



Education Report: Financing Vocational Education and Training – options for public consultation

To:	Hon Chris Hipkins, Minister of Education		
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Purpose of Report

This paper updates you on feedback from targeted engagement on options for fee regulation and employer contributions to vocational education and training (financing VET) and seeks your agreement to options for public consultation in October this year.

We request your feedback on these proposals by Friday 5 August, so that if required, a Cabinet paper can be prepared for you to present at the Social Wellbeing Cabinet Committee in early September.

Summary

We are reviewing the settings for learner fees and employer contributions to vocational education and training (VET), alongside development of the unified funding system (UFS) for government subsidies.

The shift in the arranging training function from ITOs to providers, and the centralised data on fee charging for a large number of work-based VET programmes as a result of implementing the Targeted Training and Apprenticeship Fund, has provided a unique opportunity to re-set expectations for how learners and employers contribute to VET and create a more consistent and transparent system.

In February you agreed to officials carrying out targeted engagement with the sector and stakeholders on options for employer contributions to work-based learning, and for fee regulation of provider-based VET [METIS 1281678 refers].

We are now seeking your agreement to prepare consultation materials and a Cabinet Paper seeking agreement to carry out public consultation on options starting October 2022. Final Cabinet decisions would need to be made early in 2023, so that financial implications can be considered in Budget 2023, and changes made to funding determinations in mid-2023 to come into effect in January 2024.

Financial contributions to work-based learning

Based on your previous decisions, and what we have learned through targeted engagement, we propose public consultation on two options for financial contributions to work-based learning:

- Option 1 - providers charging a fee to learners, or
- Option 2 - providers charging a fee to employers.

Under each of these options, providers retain the ability to charge zero fees to incentivise employer or learner participation.

Should work-based learners be charged a fee (Option 1) then we recommend these fees are regulated, to protect learners from excessive fees, for consistency with provider-based delivery, and to maintain differentials between work-based and provider-based fees.


We consider that the case for fee regulation, if employers are charged by providers (Option 2), is less clear-cut. We have not, however, heard employers' views and propose testing these further through consultation.

We propose that Option 1 include a sub-option to extend eligibility for student loans to work-based learners. Take up of loans by learners in provider-based VET is relatively low. We expect take-up of student loans amongst work-based learners would be similarly low, as these learners are earning, and fees would generally be lower than for provider-based learning.

Allowing work-based learners to borrow their course fees through the Student Loan Scheme would have an estimated cost to government of approximately \$20m for the initial write-down on additional borrowing.

Each of these options for who pays offer incremental improvements on the current settings in terms of consistency and transparency. On the basis of the analysis to date, our advice is that invoicing learners (Option 1) is the marginally stronger option given its alignment with the objectives of RoVE and the UFS.

9(2)(f)(iv)



Recommended Actions

The Ministry of Education recommends you:

- a. **note** that officials carried out targeted engagement on options for fee regulation and employer contributions to the VET system during May and June 2022.

Noted

- b. **note** that due to limited stakeholder capacity, we were unable to engage with VET learners or the wānanga, and engagement with Māori, and employer groups was limited. We intend to reach out to these groups again during public consultation and provide options for more targeted engagement.

Noted

- c. **agree** to public consultation on the following options for fee regulation and employer /learner contributions to work-based learning:

- i. **Option 1** – providers charge fees to learners (with regulated maxima), employers are only required to contribute in-kind costs (but may choose to pay some or all of the fee on the learner's behalf), with:

- i. learners not charged fees for training carried out in the Assessment and Verification mode of the UFS; and

Agree / Disagree

- ii. an option of extending eligibility for student loans for fees to work-based learners; and

Agree / Disagree

- iii. options for how providers and industry can work together to protect learners from unreasonable fees for high-cost provision.

Agree / Disagree

- ii. **Option 2** – providers charge a fee for service to employers, with the option for employers to pass on some or all of the cost to learners, with

- i. option for regulated fee maxima.

Agree / Disagree

- d. 9(2)(f)(iv)

9(2)(f)(iv)

Agree / Disagree

- e. **note** that the cost of extending eligibility for student loans for fees to work-based learners, and of a replacement for the AMFM, would be considered in Budget 2023.

Noted

- f. **agree** that officials prepare consultation material and a Cabinet Paper seeking agreement to public consultation on the options indicated in (c) and (d), above.

Agree / Disagree

- g. **agree** to proactively release this education report within 30 days of decisions being made, with any redactions in line with the provisions of the Official Information Act 1982.

☒ **Agree** / ☐ **Disagree**



Katrina Sutich
Group Manager
Tertiary Education
25/07/2022



Hon Chris Hipkins
Minister of Education
16/8/2022

Background

1. We are reviewing the settings for learner fees and employer contributions to vocational education and training (VET), alongside development of the unified funding system (UFS) for government subsidies.
2. In August last year, you agreed that the review should focus on options for employer contributions that do not involve any additional levies or taxes, and a replacement for the current Annual Maximum Fee Movement (AMFM) fee regulation mechanism for provider-based VET [METIS 1267229 refers]. In June you agreed to an interim approach to managing fees in work-based learning in 2023 [METIS 1286907 refers].
3. In developing and assessing options for financing VET, we have been guided by the following criteria [METIS 1259180 refers]:
 - i. contributions are fair for learners, employers and government;
 - ii. the mechanism is simple and transparent so that it is easy for employers and learners to understand;
 - iii. the mechanisms support learner and employer engagement, helping other RoVE changes to improve learner and employer voice in VET;
 - iv. the financing system supports providers to deliver the outcomes of RoVE;
 - v. the mechanism minimises transaction costs on providers and the government;
4. Throughout May and June, we engaged with transitional ITOs, Independent Tertiary Education New Zealand (ITENZ), Te Pūkenga, Business NZ, Whāriki Māori Employers Network¹, and Workforce Development Council leadership on the following options:
 - i. **Option 1** - Providers charging fees to learners (with regulated maxima), employers are only obligated to contribute in-kind costs (but may choose to pay some or all of the fee on the learner's behalf).
 - ii. **Option 2** - Providers charging a fee for service to employers, with employers able to pass on some or all of the cost of fees to learners (option to introduce regulated maxima).
 - iii. Options for fee-capping mechanisms to replace the AMFM for Provider-based VET, with the option to extend this to work-based learning.
5. Under each of these options, providers retain the ability to charge zero fees to incentivise employers or learners to participate in training. We do not propose introducing a minimum fee contribution, which would require legislative change.
6. Annex 1 summarises our analysis of options and current settings against the agreed criteria set out in paragraph 2. Annexes 2 and 3 summarise the key findings from targeted engagement and analysis of Treaty interests which informed our analysis of options.
9(2)(f)(iv)

Financial contributions to work based learning

7. Following targeted engagement on current fee charging practices in work-based VET, information gathered to implement the Targeted Training and Apprenticeship Fund

¹ Whāriki Network is the largest Māori business network in Aotearoa, based in Tāmaki Makaurau.

(TTAF), and the setting of the UFS subsidy rates, we now have a clearer picture of how financing of VET for work-based learning operates.

8. Given that options for eliciting a broader industry cash contribution, for example, a levy or train or pay scheme, have been ruled out, fees remain as the key mechanism through which employers and/or learners make cash contributions to the work-based VET system.
9. We believe that the current fee settings for work-based learning are about right, and we are not looking to use fees as a means of increasing overall revenue. Rather, there is a decision to be made on what expectations we set for who pays the fee, and how we might recognise other types of contributions to the VET system.

The key difference between the two proposed options for who pays, is who gets the invoice...

10. Currently, there are several different arrangements between transitional industry training organisations (TITOs), employers and learners for who is invoiced, influenced by a range of factors, including:
 - i. the number of trainees a firm has in training and the nature of the services provided;
 - ii. the willingness of the employer to contribute, e.g., whether the industry is regulated or not; and
 - iii. industry attitudes to the role of employers in training.
11. The current settings (including un-regulated fees) enable maximum flexibility for providers and employers to negotiate fees that work in the industry context but result in a system that is complex for providers, lacks transparency, and is a less exact fit with the UFS.

Option 1 – providers charge learners a regulated fee

Option 1 would support a more consistent, transparent system...

12. This option would be administratively simple for providers, enabling increased alignment with processes already in place for provider-based learners and lowering administration costs, compared to current arrangements. This option would also make it easier for learners to transition between employers or modes of the UFS.
13. The key trade-off with this option is that it would shift more of the costs onto learners than is currently the case. Our understanding is that pre-TTAF employers paid most fees, although this varied by industry. While employers would still have the option to pay the fee on their employee's behalf, not being invoiced directly may reduce the likelihood of this happening.
14. Employers would still make a commitment to training through their in-kind investment in their trainees. If option 1 becomes the preferred option, we will also look at revising the Code of Good Practice for New Zealand Apprenticeships to potentially extend it to cover trainees, strengthen expectations about the support employers should be providing to learners, and clarify employers role in relation to the Tertiary and International Learners Code of Practice.²

... with the option of extending eligibility for student loans to work-based learners to help meet the cost of fees...

² TEC are planning a technical update of the Apprenticeship Code this year, with a more substantive review to follow.

15. During targeted engagement, there was general agreement that if learners are charged fees (i.e., invoiced directly), these should be regulated and there should be some form of support to help learners pay. This support could be in the form of payment plans, such as several TITOs currently offer, or access to student loans.
16. We expect take-up of student loans amongst work-based learners would be relatively low, as these learners are earning, and fees would generally be lower than for provider-based learning. For comparison, around a third of part-time learners in provider-based study take out a student loan. However, we don't know how the availability of student loans, and the potential erosion of the debt-free branding for work-based learning, might impact learner access.
17. Access to student loans could benefit work-based learners who are not debt-averse and are in programmes that are not eligible for first-year fees-free, are relatively low earners (such as those on the training wage), or who are in programmes with higher fees. The loan scheme could give learners better terms for repaying their fees than they might receive if they were repaying their employer. However, more of the cost may be shifted to learners if employers feel less compelled to contribute with the loan scheme available.
18. Access to student loans would also enable work-based learners to borrow to cover fees for any provider-based courses within their programmes (which could have higher fees, and which provider-based learners would be able to borrow for).
19. Allowing work-based learners to borrow their programme fees through the loan scheme would have an estimated cost to government of approximately \$20m for the initial write-down on additional borrowing. StudyLink would also have increased operational costs from the increase in scheme administration.

...and fees should be regulated

20. Under this option we recommend fees are regulated, to protect learners from excessive fees, for consistency with provider-based delivery, and to maintain differentials between work-based and provider-based fees.
21. We propose that fees data from TTAF form the basis for regulation of work-based learning fees. However, we would need to supplement these data with a method for deriving fees for programmes not covered by TTAF.
22. Given fees for work-based learning have only recently been "formalised" through TTAF, and subsidies for work-based learning will increase under the UFS, we do not consider there is a strong case for significant increases in fees for work-based learning at the moment. How fee-caps for work-based learning are set should therefore be weighted towards fee stability initially (such as through an AMFM-type mechanism, or narrow fee bands) and allow for greater provider flexibility, and movement in fees, over time.
23. Fee regulation settings may also need to protect learners from being legally responsible for very high fees. For example, fees for a level 4 programme in high-voltage cable jointing can exceed \$20,000. We propose to consult on a cost-sharing approach where fees to the learner are capped at a lower level, with providers and industry required to agree to industry contributions to the relevant programmes to make up the balance. From our targeted engagement, we found that some industries already have these agreements with providers.
24. To prevent the cost of firm specific skills, such as those gained through employer-led programmes delivered in the Assessment and Verification mode, being passed on to

learners, we propose that providers are not able to charge a fee to learners for VET delivered in the Assessment and Verification mode of the UFS.

25. We understand from TITOs that fees are seldom charged for programmes in the Assessment and Verification mode so this should have little impact on provider fee revenue.

Option 2 – providers charge a fee for service to employers

Option 2 provides marginally more flexibility.

26. This option is the closest to the current settings, the change being that the provider would invoice the employer, rather than having the choice over who to invoice. Employers would still be able to pass on some, or all, of the fee to learners and there would still be the option to regulate fees. However, the employer would be transparently responsible for the fee, which would lower transaction costs for providers and keep the costs and benefits of the training arrangement front of mind for employers.
27. Although we do not have data on how often employers pass on or recover fees from learners, feedback from TITOs during targeted engagement indicated that where it has been agreed that the employer will be invoiced, they usually pay. This option is likely therefore to maintain or increase the current level of financial contributions that employers make to the training system.
28. We consider that the case for fee regulation under this option is less clear-cut. If fees were not regulated, employers might manage large or unexpected fee increases by shifting more of the cost on to their employees, or by not engaging in formal training. However, the industry training system has functioned without fee regulation up until now, and feedback during targeted engagement was that regulation of fees charged to employers would not be necessary. We have not, however, heard employers' views on this matter.

Targeted engagement helped us work through some of the other potential trade-offs between the options...

29. In developing options for who pays, we had identified a potential trade-off between fees as a barrier to participation vs fees as a mechanism for encouraging employer engagement, increased consumer power, and 'skin in the game'.
30. We have heard that the in-kind costs to employers of training are a significant commitment and represent skin in the game. While small employers may see a small increase in their consumer power because of paying a fee for service, there is little evidence to suggest that this would be substantial enough to offset the barrier to participation a fee may create.
31. Following this feedback, we no longer consider that an employer fee is effective as either a meaningful proxy for indicating skin in the game or a mechanism for increasing consumer power when negotiating training services with providers.


We consider option 1 to be marginally stronger than option 2, but need to test this further...

32. During targeted engagement we heard arguments for and against each option. While both options offer incremental improvements on the current settings in terms of consistency and transparency, based on the analysis to date, we consider that invoicing learners (option 1) is the marginally stronger given its alignment with the objectives of RoVE and the UFS. However, as we have not been able to engage with learners through the targeted engagement phase, we propose that both options be tested further through public consultation.

...there is the option to do nothing, but there is no longer a status quo to return to.

33. Following the shift in the arranging training function from ITOs to providers, there is no longer a rationale for the Industry Cash Contribution, and TTAF has provided us with centralised data on fee charging for a large number of work-based VET programmes. These changes represent a unique opportunity to re-set expectations for how learners and employers contribute to VET and create a more consistent and transparent system.
34. It is unclear how the current settings might play out in the system once the UFS is introduced. Te Pūkenga has indicated that in the absence of regulation they may consider standardising charging practices across their work-based subsidiaries. However, without direction through regulation, there may still be a wide variation in who is invoiced and in payment and refund processes, making it harder for learners and employers to understand and navigate the system.

9(2)(f)(iv)



Proposed options for public consultation

47. We propose carrying out public consultation on the following options for who is charged fees and principles for fee regulation in work-based learning:

- i. **Option 1** – providers charge fees to learners (with regulated maxima), employers are only required to contribute in-kind costs (but may choose to pay some or all of the fee on the learner's behalf), with:
 - Learners cannot be charged fees for training carried out in the Assessment and Verification mode of the UFS; and
 - Option of extending eligibility for student loans for fees to work-based learners; and
 - Options for how providers and industry can work together to protect learners from unreasonable fees for high-cost provision.
- ii. **Option 2** – providers charge a fee for service to employers, with the option for employers to pass on some or all of the cost to learners, with:
 - option for regulated fee maxima.

49. During targeted engagement, we received generally positive feedback from providers on replacing the AMFM with a fee capping mechanism. Te Pūkenga and ITENZ acknowledged that the current settings unreasonably lock in historical fee differences and the 75th percentile rule for new courses is not transparent and does not support financial planning.
50. However, learners, and providers who may be most affected, have not had the opportunity to comment. Universities have also not provided any input, both in regard to their UFS-funded provision, and the potential precedent for the future application of fee-band maxima to higher education.
51. The Education and Training Act requires you to consult with the sector, via Gazette notice, before setting conditions on funding that limit the fees providers may charge. We consider this is the most appropriate avenue for consulting on the technical design of fee regulation settings.

Operational implications

52. TEC has indicated they will need to undertake work to scope operational impacts of any changes as a result of the consultation.

Proposed next steps and timeline

53. Subject to your decisions, we will prepare a Cabinet paper and consultation materials to support you to seek Cabinet's agreement in September 2022 to public consultation on proposed options. Public consultation could then occur from October to November, with decisions on final settings in February 2023, as set out in the timeline below.
54. To date, engagement with VET learners, wānanga, Māori and employer groups has been limited. We intend to reach out to these groups again during public consultation and provide options for more targeted engagement.

Cabinet agrees to public consultation on options.	Sept 2022
Public consultation on preferred options for fee regulation and employer contributions to VET.	Oct – Nov 2022 (6 weeks)
Modelling and Budget initiative development for Budget 2023 (if required) for any increase in student support and first-year fees-free costs.	Aug - Jan 2023
Advice on detailed design options. Consultation summary.	Feb 2023
Cabinet agreement to final settings.	Feb 2023
Consultation on funding conditions Gazette notice	June – July 2023
Final decisions on fee reg and funding decisions	July 2023

Annex 1 - Analysis of options for who pays against criteria

	Option 1 - providers may charge fees to learners (with regulated maxima), employers are only obligated to contribute in-kind costs (but may choose to pay some or all of the fee on the learner's behalf).	Option 2 – providers may charge a fee for service to employers (with the potential for employers to pass some or all of the fee on to learners).	ITO fees become provider fees, but otherwise no change to current settings – fees are unregulated, and providers negotiate with individual employers and learners on fee charges.
i. Contributions are <u>fair</u> for learners, employers and government	<p>✓</p> <ul style="list-style-type: none"> - Regulating fees for learners ensures consistency and transparency. - Recognises significant in-kind contributions by employers. - Reduces overall cost disparities between firms who train and firms who don't. - Shift of financial contribution to learner mitigated by options for firms to contribute, and student loans access can be considered. But some situations where learners not benefitting much will be charged (as is currently the case) 	<p>-</p> <ul style="list-style-type: none"> - Lack of consistency and transparency means it is difficult to judge fairness. - However, ensures providers can recover costs from industry. - Nominally or greater, puts a responsibility onto employers to facilitate contribution. - Some firms/industries, particularly Māori business with tikanga-based business models, are disproportionately impacted, likely to be asked to pay both fees and high in-kind costs. - 	<p>✗</p> <ul style="list-style-type: none"> - Lack of consistency and transparency means it is difficult to judge fairness. - Some firms/industries, particularly Māori business with tikanga-based business models, are disproportionately impacted, likely to be asked to pay both fees and high in-kind costs. - Risk that unreasonable costs are shifted to learners if only employers benefit (i.e. they are willing to bear in-kind costs) needs to be managed through funding system and product design providing for transferrable skills.
ii. The mechanism is simple and transparent so that it is easy for employers and learners to understand	<p>✓</p> <ul style="list-style-type: none"> - This option was considered the most simple and transparent. - Supports learner mobility between modes. - Providers may need to design arrangements tailored to different trainees (as ITOs do to avoid problems with arrears). - Extending eligibility for student loans to apprentices and trainees 	<p>-</p> <ul style="list-style-type: none"> - Conceptually simple as firms deal with invoices as BAU. - Less transparency and consistency than option 1a. - Will result in cost shifting to learners at times. 	<p>✗ ✓</p> <ul style="list-style-type: none"> - Different arrangements mean a lack of consistency and transparency. - Enables current arrangements to be maintained, reducing short-term transition costs. Acknowledges different contexts and allows transparency and simplicity to play out at transaction level (i.e. the key

	reduces financial barriers to participation, but adds some compliance costs for learners.		transaction cost here is the negotiation, but each arrangement might be fairly simple).
iii. The mechanisms support learner and employer engagement, helping other RoVE changes to improve learner and employer voice in VET.	<p>✓</p> <ul style="list-style-type: none"> - Fees have been identified as a barrier for both learners and employers, however, removing barriers for employers to participate in the VET system creates more opportunities for learners. - Supports participation of firms that provide strong pastoral support to their staff/ trainees (e.g., those with tikanga-based business models) - Direct imposition of fees on learners may change their perception of benefits of training and their participation (especially in non-regulated contexts). 	<p>✗</p> <ul style="list-style-type: none"> - Concern that employers in un-regulated industries will exit formal training if fees are charged (questions about the benefit of this training). - No indication that paying a fee will result in increased consumer choice for employers. Decision over whether to participate in training (or which provider to engage with) is the key leverage point for employers. 	<p>✓</p> <ul style="list-style-type: none"> - Flexibility enables different settings for different employer and learner characteristics. - Employer and learner engagement in proportion to benefits of training (assuming providers will set fees to be affordable). - Learner voice may be less powerful.
iv. The financing system supports providers to deliver the outcomes of RoVE,	<p>✓</p> <ul style="list-style-type: none"> - Providers are supported through fees to deliver the outcomes of RoVE, e.g., supporting learner mobility between modes. Fee income is more predictable. - Providers still need to meet employer needs for participation. - Supports direct provider-learner relationship including pedagogical support, based on industry-developed skill standards and employer commitment (acknowledged in in-kind costs). 	<p>✗</p> <ul style="list-style-type: none"> - Providers are supported by fees, but more difficult to deliver on some outcomes of RoVE, e.g., learner movement between modes. Fee income is relatively predictable. - Employers still have skin in the game, but there may be some participation impacts (as above). 	<p>✗</p> <ul style="list-style-type: none"> - Providers are supported by fees, but more difficult to deliver on some outcomes of RoVE, e.g., learner movement between modes. - Fee income is less predictable because of negotiations, so in some marginal cases providers are trading programme viability and participation of firms. - Flexibility enables providers to meet employer needs without restriction (marginally better than 1(b)).

	<ul style="list-style-type: none"> - Potential additional cost to the Crown of \$20 million in student loans. 		
v. The mechanism minimises transaction costs on providers and the government.	<ul style="list-style-type: none"> ✓ ✗ - Simple for learners and employers to understand. - May be some increased transaction costs for providers and government if student loans or repayment schemes introduced. - Fee regulation would increase transaction costs for providers and Government. 	<ul style="list-style-type: none"> ✓ - Administratively simple for providers. - Fee regulation would increase transaction costs for providers and Government 	<ul style="list-style-type: none"> ✗ - Bespoke arrangements are more complex for providers to administer. - Negotiation will need to be an ongoing resource. - More difficult for learners to move between employers/modes – requires complex refund/transfer arrangements. - Fee regulation would increase transaction costs for providers and Government.
vi. The mechanism supports the taonga and development interests of Māori businesses.	<ul style="list-style-type: none"> ✓ - Recognises the contribution/value of learner support and pastoral care. - Reduces barriers to participation in VET for Māori employers. 	<ul style="list-style-type: none"> ✗ - May place unequal burden on Māori employers who pay fees and provide high levels of learner support. - May need to test how this will work where iwi and employers already have arrangements in place. 	
vii. The mechanism supports the development and equity interests of Māori learners.	<ul style="list-style-type: none"> ✗ - Māori learners may be less inclined to take on debt. Where they do, this may compound existing economic inequities. 	<ul style="list-style-type: none"> - - May reduce barriers to participation in VET for Māori learners, however, this could be outweighed by reducing barriers for employers (option 1) which in turn creates opportunities for learners. 	

Annex 2 – Summary of Te Tiriti o Waitangi | Treaty of Waitangi Interests in the financing VET work

1. In our February advice, we indicated that we would engage with Māori employer groups, iwi Māori, and Māori learners to understand the extent to which there is a Treaty of Waitangi interest in the financing VET work.
2. Treaty interests were ascertained by assessing which Māori groups would be most impacted by the proposals. As with the broader UFS work, Māori learners and their whānau were identified as having an interest in this work. However, while Māori-owned businesses were identified as having an indirect interest in the UFS, Māori businesses, and businesses who employ a high proportion of Māori, have a significant interest in the financing of VET work.

We have considered the Crown's Tiriti obligations in this policy issue/project...

3. The financing VET proposals are technical in nature, and will not, on their own, meaningfully address existing inequities in the education system. However, it is important for us to understand the potential impacts of the proposals on Māori learners, Māori employers and tikanga and kaitiaki based business models, to ensure that any changes do not exacerbate existing inequities or create new barriers to participation in VET.

...in terms of our obligations to the principle of partnership...

4. Based on Crown Law's advice and Treaty jurisprudence, we believe the Crown's obligations of partnership as they relate to the development of proposals for financing VET are as follows:
 - i. Identify relevant Māori partners.
 - ii. Undertake targeted engagement with Māori to inform the policy process and the development of advice.
 - iii. Undertake public consultation, including targeted engagement to seek and actively support Māori participation in public consultation.
 - iv. Make information and resources available, and undertake engagement in settings and manners, that empower Māori to be actively involved.
5. We approached Māori employer groups, WDC's Kahui Ahumahi, wānanga and the Council of Trade Unions for their feedback on the proposed options. Due to the technical nature of the proposals and stakeholder capacity to engage with government, the response to our request for engagement was limited.
6. To supplement and inform engagement, we also reviewed findings from previous engagements with Māori carried out during the policy design of RoVE and the UFS, the analysis of Māori learners in VET carried out to support the design of Learner Success Component of the UFS [METIS 1257567 refers], and research on Māori learners carried out by Te Pūkenga, and Business and Economic Research Limited.

...and the principle of active protection.

7. The Waitangi Tribunal generally applies the principle of active protection within the dynamics of Articles 1 and 2 (kawanatanga or the Crown's right to govern in Article 1 and

the guarantee of tino Rangitiratanga in Article 2).³ This application extends beyond tangible things, to intangibles such as cultural concepts and practices.

8. We consider the Crown's obligations of active protection as they relate to the development of proposals for financing VET are as follows:
 - i. Protect and enable tikanga-based business models.
 - ii. Make high quality VET accessible to Māori to reduce inequitable education and employment outcomes.
9. The Department of Prime Minister and Cabinet (DPMC) has issued Cabinet agreed guidelines to support policy makers to consider the Treaty of Waitangi in policy development and implementation.⁴ The guidance suggests a range of questions relating to each of the three Treaty Articles for policy makers to consider when developing policy. We have considered these questions when analysing each of the proposals in terms of their Treaty interests.

To inform our analysis, we considered how the proposals relate to Māori businesses...

10. During targeted engagement we heard that Māori who take a Kaitiaki or tikanga-based approach to business are focused on the wellbeing of employees, their wider community, and the environment, as well as economic return – profit is important, but not as important as looking after people and place. Māori businesses employ more Māori to purposefully create business opportunities for their community, even if there is a degree of risk for them in hiring unqualified learners.
11. We also heard from Whāriki Network that the majority of Māori businesses are small-to-medium sized enterprises and that charging a fee may disproportionately impact small employers, who do not have an established training infrastructure.⁵ However, while fees are a barrier to engagement in training, other factors, such as the responsiveness and relevance of training provision, are more likely to influence whether or not Māori businesses participate in the VET system.
12. Te Arawhiti consider there is a taonga-type interest where a policy may interfere with tikanga-Māori ways of doing things or ways of life.⁶ Using Te Arawhiti's categorisation of types of interests, drawn from te Tiriti articles, as well as widely accepted Treaty principles, we identified Māori business/employer interests to be taonga-type interests and development-type interests, with opportunities to consider how options for financing VET could support Māori firms to engage in formal training and be active partners in the VET system.

... how the proposals relate to Māori learners...

13. In 2019, approximately 59,000 VET learners identified as Māori, (24% of all VET learners). Of these Māori learners in VET, 17% were studying te reo or tikanga Māori qualifications, meaning that Māori are less likely than non-Māori to be in work-based learning.

³ Government decision-making and Treaty of Waitangi principles, Ref SOL115/2675. 14 August 2017. Crown Law Advice to Chief Legal Advisors.

⁴ Cabinet Office CO (19) 5. (2019, October 22). Circular: Te Tiriti o Waitangi / Treaty of Waitangi Guidance. Wellington.

⁵ There is little robust data or evidence (due in part to difficulties defining Māori businesses). We expect richer insights over time as WDC and Te Pūkenga's processes for engaging with Māori mature.

⁶ Te Arawhiti, Deep Dive on improving policy and related performance of the Crown in relation to Māori. Policy Leaders Network Retreat, December 2021.

14. Māori learners are less likely to enrol in, and have lower achievement rates in, work-based learning, particularly apprenticeships, despite employment outcomes for work-based learning being better than for provider-based learning. Increasing participation and achievement for Māori learners in work-based learning, particularly apprenticeships, is key to improving their outcomes from VET.
15. Should eligibility for student loans be extended to work-based learners, Māori learners may be less inclined to take on debt, and where they do, this may compound existing economic inequities. Māori are more vulnerable to job loss during economic downturns (in part because of types of industries they are in), so are more likely to have interruptions to their loan repayments or end up with unpaid student loan debt.
16. With regard to fee regulation of provider-based VET, moving to fee-band caps would give providers more latitude to increase fees. This could lead to fees being a greater barrier to study (depending on attitudes towards taking on debt through the student loan scheme) or add to the overall debt burden for Māori learners. Māori learners on average take longer to repay their loans in spite of having lower debts overall.
17. However, the potential for fees to increase can be mitigated in part by how caps are set and depends on providers' assumptions about their learners' price-sensitivity. Te Pūkenga's charter also requires it to promote equitable access to learning opportunities for learners across all regions, and to give effect to Te Tiriti. Fee-band caps could support this by giving providers greater flexibility in where they can set fees for different cohorts from year-to-year, without being locked into the rigidities of the AMFM.
18. We consider that Māori learners' interests in the proposals are equity-type interests and development-type interests. In our analysis, we considered how options for financing VET could support Māori learners to access and complete work-based learning, and improve outcomes in terms of health, wellbeing, and progression into higher skilled, higher paying roles.

... and how they would impact wānanga.

19. To reduce barriers to participation for learners, wānanga have a zero fees model for many of their programmes. The AMFM does allow the fees for zero-fee courses to increase. However, moving to fee-band caps would give wānanga more flexibility to change fees year to year, and increase fees for low-fee courses, while still having the option to charge zero fees.

Annex 3 – Summary of key findings from engagement

1. During engagement, we tested and confirmed the assessment criteria outlined in paragraph 2 and added additional criteria relating to the Treaty interests.
2. We also tested some of the assumptions underlying our earlier analysis, particularly around how to best support employer voice and ‘skin in the game’ and how learners could be supported to pay fees. We heard that:

Fees are not necessarily the most effective mechanism to ensure employers have ‘skin in the game’ or the ability to influence provider offerings...

3. Feedback from earlier engagement as part of the design of RoVE, suggested that employers who paid a fee to their TITO were more invested in supporting their employee to succeed in training. In developing options for who pays, we identified a potential trade-off between fees as a barrier to participation vs fees as a mechanism for encouraging employer engagement and increased consumer power.
4. However, during targeted engagement we heard that in general, TITOs who charge fees to employers are working with regulated industries where there is already a strong incentive to train. Price sensitivity is more acute in unregulated industries, which also tend to be larger and have greater scale and influence with providers.
5. We also heard that the in-kind costs to employers of training were significant, and that this commitment in itself represented skin in the game. We were told that, in some industries, regulation requiring providers to invoice employers for fees could cause employers with large numbers of trainees, or employers in low margin businesses, to dis-engage from the formal training system. In these cases, the added value of training to firms and the industry may be relatively low, or internal training systems of larger firms may be sufficient without the need to formalise training.
6. The option to pass fees on to learners, or for providers to charge zero fees to employers could mitigate the risk of learners losing access to training that could be of value to them. However, stakeholders suggested that even this small shift away from the current unregulated settings could signal a change in expectations for employers and cause them to dis-engage.
7. While small employers may see some small increase in their consumer power as a result of paying a fee for service, there is little evidence to suggest that this would be substantial enough to offset the barrier to participation a fee may create. Other changes to the VET system, such as the establishment of WDCs and Regional Skills Leadership Groups, Te Pūkenga’s obligations under its Charter, and the design of the UFS, provide more effective levers to ensure employer voice.

...and feedback was mixed on whether eligibility for student loans should be extended to work-based learners.

8. The industry training system has functioned successfully without access to the loan scheme. However, during targeted engagement, there was general agreement that if learners are charged fees (i.e. invoiced directly), these should be regulated and there should be some form of support to help learners pay, particularly for higher cost programmes. This support could be in the form of payment plans, such as several TITOs currently offer, or access to student loans.
9. Fees for work-based learning are comparatively low and some stakeholders felt that making student loans available was an unnecessarily large response to a small issue (in

some cases the administration cost of applying for a student loan would be equivalent to half the total programme fee). Others thought that extending eligibility made sense in a unified system, and that work-based learners should have the same options as other learners. Course related costs, which could help with the sometimes-high cost of entry into employment in some industries, were mentioned as being potentially more effective at removing barriers to participation than access to loans to pay fees.

10. Feedback was also mixed on whether extending eligibility for student loans to work-based learners would damage the debt-free branding associated with industry training. This is something we would like to test further through public consultation.

We also explored options for replacing the Annual maximum Fee Movement for provider-based VET

11. We proposed to explore fee maxima bands for groupings of subject areas, based on either:
 - i. ratios of tuition subsidies, with the potential for different ratios for different fields of study
 - ii. groupings around existing fee levels, for example between the average and 75th percentile of existing fee levels.
12. Te Pūkenga and ITENZ were supportive of capping course fees by groups of fields of study, rather than having a fee cap for each course (as is the case under the AMFM). Te Pūkenga considered that this approach would support its fee-harmonisation between subsidiaries over the next few years. ITENZ was also supportive of a lower-compliance approach to setting fees for new courses.
13. While we did not receive any feedback on the proposals from wānanga, replacing the AMFM with a fee maxima would give them more flexibility, as current fee regulation settings lock in low / zero fees.
14. We tested the possibility of using fee-to-subsidy ratios, or existing fees, as starting points for an alternative to the AMFM. However, given the technical nature of the options, providers did not express a preference during targeted engagement.

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