bill, we propose you consult with Establishment Advisory Groups, regional mayors and chambers of commerce, iwi, and any institution-level student associations. You could also consult Business New Zealand, the Tertiary Education Union, Tertiary Institutes Allied Staff Association (TIASA) and the New Zealand Union of Students' Associations.

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Alignment with Government priorities

1. This report supports the redesign of the vocational education 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 (The Bill) sets out the process for the responsible Minister to establish new polytechnics, and provides for the disestablishment of Te Pūkenga, via Orders in Council and notices in the *New Zealand Gazette.* The Bill and principal Act also contain provisions for the constitutions of polytechnics, and the process to designate polytechnics as federation members.
3. For the ten polytechnics that Cabinet has agreed in principle would be established on 1 January 2026, Parliamentary Counsel Office will draft the Orders to establish them following the issuing of drafting instructions. The date we are working to for consideration at EXP Cabinet Committee and Cabinet is mid-November. Concurrently, we intend to draft the *Gazette* Notices for the constitutions of the new polytechnics based on the recommendation of the Establishment Committees. This will determine the maximum membership of the councils (six, seven or eight members).
4. The timing of the *Gazette* Notices required for designating a polytechnic as a federation member is discussed below.

When the Minister can recommend an Order to establish a polytechnic

5. The Bill sets out the circumstances under which the responsible Minister can recommend the establishment of a polytechnic. This includes taking into account the characteristics of polytechnics as set out in the Bill, and being satisfied that establishing the polytechnic will be in the national interest and the interests of the tertiary education system. You are also required to consult persons or bodies, in addition to NZQA, that you think fit. The options for consultation are discussed in paragraphs 36 – 43 below.
6. In our assessment, the ten proposed polytechnics would be likely to display the characteristics of a polytechnic and meet the national interest test set out in the Bill. You have previously advised Cabinet that you assess that the ten polytechnics are likely to meet these criteria by the date of their establishment [SOU-25-MIN-0076 Revised refers]. The characteristics in the Bill are, in part, based on the characteristics that have previously been in education legislation (section 314 (a), (b) and (c)) and are broadly similar to previous provisions, e.g. section 162(4)(b) (ii) in the Education Act as at March 2017. The two provisions are set out in Annex 1 for comparison).
7. The disestablishment of Te Pūkenga provided for in the Bill means that the establishment of institutions to maintain delivery of vocational education and training would clearly be in the national interest and in the interest of the tertiary education system. Without the proposed new polytechnics, there is the risk of significant disruption to the system, and the likelihood of some areas and regions not having their educational needs met if private training establishments, universities or wānanga needed to invest to fill the gaps. The adequate replacement of the provision delivered currently by the polytechnic business divisions would therefore be highly uncertain.
8. A polytechnic also needs to be viable to be established. The TEC is intending to provide you with further advice in late September updating you on the financial viability of the 10 polytechnics Cabinet has agreed in principle to establish. This advice will take into account

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the progress each ITP business division has made against its financial improvement plan, and its most recent financial forecasts and recapitalisation needs. It will further inform your recommendations to Cabinet to proceed with making Orders in Council.

What an Order can cover

9. Orders in Council for tertiary education institutions have historically been very simple. For a polytechnic we expect it will include:

   - The title and commencement date
   - The establishment clause (which also formalises the name of the polytechnic).

10. The Bill also allows the responsible Minister to recommend the inclusion of up to two additional matters:

    - The region (or regions) served by the polytechnic
    - Whether the polytechnic is an anchor polytechnic.

11. These matters are discretionary, although the Order for the Open Polytechnic will identify it as being an anchor polytechnic, as per Cabinet's decisions.

12. The maximum number of members on each of the polytechnic councils is set separately in a Gazetted constitution.

Regions served by the polytechnic

13. The key policy decision is about how strongly to signal to polytechnics to focus on their regions. We propose, as with the Cabinet paper, identifying the Open Polytechnic as "National online learning" (or "all of New Zealand online learning").

14. Consistent with the overarching purpose of the Bill in the General Policy Statement[1], the Bill situates polytechnics as regional institutions, reflected in their characteristics, specifically in new section 314(b), which reads: "they are predominantly involved in providing continuing education that responds to the education and training needs of local communities and industries in their regions".

15. Including a region in the Order for a polytechnic sends a strong signal about where a polytechnic should operate but does not in itself restrict the polytechnic to a specific region. Depending on the wording chosen for the Order, it could later become a basis for funding, policy or operational decisions that are more restrictive, however.

16. You have previously made decisions on the concept of core provision of polytechnics, which are non-legislative but are relevant. These are summarised in Annex 1 [METIS 1336045 refers]. Included is a decision that the regional polytechnic is responsible for either delivering, or brokering, core provision as determined through the development of investment plans in consultation with the relevant regions.

17. You have previously indicated a preference for funding and other incentives over legislation to encourage polytechnics' contributions to the system. However, including the region in the Order could provide greater certainty to the polytechnics in understanding the boundaries of their core provision responsibilities.

[1] The purpose of this Bill is to redesign the vocational education and training system to restore regional decision-making and increase industry involvement in vocational education and training, particularly in the areas of standards-setting and work-based learning.

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Including regions in the Orders may sharpen signals and future policy options

18. Including the region in the Order would also be a strong signal to the polytechnics as to where their focus should be and guide decisions about their operations. Doing so is also likely to provide a stronger basis for policy interventions or regulation in the future. If a polytechnic is not meeting its regional obligations, including the region in Orders would strengthen the TEC's hand from a monitoring point of view.

19. Including the possibility of naming regions in the legislation, but not doing so, may be seen as a signal that the Government is not prioritising the operation of a regional basis for polytechnics, despite this framing in the Bill and its purpose.

It may not be necessary to name the regions in the Orders for the polytechnics to focus their provision there

20. Even at establishment, the proposed polytechnics will know what regions apply to them. This will be further reinforced by the transition plans that will transfer capital and assets to them and based on their physical locations in many instances. There is significant continuity between the new polytechnics, the current polytechnic business divisions of Te Pūkenga, and the pre-Te Pūkenga polytechnics.

21. In addition to the any costs of expansion that polytechnics would incur and need to fund if they looked to move into other regions, the TEC can ensure that the polytechnics' investment plans focus their identification of core provision to the expected regions, and other polytechnics might expect a level of collaborative behaviour. Not including the regions in Orders does not necessarily mean by itself that significant out of region expansions are likely.

We suggest you include the regions in the Orders at least initially

22. While the use of "regions" among the characteristics of polytechnics conveys an expectation to the councils that they should focus on the region they are in, greater certainty is provided to them through naming the relevant region in each Order. While not including a region and relying on other levers is consistent with a flexible approach that supports polytechnics to have significant autonomy, for the establishment phase of the redesign it may be preferable to provide more clarity.

23. So long as a polytechnic is meeting its obligations to deliver the education and training needed in its region, this would still allow for polytechnics to deliver outside of their region, for example if they can offer core provision that another polytechnic has brokered from them, or if they have a niche national specialty that does not impact other polytechnics.

24. Therefore, the decisions you have made about core provision (see Annex 1) are possible if you include regions in the Orders. It is relatively straightforward to amend the Order (i.e. a Cabinet decision and Order in Council again) if you decide this is no longer necessary later.

Gazette Notices

25. As part of establishing polytechnics, two notices in the *New Zealand Gazette* may be required – to set the constitution of each polytechnic, i.e. that their councils have six, seven or eight members, and to designate some polytechnics as members of the federation.

Designation of federation membership

26. 9(2)(f)(iv) [redacted]

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9(2)(f)(iv)

27. Should the updated forecasts continue to support Otago Polytechnic and UCOL being designated as members of the federation, you could either issue the *Gazette* notice for UCOL and Otago Polytechnic on 1 January 2026 concurrent with their establishment, or alongside any further designations coming out of the decisions to establish further polytechnics next year. We suggest taking the latter approach because it provides more time to decide on the final mix of polytechnics that will make up the federation and means that the early decisions of the federation committee will have all the intended members at the table from the outset.

28. This also allows the members who will comprise the federation committee to be consulted. This keeps faith with the provisions of the Bill, before federation polytechnics are designated as such and the committee can exist. By consulting each of the intended members of the federation once this is known, you will have acted reasonably in covering off this requirement.

Constitutions

29. The Act provides a process for the Minister to gazette the constitution of a new institution, before it is established. The Amendment Bill will apply these provisions to polytechnics once its changes to the principal Act come into effect. The process requires the Minister to appoint establishment committees of three people to advise on the constitution for each new polytechnic – constitutions for polytechnics only need to state whether the council will have six, seven, or eight members. Once an establishment committee has recommended a constitution, the Minister determines it by notice in the *New Zealand Gazette* in accordance with the recommendation.

30. The Establishment Advisory Groups for each polytechnic are the most logical group to be your establishment committees, and the TEC is intending the development of recommended constitutions to be part of each group's work programme. Once the Amendment Bill's changes to the Act have commenced, you can then appoint the Establishment Advisory Groups as your establishment committees. They can then recommend constitutions to you, and you can publish them in the *New Zealand Gazette*. The Ministry will draw up the *Gazette* Notices for your approval and work with the *New Zealand Gazette* to publish them.

Seeking advice and consultation

NZQA advice

31. Seeking advice from NZQA is a requirement for the Minister to have the necessary assurance that any new polytechnic is able to meet quality assurance standards and has the capability required to do so in an ongoing way. You must seek the advice and clearly consider any advice given (this could be in the form of a noting or agree recommendation) to meet the requirements of the Act (Clause 315 (2) (a) of the Amendment Bill refers).

32. Since Te Pūkenga's establishment, NZQA's monitoring has included a focus on each of its polytechnic business divisions. NZQA will be able to draw on the outcomes of this monitoring to provide an assessment of each proposed new polytechnic to you.

33. NZQA will provide to you the required advice within the necessary timelines.

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Consultation

Requirements under the Bill

34. The Bill requires the Minister to consult "other" persons or bodies that the Minister thinks fit (in addition to seeking advice from NZQA) for both establishing polytechnics and designating polytechnics to be members of the federation. Your consultation for establishing polytechnics will effectively set the groups that you would also consult when designating polytechnics (and establishing any additional polytechnics) next year.

35. However, our understanding of the legislation is that while you have latitude to choose who to consult, if a significant relevant stakeholder is overlooked you would be vulnerable to challenge should somebody believe they ought to have been consulted. However, if you have been reasonable in your attempt to identify relevant key parties any challenge is less likely to succeed.

Suggested parties to consult

36. Given that public consultation on the overall reforms has taken place in August-September 2024, and also by the Education and Workforce Committee as part of the Bill process, we do not think a further open public consultation is either necessary or desirable.

37. While it is not necessary to do so under the Act, we suggest that you consult the Establishment Advisory Groups for the polytechnics. The reason for this is that it provides an opportunity to ensure that the name of the polytechnic is satisfactory to likely future governance and leadership, and, if you decide to include regions in the Order, that the region is described correctly and to the understanding of the polytechnic.

38. Other groups that may consider they ought to be consulted include:

    - Local government
    - Business
    - Iwi
    - Student and staff unions
    - Other tertiary education institutions in the regions.

39. During our different public consultations, outside of comments about the disestablishment of Te Pūkenga, we did not receive significant comment against the establishment of the specific business divisions of Te Pūkenga as future polytechnics.

40. However, the two main consultations did receive concerns about the possibility of polytechnics being designated as members of the federation. For example, Nelson City Council asked that regional interests be consulted before Nelson Marlborough Institute of Technology (NMIT) be included in the federation. While it turned out for them that NMIT is not proposed to be a federation member, it does suggest that you could consider consulting local mayors about standing up polytechnics and proposed federation membership as the main way to cover off consulting with local government.

41. You could also consider consulting the local chambers of commerce and any local or regional iwi. Further, you could consider consulting groups such as the Tertiary Education Union, students' associations attached to the local business divisions where they exist, and Business New Zealand. However, national-level organisations may have less at stake in terms of specific institutions than regional stakeholders. It therefore may be justifiable not to consult with them in addition to public consultation.

42. Given that the proposed polytechnics have been operating in their regions as part of Te Pūkenga, it may be unnecessary to consult other tertiary education institutions in the relevant regions, but there is no harm in doing so.

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43. We suggest you consult the people you see fit by writing to them seeking comment on the decisions to establish each polytechnic.

Next Steps

Timeline for Orders in Council process

44. Below sets out the steps required and proposed timeline for the Orders in Council

Activity / Task	Due date
Advice to Minister	22 August
Minister feedback and decisions	26 August
Consultation material and stakeholder engagement plan to Minister	4 September
Minister feedback	9 September
Consultation	9 – 23 September
Analysis and recommendation on Orders to Minister	3 October
Minister feedback and decisions	7 October
Drafting instructions issued to PCO	7 October
Draft Cabinet paper and Orders to Minister for approval	16 October
Minister feedback and approval to undertake consultation	21 October
Short sector consultation following Royal Assent of Bill	21 – 29 October
Advice to Minister confirming details of OiC and Cabinet paper	30 October
Minister feedback and approval to go for agency and Ministerial consultation	31 October
Agency and Ministerial consultation following Royal Assent of Bill	3 – 7 November
Incorporate any feedback into OiCs and Cabinet paper and further draft to Minister	11 November
Finalise Cabinet paper and lodge for EXP	13 November

Annexes

The following are annexed to this paper:

Annex 1: Details about characteristics clauses and previous decisions on core provision for regions.

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Recommended Actions

The Ministry of Education recommends you:

a. **note** that to establish polytechnics you must recommend Orders in Council to the Governor General to establish each polytechnic (and to designate an anchor polytechnic for the federation), and issue notices in the *New Zealand Gazette* to determine the constitution of each

Noted

b. **agree** either:

i. **not** to include the region of the polytechnic in the Order, OR

Agree **Disagree**

ii. **include** the region in the Order (Ministry preferred option)

Agree **Disagree**

c. **agree** to describe the Open Polytechnic as "National / All of New Zealand online learning" and as the anchor polytechnic for the federation

Agree **Disagree**

d. **note** that designation of a polytechnic to be a member of the federation is through a notice in the *New Zealand Gazette*

Noted

e. **agree** to issue the designations as federation members once all the decisions about polytechnics have been finalised and the members of the federation known

Agree **Disagree**

f. **note** that before you recommend the Orders and *Gazette* Notices consultation requirements apply

Noted

g. **agree** to write to the following stakeholders in the regions of the proposed polytechnics as bodies you see fit to consult with:

Establishment Advisory Groups	**Agree** **Disagree**
Mayors within the relevant region	**Agree** / **Disagree**
Local chambers of commerce	**Agree** / **Disagree**
Iwi of the region	**Agree** / **Disagree**
Existing institution-based students associations	**Agree** / **Disagree**
Business New Zealand	**Agree** / **Disagree**
Tertiary Education Union and TIASA	**Agree** **Disagree**
New Zealand Union of Students Associations	**Agree** / **Disagree**
Other Tertiary Education Institutions within regions	**Agree** **Disagree**

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h. **agree** that the Ministry of Education release this paper once the secondary legislation instruments have been issued and published 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)

VET Programme Manager

Te Pou Kaupapahere

22/08/2025



Hon Penny Simmonds

Minister for Vocational Education

23 /08/ 25

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Annex 1: Details about characteristics clauses and previous decisions on core provision for regions

Characteristics of polytechnics in Education Act 1989 (as of 2017) and the Bill

Education Act 1989 (as at March 2017)

> *162(1)(b)(ii) 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*

The current Bill:

a. *they offer a wide diversity of continuing education that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning; and*
b. *they are predominantly involved in providing continuing education that responds to the education and training needs of local communities and industries in their regions; and*
c. *they undertake research, particularly applied and technological research; and*
d. *they improve outcomes for Māori students and trainees and Māori communities in collaboration with Māori and iwi and other interested persons or bodies.*

Summary of previous decisions about core provision for regions

- Local polytechnic is responsible for ensuring core provision is delivered
    - It may only deliver some of it, and might largely be a local facilitator to ensure regional needs are met
    - All core delivery badged as local in some way whether delivered directly or via collaborations
    - If it turns out that a polytechnic is unable to be established, a viable polytechnic will cover the region from the point of view of the delivery of core provision
- The amount and scope of what can fall under core provision will be flexible.
    - core provision will emerge from the planning work ITPs do within their communities and with local industries and be reflected in investment plans.
    - An ITP can be established if not capable of delivering the core needs of a region
    - The local ITP is responsible for brokering provision in a region (e.g. via the federation) even if its own delivery scope is narrow.

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- Polytechnics can deliver non-core provision in each other's regions
    - The local polytechnic would take the lead on delivering this provision (where it is done in collaboration with the Open Polytechnic it would be the local polytechnic's front gate), with all core provision badged in the name of the local polytechnic [METIS 1333343 refers]. Outside of the core provision, other polytechnics can market and provide in another region (and PTEs and wānanga are not restricted in regard to either core or non-core provision).
- Where gaps may emerge in future that cannot be met by the local polytechnic, out of region options are marketed and made available from elsewhere in the network, with the federation agreeing how the gaps should be filled (PTEs do not need permission to operate in regions).

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