Education Report: Cabinet approval to change the TEI governance provisions in the Education Amendment Bill

To: Hon Chris Hipkins, Minister of Education

Date: 21 May 2018

Priority: High

Security Level: In Confidence

METIS No: 1127692

DDI: S 9(2)(a)

Drafter: Tom Milton

DDI: N/A

Key contact and number: Ewan Delany

Round robin: No

Messaging seen by Communications team: N/A

Purpose of Report

This paper attaches a Cabinet paper seeking Cabinet approval to proposed changes to the tertiary education institution (TEI) governance provisions in the Education Amendment Bill (the Bill).

Summary

1 The Cabinet paper consists of:

   a. the recommendations included in the Education Report, Updated proposed changes to the TEI governance provisions in the Education Amendment Bill [METIS 1126395 refers], and

   b. our discussion with you on 21 May 2018 about exempting wānanga from the requirement to include staff and student members on their councils.

2 We recommend that you lodge the attached Cabinet paper with the Cabinet Office by Thursday 24 May 2018. This ensures the paper can be discussed at the Cabinet Business Committee on 28 May 2018, and Cabinet on 11 June 2018. This is necessary because Cabinet must approve the changes before the Ministry presents the Departmental Report for the Bill on 20 June 2018.
Recommended Actions

a. **agree** to sign and lodge the attached Cabinet paper, Education Amendment Bill: Proposed tertiary education institution governance changes by Thursday, 21 May 2018

   [Agree/Disagree]

b. **agree** that this Education Report is not proactively released until Cabinet has made a decision on whether to progress these changes

   *But it should be released when the Bill is reported back from Select Committee*

   [Agree/Disagree]

Andrea Jackson  
**Group Manager**  
Graduate Achievement, Vocations and Careers

Hon Chris Hipkins  
**Minister of Education**

21/05/2018
Annex 1 – Education Amendment Bill: Proposed tertiary education institution governance changes
In Confidence

Office of the Minister of Education
Chair, Cabinet Social Wellbeing Committee

Education Amendment Bill: Proposed tertiary education institution governance changes

Proposal
1 To seek approval to make proposed changes to the tertiary education institution (TEI) governance provisions that are included in the Education Amendment Bill (the Bill).

Background
2 It is Government policy to restore guaranteed places for staff and students on TEI councils. Cabinet agreed that the following policy proposals be included in the Bill, to amend the Education Act 1989 (the Act) so that:

2.1 TEI councils are required to have at least one council member who is a staff member employed at the institution that has been elected by their peers, and at least one council member who is a student enrolled at the institution that has been elected by their peers, as provided for in their constitution, and

2.2 the size of polytechnic councils increases from eight to ten members [CBC-17-0092 refers].

3 The Bill was referred to the Education and Workforce Committee on 15 February 2018. On 28 February 2018, the then-Chair of the Committee granted the Ministry of Education (the Ministry) permission to continue engagement with wānanga and polytechnics during the select committee process to discuss their perspectives on the proposed TEI governance changes. Through engagement with wānanga and polytechnics, I identified issues with the TEI governance provisions, which are mentioned in the sections below.

4 To date, the Ministry has received one submission on the TEI governance changes through the select committee process, which was in support of these changes. The Ministry understands there will be further submissions.

Proposed changes to the TEI governance provisions in the Education Amendment Bill
5 It is proposed that the Departmental Report include changes to the TEI governance provisions in the Bill. The following outlines the changes that require Cabinet approval.

It is proposed that wānanga be exempt from including staff and student members on their councils

6 Through consultation with the Ministry, wānanga advised that they opposed including staff and student members on their councils because it affected their ability to include council members who were competent in tikanga and te reo Māori, or who represented important groups, such as the founding iwi of a wānanga.
Te Wānanga o Raukawa (Raukawa) has also indicated that it has significant questions about its institutional form and governance arrangements, as part of its WAi2698 Treaty claim. TEI governance arrangements, as proposed in the Bill, may not be consistent with the relationship Raukawa seeks under the Treaty of Waitangi. The Ministry is seeking from Raukawa further understanding about its preferred approach. It is proposed that there should not be changes to wānanga governance arrangements until I have a better understanding of Raukawa's preferences.

This revised proposal promotes the active protection of mātauranga Māori. It also ensures that a wānanga can continue to include iwi representatives on their councils, which is critical to the principle of active protection of mātauranga Māori.

It is proposed to make a number of minor and technical changes to support the implementation of the proposal to guarantee elected staff and student members on TEI councils

9 It is proposed to amend the Bill to affirm in the Act that elected staff or student council members automatically meet the statutory knowledge, skills, and experience requirements.

10 It is also proposed to amend the Bill so that councils cannot:

10.1 by council statute specify who may be eligible to stand for an election amongst the staff and students of the institution, and

10.2 refuse to appoint a staff member or student who has been elected by their peers to be a council member.

11 The above proposal does not alter the provisions in section 171A and 222AA of the Act that outline the circumstances in which a person is disqualified from appointment as a council member.

12 These changes provide certainty and consistency between policy intent and the broader statutory governance arrangements. However this proposal limits a council’s institutional autonomy because councils will not be able to influence the election or appointment processes for student and staff members.

13 Councils would not be able to control the candidate selection process or veto the appointment of the successful candidate. This means councils cannot influence who the elected staff and student council members are.

14 Each council would still be responsible for administering the elections for staff and student council members, and appointing the successful candidate from the election process to the council. This will require each council to create council statutes establishing the relevant election and appointment processes.

It is proposed to provide councils with the flexibility to have both elected teaching and general staff members

15 It is proposed to provide TEI councils with the ability to either appoint:

15.1 one member of the teaching or general staff of the institution, who has been elected by the teaching and general staff of the institution, or
15.2 One member of the teaching staff of the institution who has been elected by the teaching staff of the institution; and one member of the general staff who has been elected by the general staff of the institution.

16 The Bill as drafted requires TEIs to appoint a staff member who has been elected by both general and teaching staff. TEI councils would not meet the Bill's requirements by appointing a general staff member and teaching staff member elected separately by the general and teaching staff, respectively. This particularly affects university councils because they typically utilise this practice.

17 This proposal removes the explicit requirement that the elected staff council member must be elected by both the general and teaching staff. This seeks to provide councils that already include both an elected general staff member and elected teaching staff member with the ability to retain their existing constitution. The proposal still ensures that all permanent staff members of an institution still have the ability to vote in an elected staff council member.

*It is proposed to amend the size and composition of some types of TEI councils*

18 It is proposed to amend the Bill so that individual polytechnic councils can have between eight to ten members (including between four to six council appointments), instead of requiring them to have ten members (including six council appointments). This provides individual polytechnic councils with flexibility to choose how to incorporate staff and student places.

19 It is also proposed to amend the Bill so that combined polytechnic councils can appoint up to 60 per cent of their members, instead of having an even balance of Ministerial and council appointments. This is in line with the policy intent for individual councils because it means a combined council can incorporate staff and students without removing existing members or adding additional Ministerial appointments. There are no statutory size restrictions for combined councils.

20 The table below compares the proposed size and composition of individual and combined polytechnic councils.

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<th>Number of council appointments compared with total council size (%)</th>
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<tr>
<td><strong>Council size</strong></td>
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*It is proposed that the Minister of Education seek nominations from TEI councils before making Ministerial appointments*

21 It is proposed to insert a new provision in the Bill so that the Minister of Education must seek nominations from a TEI council before making a Ministerial appointment. This seeks to affirm the relationship between the Crown and the council in a TEI. It also formalised
existing operational practice. The Minister would not be required to appoint a person who was nominated by a council.

22 The proposal provides greater clarity about the definition of consultation with a TEI council following consultation with the Tertiary Education Commission.

It is proposed to extend the transition period from six to 12 months

23 Some TEIs, particularly wānanga, indicated that the government did not provide councils with an appropriate transition period to incorporate the 2015 governance changes.

24 It is proposed to extend the transition period in which a TEI council must update their constitution from a maximum of six months to a maximum of 12 months. Councils would have another six months to run an election and appoint staff and student council members.

25 Extending the transition period does not preclude councils from updating their constitution before the end of the transition period. It seeks to minimise disruption for TEI councils so that they can still operate effectively during the transition period.

Consultation

26 The Ministry of Education has engaged with wānanga and polytechnics after receiving the select committee's permission to do so.

27 The Ministry of Education has consulted with the Tertiary Education Commission (TEC). The Department of Prime Minister and Cabinet has been informed.

Treaty of Waitangi implications

28 The proposals ensure that there are no statutory changes to wānanga governance arrangements until I have a better understanding of Raukawa's preferences as part of the WAI2698 Treaty claim. Existing TEI governance arrangements may not be consistent with the relationship Raukawa seeks under the Treaty of Waitangi.

29 The proposals ensure that wānanga can continue to include council members who were competent in tikanga and te reo Māori, or who represented important groups, such as the founding iwi of a wānanga. This promotes the active protection of mātauranga Māori.

Financial Implications

30 The proposals do not have financial implications.

Human Rights, Gender and Disability Implications

31 This proposals do not have human rights, gender or disability implications.

Legislative Implications

32 The proposals listed in this paper will require changes to the Education Amendment Bill.

Regulatory Impact Analysis

33 The Treasury granted the Ministry of Education an exemption from its Regulatory Impact Analysis requirements.
Publicity

34 Subject to Cabinet approval, I will advise the select committee of the proposed changes to the proposed TEI governance changes through the Education Amendment Bill's Departmental Report.
Recommendations

The Minister of Education recommends that the Committee:

1 agree that the Education Amendment Bill be amended so that:
   1.1 wānanga are exempt from the requirement to have elected staff and student members on their council
   1.2 the Education Act 1989 affirms that elected staff or student council members automatically meet the statutory knowledge, skills, and experience requirements
   1.3 councils cannot:
      1.3.1 by council statute specify who may be eligible to stand for an election amongst the staff and students of the institution
      1.3.2 refuse to appoint a staff member or student who has been elected by their peers to be a council member, except in relation to the existing statutory provisions outlining the circumstances where a person is disqualified from appointment as a council member
   1.4 councils can choose to appoint either:
      1.4.1 one member of the teaching or general staff of the institution, who has been elected by the teaching and general staff of the institution, or
      1.4.2 one member of the teaching staff of the institution who has been elected by the teaching staff of the institution; and one member of the general staff who has been elected by the general staff of the institution.
   1.5 individual polytechnic councils can have between eight to ten members (four to six council appointed members), instead of requiring them to have ten members
   1.6 combined polytechnic councils must have between 50 and 60 per cent of members appointed by the council, instead of 50 per cent
   1.7 the Minister of Education is required to seek nominations from a TEI council before making a Ministerial appointment to a TEI council
   1.8 the transition period for councils to update their constitution is 12 months

2 note that the changes to the Education Amendment Bill included in Recommendation 1) be progressed through the Departmental Report.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education