

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Education (Vocational Education and Training Reform) Amendment Bill: Approval for Introduction
Date considered	26 August 2019
Date released	4 October 2019

These documents have been proactively released:

Cabinet paper: Education (Vocational Education and Training Reform) Amendment Bill: Approval for Introduction

Date considered: 21 August 2019, Social Wellbeing Committee

Author: Ministry of Education

Departmental Disclosure Statement: Education (Vocational Education and Training Reform) Amendment Bill

Date considered: 21 August 2019, Social Wellbeing Committee

Author: Ministry of Education

Document is publicly available [here](#).

Education (Vocational Education and Training Reform) Amendment Bill

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Author: Ministry of Education

Document is publicly available [here](#).

Cabinet minute – CAB-19-MIN-0426

Date considered: 26 August 2019

Author: Cabinet Office

Material redacted

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Chair, Cabinet

Education (Vocational Education and Training Reform) Amendment Bill: Approval for Introduction

Proposal

1. I propose that the Education (Vocational Education and Training Reform) Amendment Bill (the Bill) be approved for introduction into the House of Representatives.

Executive Summary

2. The Education (Vocational Education and Training Reform) Amendment Bill has been finalised for introduction into the House of Representatives. The Bill holds priority 4 (to be referred to a select committee in the year) on the 2019 Legislation Programme.
3. The main purpose of the Bill is to give effect to the public policy objective of creating a unified and cohesive vocational education and training system, which the Bill achieves through a new regulatory framework for vocational education and training.
4. The Bill should be introduced on 26 August 2019 and enacted as soon as possible after the Education and Workforce Committee has reported it back to the House of Representatives.

Policy

5. Cabinet agreement to the policies to be implemented by the Bill has been obtained (refer CAB-19-MIN-0354). The Bill will amend the Education Act 1989 and repeal the Industry Training and Apprenticeships Act 1992 in order to implement policies to:

Introduce a new regulatory framework for vocational education and training

- integrate industry training and vocational education through the establishment of a new regulatory framework for vocational education and training;

Establish workforce development councils

- strengthen industry involvement in vocational education by establishing industry governed workforce development councils by Order in Council;

- increase the role of industry in vocational education provision through workforce development councils leadership and advisory functions and their role in setting standards and qualifications, endorsement of programmes, and moderation of assessments;

Establish the New Zealand Institute of Skills and Technology (the Institute)

- strengthen the national network of vocational education through the establishment of the Institute as a single tertiary education institution spread across a range of campuses;
- strengthen the delivery of vocational education by making the Institute, together with its subsidiaries, responsible for a range of education and training, including vocational, foundation, and degree-level and above provision, with a role in supporting workplace training;

Support the transition of entities

- provide for the transfer of the 16 institutes of technology and polytechnics into Crown entity subsidiaries of the Institute;
 - provide for the transition from industry training organisations to workforce development councils and providers.
6. The Bill is likely to be contentious as it redefines the roles for industry bodies and education providers within the vocational education and training system. The Bill establishes the Institute, which incorporates the current 16 institutes of technology and polytechnics. The Bill replaces industry training organisations with workforce development councils, which have a different set of functions.
 7. Whilst many stakeholders supported the changes, a significant group (including many at the organisations affected by the changes) are likely to be concerned that proposals they opposed during the public consultation phase are proceeding. While the Bill does establish the Institute and workforce development councils, aspects of the proposals have changed as a result of consultation.
 8. It is likely that there will be support for the detailed changes that we have made to the proposals as a result of consultation. However, it is also likely that similar arguments are likely to be raised in opposition to the proposals over the course of the select committee consideration of the Bill. In particular:
 - Industry training organisations and some employers have argued that the proposed changes would lead to significantly poorer support for work-based learning than is provided by the current system.
 - A small number of regional polytechnics are likely to argue for the importance of regional autonomy in vocational education provision.
 - There may be concerns expressed about the Institute having the same academic freedom principles as other tertiary education institutions, but not the same statutory protection of institutional autonomy (due to the need for accountability and monitoring of a national level provider).

9. The Ministry of Education will provide information about the policies within the Bill via its website, upon introduction of the Bill. The sector will have an opportunity to provide their views on the policies through the select committee process. My officials will prepare material responding to the above concerns, for use in communicating the Bill and in preparations for select committee, such as:
- describing the Institute's role in supporting work-based learning, and demonstrating how the provisions of the Bill embed strong links between the Institute, industry and employers;
 - highlighting how regional interests are protected through the Bill, particularly through the provisions of the Institute's Charter; and
 - explaining the decisions made relating to institutional autonomy of the Institute, and why they are appropriate in the context of a single national provider.
10. Legislative action is required because in order for the policies set out in paragraph 5 above to have legal effect, changes must be made to the Education Act 1989, the Industry Training and Apprenticeships Act 1992 and related Acts.

Changes to Cabinet policy approvals

11. During the drafting of the Bill, it became apparent that changes would be required to Cabinet policy approvals. These are set out below.
12. Cabinet agreed to convert, as a transition measure, the 16 current institutes of technology and polytechnics to subsidiary companies of the Institute for a life of up to two years, extendable by the Minister, with the intention of their incorporation into the Institute. For practical reasons, I propose to set the date on which subsidiaries will dissolve as 31 December 2022, unless dissolved prior by the Council, to align with the academic year.
13. I have noticed an inconsistency with regard to the council of the Institute. Cabinet agreed that all members of the Institute's council are to be appointed by the Minister of Education apart from one member of staff and one student, representing staff and students of the Institute respectively. Cabinet also agreed that the Institute would be required to establish committees for students, staff and Māori. The intention of the latter is to support the Institute's council to work in partnership with Māori. To further enable this and to be consistent with the staff and student provisions, I think it is appropriate for a member of the Māori advisory board to be elected to the Institute's council.

Power to act

14. Cabinet authorised the Minister of Education to make decisions on the details of the changes, for the purpose of drafting legislation, without any further reference to Cabinet, subject to these details being consistent with the policy intent set out in the relevant Cabinet paper. These decisions relate to constitution and governance, content and application of the charter, monitoring, risk management and interventions. A full list of these decisions is provided in Appendix 1.

Impact analysis

15. A Regulatory Impact Assessment on the Reform of Vocational Education has previously been considered by Cabinet. The changes to the vocational education and training system made in the Bill relate directly to concepts discussed within this Regulatory Impact Assessment.
16. The Regulatory Impact Assessment requirements apply to the following policies and related amendments, as described in this paper:
 - Redefine the roles for education providers and industry bodies in vocational education by shifting the arranging of work-based training to providers, and strengthening industry's leadership through new workforce development councils.
 - Create the New Zealand Institute of Skills and Technology: this organisation would bring together the institute of technology and polytechnic sector as a single entity.

Compliance

17. The Bill complies with the following:
 - 17.1 the principles of the Treaty of Waitangi;
 - 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 17.3 the disclosure statement requirements (statement attached);
 - 17.4 the principles and guidelines set out in the Privacy Act 1993;
 - 17.5 relevant international standards and obligations; and
 - 17.6 the LAC Guidelines on the Process and Content of Legislation (2018 edition).
18. The Ministry of Justice notes that section 292 of the Education Act 1989 is not consistent with the 2018 Legislation Guidelines. Section 292 covers existing provisions that make it an offence to use a term, such as university or institute of technology and polytechnic. The proposed minor change to this section will continue this inconsistency. Section 292 is a strict liability offence and no defence is provided. The Legislation Guidelines note that when strict liability offences are justified, it is necessary to specify any defences that a defendant is entitled to raise in the relevant statutory context that, if accepted, would result in acquittal. Further details on this matter are outlined in the Disclosure statement.
19. The Disclosure Statement identifies two unusual features of the Bill. A provision allows the Governor-General, by Order in Council, made on the recommendation of the Minister, to change the name of the New Zealand Institute of Skills and Technology and amend its name in legislation. The ability to amend primary legislation through an Order in Council provides a necessary process whereby the Council can (first be established and then) change the

name of the Institute following consultation with national and regional stakeholders, including Māori.

20. A provision allows the Governor-General by Order in Council, made on the recommendation of the Minister, to extend the date by which any particular Institute subsidiary or all the Institute's subsidiaries may continue to exist beyond the legislated date of 31 December 2022, to a date specified in the order. The ability to amend primary legislation through an Order in Council provides a necessary process whereby the Minister can extend the existence of the Institute's subsidiaries.

Consultation

Relevant government departments or other public bodies

21. The following agencies were consulted in the preparation of this Cabinet paper, the Disclosure Statement, and the Bill: New Zealand Qualifications Authority, the Tertiary Education Commission, the State Services Commission, and the Treasury. The Department of the Prime Minister and Cabinet has been informed of the package.
22. A wider group of agencies were consulted on the *Reform of Vocational Education – Key Decisions and Fiscal Implications* Cabinet papers, which sought Cabinet agreement to the policy decisions that formed the Bill.

Relevant private sector organisations and public consultation processes

23. Public consultation on the policy proposals ran from 13 February 2019 until 5 April 2019. We received 2,904 submissions and met with more than 5,000 people at approximately 190 events, meetings and forums. Thirty-five meetings and events were held specifically for staff and management at the 11 industry training organisations.
24. The Government has sought input from all perspectives: learners, trainees and apprentices, employers, industry representatives and industry training organisations, education providers, Māori, iwi, Pacific people, disabled people, people with additional learning support needs, parents, other interested groups and the general public.
25. The summary of submissions document can be found at: <https://conversation.education.govt.nz/assets/RoVE/AoC/Reform-of-Vocational-Education-Summary-of-Public-Consultation-and-Engagement.pdf>.

The government caucus and other parties represented in Parliament

26. Consultation with the Labour, New Zealand First, and Green party caucuses will occur prior to the introduction of the Bill into the House of Representatives. I have been in regular contact with representatives of New Zealand First and the Green parties as these proposals have been developed.

Binding on the Crown

27. Until the passage of the Education and Training Bill, the amendments in the Bill will not be binding on the Crown. This is consistent with the position regarding the Education Act 1989, which is not binding on the Crown.
28. The amendments in the Bill will become binding on the Crown after the Education and Training Bill, which replaces the Education Act 1989, is passed. The new Education and Training Act will be binding on the Crown.

Proactively Released by the Minister of Education

Creating a Crown entity or amending law relating to existing agencies

29. The Bill establishes the Institute as a tertiary education institution under the Education Act 1989. Tertiary education institutions are Crown entities for the purposes of the Crown Entities Act 2004. The Ombudsmen Act 1975 and the Official Information Act 1982 will apply to the Institute.
30. As a tertiary education institution, alongside universities and wānanga, the Institute has as much academic freedom and operational independence as is necessary for it to perform its education functions. This is consistent with the need for the Institute to make decisions regarding the type and nature of its provision, as well as the delivery of vocational education across a national network.
31. Given the new council is to lead the single largest national provider of vocational education, accountability arrangements, including those of a legislative nature, have been developed to protect the public interest in vocational education provision and the risks associated with a single national provider.
32. The legislative arrangements include a majority of Ministerial appointments to the council of the Institute, with the exception of an elected staff and student representative and a representative of the council's Māori advisory committee. The Institute is to produce a statement of intent and a statement of performance expectations, as well as annual reporting, as provided for in the Crown Entities Act 2004.
33. As a transition measure, the 16 current institutes of technology and polytechnics will be converted to subsidiary companies of the Institute. The subsidiaries will dissolve on 31 December 2022, unless dissolved prior by NZIST. The dissolution date of a subsidiary may be extended beyond the legislated date by Order in Council on the recommendation of the Minister.

Creating new workforce development councils as statutory entities

34. The Bill allows for Workforce Development Councils to be established by Order in Council made on the recommendation of the Minister. The Order in Council will specify the name of the entity, the industries that it will cover, membership of its governing body and the process by which appointments are made, and any additional functions to those listed in statute. Workforce development councils will be subject to the Ombudsmen Act 1975 and the Official Information Act 1982.
35. Workforce development councils will be independent statutory bodies rather than Crown Entities. Independent bodies are necessary to gain industry support and achieve a strong focus on industry involvement in vocational education and training. Given that each council will lead their industry's involvement in vocational education, it is critical that the councils are able to independently comment on government policy and practice in relation to vocational education and training.
36. Accountability arrangements, including those of a legislative nature, have been developed to protect the public interest in relation to industry standard setting and quality assurance functions, and in determining the mix of training that will be funded.

37. Workforce development councils will be subject to the Tertiary Education Commission and the New Zealand Qualifications Authority powers to request information and appropriate audit and investigation powers. They will be subject to monitoring and evaluation by New Zealand Qualifications Authority.
38. If required, the Minister has the power to amend their establishment (e.g. to add Ministerial appointees to their governance board, or to dismiss members or amend the appointments process). The Minister can also disestablish a workforce development council with just cause, such as on the request of industry.
39. Industry training organisations will become 'transitional industry training organisations' on commencement. Body corporates may apply to be recognised as 'transitional industry training organisations' to facilitate the transfer of industry training organisations' responsibilities and activities to workforce development councils and providers. This will occur between commencement and the end of 2022.

Allocation of decision making powers

40. Non applicable.

Associated regulations

41. The Bill enables the Governor-General by Order in Council made on the recommendation of the Minister, to make regulations prescribing transitional provisions, savings provisions (or both). This ability for regulations to amend primary legislation through an Order in Council provides a necessary process to enable additions or changes to the transitional provisions to facilitate an orderly transition to the Institute and workforce development councils or to ensure that existing rights or obligations continue as part of, or despite, that transition. The power to make regulations is limited to the duration of a transitional period ending 31 December 2022.

Other instruments

42. The Bill enables the Governor-General by Order in Council, on the recommendation of the Minister, to impose a levy on qualifying members of a levy group that is payable to a workforce development council. The levy order is a legislative instrument and a disallowable instrument for the purposes of the Legislations Act 2012.
43. The Bill also enables the Minister, by notice in the Gazette, to issue an apprenticeship training code, which is a disallowable instrument, but not a legislative instrument for the purposes of the Legislation Act 2012.
44. These are not new instruments, as the levy and the apprenticeship provisions are being transferred from the Industry Training and Apprenticeships Act 1992 to the Education Act 1989.

Definition of Minister/department

45. Non applicable.

Commencement of legislation

46. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

47. The Bill should be introduced into the House of Representatives on 26 August 2019 and enacted as soon as possible after it is reported back to the House.

48. The Bill should be referred to the Education and Workforce Committee.

Proactive Release

49. This paper will be proactively released following Cabinet decisions.

Recommendations

50. The Minister of Education recommends that the Committee:

1. **note** that the Education (Vocational Education and Training Reform) Amendment Bill has a priority 4 on the 2019 Legislation Programme;
2. **note** that the main purpose of the Bill is to amend the Education Act 1989 and repeal the Industry Training and Apprenticeships Act 1992 in order to:
 - 2.1 establish a new regulatory framework for vocational education and training;
 - 2.2 establish workforce development councils as industry governed statutory entities under the Education Act 1989, which have oversight of vocational education and training;
 - 2.3 establish the New Zealand Institute of Skills and Technology as a tertiary education institution under the Education Act 1989 and the Crown Entities Act 2004, to support workplace-based training as well as deliver education and training in provider-based settings;
 - 2.4 provide for the transition of entities to the new state; and
 - 2.5 make a number of other minor corrections and updates.
3. **agree** to revise the decision recorded in CAB-19-MIN-0354 to convert the 16 current institutes of technology and polytechnics to subsidiary companies of the Institute for a life of up to two years, to specify the date on which subsidiaries will dissolve as 31 December 2022, unless dissolved prior by resolution of the Council;
4. **agree** to revise the decision recorded in CAB-19-MIN-0354 that all members of the Institute's council are appointed by the Minister of Education, apart from one student and one staff member elected by the committees representing students and staff of the Institute, to require in addition, one member of the Institute's council to be elected by the members of the Māori advisory committee;

5. **approve** the Education (Vocational Education and Training Reform) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **note** that the Education (Vocational Education and Training Reform) Amendment Bill is approved subject to Parliamentary Counsel making minor drafting changes prior to introduction that do not change the effect of any provision;
7. **agree** that the Bill be introduced on 26 August 2019;
8. **agree** that the Government propose that the Bill be:
 - 8.1 referred to the Education and Workforce committee for consideration; and
 - 8.2 enacted as soon as possible after it is reported back to the House of Representatives.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Appendix A: Power to Act decisions

Cabinet has agreed that the Minister of Education can make detailed policy decisions on the following	The Minister of Education has made the following detailed policy decisions
<i>New Zealand Institute of Skills & Technology</i>	
A final name for the Institute	The Bill establishes the New Zealand Institute of Skills and Technology (NZIST) and provides for the name of NZIST to be changed by Order in Council.
Details of the NZIST's charter	NZIST will have a duty to the Minister to give effect to its charter, which is set out in Schedule 3. The charter outlines how NZIST must meet the needs of the regions throughout New Zealand, and how it must operate to support learners and be responsive to the needs of industries, communities and Māori. NZIST must report annually on how it has given effect to the charter.
Duties in statute to ensure that NZIST has effective local and national stakeholder engagement processes, and gives appropriate consideration to international learners and their potential contribution to regions	NZIST's charter requires NZIST to operate in a way that allows it to develop meaningful partnerships with industry across the country, including Māori and Pacific employers, and communities at a local level, including hapū and iwi, and Pacific communities. It requires NZIST to use the insights gained to develop and provide vocational education that meets short and long-term skills needs and supports the social and economic goals of local communities. It requires NZIST to ensure that international learners are attracted to train and study in regions throughout New Zealand.
Details of the constitution of, and appointments to, NZIST's Council, including the process for meeting Crown Māori relationship expectations surrounding Council appointments	<p>NZIST will be required to establish regional divisions, for the purposes of appointing members to its staff committee and students' committee, and for appointing initial directors to its subsidiaries (covered below).</p> <p>NZIST's council members must include:</p> <ul style="list-style-type: none"> • one member who is elected by the regional representatives of its staff committee; • one member who is elected by the regional representatives of its students' committee; and • one member who is elected by its Māori advisory committee.

<p>Cabinet has agreed that NZIST's council will be required to have at least 8 but not more than 12 members, of which one must be elected by the regional representatives of its staff committee, one must be elected by the regional representatives of its students' committee, and the rest are to be appointed by the Minister.</p>	<p>When making appointments to NZIST's Council, the Minister must appoint people with the relevant knowledge, skills and experience, including cultural competency to carry out the responsibilities, duties and functions of NZIST's Council.</p> <p>Responsibilities and functions of NZIST include operating in a way that reflects Māori Crown partnerships and working closely with Māori and iwi partners and stakeholders to improve outcomes for Māori learners and Māori communities respectively.</p>
<p>Details of the application of the Crown Entities Act 2004 to NZIST</p>	<p>Provisions of the Crown Entities Act 2004 that apply to tertiary education institutions will apply to NZIST. These cover matters such as the preparation of financial statements, audit reports, gifts, accounting records and offences and penalties.</p> <p>To support transparency and accountability of NZIST's Council, the following additional provisions of the Crown Entities Act 2004 also apply to NZIST's Council and its members:</p> <ul style="list-style-type: none"> • The removal of members of autonomous Crown Entities; • Removal of elected members of Crown agents and autonomous Crown entities; • Remuneration and expenses of members; • Collective duties of board; • Effect of non-compliance with duties and reliance on information and advice; • Individual duties of members; • Delegation; • Vacancies in members of board; • Crown entity subsidiaries; • Liability of members, office holders, and employees; • Method of contracting and seal; • Statement of intent; • Statement of performance expectations; • Reporting: annual report; and

	<ul style="list-style-type: none"> • Bank account of Crown entities. <p>In addition, NZIST must comply with section 97 of the Crown Entities Act 2004 in respect of its subsidiaries. This places responsibilities on NZIST to ensure that the subsidiary does not do anything which NZIST does not itself have the power to do, acts consistently with NZIST's objectives and statement of intent, exercises its powers only for the purpose of performing, or assisting NZIST to perform, NZIST's functions, complies with directions from NZIST, and other similar matters.</p>
<p>Details of changes to existing statutory interventions and monitoring framework as apply to NZIST and its subsidiaries</p>	<p><i>Monitoring</i> The chief executive of the Tertiary Education Commission (the Commission) may require the NZIST's council to provide any information about its operation (or the operation of any related entity of NZIST), for the purpose of determining whether there is any risk to or arising from the governance, management or financial position of NZIST (or any related entity) or the education performance of students enrolled at NZIST (or any related entity).</p> <p><i>Statutory interventions</i> The Secretary of Education may set criteria for risk assessment that are specific to NZIST, to be used for the exercise of the statutory interventions.</p> <p>If the chief executive of the Commission has reasonable grounds to believe that NZIST or a related entity may be at risk, the chief executive may require the council to provide information about the NZIST's (or related entity's) operation, management or financial position.</p> <p>The Bill sets out a framework for statutory interventions by the Minister or the chief executive of the Commission at graduated levels of risk to NZIST or a related entity, including (as applicable) risk related to the education and training performance of students enrolled at NZIST (or a related entity). The interventions are that:</p> <ul style="list-style-type: none"> • the Minister may appoint a Crown observer; • the Chief Executive of the Commission may require NZIST's council to obtain specialist help; • The Chief Executive of the Commission may require NZIST's council to prepare a draft performance improvement plan for NZIST (or a related entity);

	<ul style="list-style-type: none"> • the Minister may appoint a Crown Manager for NZIST; and • the Minister may dissolve the council of NZIST and appoint a commissioner to act in its place.
Details of changes to the framework for approving capital (including borrowing, disposals and capital acquisitions) to NZIST and subsidiaries	<p>The Bill includes a requirement for NZIST to obtain the written consent of the Secretary for capital projects of NZIST or any subsidiary that are not within a capital plan approved by the Secretary, or that meet or exceed any thresholds for capital projects published by the Secretary.</p> <p>Requirements for TEIs to obtain the Secretary's approval before exercising some of their powers (to sell, mortgage, grant leases and borrow) will also apply to NZIST subsidiaries.</p>
<i>Redefined roles for industry bodies and education providers</i>	
Minister of Education has the power to establish individual WDCs	<p>The Bill provides for WDCs to be established by Order in Council to represent one or more specified industries.</p> <p>WDCs may be disestablished by Order In Council, if the Minister a) has received a request from the specified industries to do so, and is satisfied that there are reasonable grounds for disestablishment or b) if the Minister reasonably considers that there has been a consistent failure by the WDC to carry out one or more of its functions.</p>
Details of industry coverage and governance of WDCs following discussion with industry bodies	<p>The Order in Council must specify the name of the WDC, the industries that it represents, the governance arrangements (including arrangements relating to the appointment, composition, and removal of members of the council) and any additional functions conferred on the WDC by the Minister. The use of an Order in Council process will allow for further engagement with industry bodies to ensure arrangements are appropriate for each WDC and reflect the needs of industry.</p> <p>The governance arrangements for a WDC must, as far as reasonably practical, provide for a) the collective representation of employees in the governance of the council and b) the representation on the council of Māori employers.</p>
Details of the scope of WDC roles and the scope and form of WDC advice to TEC	<p>The functions of a WDC will be skills leadership; setting standards and developing qualifications; endorsing programmes and moderating assessments; an advisory and representative role; and any other functions conferred on the WDC by the Minister in relation to the specified industries.</p> <p>As part of the advisory and representative role, WDCs may advise the Commission about the mix of vocational education and training needed for the specified industries, and advise the Commission</p>

	<p>on its overall investment in vocational education and training, within that WDC's agreed industry or industries. A WDC will have a right to object if it feels that the Commission has not adequately responded to its advice about the mix of education and training required.</p>
<p>Details of outputs WDCs must produce to receive funding</p>	<p>WDCs will be organisations for the purposes of Part 13A of the Education Act 1989. As an organisation they will seek funding from the Commission by submitting a proposed plan under the requirements of section 159P of the Education Act 1989, in line with other organisations.</p>
<p>Details of how external quality assurance applies to WDCs</p>	<p>The Bill gives the New Zealand Qualifications Authority (NZQA) the ability to set rules prescribing quality assurance requirements for WDCs (including relating to the performance of its functions) and prescribing the annual fee payable by a WDC (including arrangements for paying that fee). WDCs will have an obligation to comply with those quality assurance requirements.</p> <p>The Bill gives NZQA the function of monitoring WDCs' compliance with those requirements and monitoring WDCs' moderation systems.</p> <p>NZQA may issue a quality assurance improvement notice to a WDC, if it is satisfied that a notice is necessary to maintain the quality and effectiveness of a WDCs' performance of its functions. It may issue a compliance notice to a WDC, requiring it to a) do, or refrain from doing, a particular thing in relation to a prescribed quality requirement and/or b) address any concerns set out in a quality assurance improvement notice that were not addressed within the time specified.</p>
<p>Adjusting TEC's roles to take into account its relationships with WDCs</p>	<p>The Commission will have a duty to have regard to advice from a WDC when considering whether to fund an organisation for vocational education and training within that WDC's specified industries (under Section 159YA and 159ZC of the Education Act 1989). The Commission will have a duty to give effect to advice from any WDC about the mix of vocational education and training within their specified industries when deciding to give funding approval to organisations (under section 159YA(5)). This is subject to any funding limits set by the Minister and the Commission, and the capacity and capability of providers to deliver that mix. If the Commission is unable to give effect to that advice due to capacity and capability constraints of providers, the Commission must advise a WDC in writing, setting out what actions it will take to address those constraints.</p> <p>The Bill gives the Commission a power to require information from WDCs about the financial position or operations of the WDC, and a power to commission an audit of a WDC.</p>
<p>Other matters relating to</p>	<p>WDCs will be subject to the Official Information Act 1982 and Ombudsmen Act 1975.</p>

WDCs not covered above	<p>WDCs may only endorse programmes developed by a wānanga if requested by the wānanga. Similarly, a capstone assessment developed by a WDC only applies to a wānanga if requested by the wānanga. If a programme includes a component of work-based training, a WDC may perform its functions in relation to the programme. This reflects Cabinet's agreement that wānanga be enabled to remain outside WDCs' standard setting, other than where they are moving into the role of supporting work-based learning. This restriction will be given effect through the funding system.</p>
<i>Transition from ITOs to WDCs and providers</i>	
<p>Details enabling the function of supporting work-based learning to be performed by holding organisations (from the former ITOs) for a period during the transition of those functions to providers</p>	<p>The Bill specifies a transition period from the date the Act comes into force until the close of 31 December 2022.</p> <p>The Bill provides for the recognition of currently recognised ITOs as transitional ITOs. Transitional ITOs will be able to develop and maintain skill standards, develop and maintain arrangements for the delivery of work-based training, and carry out apprenticeship training activities, for the industry or industries that they previously covered. Approvals and consents granted by the NZQA to former ITOs under Part 20 of the 1989 Act will be treated as if they were granted to the corresponding transitional ITOs, and transitional ITOs will be treated as approved standard-setting bodies.</p> <p>Transitional ITOs will also be able to evolve their coverage or form (with body corporates able to apply for recognition as a transitional ITO) during the transition period as responsibility for activities transfers to workforce development councils and providers. Taken together, these provisions allow for continuity of support to employers for work-based learning.</p> <p>The Minister may impose conditions on recognition via written notice, if necessary to i) maintain the quality and effectiveness of vocational education and training in the transitional ITO's industries, or (ii) ensure the success of the transfer of responsibility for the activities of the transitional ITO. The Minister may also change the industries covered by the transitional ITO, or the activities that may be carried out by them.</p> <p>When a transitional ITO is no longer responsible for setting skill standards, supporting work-based training or apprenticeship training activities (because they have been transferred to WDCs or providers), the Minister may cancel its recognition. The Minister may also cancel recognition in certain other limited circumstances. Recognition of all transitional ITOs will lapse at the end of the transition period, if it has not been cancelled prior to that.</p>

	<p>The Bill specifies that there will be no compensation for technical redundancy for employees of transitional ITOs, meaning that employees whose position ceases to exist will not be entitled to receive any payment or other benefit if they are offered an equivalent position in a WDC, provider or another transitional ITO.</p>
<p>Enabling the Minister of Education to transfer responsibility for trainees' and apprenticeships' training agreements from a recognised ITO to a specified holding organisation or a specified provider during the transition period</p>	<p>The Minister may change the activities that may be carried out by a transitional ITO in relation to an industry or industries. The Minister may also direct funding to a provider for work-based training, if the Minister reasonably believes it is necessary for facilitating or ensuring the orderliness of the transition.</p>
<p>Technical details required to ensure continuity of services during transition of supporting work-based learning</p>	<p>Provisions from the Industry Training and Apprenticeships Act 1992 (ITAA) that govern how ITOs operate will apply to transitional ITOs. These provisions cover proposed plans of ITOs, their obligations, quality assurance by NZQA, annual fees payable and the specification that ITOs must not operate registered private training establishment. (The latter ensures no conflicts of interest during the transition, as currently).</p> <p>The Bill requires transitional ITOs to develop a transition plan for approval by the Commission that provides for the transfer of responsibility for developing and maintaining skill standards to WDCs, and the transfer of responsibility for supporting work-based learning and apprenticeship training activities to providers. Transitional ITOs must implement and maintain that plan and support providers in the transferring of responsibility for supporting work-based learning and apprenticeship training activities.</p>
<p>Enabling industry training organisations (ITOs) to transfer surplus funds or reserves to holding organisations and/or WDCs</p>	<p>Transitional ITOs will be able to transfer assets to a WDC (or WDCs) taking over responsibility for their activities, notwithstanding anything to the contrary in their founding documents.</p>
<p>Transition from ITPs to NZIST</p>	

<p>Details establishing existing ITPs as subsidiaries to NZIST (aligned with the current sector)</p>	<p>On the commencement date, existing ITPs become Crown entity subsidiaries of NZIST, and companies under the Companies Act 1993. Provision is made for the transfer of any legal proceedings and similar matters from polytechnics to the relevant NZIST subsidiary.</p> <p>Up until the end of 2022, programme approvals, programme accreditations, training scheme approvals and consents to assess against standards granted to a polytechnic will be treated as if they were granted to the relevant NZIST subsidiary.</p> <p>From 1 January 2023, all programme and training scheme approvals, accreditations and consents to assess and consents to award a degree or post graduate qualification will be transferred to NZIST. However, if an Order in Council extends the dissolution date of a subsidiary (see below), any accreditation to provide programmes, training scheme approvals, and consents to assess against standards must remain with the subsidiary to ensure that NZQA can carry out its quality assurance functions at the provider level.</p> <p>Funding approvals will be granted to the subsidiaries until the end of 2020. From 2020 until end of 2022 the Commission will fund at the subsidiary level only on the request of NZIST. From 2022 onwards funding approval will be granted to NZIST.</p>
<p>Dissolution of subsidiaries</p>	<p>The subsidiaries of NZIST will be dissolved on 31 December 2022. The Bill provides for the dissolution date of any subsidiary to be extended beyond the legislated date by Order in Council made by the Governor-General on recommendation of the Minister. The Minister shall not recommend such an extension unless the Minister is satisfied such an extension is consistent with NZIST's responsibilities under the Charter, and that it is in the interests of the tertiary education system and the nation as a whole. NZIST may dissolve a subsidiary at any time prior to the dissolution date.</p> <p>On dissolution, all assets, liabilities and rights of the NZIST subsidiary vest in NZIST and staff and students likewise transfer.</p>
<p>Any legislative implications of the transitional approach between the existing ITP system and NZIST and its</p>	<p>On commencement, every member of an existing polytechnic council will go out of office on the previous date and will not be liable for compensation in respect of the loss of office.</p> <p>All employees of polytechnics will become employees of the corresponding subsidiary on the same terms and conditions that applied previously. All students of existing ITPs will be treated as having</p>

<p>subsidiaries (e.g. to maintain administrative approvals and existing legal agreements)</p>	<p>been enrolled at the corresponding subsidiary.</p> <p>All rights, assets and liabilities of the polytechnics will vest in the corresponding NZIST subsidiary. References to polytechnics in any instrument, agreement, deed, lease, application, notice or other document will be read as reference to the corresponding subsidiary.</p> <p>Legislation is not required for the transfer of international student visas from the polytechnics to NZIST subsidiaries. Operational arrangements will be put in place as required to provide for a smooth transition of student visas that were granted prior to 1 April 2020 for study at one of the former ITPs.</p>
<p>Any restrictions or requirements on the composition of transitional subsidiary boards</p>	<p>The initial directors of an NZIST subsidiary must comprise at least 4, but not more than 6, directors. At least half of those must reside in the region in which the NZIST subsidiary predominately operates. To facilitate this provision, NZIST will be required to establish regional divisions.</p>
<p>Other matters relating to transition not covered above</p>	<p>The Bill provides for regulations to be made by Order in Council prescribing transitional provisions, savings provisions or both. These may be to facilitate an orderly transition, or to ensure that existing rights or obligations continue as part of, or despite, the transition. No regulations may be made after 31 December 2022.</p>
<p>Consequential matters resulting from the overall legislative proposals</p>	<p>The Bill introduces new definitions for certain terms (including vocational education and training and work-based training) and repeals terms that will no longer be required (such as industry training).</p> <p>The Bill provides for the Minister to set limits on fees that a tertiary education provider may charge employers for supporting their employees' work-based training. It does this by allowing for conditions to be attached to funding mechanisms.</p> <p>The Bill amends existing offence provisions relating to the use of the terms 'polytechnic' or 'institute of technology' by educational establishments, to clarify that only NZIST or an NZIST subsidiary may use these terms to describe themselves.</p> <p>Those who are funded to support apprenticeship training must advise all individuals to seek independent advice when considering entering into an apprenticeship training agreement. This is a change from the previous obligation under the ITAA which applied only to those under the age of 18.</p>



Cabinet

Minute of Decision

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Education (Vocational Education and Training Reform) Amendment Bill: Approval for Introduction

Portfolio **Education**

On 26 August 2019, Cabinet:

1 **noted** that on 22 July 2019, Cabinet:

1.1 took a series of decisions to provide for the reform of New Zealand's Vocational Education system;

1.2 authorised the Minister of Education to make decisions on further detailed policy proposals;

[CAB-19-MIN-0354]

2 **noted** that the main purpose of the Education (Vocational Education and Training Reform) Amendment Bill (the Bill) is to amend the Education Act 1989 and repeal the Industry Training and Apprenticeships Act 1992 in order to:

2.1 establish a new regulatory framework for vocational education and training;

2.2 establish workforce development councils as industry governed statutory entities under the Education Act, which have oversight of vocational education and training;

2.3 establish the New Zealand Institute of Skills and Technology (the Institute) as a tertiary education institution under the Education Act and the Crown Entities Act 2004, to support workplace-based training as well as deliver education and training in provider-based settings;

2.4 provide for the transition of entities to the new state;

2.5 make a number of other minor corrections and updates;

3 **noted** that on 22 July 2019, Cabinet agreed:

3.1 to convert, as a transition measure, the 16 current institutes of technology and polytechnics to subsidiary companies of the Institute for a life of up to two years, extendable by the Minister of Education (the Minister), with the intention of their incorporation into the Institute;

3.2 that all members of the Institute's Council be appointed by the Minister, apart from one student and one staff member elected by the committees representing students of the Institute and staff of the Institute respectively;

[CAB-19-MIN-0354]

- 4 **agreed** to amend the decision referred to in paragraph 3.1 to specify the date on which subsidiary companies will dissolve as 31 December 2022, unless dissolved prior by resolution of the Council;
- 5 **agreed** to amend the decision referred to in paragraph 3.2 to provide, in addition, that one member of the Council is elected by members of the Māori advisory committee;
- 6 **approved** the Education (Vocational Education and Training Reform) Amendment Bill [PCO 21821/8.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **noted** that the Bill holds a category 4 on the 2019 Legislation Programme (to be referred to a select committee in 2019);
- 8 **agreed** that the Bill be introduced on 26 August 2019;
- 9 **agreed** that the government propose that the Bill be:
- 9.1 referred to the Education and Workforce Committee for consideration;
- 9.2 enacted as soon as possible.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Education