



Briefing Note: Issues arising from the Parliamentary Counsel Office presentation of the revised track changes version of the Education (Tertiary Education and Other Matters) Amendment Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	30 January 2018	Priority:	High
Security Level:	In Confidence s 9(2)(a) OIA	METIS No:	1103802 s 9(2)(a) OIA
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Messaging seen by Communications team:	N/A		

Summary

- The Parliamentary Counsel Office (PCO) will present the revised track changes version of the Education (Tertiary Education and Other Matters) Amendment Bill to the Education and Workforce Select Committee on Wednesday 31 January.
- They will raise in their submission that:
 - a. The new community tertiary education provider (CTEP) provision is not of a proper legislative character given that no consequence flows from the creation of a new subset of private training establishment (PTE).
 - b. Legislating where there is no need to, is contrary to the Cabinet Manual and the Legislative Design and Advisory Committee (LDAC) guidelines.
- In the report back to the House, or in subsequent readings of the Bill, Committee members or other opposition members of parliament, may draw attention to this.



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Key messages

1. Cabinet has agreed to amend the Education (Tertiary Education and Other Matters) Amendment Bill to include a definition in section 159 of the Act (the interpretation section), that a CTEP is a PTE which is recognised by the Minister as a community tertiary education provider. The criteria for being recognised as a community tertiary education provider could then be gazetted and the Minister could recognise those organisations that meet the criteria.
2. This amendment has been included in the Education (Tertiary Education and Other Matters) Amendment Bill departmental report and provided to the Education and Workforce Select Committee.
3. The Committee has instructed PCO to draft this amendment into a revised track changes draft of the Bill. PCO will present the revised Bill to the Committee on Wednesday 31 January, following the Departmental report presentation.
4. PCO has identified the following issue with the CTEP amendment, which they will share with the Committee.
 - The definition of the CTEP and the new provision are not of a proper legislative character given that no consequence flows from the new subset of PTE.
 - Legislating where there is no need to, is contrary to the Cabinet Manual and the LDAC guidelines.
5. In the report back to the House, or in subsequent readings of the Bill, Committee members or other opposition members of parliament, may draw attention to this.

Officials proposed response to Committee if this issue is raised

6. We expect the Committee may ask what the purpose of a CTEP is following discussion of the Departmental Report. In response, we intend to make the following points.
7. The CTEP amendment will enable the Minister to identify a subset of PTEs should s/he wish to. Should the Minister choose to use this category, the gazette process will make it clear what the characteristics of a CTEP are. Examples of a CTEP may include types of providers that are not for profit, or who have a particular philosophy of education, such as Māori immersion. There are examples of PTEs who have a wider purpose, such as:
 - ACE Aotearoa
 - Literacy Aotearoa.
8. The definition in the legislation simply recognises that a CTEP does things differently than a PTE. There are other examples of this in the Education Act such as under section 156, which covers the establishment of designated character schools.
9. A designated character school is a state school that is designated by the Minister to have a special character, for example Māori medium schools. In these case the schools has a character that is in some specific way or ways different from the character of ordinary State schools but they are subject to the same regulatory requirements.
10. The Committee may also ask whether creating a CTEP without a defining purpose, is intended to justify funding different types of PTEs at different funding rates.
11. We will respond that we have no indication from the Minister of that at this stage.