Tertiary Education Report: draft approval for introduction pack for the Education (Vocational Education Reform) Bill (as at 15 August)

To: Hon Chris Hipkins, Minister of Education  
Date: 16 August 2019  
Priority: High  
Security Level: In Confidence  
METIS No: 1202516  
Key Contact: Vic Johns, Katrina Sutich  
DDI: s 9(2)(a)  
Drafter: Emily Harding  
Messaging seen by Communications team: No  
Round Robin: No

Purpose of Report

This briefing provides an updated draft approval for introduction pack for the Education (Vocational Education Reform) Bill (the Bill), which includes a draft:

a. Approval for Introduction Cabinet paper
b. Disclosure statement
c. Education (Vocational Education Reform) Bill.

This briefing also provides draft material related to the introduction of the Bill, including a first reading speech and a press release, and outlines issues raised through agency consultation on the Bill that require your direction.

Recommended Actions

The Ministry of Education recommends that you:

a. note the attached draft approval for introduction pack for the Education (Vocational Education Reform) Bill, first reading speech, and press release

   Noted

b. note that officials wish to discuss these attachments with you at the agency meeting on 19 August

   Noted

c. note that we wish to confirm our interpretation that the provisions related to dissolving subsidiaries of the Institute (222X and 222Y) are consistent with what was agreed by Cabinet on 22 July [CAB-19-MIN-0354]

   Noted

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d. either:
   a. agree that you consider sections 222X and 222Y to be consistent with what was agreed by Cabinet on 22 July, 
      
      Agree / Disagree
   b. agree that a decision be included in the approval for introduction Cabinet paper to confirm Cabinet’s agreement to the process of dissolving subsidiaries set out in the Bill, or
      
      Agree / Disagree
   c. agree to amend the Bill so that subsidiaries would automatically expire at the end of two years, extendible by the Minister (note this would require significant redrafting).
      
      Agree / Disagree

  
  e. note that as crown entity subsidiaries, the Institute’s subsidiaries are subject to the same statutory requirements as the Institute, such as chief executive pay and conditions
      
      Noted

  
  f. note that Treasury has recommend a minor change to a provision in the Charter and the Ministry of Education supports this change
      
      Noted

  
  g. agree to update 5(d) of the Charter so that “the range of education and training options available to learners and employers is appropriately broad and current”, rather than “is expanded and continuously renewed”
      
      Agree / Disagree

  
  h. agree to add a provision to the Bill to allow the Minister to limit any fees charged to employers under section 159L of the Education Act (1989)
      
      Agree / Disagree

  
  i. forward this briefing and annexes to any additional ministers you may wish to inform
      
      Agree / Disagree
j. agree that this briefing and annexes will be proactively released once the Bill has been introduced.

[Signature]

Vic Johns
Policy Director, Graduate Achievement, Vocations and Careers
Ministry of Education
16/08/2019

[Signature]

Hon Chris Hipkins
Minister of Education
17/8/19

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Updated approval for introduction pack

1. At the agency meeting on Monday 12 August, we discussed with you the *Updated draft approval for introduction pack for the Vocational Education Reform Bill* [METIS: 1201928] (now known as the Education (Vocational Education Reform) Bill).

2. The Ministry of Education and the Tertiary Education Commission (TEC) have continued to work closely with the Parliamentary Counsel Office (PCO) to update and prepare the Bill for introduction.

3. We have received agency feedback on the introduction package from the New Zealand Qualifications Authority (NZQA), the TEC, the State Services Commission (SSC), and Treasury. The Department of the Prime Minister and Cabinet has been informed of the package.

Updates to the Bill

4. The Bill has been updated in response to agency comments. While most of these changes are minor, we would like to bring your attention to updates to the following:

   a. We have included the new arrangements you requested at the agency meeting on 12 August regarding the relationship between government and the Institute’s subsidiaries, in terms of funding, during and after the transition period.

      There will now be a two stage approach. The TEC will fund at the subsidiary level up until the end of 2020. From 2020 until end of 2022 the TEC will fund at the subsidiary level only on the request of the Institute. From 2022, funding can only be directly between the Institute and TEC.

   b. We have included a new provision so that from 1 January 2023, all programme approvals and consents to award a degree or post graduate qualification will be transferred to Institute. However, any accreditation to provide training schemes 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.

   c. We have aligned the interventions framework and risk criteria for the Institute with the above principle so that interventions must be via the council of the Institute, not direct to the subsidiary. However, the intervention can reach into Institute's subsidiaries and related entities via the council's levers of control over its subsidiaries and related entities. This ensures the council of the Institute is clearly accountable for the performance of the institute as a whole. The provisions have been updated (and include bespoke provisions for a Crown Commissioner brought over from the primary Act) to match the risk to the Institute so they stage through the interventions (and do not wait till the Institute is failing before an appropriate intervention is available).

   d. We have included provisions for setting limits on fees that provider may charge to employers for support of their employees' work-based training.

5. The Bill does not yet include provisions relating to final reporting and audit requirements for ITPs and subsidiaries of the Institute. We have received advice from Office of the Auditor General and are working with Treasury on this matter.

6. A definition of Vocational Education and Training is provided in the Bill. However, this definition needs further work to capture both the current and desired future state of the system. We expect to provide an update definition, prior to introduction of the Bill.

7. A tracked change and a clean version of the Bill are attached.
Updates to Disclosure statement and Cabinet paper

8. Minor updates have been made to the Disclosure statement, including to the General Policy Statement (to reflect changes to the Bill) and to section 3.2 regarding the whether the Bill is consistent the government’s Treaty of Waitangi obligations.

9. Minimal updates have been made to the introduction Cabinet paper. However, Appendix A: Power to Act decisions, has been updated to reflect the Bill.

Process for dissolving subsidiaries and application of Crown Entities Act – SSC comment

Process for dissolving subsidiaries

10. Cabinet agreed on 22 July “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” [CAB-19-MIN-0354].

11. In the draft Bill, sections 222X and 222Y provide that:
   a. A subsidiary may be dissolved at any time by resolution of Institute’s council, and
   b. The Minister may, at any time on or after 1 April 2022, by notice in the Gazette give a direction to Institute’s council to dissolve a subsidiary and specify the date on which it is dissolved.

12. These provisions mean that the Minister (you) will need to direct the Institute to dissolve a subsidiary after 1 April 2022, rather than all subsidiaries automatically expiring at the end of two years (with the Minister having the power to extend). We consider the provisions in the Bill will achieve the same outcome agreed by Cabinet of allowing the Institute to re organises itself as it sees fit, with the ability of the Minister to complete the reforms through the power to dissolve the subsidiaries.

13. However, SSC has commented that the way these provisions are drafted could be interpreted as reducing the expectation on the Institute that the transition would be completed within two years, and that this could be seen as a change in policy position requiring Cabinet agreement.

14. Your direction is required to either i. confirm that sections 222X and 222Y are consistent with what was agreed by Cabinet on 22 July, or ii. that a further decision should be taken to Cabinet on this matter (this could be included in the Bill’s introduction Cabinet paper), or iii. be to amend the Bill so that subsidiaries would automatically expire at the end of two years, extendible by the Minister. Option iii would require significant redrafting to the Institute’s transition provisions.

Application of Crown Entities Act

15. SSC has also asked the Ministry whether it was intentional for section 97 of the Crown Entities Act to apply to the Institute’s subsidiaries. The Ministry considers it was intentional; this section covers standard rules that apply to Crown entity subsidiaries and has provisions that require the subsidiary to act consistently with the parent’s objectives and current statement of intent.

16. A consequence of using these provisions is that this clause also means statutory requirements that apply to employees of the parent also apply to the subsidiary. This would include requirements around the appointment of subsidiary chief executives in line with State Sector Act Part 7B, including the concurrence of the State Services Commissioner to the conditions of employment of all of those subsidiary chief executives under s771D(3).

17. MOE considers it is appropriate for these provisions to apply to the Institute’s subsidiaries.

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Updating the Charter – Treasury comment

18. Treasury commented that the Institute's Charter provides that it must ensure that the "range of education and training options available to learners is expanded and continuously renewed". While Treasury supports an expectation that the Institute should regularly review its programme offering and look for opportunities to expand it where there is evidence of unmet demand, they do not see value in requiring it to expand or continually renew it as a matter of principle.

19. The workforce development councils will have the ability to approve or veto programmes, and the provision in the Charter requiring the Institute to meet the needs of industry, communities and regions already entails that they update programmes as needed.

20. Part of the purpose of the reforms is to provide regions with a strong range of provision. In some cases where regional polytechnics have been struggling, this must involve expanding provision from current offerings. If you would like the Institute to focus on expansion in its first few years of operating, it might be more appropriate to include this in the Letter of Expectation, as this lever is time-specific rather than ensuring.

21. The Ministry agrees with Treasury's proposal. We recommend updating provision 5(d) of the Charter to say:
   a. "the range of education and training options available to learners and employers is appropriately broad and current", rather than "is expanded and continuously renewed"

22. If you agree, PCO will update the Charter prior to introduction of the Bill.

Fees that providers may charge employers for supporting their employees' work-based training

23. Industry is currently required to contribute to the costs of industry training. This can be achieved in a number of ways, but is generally linked to training arrangements with employers (or in many cases employees) paying a fee to an industry training organisation (ITO) for enrolling a trainee or apprentice in work-based training.

24. Under the new system, providers will be responsible for supporting work-based training on behalf of employers. They will therefore need to recover the equivalent of the "industry contribution", though it does not make sense to have a general provision for contributions.

25. A general provision for collecting contributions could result in a significant shift away from the co-funding principle that underpins the current industry training system (which tries to place industry in the lead) to a fee for service system. The co-funding principle has, for example, helped government to justify a common standard training measure funding rate without reference to the different costs of industry training in different industries.

26. The details of the unified funding system have still to be worked through. In the event that employers are directly charged a fee by providers, there needs to be a provision to regulate these fees. The work being led by the Treasury, on incentives for work-based training also may apply. In this case a different and more general "industry contribution" could be the result.

27. Industry and employers raised a number of concerns about potential cost increases with the transfer of the "arranging training" function to providers. They will need assurance that any fees will not be unreasonable, and that fees immediately following the transition are comparable to those paid to ITOs. If a compulsory levy were to be introduced, although no such proposal has currently been developed, then there may
also be a requirement that prevents providers from charging a fee to employers and to work-based trainees and apprentices.

28. In light of these issues, we propose that the Bill include provision to allow the Minister to limit any fees charged to employers under section 159L.

Draft first reading speech and press release

29. A first reading speech and press release for the introduction of the Bill have been prepared. Drafts of these two documents are attached, for your comment. A brief summary of the legislation will also be published on the Ministry’s website.

Annexes

Annex one: draft Approval for introduction Cabinet paper (as at 15 Aug)
Annex two: draft Disclosure statement, including the General Policy Statement (as at 15 Aug)
Annex three: draft Education (Vocational Education Reform) Bill (as at 15 Aug) (tracked)
Annex four: draft Education (Vocational Education Reform) Bill (as at 15 Aug) (clean)
Annex five: draft press release – Education (Vocational Education Reform) Bill introduced (as at 15 Aug)
Annex six: draft first reading speech (as at 15 Aug).