



Education Report: Further decisions on transition arrangements for the Reform of Vocational Education

To:	Hon Chris Hipkins, Minister of Education		
Date:	31 May 2019	Priority:	High
Security Level:	In Confidence	METIS No:	1193251
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The attached Annotated Agenda seeks agreement to transition arrangements for the structure of the New Zealand Institute of Skills and Technology and transition arrangements for role changes.

Recommended Actions

The Ministry of Education and the Tertiary Education Commission recommend that you:

- a. **note** that the attached Annotated Agenda seeks your indicative agreement to high-level design aspects related to the transition arrangements for the Reform of Vocational Education

Noted

- b. **note** that decisions are required on the topics outlined in the attached Annotated Agenda to inform your report back to Cabinet in June 2019 and to allow for legislation to be drafted for introduction by late August

Noted

- c. **forward** the attached Annotated Agenda to any additional ministers you may wish to include in discussion

Agree / Disagree

- d. **agree** that this briefing will be proactively released once Cabinet has taken decisions on the Reform of Vocational Education. Legal advice and commercially sensitive material may be redacted in line with the relevant provisions of the Official Information Act (1982).

Agree / Disagree



Grant Klinkum

Acting Deputy Secretary, Graduate
Achievement, Vocations and Careers
Ministry of Education

31/05/2019



Hon Chris Hipkins

Minister of Education

3/5/19



Tim Fowler

Chief Executive
Tertiary Education Commission

31/05/2019

Background

1. The attached Annotated Agenda outlines high-level design aspects related to aspects of the transition arrangements for the Reform of Vocational Education (RoVE) proposals one and two, the formation of Industry Skills Bodies (ISBs).
2. As discussed at the agency meeting on 28 May, we indicated we would provide further advice on:
 - a. the holding company approach to the transition of arranging training, and
 - b. the transition arrangements for the establishment of Institute, including subsidiaries within the establishment entity.
3. This responds to your feedback on transitions arrangements in the most recent annotated agenda (METIS 1190415 refers). You agreed that the New Zealand Institute of Skills and Technology (the Institute) establishment entity should be within an existing agency (not a Schedule 4(a) company). You also indicated that officials develop a transition plan for arranging training based on a managed transitions approach, with the role of industry training organisations (ITOs) transferring to a holding company with more Government control.
4. We seek your indicative agreement to these design aspects (where required) in the week starting 3 June. These decisions are needed to inform your report back to Cabinet in June 2019 and to allow for appropriate legislation to be drafted.
5. We have aimed to provide sufficient detail on each topic to support good decision-making while ensuring the paper is manageable. Officials can provide further information to support your decision on an item if required.

AGENDA

Reform of Vocational Education 4 June 2019

Attendees

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

1. This annotated agenda seeks agreement to two key aspects of the transition arrangements for the Reform of Vocational Education (RoVE) on proposals one and two.
2. We seek feedback on these matters in the week starting 3 June.
3. The structure of this paper is as follows:
 - **Section 1 – transition arrangements for the structure of the New Zealand Institute of Skills and Technology**
 - **Section 2 – transition arrangements for role changes**

Section 1 – transition arrangements for the structure of the New Zealand Institute of Skills and Technology

4. This section seeks your feedback on the structural arrangements to establish the New Zealand Institute of Skills and Technology (the Institute) within an existing agency, in response to your decisions in the most recent annotated agenda provided on 17 May (METIS 1190415 refers).
5. Our analysis suggests that the choice is between establishing subsidiaries within the Institute or a consolidated Institute. Education officials strongly recommend establishing the Institute with subsidiaries, as a transition measure. This section sets out some further implications of that approach, based on further exploration with central agencies.

Options for the Institute's structure on 'day one'

6. In choosing transitional arrangements for the Institute's structure, you are largely weighing up the two factors below:
 - a. **Risks of moving too fast** – in moving very quickly towards a consolidated Institute, there is a high risk that not all issues, liabilities or risks will be understood on Day One, or how they might interact if brought into the single entity. In these circumstances, having each of the legacy ITPs initially ring-fenced in a separate legal entity simply provides greater clarity and a better starting point for managing any issues that might emerge from the amalgamation.
 - b. **Slowing change** – a subsidiary model might make it harder to create cultural change and may reduce the ability, over time, to use intervention levers to directly influence substantive governance of operations and management as intended through the legislative change. It is also not a commonly used model within Crown Entities or Tertiary Education Institutions for the substantive operations and functions of an entity to be governed entirely through subsidiaries.

Education officials recommend the subsidiary model

7. While Officials at TEC and MoE recognise that the use of a subsidiary model is slightly different than that used previously, it is important to note that the creation of a new organisation encompassing 16 previously autonomous tertiary education institutions (TEIs), at considerable pace, is unprecedented.
8. These 16 ITPs all operate largely independently, and using a manner of different systems, processes, methods, accreditations and brands. Therefore, when seeking a solution to combining these organisations into a new TEI, we have sought to ensure that the greatest priority which is bringing all of the existing 16 ITPs under one umbrella with central control can be achieved at the outset. Retaining boundaries between each regional operation mitigates some key risks but allows centralised control to work alongside regional leadership through the initial transition period.
9. For this reason, it is our strong preference that a subsidiary model be used to:
 - a. *ensure continuity for learners on Day One of the Institute stand up*, through having legacy brands, accreditations, qualifications and powers to award qualifications contained within individual subsidiaries;
 - b. *avoid unintentional financial distress* as a result of unknown financial arrangements within the Institute; and
 - c. *provide the cleanest possible lift and shift process*, minimising the transition risk to stakeholders.

Recommendations

10. It is recommended that you:

EITHER

- a. **agree** that the New Zealand Institute of Skills and Technology establishment entity should be established as subsidiaries, as a transition measure (*recommended*)

AGREE/DISAGREE

OR

- b. **agree** that the New Zealand Institute of Skills and Technology establishment entity should be established as a consolidated institute from 'day one' (*not recommended*)

AGREE/DISAGREE

How will we ensure the transition arrangement doesn't get locked in?

How will accountability sit with the central entity for subsidiary decisions?

Section 2 - Transition arrangements for role changes

11. You have asked for further exploration of options to provide for greater direction by government over the transition of the 'arranging training' function. This could include using a holding company or similar arrangement, as suggested by the Building and Construction Industry Training Organisation (BCITO).
12. We have previously set out options for these transition arrangements in the annotated agenda provided on 17 May (METIS 1190415 refers). Officials remain of a view that it will be critical to ensure that transition arrangements are tightly managed, with either a collective holding company arrangement covering all Industry Training Organisations (ITOs) or very tightly managed ITO by ITO arrangements.
13. It is worth noting in this context that almost all of our advice has been informed by in depth discussions with sector stakeholders. However, this has not been possible with ITOs and other industry bodies due to their opposition to proposals concerning the arranging training function.
14. For this reason, it would be desirable to leave open as much of the detail of transition arrangements as possible until after Cabinet decisions have been announced. ITOs and industry bodies are more likely to engage with officials if they have the opportunity to provide meaningful input to transition arrangements.

Managing transition of the 'arranging training' function

15. Rather than settling the exact mechanism for supporting a successful transition via a Cabinet decision, officials would like to suggest a three-step process:
 - a. **Step one** – set high level government expectations expressed through Cabinet decisions
 - b. **Step two** – officials work with ITOs and industry on the detail of how best to transition the arranging of training function, and
 - c. **Step three** – the Minister of Education agrees (or disagrees) with the proposed approach.
16. It is worth noting that almost all of our advice about key aspects of the proposed reforms has been informed by in depth discussions with sector stakeholders. This has not been possible over detailed transition options for shifting the arranging of training function to providers (as the focus has been on whether or not such a shift should occur).
17. For this reason, it would be desirable to balance clear expectations from Government through Cabinet decisions with space for industry, ITOs and officials to co-design the detail of transition arrangements.
18. Officials are conscious that after the high level architecture of the new system is decided by Cabinet, ITOs and industry will want to ensure that transition arrangements are seamless for trainees and work well for employers. It is possible that some ITOs and their associated industry bodies may wish to move relatively quickly to work with providers on transition arrangements, while simultaneously working on building new Industry Skills Bodies (ISBs). In other cases transition arrangements may take two or three years.
19. Officials propose to work with industry and ITOs on the exact approach to transition arrangements throughout July and August and report back to you right throughout this period and seek formal decisions from you in late August / early September. This timeframe would allow for any legislative implications to be worked through.
20. If agreement cannot be reached on the precise arrangements that appropriately protect the interests of trainees, employers and the government as the funder of industry training, officials will recommend a uniform and prescribed approach for your consideration.

Framework for effecting the transition of the 'arranging training' function

21. Under any scenario it will be important for:
- a. **The responsible Minister to re-recognise industry organisations** – industry needs to continue to provide workplace-based training prior to its transition to providers. Either an existing organisation (the underlying body corporate for an ITO) or a holding company developed by the ITO or a single holding company developed jointly by ITOs and the Crown would be recognised by the responsible Minister, under new recognition conditions in order to provide for an orderly transition. A fixed date for the transition process to be completed is also required.
 - b. **The responsible Minister to have the power to direct funding to particular providers** – by amending s159M(a) of the Education Act 1989 to allow the responsible Minister to direct funding to particular education providers, the opportunity for potential litigants to pursue judicial review would be reduced. A transparent process and natural justice considerations would still apply. The Minister could then direct through s159L funding determinations during the transition of industry programmes from ITOs to providers.
 - c. **The transition to be managed by using funding authorisations and de-authorisations** – the transition for each industry training programme would be achieved by turning off funding through the Industry Training Fund (in ITO investment plans) and turning on funding in student achievement component (SAC) funding (in provider investment plans). This would apply in either the case of a collective holding company or in the case of ITO by ITO arrangements.

Transition organisation form

- 22. Officials believe that all parties (government, industry, employers, learners and providers) will be seeking the same outcomes from the transition: an orderly transition that is well executed and that does not result in a significant decline in employer engagement in structure industry training.
- 23. The transition will require education providers to build trusted relationships with employers, and for providers to have access to some or all of the resources presently held by ITOs (along with their IP and systems), and to gain insights to successful models for supporting employers in on-job training.
- 24. Rather than Cabinet determining all of the detail of the transition arrangements we believe an enabling framework (based around the advice in paragraph 21) should be supported in statute, along with a firm date for completion of the transition.
- 25. Active management of the transition would be expected, and that higher priority industries would be considered first (e.g. Primary and Construction sectors). The goal would be to effect the transition as quickly as possible, while ensuring providers are adequately able to support employers and employees following the transition and that any fall-off in the volume of training provided in the workplace is minimised.
- 26. Transition organisations arrangements could be managed in a number of ways, with two main presenting options:
 - a. A holding company arrangement that brings together all of the ITO capability under a single organisation during the transition
 - b. Individual ITO arrangements (including potentially holding companies). This could also enable groups of ITOs to work together to form holding companies.
- 27. Holding companies offer some advantages in managing the transition. For example, the Minister could hold some of the shares and appoint company directors. This would provide insight into the operation of ITOs prior to and during the transition. A holding company could involve industry, provider and Ministerial appointees to the governing board.

28. However, it may be simpler for ITOs (since this would avoid two transitions for ITO staff) to continue to recognise the underlying organisations or for ITOs to make their own decisions on form.
29. Officials consider a holding company could provide the cleanest final solution but believe the best solution will emerge from working with industry and ITOs following Cabinet's decisions on overall design of the new system.

Timeframe for the transition

30. The timeframe for completion of the transition of the arranging training function to providers should be clear from the outset. Officials recommend that legislation require the transition to be completed by 31 December 2022. It is likely that aspects of the Unified Funding System would be in place by 2022 to support greater choice of employers around workplace-based learning.

Recommendations

31. It is recommended that you:
- a. **agree** to officials working with industry and ITOs in July and August on the high level detail of transition arrangements and providing you with advice on options by late August / early September
 - b. **agree** that the following mechanisms be used to manage risks during the transition:
 - i. A process to re-recognise industry organisations (not as ITOs) to deliver industry training that could involve holding companies or similar
 - ii. Ministerial powers to direct funding for industry training to particular providers
 - iii. Funding authorisations in the ITF and SAC are used to enable the switchover in responsibility
 - c. **agree** that the transition be completed by the end of 2022, at which time any provider could provide industry training to employers

AGREE/DISAGREE

AGREE/DISAGREE

AGREE/DISAGREE

I'm not convinced about a re-recognition process - seems very bureaucratic for something that's only temporary?