



Tertiary Education Report: Proposed amendments to the Education (Vocational Education and Training Reform) Amendment Bill

To:	Hon Chris Hipkins, Minister of Education		
Date:	22 January 2020	Priority:	Medium
Security Level:	In Confidence	METIS No:	1218243
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Messaging seen by Communications team:	N/A	Round Robin:	No

Purpose of Report

This paper provides a list of minor but important amendments we propose to make to the Education (Vocational Education and Training Reform) Amendment Bill (the Bill). We are seeking your approval to make these changes through a supplementary order paper (SOP) that could be considered at the Committee of the Whole House.

Recommended Actions

The Ministry of Education recommends you:

- a. **agree** to the proposed amendments to the Bill

But not the proposed change to 479(3)(a) - I think there is real value in the collective representation of employers


Agree / Disagree

- b. **agree** to include these changes as a supplementary order paper to the Bill, and introduce it at the Committee of the Whole House

Agree / Disagree

- c. **agree** to proactively release this paper once the SOP has been announced.

Agree / Disagree


 Andy Jackson
 Group Manager, Tertiary
 Graduate Achievement, Vocations and Careers


 Hon Chris Hipkins
 Minister of Education

22/1/20

29/1/20

Context

1. The Education and Workforce Select Committee reported back to the House in late December 2019 on the Education (Vocational Education and Training Reform) Amendment Bill (the Bill). Prior to this, officials worked quickly to produce a departmental report in time to meet the Committee's deadlines.
2. During the drafting of the revised track changes version of the Bill, officials noted further minor but important changes were needed that were not within the scope of changes agreed by the Committee. To meet our timelines, we opted to address these proposals at a later date. Since then, we have also identified some further changes that are needed.
3. The proposals to add a new transition provision to ensure trainees are not charged a compulsory student services fee (CSSF) upon transferring from an ITO to a provider are discussed below.
4. A number of minor and technical drafting changes are attached in Appendix One.

Compulsory student services fees for trainees

5. Under the current system, ITOs do not charge trainees a separate fee for the provision of student services. Following the passage of the Bill, trainees will begin to transition to providers and become students under the Education Act, as well as trainees. This means it will be possible under current legislative settings for providers to start charging trainees a compulsory student services fee (CSSF).
6. The Education Act allows providers to charge students a compulsory fee for access to services such as health services, employment information and childcare services at a reduced cost. The average CSSF at ITPs in 2019 was approximately \$300 per EFTS (this ranges from \$100 to \$600).
7. Currently, trainees enter into a three-party training agreement with their employer and the ITO, which would set an expectation around the likely costs they will have to cover for the duration of their training. Many trainees establish arrangements with their employers to pay or share the costs of these fees. For example, employers may cover a trainee's fees upfront and then recover this through reduced wages.
8. If new or existing trainees were charged a CSSF, this could amount to a significant additional upfront cost in the VET system that trainees or their employers would need to meet. For example, if providers started to charge all 50,000 apprentices in the VET system a CSSF, this could result in approximately \$15 million additional costs in fees (which would also result in a small increase of approximately \$1.5 million in Fees Free payments). Most trainees will not meet the eligibility requirements for student loans, which students would usually use to cover these costs. Existing trainees would also face this additional cost part-way through their training, something about which they did not know, or agree to, at the start of their training.
9. The Minister of Education does not have powers under the Act to prevent trainees from being charged a CSSF. Providers have a lot of flexibility to set and increase CSSFs and make decisions on how much they can charge different categories of students (for example, distance or online students, or in this case, work-based students).
10. We seek your agreement to include a transitional provision in the Bill which prevents providers from charging trainees a CSSF in 2020 and 2021. This would essentially maintain the status quo and give us time to determine new settings on CSSFs specific to trainees before providers could start charging this group of students these fees.
11. While this may discourage providers from resourcing student services for their trainees, providers will still need to meet requirements under the code of pastoral care

for domestic tertiary students. Furthermore, providers are free to charge 'other' fees to students that are not part of compulsory fees. For example, they could charge trainees to access student services in the interim on a user-pays basis.

12. These transitional provisions would only apply for 2020 and 2021, s 9(2)(f)(iv)

Next steps

13. You can make the proposed amendments through a supplementary order paper. These proposals fit within your Cabinet delegation [SWC-19-SUB-0080] to make decisions on the details of the changes, for the purpose of drafting legislation, without any further reference to Cabinet.
14. Subject to your agreement, we will issue drafting instructions to Parliamentary Counsel Office to prepare an SOP that shows the proposed amendments as track changes to the Bill.
15. The SOP could be announced at the Second Reading and considered at the Committee of the Whole House.
16. We expect the Second Reading to be held on Thursday 13 February at the earliest.

Proactive Release

17. Should the Minister agree to the proposal, a SOP will be released at a later date announcing the Minister's proposed changes to the Bill. We recommend that this Education Report is released once the SOP has been announced.

Annexes

Annex One: Proposed minor amendments to the Education (Vocational Education and Training Reform) Amendment Bill

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Section/ Clause	Explanation/ reason for change	Proposed amendment
479(3)(a)	This provision was intended to ensure the collective representation of employees in governance arrangements. The inclusion of the word "employer" was a drafting oversight. Employers are likely to be well-represented in governance arrangements because they constitute industry.	Remove the word 'employer'.
482(g)	Section 482(1)(g) covers the function of 'setting, developing and maintaining capstone assessments'. This function belongs under the subheading 'setting standards and developing qualifications' rather than 'endorsing programmes and moderating assessments'.	Move 482(1)(g) up under the subheading 'setting standards and developing qualifications'. Change the heading to 'setting standards, capstone assessments and developing qualifications'.
485(2)(c)(i)	Section 485 provides a duty for WDCs to collaborate with providers. The departmental report agreed that WDCs must collaborate with providers - <i>whilst performing its functions of qualification development and standard setting</i> . The final part of this sentence has not been accounted for in the drafting.	Cross reference section 482(1)(b) and (c) with 485(2)(c)(i).
Schedule 4, title of clause 7	Change the title of the section to be consistent with other section titles.	Title should read 'Students of NZIST subsidiaries upon dissolution' or similar.
Schedule 1 clause 29	Minor drafting change to incorporate a missing word.	Include the word 'subsidiary' between 'corresponding NZIST' and 'exists'.
Schedule 1 clause 39(1)	Minor drafting change to incorporate a missing word.	This section should also refer to "corresponding" NZIST subsidiary.
Schedule 1 - 40B	It is unclear in 222Z(1) that the Minister's permission for NZIST to form new subsidiaries is not needed after the end of 2024.	Suggest moving the requirement for the NZIST to obtain the Minister's permission to form new subsidiaries from 222Z(1) to schedule 1 so that the provision applies as a transitional matter until the end of 2024.
Schedule 1, clause 53, Cancellation of recognition	Minor amendment to Schedule 1 clause 53 so that it refers to the underlying body which is the body corporate, not the transitional ITO. As it is the body corporate that would cease to exist.	Amend clause 53(1)(d) so that the Minister is satisfied that: (i) the transitional ITO is no longer responsible for carrying out any of the activities referred to in clause 44(3); or

of transitional ITO		(ii) the body corporate recognised as a transitional ITO under clause 43 no longer exists as a body corporate.
Schedule 1 clause 56 and 56C	56 and 56C double up on 56A(5) and 56B(5) respectively.	Clauses 56 and 56C should be removed
Schedule 1 56A(5) & 56B(5)	Minor drafting change. "An employee ... <i>that</i> " should be "an employee ... <i>who</i> ".	Change 'that' to 'who'.
New Schedule 25	For clarity and to distinguish the subsidiaries that do and do not provide education and training.	Amend schedule 25 so that NZIST subsidiaries refers to subsidiaries that provide education or training, or both.
Schedule 6 Part 1, (Amendments to other Acts) section 1(a)	The new subsection (1A) which has been added to section 6 of the Crown Entities Act needs to be largely the same as new section 222Y given that they are meant to be equivalent provisions saying the same thing – one in the Education Act and one in the Crown Entities Act.	The amendments required to Schedule 6 are: (a) to remove the words "and its Crown entity subsidiaries (as applicable)" and replace them with "and its Council" (b) copy subsection (2) of new section 222Y into section 6 of the Crown Entities Act.
Section 223(1) of the Education Act	Section 223(1) states that the council of each institution may determine the programmes of study and training to be provided at the institution. This should be amended to reference the NZIST academic freedom provisions, and in particular the interactions with WDC functions.	Amend section 223(1) so that it cross references new section 222E(6).