

## Tertiary Education Report: Timeline for establishing Workforce Development Councils

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	10 July 2020	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1234780
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose

1. This report sets out a modified process and timeline for establishing Workforce Development Councils (WDCs) by the end of 2020.

### Recommended Actions

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

- a. **note** that a key driver of accelerating the establishment of WDCs was to ensure that industry voice was able to inform the wider Reform of Vocational Education (RoVE) early,
- b. **note** that WDC interim Establishment Board (iEB) Chairs had their first meeting on 25 June, and that this was a positive and productive meeting where the Chairs expressed an appetite for sharing ideas and working collaboratively on the establishment of WDCs,
- c. **note** that the iEB Chairs, as well as Te Taumata Aronui and Transitional Industry Training Organisations chief executives, consider that it would be preferable to extend the period of engagement with industry to develop the 'core proposal' that would form the Orders in Councils (OICs) to establish WDCs, prior to the formal consultation process that was planned for August,
- d. **note** that officials recommend modifying the phasing of the WDC establishment process to allow more time for iEBs to engage with industry,
- e. **note** that this re-phasing will allow iEBs to both develop the content of the core proposals and establish critical relationships with stakeholders which officials consider will help to ensure the arrangements for WDCs are well informed by industry, that industry buy-in is maximised, and that WDCs are well supported to be effective in performing their critical role in the reformed vocational education system,

f. **agree** to a modified process and timeframe for establishing WDCs by the end of 2020 that enables:

- a. iEBs, with support from the Tertiary Education Commission (TEC), to engage with industry to develop the draft 'core proposals' that would form the six OICs from now until mid-September,
- b. the TEC, on behalf of the Minister, to conduct a formal consultation process on the six draft core proposals from late September until late October,
- c. the legislative process to establish WDCs (i.e. drafting the OICs based on the core proposals) to be completed from early November till mid-December.

**AGREE** **DISAGREE**

g. **agree** that the TEC undertakes the formal consultation process on the draft core proposals to establish the six WDCs, on behalf of the Minister of Education,

**AGREE** **DISAGREE**

h. **note** that the Ministry of Education considers the establishment of WDCs to be a 'non routine' process requiring significant policy decisions, and that agreement of the six core proposals to establish WDCs requires Cabinet authority before the Parliamentary Counsel Office (PCO) drafts the six OICs,

i. **note** the under this proposed modified timeline, the Minister of Education would take the six draft core proposals through Cabinet in October (in parallel to the formal consultation process), seeking authorisation to provide the final proposals directly to PCO following the consultation process without taking these through Cabinet for a second time,

j. **note** that while this process should allow for the legislative process to establish WDCs to be completed by the end of 2020, it is still a highly ambitious timeline.



**Andy Jackson**  
Deputy Secretary, Graduate Achievement,  
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Ministry of Education

10/07/2020



**Tim Fowler**  
Chief Executive  
Tertiary Education Commission

10/07/2020



**Hon Chris Hipkins**  
Minister of Education

19/7/2020

## Background

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2. In April you agreed to accelerate particular aspects of the Reform of Vocational Education (RoVE) to support the government's response and recovery from COVID-19 [METIS: 1226204].
3. Part of this acceleration was to appoint interim Establishment Boards (iEBs) for the six Workforce Development Councils (WDCs). The iEBs were to engage with industry to develop the details of the six Orders in Council (OIC) that would form the permanent WDCs. They would also provide industry voice to influence government's work on education and training-focussed COVID-19 response initiatives.
4. This April report indicated that it could be possible to have the six WDCs formally established through OIC in October. However, this relied on a heavily condensed industry engagement and consultation process; iEBs would have less than one month to engage with industry to develop the 'core proposals' for the six OIC, prior to formal consultation on these proposals in August.

## Feedback from iEBs, Transitional ITO CEs and Te Taumata Aronui

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5. The six iEBs were announced on Thursday 25 June, and the first meeting of the Chairs took place on Thursday 2 July. This was a highly positive and productive meeting, and the Chairs expressed an appetite for sharing ideas, working collaboratively, having a joined-up approach for engaging and developing the core proposals that would form the six OICs and supporting an aligned consultation process across the six proposals.
6. Through this discussion with the iEB Chairs, and also through recent engagement with Te Taumata Aronui, a strong message has emerged that the condensed engagement required to establish WDCs in October would not be sufficient to gain industry support for these new entities (which is critical to their success). Furthermore, stakeholders (including CEs of the Transitional ITOs) have raised significant concerns with iEB members around insufficient time for industry to engage on the core proposal prior to the formal consultation process, particularly given the impacts of COVID-19 that businesses are having to deal with.
7. Modifying the phasing of the proposed establishment process to allow more time for iEBs to engage with industry will allow them to both develop the content of the core proposals and establish critical relationships with stakeholders which we consider will help to ensure the arrangements for WDCs are well informed by industry, that industry buy-in is maximised, and that WDCs are well supported to be effective in performing their critical role in the reformed vocational education system.
8. We therefore propose to amend the phasing of the WDC establishment process so that iEBs have more time to engage with industry to develop the 'core proposals' before the one month formal consultation process on these proposals begins. This would move formal consultation to late September (from August). This timeline could enable all six WDCs to be established through OICs before the end of 2020, though this is dependent on a range of factors including whether Cabinet agreement to the core proposals is required before the OICs are drafted.

## Proposed process and timeline for establishing WDCs by the end of 2020

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*There is a legislative requirement to consult with industry on the details of the WDCs*

9. An OIC is required to establish each WDC as a legal entity. Each OIC must cover elements such as name, coverage and governance arrangements for the WDC. It is

intended that the OICs will also include intervention powers that the Minister and TEC can use in relation to the WDCs, subject to consideration of whether such powers are within the scope of the empowering provision under which the OICs are made.

10. There is also a legislative requirement that the Minister must consult “the representatives of the 1 or more specified industries covered or proposed to be covered by the workforce development council”. We propose this responsibility to consult be delegated by the Minister to the Tertiary Education Commission (TEC).

*Proposed process for establishing WDCs*

11. Officials from the TEC, the Ministry of Education (MoE), and the Parliamentary Counsel Office (PCO) have met to discuss options for the most efficient process for establishing WDCs that would allow more time for iEBs to engage with industry to develop the core proposals that would form the OICs to establish WDCs.
12. The proposed process for establishing WDCs would be as follows:
  - **Now – mid-September:** iEBs, with support from TEC, engage with industry to develop the draft ‘core proposals’ that would form the six OICs (2-2.5 months).
  - **Late September:** Minister of Education reviews the draft core proposals and agrees to begin the formal consultation process.
  - **Late Sep till late October:** the TEC, on behalf of the Minister, conducts the formal consultation process on the six draft core proposals. PCO would also begin developing the structure of the OICs based on these draft core proposals (1 month).
  - **Mid-October:** the Minister takes a paper to Cabinet attaching the six draft core proposals, noting that the TEC is currently consulting on these proposals, and seeking Cabinet’s authorisation to provide the final proposals to PCO (along with drafting instructions) following consultation without taking the proposals through Cabinet a second time.
  - **Early November:** TEC and MoE provide a paper to the Minister summarising the consultation process and recommending changes to the six core proposals in response to stakeholder feedback.
  - **Mid-November:** The Minister agrees to the updated final core proposals and sends these (along with drafting instruction) directly to PCO. The Minister may also wish to circulate the final proposals to Ministerial colleagues for round-robin feedback process.
  - **Mid-Nov till early December:** PCO finalises drafting of the six OICs, incorporating feedback received from Ministers via round-robin (3 weeks).
  - **Early-mid December:** Minister/LEG/Cabinet approve the final OICs. Establishment Board members are appointed (by APH, if this is the process set out in the OICs) (2 weeks – by 14 December).
  - **Late December:** Announcements made on WDCs.
13. WDCs would become legal entities in mid-January; 28 days after the Governor-General signs the OICs.
14. **Annex one** provides further detail on this timeline and process.

*Decisions on the establishment of WDCs are likely to require Cabinet agreement*

15. The Cabinet Manual states that “If the regulations are routine and do not require new policy decisions, the Minister may authorise drafting without reference to Cabinet”.
16. The Ministry of Education considers that the OICs establishing the WDCs are not routine or mechanical since in effect they will establish significant new statutory bodies which require substantive policy decisions on aspects such as governance arrangements, industry coverage, functional responsibilities, use of assets, etc.
17. Therefore, we consider that the six core proposals that will form the OICs need to be agreed by Cabinet before these proposals (and drafting instructions) are sent to PCO.
18. Taking the final core proposals to Cabinet after the formal consultation process (i.e. in early November), would not allow enough time for PCO to draft the OICs and for these to be approved by the Cabinet Legislative Committee (LEG) and Cabinet before the end of the year.
19. We therefore propose in the above timeline, that the Minister takes the draft core proposals through Cabinet in parallel to the formal consultation process, seeking authorisation to provide the final proposals to PCO (along with drafting instructions) following consultation without going through Cabinet. This Cabinet paper would note that if the core proposals were to change significantly following formal consultation, then the updated final proposals would need to be re-agreed by Cabinet.

Key assumptions for establishing WDCs by the end of 2020

20. Achieving the milestones set out in the above timeline to establish WDCs by the end of 2020 would be highly challenging and would rely on the following assumption:
  - a. *There are no delays or slippages in timing* – the timeline has been condensed as far as possible, and is based on Cabinet confirming the OICs on the last possible date in December. If any part of the process slips, it is highly likely that the OICs would not be ready for Cabinet confirmation on 14 December.
  - b. *There are no changes to the COVID-19 Alert Levels* – if New Zealand, or a particular region, moves to a higher Alert Level, this will disrupt various parts of the process, in particular the engagement to develop the core proposals and the formal consultation process.
  - c. *Stakeholders provide limited feedback during the formal consultation* – while feedback during the formal consultation on the ‘core proposals’ may be limited due to the longer initial engagement with industry, this may not be the case. If significant feedback is received, it may be challenging for agencies to provide updated ‘core proposals’ to the Minister by early November.
  - d. *Cabinet prioritises approving the OICs in December* – towards the end of the year, the Cabinet agenda is likely to become very full. There is a risk that approving the OICs is not a priority for Cabinet given other potential decisions they may be considering.

## Annex one: detailed process and timeline for establishing WDCs

Proposed timing	Activity
Now – mid September (2-2.5 months)	<p><u>Engaging with industry to develop the draft 'core proposals' for the OICs</u></p> <p>The six iEBs, with support from TEC, would engage with industry (including Te Taumata Aronui) to develop the draft <u>core proposals</u> for the six OICs (e.g. the name, coverage, governance arrangements, etc.).</p> <p>This extended engagement period will support the new iEBs to establish stronger relationships with industry which should assist in a smoother process for overall establishment of WDCs.</p> <p><b>Note:</b> iEBs and other industry stakeholders have raised significant concerns with starting the formal consultation process prior to the election. Therefore, reducing the length of this engagement would not accelerate the remainder of the establishment process (and would in fact likely result in a more intensive and lengthy formal consultation).</p>
19 September	Election
ASAP following the election	<p><u>Seeking the Minister's agreement to consult</u></p> <p>The TEC and MoE would provide the Minister of Education with the six draft <u>core proposals</u> and a consultation plan (as per legislative requirement) for the Minister's agreement.</p> <p>Agencies would also seek agreement from the Minister to provide the draft core proposals to PCO so they can begin developing the structure of the six OICs.</p>
Late Sep – late Oct (1 month)	<p><u>Formal consultation on 'core proposals'</u></p> <p>The TEC, on behalf of the Minister of Education, would conduct a formal consultation with industry on these draft <u>core proposals</u> for a 'reasonable consultation period', which we are advised would be 1 month. This would be done mainly through an online platform, with some face-to-face engagements in key centres (including regional centres).</p> <p><b>Note:</b> with the longer and more comprehensive initial engagement process to form these core proposals, we expect that feedback from industry at this stage in the process may be fairly limited.</p> <p><u>PCO begins developing the structure of the OICs</u></p> <p>PCO uses the draft 'core proposals' to begin developing the structure and draft content for the six OICs.</p> <p><u>Seeking authorisation from Cabinet</u></p> <p>The Minister takes a paper to Cabinet in mid-October which:</p> <ol style="list-style-type: none"> <li>attaches the six draft core proposals,</li> <li>notes that the TEC is currently consulting on these proposals, and</li> <li>seeks authorisation to provide the final proposals directly to PCO (along with drafting instructions) following consultation without taking the proposals through Cabinet a second time (unless the proposals were to change significantly).</li> </ol> <p><u>Analysing submissions and updating core proposals</u></p> <p>TEC analyses and summarises feedback from submitters on the draft core proposals throughout the consultation process, and drafts suggested amendments to the proposals to reflect this feedback. This would start towards the end of October, and may run into early November.</p>

Early Nov – mid-Nov (10 days)	<p><u>Confirming changes to core proposals</u></p> <p>A paper would be provided to the Minister in early November that would:</p> <ol style="list-style-type: none"> <li>include detail on the consultation process (number of submitters, etc.), and a summary of industry feedback on the six core proposals,</li> <li>outline changes that agencies recommend are made to the core proposals in response to industry feedback,</li> <li>attach updated versions of the six <u>final</u> core proposals (with the proposed changes from industry tracked), and</li> <li>seek the Minister's agreement to circulate the final proposals to other relevant Ministers for round-robin feedback, and forward the proposals and final drafting instructions to PCO to prepare the six OICs.</li> </ol>
Mid Nov – early Dec (3 weeks drafting)	<p><u>PCO finalises the six Orders in Council</u></p> <p>Using the structure for the OICs that were developed based on the draft core proposals, PCO works with TEC and MoE to update and finalise the detail of the six OICs. Feedback from Ministers on the core proposals would feed in to this drafting process.</p>
Early Dec – mid Dec	<p><u>Minister/LEG/Cabinet approve the final OICs</u></p> <p>A paper is provided to the Minister of Education in the <u>first week of December</u> which attaches:</p> <ul style="list-style-type: none"> <li>- the six final OICs, and</li> <li>- a draft Cabinet paper which seeks agreement from the Cabinet Legislative Committee (LEG) to these six OICs.</li> </ul> <p>The Cabinet paper and six OICs would need to be agreed by LEG by Tuesday 9 December at the latest, and then confirmed by Cabinet on Monday 14 December. The Governor-General would sign the orders following Cabinet on the afternoon of 14 December.</p> <p><u>APH process to appoint WDC Establishment Boards (if required)</u></p> <p>If the intended governance arrangements for any of the WDCs requires a Ministerial appointment process, then this will be carried out in parallel to the OIC process – i.e. the TEC would provide the Minister in early December with a draft Cabinet paper seeking agreement from the Cabinet Appointment and Honours committee (APH) to the WDC Establishment Board members (if this is required).</p> <p>APH would need to agree these appointments on Wednesday 9 December at the latest, and Cabinet would need to confirm these on Monday 14 December.</p> <p>These appointments would take effect from the date at which the WDCs become legal entities (i.e. mid-January) 2021.</p>
Mid/late December	<p><u>Announcements on WDCs</u></p> <p>While WDCs would become legal entities in mid-January (28 days after the GG signs the OICs), once the orders are signed, and once the appointees to the WDC Establishment Boards have been confirmed (by APH, if necessary), announcements about the final structure, governance, industry coverage, and membership can be made by mid to late December.</p>