

Education Report: Crown entity draft Statements of Performance Expectations 2020/21

To:	Hon Chris Hipkins, Minister of Education		
Date:	4 May 2020	Priority:	Medium
Security Level:	In Confidence	METIS No:	1226481
Drafter:	Kirstin Scott	DDI:	s 9(2)(a)
Key Contact:	Fiona O'Leary	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of report

This paper provides advice on the draft Statements of Performance Expectations (SPEs) 2020-21 produced by Education New Zealand (ENZ), the New Zealand Qualifications Authority (NZQA) and the Tertiary Education Commission (TEC).

You are required by the Crown Entities Act 2004 (the Act) to give any feedback to the entities within fifteen working days of receipt of the documents. Draft letters are attached for this purpose.

Summary

- Our report sits alongside the draft SPEs which your office received from ENZ, NZQA and TEC on 30 April 2020. Under the Act, you have 15 working days from this date to provide your comments to the entities. Draft letters are provided for this purpose and should be sent by 21 May 2020.
- The entities recognise that the COVID-19 outbreak and response will have impacts on their future operations, funding, resourcing and performance.
- The draft SPEs reflect the operating environment prior to the COVID-19 outbreak.
- The final SPEs can be amended later in the year, in accordance with s149K of the Act, as the impacts of the COVID-19 outbreak and response become clear.
- The entities have considered seeking a three month extension to the timeframe for providing a draft SPE (recently provided for by the COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Bill), but have decided that the most effective and least burdensome way of managing the SPE process is to submit an SPE in line with the existing timeframes for later amendment, if required.

Recommended actions

The Ministry of Education recommends that you:

- a. **note** ENZ, NZQA and TEC have provided you with draft SPEs, as required by the Crown Entities Act 2004 (the Act)

Noted

- b. **note** the draft SPEs meet requirements in the Act for timing and content

Noted

- c. **note** you are required by the Act to provide any comments to the entities on the SPEs within fifteen working days of receiving them, and we have provided draft letters for this purpose

Noted

- d. **sign** and **send** the attached draft letters to the board Chairs by 21 May 2020

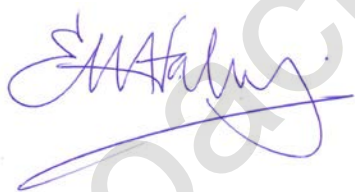
☒ **Agree** ☐ **Disagree**

- e. **note** the entities can update their final SPEs later in the year, in accordance with s149K of the Act, once the impacts of the COVID-19 outbreak and response on future operations, funding, resourcing and performance are better understood

Noted

- f. **release** this Education Report as part of a proactive release once final SPEs have been published

☒ **Release** ☐ **Not release**



Emily Fabling
Deputy Secretary
Strategy, Planning and Governance

04/05/2020



Hon Chris Hipkins
Minister of Education

22/05/2020

Background and statutory requirements

1. We have been working with the entities to provide advice and support as they draft their SPEs for 2020/21. We have also been in regular contact with Treasury, and tested our advice with them.
2. We recognise the COVID-19 pandemic has increased workload for entities, and working from home has created logistical issues for the preparation and sign out of documents. Our aim throughout the SPE drafting process has been to reduce the compliance burden for the entities and you and your Office, while still ensuring the entities are able to meet their statutory obligations.
3. The Crown Entities Act 2004 (the Act) sets out the statutory requirements that a Crown entity must comply with when preparing and publishing its SPE.
4. The COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020 amended the Crown Entities Act to allow entities to seek an extension of up to three months to the timeframe for providing an SPE.
5. All three entities have considered the options available, and concluded that providing a draft and final SPE under the current legislative timeframes is the most effective and least burdensome way of managing the SPE process. This is because the draft SPEs have already been prepared and approved through their Boards, and the entities would likely need to amend their final SPEs later in the year anyway, using existing mechanisms in s149K of the Act (see paragraph 17 below), even if they sought three month extensions.
6. We support this approach, and it is in line with Treasury advice that if entities are able to provide draft strategy and planning documents on the current timeframe, then they should use their best endeavours to do so.

Requirements for timing

7. Section 149I of the Act sets out the process for providing the SPE to the responsible Minister:
 - a. A draft SPE must be provided to the responsible Minister no later than two months before the start of the financial year to which it relates.
 - b. The responsible Minister must provide any comments on the draft within 15 working days of receipt.
 - c. The entity must consider any comments on the draft and provide the final SPE to the responsible Minister as soon as practicable after receiving the comments, but before the start of the financial year.
 - d. The entity must also publish the documents online.
8. You received draft SPEs from ENZ, NZQA and TEC on 30 April 2020, meeting the statutory deadline. You have 15 working days to provide your comments to the entities. Draft letters are provided for this purpose and should be sent by 21 May 2020.

Requirements for content

9. Requirements for content are set out in s149E of the Act. In summary, an SPE must identify each reportable class of outputs, explaining what the class of output is intended to achieve, the expected revenue and expenses and how performance will be assessed. It must also contain forecast financial statements, prepared in accordance with generally accepted accounting practice.

10. We consider the draft SPEs provided by ENZ, NZQA and TEC meet statutory requirements for content.

Impact of COVID-19

11. There is a great deal of uncertainty for all three education Crown entities in light of COVID-19. At this stage, it is unclear what impact COVID-19 will have on the entities' finances, operations, funding, resourcing and performance. This makes it very difficult for entities to prepare accurate financial forecasts and set appropriate measures for assessment of performance.

Advice from Treasury

12. Treasury received several enquiries from monitoring departments and Crown entities on the external financial and non-financial reporting requirements under the Act in light of the COVID-19 outbreak. In response, Treasury provided advice about possible modification to timelines, overcoming logistical issues, and dealing with uncertainty of future operations.
13. On 1 May, Treasury confirmed that a Bill providing a process for extensions to timelines for strategy and planning documents had passed on 30 April. Treasury also provided guidance for agencies which covers the process for seeking extensions.

Decision to provide a draft and final SPE under the existing legislative timeframes

14. By the time confirmation that entities would be able to seek extensions came on 1 May, ENZ, NZQA and TEC had already prepared draft SPEs, had them approved by their Boards and leadership teams, and submitted them to your Office. Seeking an extension to the timeframe would have created an additional burden for entities. Instead, the entities propose updating their SPEs later in the year using the existing mechanisms in the Act (see para 17 below).
15. The drafts the entities have produced reflect the operating environment prior to the COVID-19 outbreak. We have worked with the entities to agree on a paragraph to be included in each draft SPE, which provides context on the current situation:

The financial and non-financial information as set out in this document were developed prior to COVID-19 and will be impacted by COVID-19. The extent of this impact is unknown at present but could mean that some of the measures set out are no longer relevant, unable to be met or measured, or that new measures are required. Any variances will be explained through our existing reporting mechanisms. However, if the variance of the change is significant, the final Statement of Performance Expectation may be amended and this may happen at any time as set out in Section 149K of the Crown Entities Act 2004.

Levers in the Act to manage the uncertainty created by COVID-19

16. Due to the tight timeframes, the entities have indicated the SPEs are not likely to change between draft and final versions. At this stage, any changes to take into account the impacts of COVID-19 would be based largely on guesswork, and unlikely to reflect the reality of the year ahead. We understand this approach, and would not expect updates to be made unless there is certainty around the changes needed. If you would like to provide feedback on the draft documents, we can work with your Office to amend the attached draft letters to the Board Chairs.

Amendments to the final SPE

17. The final SPEs for all three entities can be amended later in the year as the impacts of the COVID-19 outbreak become clear.
18. Where necessary, amendments will be made in accordance with s149K of the Act. This provides that a Crown entity may amend its final SPE at any time, and must amend its SPE if the intentions and undertakings in the final SPE are significantly altered or affected by a change in the entity's operating environment.
19. Using this amendment process, rather than seeking an extension to the current legislative timeframe for providing a draft SPE, will allow entities to control the timing of the amended final SPEs and produce them once they have more certainty around the impacts of COVID-19 for their businesses.

Exemption for certain outputs

20. Section 149F of the Act provides that the Minister of Finance may exempt one or more classes of outputs from an SPE. This may be an appropriate lever to use for ENZ in relation to awards for outbound New Zealand students, and we will work with ENZ and Treasury to test this.
21. The Minister of Finance, you and the Ministry would need to be satisfied the exemption would not compromise accountability for performance, and there are mechanisms in place to report on the class of outputs outside of the annual reporting process.
22. We will provide you with further advice on this with the final SPEs.

Next steps

23. Under the Act, your comments need to be forwarded to ENZ, NZQA and TEC within 15 working days of receiving the draft SPEs. That is, by 21 May 2020. In **Annex 1**, we have provided draft letters to the Board Chairs for this purpose.
24. The entities will then provide the final SPEs to you no later than 30 June 2020. We will provide you with further advice alongside the final SPEs, as required.
25. After providing the final documents, the Crown entities will publish them on their websites.
26. The SPEs must be tabled by the responsible Minister. This can be done before the Annual Report for the previous year is presented or at the same time (s149 and s149L).

Proactive release

27. It is intended that this Education Report is proactively released once the entities have published their final SPEs. This is as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Annexes

Annex 1: Draft letters to the Board Chairs

Office of Hon Chris Hipkins

MP for Rimutaka

Minister of Education

Minister of State Services

Leader of the House

Minister Responsible for Ministerial Services



Jenn Bestwick
Chair
Tertiary Education Commission
PO Box 27048
WELLINGTON 6141
Jenn@jennbestwick.com

Dear Jenn

I have received the Tertiary Education Commission's draft Statement of Performance Expectations (SPE) 2020-2021, alongside the Ministry of Education's advice. Thank you for providing me with this information.

I appreciate the work you have put into the draft SPE. Uncertainty about future operations in light of COVID-19, together with the logistical issues of working remotely, will have made producing the draft SPE a difficult task.

I acknowledge the financial and non-financial information in the draft SPE you have provided is based on a pre-COVID-19 world, and the timing of the final SPE means it will not reflect all impacts of COVID-19 on your operations and performance over 2020/21. TEC may therefore need to make amendments to the SPE later in the financial year, as impacts become clear.¹

Thank you again for your work on the draft SPE during this challenging time.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CH', over a large, light grey 'Proactive' watermark.

Chris Hipkins
Minister of Education

cc Tim Fowler, Chief Executive, Tertiary Education Commission
cc Emily Fabling, Deputy Secretary, Strategy, Planning and Governance,
Ministry of Education

¹ In accordance with s149K of the Crown Entities Act 2004

Office of Hon Chris Hipkins

MP for Rimutaka

Minister of Education

Minister of State Services

Leader of the House

Minister Responsible for Ministerial Services



Neil Quigley
Deputy Chair and Acting Chair
New Zealand Qualifications Authority
PO Box 160
WELLINGTON 6140
neilq@waikato.ac.nz

Dear Neil

I have received the New Zealand Qualification Authority's draft Statement of Performance Expectations (SPE) 2020-2021, alongside the Ministry of Education's advice. Thank you for providing me with this information.

I appreciate the work you have put into the draft SPE. Uncertainty about future operations in light of COVID-19, together with the logistical issues of working remotely, will have made producing the draft SPE a difficult task.

I acknowledge the financial and non-financial information in the draft SPE you have provided is based on a pre-COVID-19 world, and the timing of the final SPE means it will not reflect all impacts of COVID-19 on your operations and performance over 2020/21. NZQA may therefore need to make amendments to the SPE later in the financial year, as impacts become clear.¹

Thank you again for your work on the draft SPE during this challenging time.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CH', over a large diagonal watermark that reads 'Proactive Release'.

Chris Hipkins
Minister of Education

cc Grant Klinkum, Chief Executive, New Zealand Qualifications Authority
cc Emily Fabling, Deputy Secretary, Strategy, Planning and Governance,
Ministry of Education

¹ In accordance with s149K of the Crown Entities Act 2004

Office of Hon Chris Hipkins

MP for Rimutaka

Minister of Education

Minister of State Services

Leader of the House

Minister Responsible for Ministerial Services



Hon Steve Maharey
Chair
Education New Zealand
Level 5, 160 Lambton Quay
WELLINGTON 6022
Steve@Maharey.co.nz

Dear Steve

I have received Education New Zealand's draft Statement of Performance Expectations (SPE) 2020-2021, alongside the Ministry of Education's advice. Thank you for providing me with this information.

I appreciate the work you have put into the draft SPE. Uncertainty about future operations in light of COVID-19, together with the logistical issues of working remotely, will have made producing the draft SPE a difficult task.

I acknowledge the financial and non-financial information in the draft SPE you have provided is based on a pre-COVID-19 world, and the timing of the final SPE means it will not reflect all impacts of COVID-19 on your operations and performance over 2020/21. ENZ may therefore need to make amendments to the SPE later in the financial year, as impacts become clear.¹

Thank you again for your work on the draft SPE during this challenging time.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CH', over a large, light grey 'Draft - Not for Release' watermark.

Chris Hipkins
Minister of Education

cc Grant McPherson, Chief Executive, Education New Zealand
cc Emily Fabling, Deputy Secretary, Strategy, Planning and Governance,
Ministry of Education

¹ In accordance with s149K of the Crown Entities Act 2004