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### Education Report: Proposed amendment to the Ministerial consent process to allow wānanga to apply to use a protected term

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Cc:</b>	Hon Kelvin Davis, Associate Minister of Education		
<b>Date:</b>	16 February 2018	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1105100
<b>Drafter:</b>	Mary Kuepper	<b>DDI:</b>	[Redacted]
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<b>Messaging seen by Communications team:</b>	N/A	<b>Round Robin:</b>	No <span style="border: 1px solid orange; padding: 2px;">s 9(2)(a) OIA</span>

#### Purpose of Report

We are seeking your approval of a minor wording change to the Ministerial consent process within the proposal to allow wānanga to apply to use a protected term. This proposal is included in the Education (Tertiary Education and Other Matters) Amendment Bill (2017).

#### Summary

The Education (Tertiary Education and Other Matters) Amendment Bill will allow wānanga to apply for Ministerial consent to use protected terms to describe themselves.

Under the Bill as currently drafted, when considering a wānanga's application for consent, the Minister is required to consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate to inform his or her decision. This is unchanged from existing consultation requirements in the Education Act (1989).

In its submission on the Bill to the Education and Science Select Committee, Te Whare Wānanga o Awanuiārangi ('Awanuiārangi') suggested adding to this section to require the Minister to consult with people who are knowledgeable in delivering education in a Māori tertiary education context. Awanuiārangi sought this to balance the consultation process.

In the Departmental Report we recommended no change to the proposal to allow wānanga to apply to use a protected term because we considered the consultation requirements to be sufficiently broad to include Awanuiārangi's suggestion as well as wider consultation.

On further consideration of Awanuiārangi's submission, and in light of Te Wānanga o Raukawa's Whakatupu Mātauranga Claim (lodged with the Waitangi Tribunal in December 2017) and your meeting with Awanuiārangi on 25 January 2018, we recommend a minor change to the proposal to allow wānanga to apply to use a protected term.

We propose that the Bill be amended so that, when considering an application for consent by a wānanga to use a protected term, the Minister must also consult with people or bodies knowledgeable in delivering education in a Māori tertiary education context.

This change would balance the consultation process and ensure the Minister gains a more fulsome understanding of the applicant wānanga in a Māori tertiary education context.

Should you agree, you can make this change through a supplementary order paper, which could be considered at the Committee of the Whole House.

### Recommended Actions

The Ministry of Education recommends you:

- a. **agree** to amend the proposal to allow wānanga to apply to use a protected term so that, in considering a wānanga's application, the Minister must also consult with such persons or bodies as the Minister considers appropriate who are knowledgeable in āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom) within a Kaupapa Māori pedagogy

Agree / Disagree

- b. **agree** to include this change as a supplementary order paper to the Bill, and introduce it at the Committee of the Whole House

Agree / Disagree

- c. **not release** this Education Report until the supplementary order paper has been announced.

Release / Not release

*This SOP will need to be drafted very quickly.*

*Claire Douglas*

Claire Douglas  
Deputy Secretary  
Graduate Achievement, Vocations and Careers

*Chris Hipkins*

Hon Chris Hipkins  
Minister of Education

16/02/2018

18/2/18

## Background

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1. The Education (Tertiary Education and Other Matters) Amendment Bill will allow wānanga to apply for ministerial consent to describe themselves using a protected term, such as university or polytechnic. It extends to wānanga the existing process under the Education Act by which Private Training Establishments (PTEs) can seek consent to use protected terms.
2. Section 253C(3) of the Act requires that, before deciding whether to grant consent, the Minister must:
  - a. take into account the characteristics of institutions as described in section 162(4); and
  - b. receive advice from the New Zealand Qualifications Authority (NZQA) [the Bill adds the Tertiary Education Commission (TEC) to this clause - the TEC was not formally established when this section of the Act was last amended]; and
  - c. be satisfied that consenting to the application is in the interests of the tertiary education system and the nation as a whole; and
  - d. consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate.

## Previous Suggestions to Change Consultation Requirements of the Ministerial Consent Process

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### **Awanuiārangi's submission on the Bill to the Education and Science Select Committee**

3. In its submission on the Bill to the Education and Science Select Committee on 23 June 2017, Awanuiārangi mostly supported the proposal. However, Awanuiārangi argued that the consultation requirements should be amended so that (changes in italics), when deciding whether to grant consent, the Minister must:
  - a. consult with the institutions, organisations representing institutions, and other relevant bodies *who are knowledgeable in āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom) within an Iwi context and have knowledge of the nuance in delivering a suite of programmes from community education (certificates) through to PhD within a Kaupapa Māori pedagogy.*

### **Departmental Report on the Bill**

4. In the Departmental Report on the Bill (15 December 2017) we considered the existing consultation requirements to be broad enough to include those whom Awanuiārangi wish to include, as well as other organisations the Minister considers appropriate.
5. We recommended no changes to the proposal to allow wānanga to apply to use a protected term.

## Reconsideration of Previous Recommendation: Proposed Wording Change

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6. Upon further consideration, we think Awanuiārangi has raised a valid concern. Our understanding is that Awanuiārangi made their suggestion to balance the consultation

- process to ensure that the Minister gains a more fulsome understanding of the applicant wānanga in a Māori tertiary education context.
7. We therefore believe there is merit in being explicit in the legislation that, in the case of wānanga, the Minister must consult those with the relevant expertise. We propose a specific requirement for the Minister to consult with relevant people or organisations who are knowledgeable in āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom) within a Kaupapa Māori pedagogy to achieve this balance.<sup>1</sup>
  8. However, we don't suggest restricting consultation only to people who are knowledgeable in this area. We want this to be an addition to the general consultation requirements for applications for consent by wānanga. Therefore, we propose a change in clause 36 of the Bill amending section 253C of the Act (subject to Parliamentary Counsel Office drafting requirements) to the following effect (changes underlined):
    - (3) *Before deciding whether to grant consent under subsection (2) the Minister must -*
      - (a)-(c)...
      - (d) *consult with the institutions, organisations representing institutions, and other relevant bodies that the Minister considers appropriate; and*
      - (e) *in the case of a wānanga, consult with persons or bodies who are knowledgeable in āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom) within a Kaupapa Māori pedagogy that the Minister considers appropriate.*
  9. This would mean that for consent applications from wānanga the Minister must consult with, for example, other wānanga or Māori education experts. This would give the Minister a more fulsome understanding of the applicant wānanga in a Māori tertiary education context.
  10. We have informally consulted with Awanuiārangi to fully understand their objectives as expressed in their submission. They have indicated they are happy with our proposed changes.

#### **Process to include proposed change in the Bill**

11. The Bill is currently before the Education and Workforce Select Committee. The Committee has unanimously agreed to all changes proposed in the Bill. The Committee is likely to report back to the House before the end of February.
12. Should you agree, you could make this change through a supplementary order paper (SOP).
13. The proposed amendment is consistent with the policy proposals in the Bill and should therefore come within the scope of your authority to act.
14. You could then announce the proposed change at the Second Reading. This will allow members time to consider the proposal before seeking to include the SOP in the Bill at the Committee of the Whole House.

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<sup>1</sup> These terms are already used in the Act with reference to Kura Kaupapa Māori (s155-s155F) and the characteristics of wānanga (s162(4)(b)(iv)). This proposal would therefore not introduce new concepts to the legislation.

## Next Steps

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15. Should you agree, we will issue drafting instructions to Parliamentary Counsel Office to prepare a SOP amending the provisions in the Bill by extending the consultation requirements in relation to an application for consent by wānanga to use a protected term.
16. If you agree, you could announce the SOP at the Second Reading. The SOP will be ready for you to submit at the Committee of the Whole House.
17. We expect the Second Reading to be held on Thursday 22 Feb at the earliest.

## Proactive Release

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18. We recommend that this Education Report is not released until the SOP has been announced.
19. Should the Minister agree to the proposal, a SOP will be released at a later date announcing the Minister's proposed changes to the Bill.

Proactively Released