



Tertiary Education  
Commission  
Te Amorangi Mātauranga Matua



## Tertiary Education Report: Annotated agenda to support discussion of the Reform of Vocational Education on 13 December 2018

Date:	10 December 2018	TEC priority:	Medium
Security level:	In Confidence	Report no:	B-18-00942
		Minister's office No:	TR18.9861

### ACTION SOUGHT

	Action sought	Deadline
Hon Chris Hipkins Minister of Education	Note the attached annotated agenda for your discussion with officials on Thursday 13 December at 9.45am 9.40am	
Enclosure: Yes	Round Robin: No	

### CONTACT FOR TELEPHONE DISCUSSION (IF REQUIRED)

Name	Position	Telephone		1st contact
9(2)(a)	Chief Advisor to the Chief Executive, TEC	9(2)(a)	9(2)(a)	✓
9(2)(a)	Policy Director, Ministry of Education	9(2)(a)	9(2)(a)	

### THE FOLLOWING DEPARTMENTS/AGENCIES HAVE SEEN THIS REPORT

☐ DPMC ☐ MPI ☐ ENZ ☐ ERO ☐ MBIE ☒ MoE ☐ MFAT  
☐ MPP ☐ MSD ☐ NZQA ☐ NZTE ☒ TEC ☐ TPK ☐ Treasury

Minister's Office to Complete: ☐ Approved ☐ Declined  
☐ Noted ☐ Needs change  
☐ Seen ☐ Overtaken by Events  
☐ See Minister's Notes ☐ Withdrawn

**Comments:**

## Recommendations

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**Hon Chris Hipkins**, Minister of Education

*It is recommended that you:*

1. **note** the annotated agenda attached to support your discussion with officials on Thursday 13 December from 9.45am to 10.15am about the Reform of Vocational Education
2. **note** that, as the agenda is long, we have put the items in order of priority to make the best use of your limited time
3. **agree** that this briefing will not be proactively released until you have agreed to vocational education reforms (and consultation on these) with your Cabinet colleagues

AGREE / DISAGREE



**Tim Fowler**

Chief Executive  
Tertiary Education Commission

10 December 2018



**Claire Douglas**

Deputy Secretary, Graduate Achievement,  
Vocations and Careers

Ministry of Education

10 December 2018



**Hon Chris Hipkins**

Minister of Education

11 / 12 / 18



## AGENDA

**Reforms of Vocational Education**  
**Thursday 13 December, 9.45am-10.15am**

**Attendees** Minister of Education, Hon Chris Hipkins  
Other Ministers to be confirmed  
Officials to be confirmed

This annotated agenda is to support a discussion with you about key choices in the design of new settings for vocational education and for New Zealand's proposed new national ITP. It will inform our preparation of your Cabinet paper and materials for public consultation in early 2019.

This agenda seeks as many decisions as possible from you prior to consultation on design choices for the new ITP. Where you have no preferences about the options outlined in this agenda, you can of course choose to leave the matter open to consultation. However, the more options that remain open for consultation, the less detail that consultation can reasonably go into on the design of any particular option. A consultation process with a very large number of "live" options will make it very difficult for officials to prepare robust detailed proposals for Cabinet by May 2019.

The advice below has of necessity been compiled on tight timeframes. This has prevented full analysis by officials of the issues. The agenda represents officials' best advice at this point in time, but is subject to change as our analytical work continues.

As the agenda is long, we have put the items in order of priority to make the best use of your limited time. Having said that, we suggest limiting discussion of the first two items to about 15 minutes.

### **Item 1: Industry Skills Bodies and Centres of Vocational Excellence**

1. You have indicated that we will establish Industry Skills Bodies (ISBs) with the following responsibilities across all on- and off-job vocational education:
  - setting standards for levels 1 to 7 (diploma)
  - quality assurance at the start and end of provision, including potentially the use of capstone assessments
  - purchase advice, which TEC will act on
  - skills leadership in identifying and planning for future skills needs.
2. This section provides further advice on the principles underlying the industry-led nature of ISBs, how we consult on CoVEs, and how programme approval responsibilities would work.
3. The work on ISBs is at an earlier stage than the work on ITP structural change. We consider the matters in this agenda to be the key ones to be addressed prior to Cabinet decisions, but there are many others to be worked through over coming months. They include:
  - roles across ISBs, occupational regulators, and other industry bodies – for example, clarity about overall responsibilities for workforce development
  - whether current recognition, governance, and monitoring arrangements for industry training organisations (ITOs) are suitable for ISBs
  - the relationship between ISBs, providers and CoVEs
  - requirements for the purchase and skills leadership roles (and how government, especially the Ministry of Business, Innovation and Employment, should support it)
  - how the ISBs will be funded

*Tomorrow's  
Schools Transformation  
link?*

- how systems and requirements for the **New Zealand Qualifications Authority** will change to support a stronger standard-setting role.

4. We will develop a work programme and provide advice in stages over the coming year.

### **The establishment of industry skills bodies**

5. A key issue is how ISBs are formed, as this affects a number of other design matters such as how they are recognised, funded and governed. There are two ways in which ISBs could be formed:
  - Current approach: Industry self-organises and Government recognises ISBs in a similar manner to how it recognises ITOs today.
  - Structured approach: Government takes a more coordinated approach to identifying the number of ISBs and their scope of coverage.
6. We could continue with the current approach for ITOs. This is strongly industry-led, where industry groups propose how they want to be represented by ITOs, and apply to the Minister for recognition. This creates flexibility to adapt to industry needs, but leaves it to industry to determine the number, size, structure and coverage of ITOs.
7. As a result some industries and cross-industry qualifications (e.g. business management) will lack coverage. Currently this amounts to around a third of all qualifications/programmes. Gaps in coverage are reflected in costs to government agencies (TEC and NZQA) in managing alternative qualification/programme development processes. The new role of industry in providing advice to TEC on purchase of vocational education, means that significant gaps in coverage will weaken industry leverage on purchase decisions.
8. The gaps in standard-setting will be more apparent in the new system, where the roles are more clearly divided. However, current arrangements can be made to work, especially as a transitional arrangement – ISBs may well be willing to work with industry to extend their coverage to areas not currently covered by ITOs.
9. An alternative is to take a more coordinated approach, by Government determining the range and scope of the ISBs. This could be targeted (e.g. identifying gaps and calling for expressions of interest to fill them) or comprehensive (e.g. creating a single umbrella organisation to convene all ISBs, and provide common resources such as forecast data and expertise on skills development).
10. This would strengthen industry's hand in comprehensively setting standards for vocational qualifications and impact positively on the quality and comprehensiveness of advice to TEC on the purchase of vocational education provision. However, it is also likely to reduce opportunities for industry to change their representation over time, and reduce responsiveness of ISBs to employers.
11. You previously indicated that the number of ISBs could be open, as long as there was flexibility for ISBs to adapt as industry needs change. We recommend that we continue for the time being with an industry-led system modelled on the current ITO system, with the implication that the number and scope of ISBs will be determined by industry with the Minister's agreement through a recognition process. This is in keeping with the message that industry has a critical role in the skills system, and that this role comes with both rights and responsibilities.
12. Within this industry-led approach, government can work to fill gaps and stimulate coordination. Gaps can often be resolved through the Investment Plan process, but government can also use funding incentives or criteria for recognition to address its goals.

**Agree** that we consult on a proposal to retain the industry-led nature of ITOs in the ISB structure, with the implication that the number and scope of ISBs will be determined by industry with the Minister's agreement through a recognition process.

**AGREE / DISAGREE**

### **Centres of Vocational Excellence**

- New ISBs proactively setup to fill gaps?
- A new ISB for foundation / generic skills?

13. In our preliminary discussions with you about CoVEs, we understood that you envisage a small number of CoVEs in areas of strategic significance for New Zealand. We suggest that we use the consultation process next year to test some of the design parameters for CoVEs, as follows:

- Purpose: Should the purpose of CoVEs be to recognise existing high-quality vocational education, or to act as a means to directly lift quality. *Both*
- Should all CoVEs be industry-focussed: Most CoVEs will focus on industries such as forestry and viticulture. We could also explore CoVEs focussed on modes of delivery (e.g. distance), or other specialisms (e.g. Mātauranga Māori). *Both*
- Which providers should be able to host a CoVE: Whether ITPs should be the only provider type able to host a CoVE, or whether wānanga or other provider types should be able to apply. *ITPs + wānanga*
- What are the functions of a CoVE: Depending on the purpose of CoVEs, it might engage in specialised innovative delivery, provide leadership and professional development across the ITP and/or other providers. A CoVE could work with the ISB to enhance industry input into the design of programmes of study, or conduct applied research and improve knowledge exchange. *All*

14. The sector is also likely to ask about the level of funding available to support CoVEs. We suggest this should be considered once design matters have been worked through. 9(2)(f)(iv)

**Agree** that we use the consultation process to explore the:

- purpose of CoVEs
- types of CoVEs
- organisations that can host a CoVE
- potential activities of a CoVE.

**AGREE / DISAGREE**

**Note** that this approach would not comment on the level of additional funding for CoVEs, with that to be determined after design decisions have been worked through.

**NOTED** ✓

## **Item 2: Programme approval - current roles and responsibilities**

15. In our last discussion with you, we agreed that we would come back with more advice on the role of ISBs in quality assurance of vocational education, including programme approval for off-job provision.

16. At the moment, providers and ITOs develop programmes - coherent sets of learning outcomes that lead to achievement of the graduate profile, outcomes and purpose of a qualification - for NZQA to approve. Programmes are of two types:

- Providers develop programmes of study. These consist of projects, papers, courses, modules and so on. Just over half of currently approved programmes of study incorporate unit standards developed by ITOs. The content of provider-developed programmes is currently reviewed and endorsed by the relevant ITO prior to NZQA approval. Even so ITOs are concerned they do not have sufficient influence over provider based VET programmes
- ITOs develop programmes of industry training to structure trainees' learning. These programmes are made up of unit standards, but may include other components, such as

courses delivered by a provider off-job. Reported off-job delivery by providers currently accounts for just 21% of all Apprenticeship delivery (down from 28% in 2014).

17. In approving programmes, NZQA considers if a programme is coherent and educationally sound and will achieve the intended qualification purpose and outcomes. It also considers whether the programme is needed by, and acceptable to, key stakeholders. This includes industry, professional bodies and employers. NZQA also ensures that the level and credit value of a programme is aligned to the New Zealand Qualifications Framework (NZQF) and is appropriate.
18. Where programmes lead to qualifications which then lead to professional registration, NZQA works closely with the relevant registration authority on programme approval and provider accreditation. For professions such as teacher training, nursing, midwifery and social work, this is a joint process with the relevant registration body – for example, NZQA and the Education Council jointly approve teacher training programmes).
19. Once a programme has been approved, NZQA is responsible for the quality assurance of its in-flight delivery and the performance of the TEO. The relevant standard setting body is responsible for national external moderation of its unit standards.
20. Existing programme approval and quality assurance processes ensure the integrity and credibility of New Zealand's qualifications listed on the NZQF, which in turn maintains a high level of confidence in the system on the part of learners (including international learners) and their families, employers and other stakeholders. We need to ensure we maintain this confidence as we determine new roles and responsibilities for quality assurance of vocational education.

#### ***Industry skills bodies' involvement in quality assurance***

21. To strengthen the involvement of ISBs in quality assurance of vocational education, you have decided that:
  - ISBs will be responsible for setting standards across all sub-degree vocational education qualifications
  - ISBs will gain responsibilities for ex ante quality assurance of off-job provision (in addition to ITOs' existing ex ante responsibilities for quality assurance of on-job provision), including programme approval
  - ISBs will gain a role in setting and/or moderating capstone assessments for learners at the end of their study (for optional use where industry determines it will be valuable).
22. We have enough information about capstone assessments to inform your Cabinet paper and consultation document. Below we seek decisions from you about the role of ISBs in standard-setting and in ex ante quality assurance, including programme approval.

#### ***Standard setting***

23. As well as setting standards across all sub-degree vocational education qualifications, ISB's standard setting role could be strengthened by changing the scope and nature of skill standards (i.e. unit standards) beyond narrowly-described tasks. Countries including the UK and Canada have shifted to broader-brush descriptions of standards that include skills and competencies, and larger "chunks" of learning, with good results.
24. This approach to standard setting would help to ensure that skill standards are fit-for-purpose across all sub-degree vocational education (matching the breadth of ISB's standard setting). It could also enhance the transferable skills that standards capture alongside industry-specific skills.
25. At the same time, providers need to be more flexible and able to develop programmes that are adaptable to different modes of delivery (such as classroom, distance learning, or in the workplace with supervision), and that meet the needs of a wide variety of learners and employers.
26. We propose that your consultation document signal that the strengthened standard setting role for ISBs applies across all sub-degree vocational qualifications, but may require changes in the nature of skill standards so they are fit for purpose.

**Agree** to outline the above high-level proposal and choices in your consultation document, and make final decisions about the nature of ISBs' standards setting function, based on consultation feedback and further analysis and advice from officials.

**AGREE / DISAGREE**

***Programme approval for off-job provision***

27. You signalled that you want ISBs to gain responsibility for ex ante quality assurance of off-job provision, including programme approval. This will increase the relevance of vocational education. But it could have considerable implications for quality assurance responsibilities across the system, including for NZQA and providers.

28. We have not worked through all the implications at this stage, but our initial advice is below.

29. ISBs assuming sole responsibility for programme approval would strengthen the focus on industry needs. This would respond to industry concerns about whether the current consultation requirements for programme approval result in a representative industry view. However, even with increased education expertise than ITOs currently have, we see a significant risk that ISBs may give insufficient emphasis to wider stakeholder interests (beyond industry), educational soundness, and transferable skills when approving programmes. They will have strong incentives to prioritise their own industry's needs over the long-term needs of learners for a broad-based qualification providing transferable skills.

30. Our initial advice is therefore that ISBs' responsibility for programme approvals should complement, rather than replace, NZQA's approval process, as a formalised "industry endorsement" step. This is currently the process for professional bodies in education and health, and would be a significantly stronger requirement than the "evidence of industry consultation" that NZQA currently requires before approving programmes.

31. The resulting framework would see ISBs:

- *leading* qualifications development, with NZQA approving qualifications
- *setting* skills standards and developing associated programmes in concert with ITPs and other VET providers, with NZQA approving standards
- *managing* national moderation of the new skill standards with NZQA monitoring in-flight programme delivery and TEO performance
- *oversight* of any "capstone assessment" arrangements, with NZQA responsible for External Evaluation and review of TEOs.

**Agree** that we consult on the proposed ISB responsibilities in paragraph 31.

**AGREE / DISAGREE**



### Item 3: Organisational form and structure of new ITP

#### Proposals

32. You have indicated that the new ITP should:

- be a form of tertiary education institution established in the Education Act 1989
- be guided by a charter provided for in legislation, with protections for academic freedom
- be governed by a single national council
- maintain a presence in each region of New Zealand
- be supported by regional advisory committees (see Item 4).

33. Below we lay out a series of consequential decisions for your consideration. We have made recommendations where we consider we already have enough information to advise you; in other cases we suggest you leave the matter open for consultation, in which case we will provide advice for your consideration after consultation closes.

34. All legislative references are to the Education Act 1989 unless otherwise stated.

## 9(2)(f)(iv)

#### Institutional charter

36. You have proposed the new ITP should be guided by an institutional charter, provided for in legislation.

37. Central government's existing mechanisms to steer tertiary education institutions include legislation and the Tertiary Education Strategy. Legislation is best suited to requirements and conditions that are long-term and can only be changed after lengthy consideration and consultation. The Tertiary Education Strategy is more flexible and shorter term, expressing government priorities over a five-year timeframe.

38. An ITP charter offers the opportunity to set ITP-specific objectives and behaviours that can transcend multiple Tertiary Education Strategies if desired, but can also be changed without a legislative process. X

39. We envisage that the charter would contain a high-level description of the contribution the government expected the ITP to make to New Zealand, with reference to specific government medium- to long-term policy goals. This could potentially sit alongside goals and objectives produced by the ITP for itself – this would make the charter a partnership document between the ITP and the Crown, rather than solely a Crown-originated steering instrument. Either way, the charter would act as a framework to guide the institution's autonomous decision-making. It would also be a key document for stakeholders to point to as an expression of the government's intentions for the ITP. X

40. We envisage that, among other things, the charter would set out government expectations regarding the way the ITP:

- supported the aspirations and development of regional communities (see also Item 4) ✓
- enabled and supported students to be involved in decision-making at every level of the ITP ✓
- formed and maintained partnerships with iwi and hapū. ✓

41. The legislation providing for a charter could also provide that the contents of the charter be consistent with the principle of preserving academic freedom. ✓

42. A key choice about the charter is whether it should originate from within government and express only government goals and priorities, or whether it should be co-created with the ITP and express

ITP-originated priorities and goals. Other key choices include:

- whether the ITP was required to "have regard" or to "give effect" to the charter in making decisions (the latter being a much stronger requirement)
- how government would monitor the ITP against the charter
- what the legislation should say about how often a responsible Minister could or must issue a charter, for example "from time to time" or "at least once every five years".

43. We recommend that you outline the above high-level proposal and choices in your consultation document. We recommend you make final decisions about the nature and content of an ITP charter after consultation closes, based on consultation feedback and further analysis and advice from officials.

**Agree** to outline the above high-level proposal and choices in your consultation document, and make final decisions about the nature and content of an ITP charter after consultation closes, based on consultation feedback and further analysis and advice from officials.

*I envisaged the Charter being legislated and long-term*

AGREE / DISAGREE

### **Governing council**

44. Your Education Amendment Bill, passed in October 2018, set out new requirements for ITP councils. Under the new arrangements, ITP councils:

- comprise 8-10 members: up to four appointed by the Minister of Education, and four, five or six appointed by the council, with the requirement that council-appointed members make up 50-60% of the total council
- include one or two staff members and one student, elected by their peers
- have a chair and deputy chair appointed by the Minister from among any of the council members
- have all members appointed for up to a four-year term and often for a shorter period.

45. The governing council of the new ITP will have the same goals as the councils of existing ITPs and will operate in a broadly similar way. However, it will be overseeing a national rather than a regional organisation, at a much larger scale and with different challenges and opportunities.

46. We recommend consulting publicly on whether the governance arrangements described above need to change for the new ITP. Officials will provide further advice after consultation closes.

**Agree** to consult on whether existing the ITP council composition and appointment process need to change for the new ITP.

*Fully ministerial appointed with separate staff/student advisory councils to provide regional representation?*

AGREE / DISAGREE

### **Council committees, including the Academic Board**

47. Institutional councils can formally appoint committees for various purposes and in limited cases delegate powers to them (s.193 refers). We propose the new ITP be able to do the same.

48. The council of the new ITP will need to establish committees to advise it on particular matters. This may include committees advising on the needs and interests of regions, students, staff, iwi and hapū, or any other groups the council deems relevant. For the most part, we believe the new council should be left to decide what committees it wants to establish; but see Item 4 for choices about how the government could mandate regional committees in a national ITP structure.

49. We propose the existing requirements regarding Academic Boards (s.182 refers) be retained for

the new ITP. These are that the council:

- establish an Academic Board, comprising the chief executive as well as selected staff and students of the institution, to advise the council on academic matters and also exercise any powers delegated to it by the council
- not make any decisions on academic matters without seeking and considering the advice of the Academic Board.

**Agree** that:

- existing provisions allowing an ITP council to establish committees of various kinds should remain unchanged (except for any changes you may indicate in Item 4)

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

- existing provisions regarding Academic Boards should remain unchanged.

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

### **Regional structure**

50. You have indicated that the new ITP will maintain delivery throughout New Zealand, with some kind of administrative structure at the regional level.

51. A key design choice is how many regional administrative units the ITP should divide into and for what purposes: When we talk about the ITP national office working with "the regions", what regions do we mean? How are multiple regional delivery sites clustered into a smaller number of large administrative regions for management and planning purposes? Will the ITP maintain different regional groupings for different purposes, or will there be one set of regions for all decision-making?

52. These questions will be matter of significant priority and concern for local communities. The design choice about regional administration affects where influence and decision rights sit in the new ITP, the size and nature of the most senior roles available in each region, and the ability of existing ITP sites and brands to "map into" the new structure.

53. Our view is that the incoming ITP council should be responsible for determining the regional structure the new ITP needs, rather than government. Having said this, government may choose to stipulate that any new ITP administrative regions should align (probably in a one-to-many relationship, to achieve scale on the ITP side) with relevant existing or proposed administrative regions, for example:

- DHB boundaries (20 regions)
- Education Hub boundaries proposed by the Tomorrow's Schools reforms (about 20 regions)
- local government boundaries (11 regional councils; 12 city councils excluding Auckland; 54 district councils; and Auckland Council)
- Work and Income delivery regions (11 regions).

9(2)(g)(i)

54. Government will need to make undertakings to the local and regional communities of existing ITPs about how their voices will be heard and their interests protected in a new single ITP model; see Item 4.

**Agree** that the incoming ITP council should be responsible for determining the regional structure the new ITP needs, potentially within parameters set by government

*We need more cross-govt alignment*

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

**Indicate** whether you want to propose in your consultation document that government should stipulate that any new ITP administrative regions should align with relevant existing or proposed administrative regions (and if so, which).

**YES / NO**

#### **Item 4: Regional advisory committees**

##### ***Proposals***

55. You have indicated that:

- regional advisory committees should be established to steer or inform the new ITP's decisions about regional delivery
- these committees should include representatives of local government, local industry, and iwi/hapū
- these committees:
  - should be responsible for advising about the skill needs of their region
  - should not be responsible for making decisions about asset management or finances.

##### ***Consequential matters***

56. Note that your decisions here interact with decisions about the proposed regional structure of the new ITP, discussed in item 3.

57. The concept of regional advisory committees also intersects with that of "regional skills bodies", approved by the Cabinet Economic Development Committee (DEV) for public consultation as part of the arrangements to support the domestic labour market response required in the new approach to work-assisted visas and regional workforce planning. DEV noted that agencies will work together to ensure that advice on any new structures or mechanisms is consistent with outcomes sought across current reviews of the immigration, education and welfare systems. We propose that your RoVE Cabinet paper include a corollary recommendation. ✓

58. The formation of the new ITP's regional advisory committees will be key to securing community and industry support for the ITP structural changes proposed, as well as enduring their on-going input to programme development and delivery in their region.

59. We propose that the committees be established as "Regional Advisory Boards" in the Education Act 1989, in a similar way Academic Boards (see previous item). The Act could provide that the new ITP "must consult" with Regional Advisory Boards and take account of their advice in decision-making about regional activity. This could be further reinforced with performance measures included in Investment Plans or External Evaluation and Reviews (EER) that track the effectiveness of the new ITP in dealing with regional education requirements. In this way, while the new Boards would not have decision-making powers, their advice would have to be considered, and the ITP would need to show how it was giving effect to that advice. ?

##### ***Board composition and appointment***

60. The Act could specify how and where Regional Advisory Boards should be located, how they must be constituted and how their members must be selected; or could leave these matters to the Minister to determine in consultation with the ITP, ie enabling legislation. Enabling legislation would enable a Minister to set requirements for Regional Advisory Boards that make best use of other existing or proposed regional bodies. For example:

- As noted at paragraph 57, the government shortly expects to consult on immigration policy changes that include a proposal to establish regional skills bodies of some kind. It may be that any such new bodies could also form the Regional Advisory Boards of the new ITP. ✓
- Some regions may have groups of various kinds already convened (for example, by Regional Economic Development Agencies, or indeed by existing ITPs) that could be well-placed to act as Regional Advisory Boards to the new national ITP. ✓

61. It would not be necessary for the number of Regional Advisory Boards and the number of ITP administrative regions (discussed in item 3) to be the same, provided the relationship between them was clear (ie they did not cut the same territory in two different ways).

62. In terms of constitution, we envisage that some representational roles (eg local government –

which may involve multiple city or regional councils) would be mandatory on all Regional Advisory Boards, while others would change depending on industry or regional requirements. The constitution of each Board would shape the issues, conversations, and issues examined by the Board and ITP managers (this would need to be carefully considered in terms of how a constitution is created and by whom).

63. We propose consulting with Māori and iwi on how they want to be represented on the Boards.

#### *Role and functions*

64. However they are established and constituted, Regional Advisory Boards will need clear direction from government about their role and responsibilities, and the extent of their mandate and the national ITP's and TEC's obligation to heed their advice. We will need to provide you with further advice on this post-consultation. At this stage, we envisage that, given the size and number of delivery sites, the Regional Advisory Boards would likely work with regionally appointed managers from the new ITP to provide advice to the national ITP on programme development and delivery for each region. We also envisage that the Regional Advisory Boards would have a mandate to provide formal feedback directly to the ITP head office and to TEC on the relevance and effectiveness of regional delivery operations.

65. In this way, both the ITP head office and TEC would hear directly from the Regional Advisory Board if the Board considered that the ITP's regional response was unsatisfactory. This should create strong incentives on the ITP's regional managers to work effectively with Boards. See also paragraph 92 for a discussion of how advice from Regional Advisory Boards could feed into TEC's decision-making about funding.

66. The Regional Advisory Boards could potentially also provide advice to the ITP on local issues or concerns separate to educational programme design and delivery, including (for example) student services, pastoral care and community use of ITP assets. Corporate functions of the ITP would however remain separate and under the authority of head office.

67. We seek your agreement to test these ideas with the sector and its stakeholders during consultation.

**Agree** that your consultation document should outline a high-level proposal for Regional Advisory Boards along the above lines, and seek sector feedback on the detailed design.

*need to consult SSC on cross-govt alignment.*

**AGREE / DISAGREE**

9(2)(f)(iv)

# 9(2)(f)(iv)

9(2)(f)(iv) and 9(2)(g)(i)

**Item 6: Managing Crown ownership risk in the new ITP**

75. The precise nature of the government's ownership of ITPs or their assets is a matter of some debate. However, ITPs' assets and liabilities are recorded in the Crown consolidated accounts, and the government is legally liable for an ITP's debts in the event of its failure. Moreover, a clear public expectation exists that the government will, through its approach to monitoring and funding, ensure the viability and sustainability of all tertiary education institutions. This expectation will apply to the new institution as it does to existing ITPs.
76. The creation of a single ITP will reduce some kinds of risk to the Crown and increase others. Fewer providers means fewer opportunities for critical failure; but it also means that any critical failure becomes catastrophic. A combined balance sheet provides more resilience, but it also puts about \$1.1 billion of operating funding and about \$2.2 billion of capital assets under the control of one council.
77. In addition, the significant changes in the wider vocational educational system mean the new ITP will be operating in a novel environment, in which neither the ITP nor government is experienced in identifying and managing new risks which may emerge.
78. The change to a single national ITP also creates a need for the Crown to be able to monitor and manage risks arising in part of an institution (ie a regional campus or a specific type of delivery)

even if the institution as a whole is not at risk.

79. The following section lays out choices for how the Crown manages its ownership risk in the new ITP in this new situation, with reference to three existing risk management tools:

- Crown powers over financial transactions ("s.192 approvals")
- statutory interventions in at-risk institutions
- TEC purchasing instruments.

***Crown powers over financial transactions ("s.192 approvals")***

80. Section 192 of the Education Act 1989 sets out various powers of tertiary education institutions, including ITPs. It provides that they must seek the written consent of the Secretary of Education to undertake certain types of financial transactions, such as to sell or dispose of assets, to mortgage assets, to grant leases to land owned by the institution, or to raise capital. This in effect gives the government veto power over those transactions, with the Minister able to stipulate a dollar threshold under which permission need not be sought.

81. Section 192 does not however apply to all transactions that could create financial risk for the Crown. In fact, a tertiary education institution can commit to any number of unwise major projects without any need for consent from the Secretary for Education, provided it is funding them from its own balance sheet. The application of s.192 requirements to institutional subsidiaries is also currently unclear.

82. In addition, the current regime also does not give the Secretary for Education or any other person any power to compel any institution to undertake a financial transaction, for example to dispose of an asset.

83. In the new context of a single national ITP, you have a choice to make about the nature of the government's fiscal controls on the ITP, and where they should sit. In terms of powers, options include:

- retaining the status quo in s.192 for the new ITP, ie power of veto over certain kinds of transaction only (not recommended) ✗
- creating a new requirement in s.192 for the ITP to inform TEC early on about any major financial transactions it is considering (suggested for consultation) ✓
- extending the veto powers in s.192 to cover all major financial transactions for the new ITP, with the definition of "major" to be determined by the Minister in consultation with the ITP and published in the Gazette (suggested for consultation) ✓
- introducing new powers in s.192 to enable the government to compel ITPs to undertake certain types of financial transaction (not recommended) ✗
- going out to consultation on all these options without indicating a preference.

84. On the question of a government power to compel ITPs to undertake certain types of financial transaction: We see value in exploring the idea of a one-off asset rationalisation exercise across the ITP sector in 2020, rather than the creation of permanent compulsive powers for the Crown. An asset rationalisation exercise could be undertaken by the ITP, by an independent party, by the new ITP and Crown working together, or by the Crown – and could operate either on a voluntary basis or via specially designed Crown powers created for the purpose. We have not had time to consider this idea in depth but seek an indication of your potential interest in it.

85. This year we also have identified some weaknesses in how the s.192 statutory framework has been operationalised, including role clarity between agencies. We will work this through further in coming months.

86. We also seek your agreement that any proposed changes to s.192 applying to the new ITP will not apply to universities and wānanga. To include them would require a separate justification (and consultation process). ✓

**Indicate** your preferences:

- retain the Crown's existing veto powers under s.192 for the new ITP unchanged (not recommended)

**YES / NO / LEAVE OPEN TO CONSULTATION**

- create a new requirement in s.192 for the ITP to inform TEC early on about any major financial transactions it is considering (suggested for consultation)

**YES / NO / LEAVE OPEN TO CONSULTATION**

- extend the Crown's existing veto powers under s.192 to cover all major financial transactions for the new ITP (suggested for consultation)

**YES / NO / LEAVE OPEN TO CONSULTATION**

- Introduce new compulsive powers for the Crown over major ITP financial transactions (not recommended)

**YES / NO / LEAVE OPEN TO CONSULTATION**

- consider a one-off government-led review and rationalisation of assets across the ITP network in 2020, with the aim of returning control to the ITP over its assets after that (with any s.192 veto or compulsive powers continuing to apply), in which case we will provide further advice in due course (recommended)

**YES / NO / LEAVE OPEN TO CONSULTATION**

- consult on the above options without indicating a preference (not recommended)

**YES / NO**

**Agree** that any changes agreed above for the new ITP should not apply to universities and wānanga.

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

### **Statutory interventions**

87. The table below sets the government's existing statutory powers to intervene in tertiary education institutions under the Education Act 1989 (on the basis of assessment of risk made against criteria provided for in s.195A, with the option of setting separate criteria for ITPs). Note that the first three powers apply to all tertiary education institutions, whereas the latter three apply only to ITPs.

Section	Whose power?	To do what?	In what circumstances?
195B	TEC CE	Require the institution to provide <b>information</b>	If the CE has reasonable grounds to believe the institution may be at risk
195C	Minister	Appoint a <b>Crown observer</b> to the council of the institution	If the Minister consider on reasonable grounds that the operation or long-term viability of the institution is at risk
195D	Minister	Dissolve the council of the institution and appoint a <b>commissioner</b>	If the Minister believes on reasonable grounds that (a) there is a serious risk to the operation or long-term viability of the institution; and (b) other methods of reducing the risk either have failed or appear likely to fail
222A	TEC CE	Require the ITP to get <b>specialist help</b>	If the CE believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk
222B	TEC CE	Require the ITP to provide TEC with a <b>performance improvement plan</b> for approval, which the ITP then	If the CE believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk



		must take all practicable steps to implement	
222C	Minister	Appoint a <b>Crown manager</b> for the ITP (to perform some or all of the functions of the council)	If the Minister believes on reasonable grounds that there is a serious risk to the operation or long-term viability of a polytechnic, or that the education performance of the students at a polytechnic is at risk

88. The existing powers are essentially of three kinds:

- to request information or an improvement plan (s.195B, s.222B; authority to act resides with the provider)
- to appoint a specialist or observer to assist and/or report (s.195C, s.222A; authority to act still resides with the provider)
- to appoint a statutory manager or commissioner (s.195D, s.222C; authority to act shifts to the Crown).

89. Officials' early view is that effective risk management of the new ITP is likely to require change to this framework. Current responses can be described as "suggest, request, remove", and are designed to uphold the autonomy of tertiary education institutions to the greatest extent possible. In doing so, however, they give the government little ability to direct or change specific problematic behaviours or processes inside an institution unless and until the risk is extreme, in which case (after a consultation process) decision-making power shifts to the Crown – often too late to avoid harm.

90. We see potential value in adding a "require" step (ie "suggest, request, require, remove"), where authority still resides with the entity but the Crown can intervene to change a specific behaviour, issue, or process without removing the entity's governing body. We also see value in considering more regular financial reporting to give TEC better visibility of the ITP's financial situation throughout the year.

91. We would likely to provide further advice on this as more becomes clear about the new ITP's proposed regulatory framework, the nature of its operations, and TEC's visibility of its activities.

**Note** that officials think it likely that existing statutory interventions for ITPs will need amendment to manage Crown risk in the new ITP, and that we will provide further advice on this as the new regulatory regime takes shape. ✓

NOTED

### **TEC purchasing instruments**

92. Most funding is administered to ITPs via the Plan-based funding system administered by the TEC. On this model, a provider proposes a Plan (commonly called an Investment Plan) to TEC outlining:

- its strategic goals, how it arrived at them (including how it is responding to the Tertiary Education Strategy and to the needs of its stakeholders), and how it intends to meet them; and
- the educational delivery it intends to offer in the period covered by the Plan, including the portion for which it is seeking TEC funding (ie a "mix of provision" covering both funded and unfunded intended activities).

93. Each ITP's proposed "mix of provision" is submitted in a large spreadsheet setting out how many EFTS the ITP intends to deliver by alphanumeric SAC funding category, where the letter of the alphabet represents a cluster of fields of study with similar costs, and the number represents the level of study. SAC funding rates apply at the course rather than qualification level, so a qualification may comprise courses attracting several different SAC funding rates.

94. After negotiation with the ITP, TEC agrees to fund the activities set out in the Plan at the total

cost set out in the approved Mix of Provision.

95. This Plan-based funding approach is flexible enough to accommodate the new ITP in the short term, and its use will be efficient. However, we would propose to review the approach after (say) two years, by which time we would have a clearer view of the investment management needs of the new ITP, and the new purchase relationship with ISBs. ✓

96. In the meantime, we propose that the new ITP be funded via the existing Plan arrangements, but that the relevant legislation should be amended to provide that:

- the proposed Plan of an ITP must set out:
  - regional as well as national goals ✓
  - an intended mix of provision for each region as well as for the country as a whole ✓
- the regional content of the proposed Plan of an ITP must take account of advice from the ITP's Regional Advisory Boards (see item 4) ✓
- TEC must assess the ITP's proposed Plan, including its intended delivery, with reference to
  - regional as well as national outcomes ✓
  - the ITP's charter, described in item 1 ✓
- in assessing the ITP's proposed Plan, TEC must take account of any relevant advice it has received from Industry Skills Bodies (see item 1) and from Regional Advisory Boards (see item 4). ✓

97. We seek your agreement in principle to the above so that we can consult on this basis.

98. Note that the above represents a "belt and braces" arrangement whereby both the ITP and TEC must consider advice from Regional Advisory Boards before a Plan can be approved for funding. In this way, both the ITP and TEC are responsible for ensuring the ITP's proposed delivery is well-suited to regional need. This is important because TEC has visibility not just of what the ITP proposes to provide in that region but also of proposed delivery by other providers – so sometimes TEC may override an ITP's proposal for a specific type of regional delivery on the grounds that another provider in the region is better able to meet the relevant need.

99. In addition, it is important to note that the advice TEC will receive from Industry Skills Bodies and from Regional Advisory Boards is likely at times to be incompatible, and/or to seek more total funding than is available in the system. The responsibility will need to lie with the TEC Board to reconcile these tensions in a funding approach that gives best effect to the Tertiary Education Strategy, as per its existing statutory function.

**Agree in principle** that the legislation governing Plans should be amended to provide that:

- the proposed Plan of an ITP must set out:
  - regional as well as national goals
  - an intended mix of provision for each region as well as for the country as a whole

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

- the regional content of the proposed Plan of an ITP must take account of advice from the ITP's Regional Advisory Boards (see item 4)

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

- TEC must assess the ITP's proposed Plan, including its intended delivery, with reference to
  - regional as well as national outcomes
  - the ITP's charter, described in item 1

**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

- in assessing the ITP's proposed Plan, TEC must take account of any relevant advice it has received from Industry Skills Bodies (see item 1) and from Regional Advisory Boards (see item 4).



**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**

#### **Item 7: A pre-establishment board for the new ITP**

##### **Proposals**

100. We propose that you create a "pre-establishment board" to oversee and govern the process of establishing the new ITP. Given the size and complexity of the proposed change, a separate transitional body provides focus for the project, and ensures appropriate resources remain committed to it. It also creates an opportunity to meaningfully involve skilled representatives from the ITP sector in the project, to help shape information, messaging, and policies that will land well with the sector and be effective in supporting change.
101. We envisage that this board would:
- comprise a mix of government officials and sector representatives (which could include representatives from existing ITP governance, management, staff and student bodies, potentially alongside industry, iwi/Māori or local government representatives)
  - be responsible for designing, managing and reporting on the establishment process for the proposed new ITP, including providing advice to Ministers on key decisions as they arise
  - be convened early in 2019 fairly informally to contribute to early thinking (including design of the consultation process), with the aim of creating a more formal structure and mandate for the board via the May Cabinet report-back
  - ideally, be led by a highly regarded and talented senior manager from the existing ITP sector. Leadership drawn from the sector would contribute significantly to the sector's sense of ownership of the change process, and – if the right person was appointed – could provide valuable expertise in a critical role.
102. The board's statutory form and powers would require careful consideration to ensure it had the ability to govern the change process effectively while also protecting the Crown's interests and decision rights. We would need to provide you with further advice on this – in the meantime we ask you to agree in principle to create a pre-establishment board, comprising government officials and sector representatives, to oversee and govern the process of establishing of the new ITP, with further advice to come on the nature, composition and function of that board.

**Agree in principle** to create a pre-establishment board, comprising government officials and sector representatives, to oversee and govern the process of establishing of the new ITP, with further advice to come on the nature, composition and function of that board.



**AGREE / DISAGREE / LEAVE OPEN TO CONSULTATION**