

Departmental Disclosure Statement

Industry Training and Apprenticeships Amendment Bill
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2013 No 151

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 September 2013

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Part One: General Policy Statement

The Government reviewed industry training over the period 2011 to 2012 to consider the extent to which the industry training system delivered the skills to maximise the productive potential of New Zealand industries and the employment and earnings of people in the workforce. The review found that changes were needed to ensure the industry training system, which includes apprenticeship training,—

- is well-connected to industry, with high employer buy-in; and
- is educationally sound; and
- is coherent with the wider tertiary system; and
- delivers value for money for employers and the Government.

The Industry Training and Apprenticeships Amendment Bill (the Bill) makes the amendments required to implement the findings of the review. The public policy objectives of the Bill are to—

- establish a comprehensive apprenticeship system that provides the same level of support to all apprentices, regardless of age; and
- focus Industry Training Organisations (ITOs) on 2 key functions: setting skill standards for their industries and arranging training; and
- clarify the functions and powers of the New Zealand Qualifications Authority (NZQA) in relation to ITOs; and
- include criteria relating to quality assurance in the process by which the responsible Minister recognises an organisation as an ITO.

The Bill makes substantive amendments to 3 statutes. It amends the Industry Training Act 1992, repeals the Modern Apprenticeship Training Act 2000, and amends the Education Act 1989 in relation to the NZQA's powers to make rules and charge fees.

Apprenticeship training

In order to locate the critical aspects of law relating to industry training and apprenticeships within 1 statute, the Bill repeals the Modern Apprenticeship Training Act 2000 and amends the Industry Training Act 1992 so that it—

- defines apprenticeship training and removes the existing age-restriction for apprenticeship training; and
- defines the functions of the Tertiary Education Commission (TEC) in relation to apprenticeship training; and
- prescribes the duties and responsibilities of organisations, including ITOs, that arrange apprenticeship training; and
- allows the responsible Minister to issue a code of practice for apprenticeship training, to set guidelines for organisations that arrange apprenticeship training, employers, and apprentices. This code would be a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

The responsibilities of ITOs

The Bill removes ITOs' skills-leadership function. This function currently entails identifying current and future skill needs in an industry, developing strategic training plans, and promoting training that will meet those needs to employers and employees.

Removing ITOs' skills-leadership function allows other organisations, such as industry associations, to take a greater role in communicating demand and supply of skills to government agencies. However, ITOs can continue this role if they wish.

The Bill specifies that ITOs' core activities are to develop and maintain—

- skill standards to be used in the assessment of trainees in industry training; and
- arrangements for the delivery of industry training that will enable trainees to achieve the relevant listed skill standards.

The Bill requires ITOs to have particular regard to the needs of Māori and other priority population groups, when developing and maintaining arrangements for the delivery of industry training. ITOs will continue to be required to make arrangements for the collective representation of employees in their governance.

Under section 10(2)(b) of the Industry Training Act 1992, ITOs may not seek funding to deliver training. This prohibition will continue, but the Bill clarifies that ITOs are not permitted to own, or be beneficial owners of, registered private training establishments. Otherwise an ITO could have a conflict of interest, and direct trainees to the training establishment in which it has an interest, rather than offering employers the training that best meets business and trainee needs.

Clarifying the functions and powers of the NZQA in relation to ITOs

The quality assurance framework for ITOs is currently weaker than for other tertiary education organisations. The framework currently lacks a graduated regime of regulatory sanctions to address inadequate performance by an ITO in performing its functions or meeting quality assurance requirements. To address this, the Bill gives the NZQA powers to—

- prescribe quality assurance requirements for ITOs, in the form of rules made under section 253 of the Education Act 1989; and
- issue quality assurance improvement notices to address any poor practice by ITOs that is leading to poor educational outcomes; and
- issue compliance notices in response to non-compliance with a quality assurance improvement notice or with prescribed quality assurance requirements; and
- recommend that the Minister impose a new condition on an ITO's recognition, or amend an existing condition, if an ITO has not complied with a quality assurance improvement notice or a compliance notice.

In order to carry out its new powers in relation to the quality assurance of ITOs, the NZQA gains additional functions to—

- promote, through the exercise of its powers, compliance by ITOs with the prescribed quality assurance requirements; and
- monitor the quality and results of an ITO's moderation system and procedures for vocational training.

As the NZQA operates on a cost-recovery model, the Bill allows the NZQA to charge ITOs fees for its new quality assurance activities. The Bill also allows the NZQA to charge ITOs an annual fee to recover the costs of carrying out quality assurance monitoring and compliance activities in relation to industry training generally.

Including quality assurance criteria in the recognition process for ITOs

Section 6 of the Industry Training Act 1992 requires the responsible Minister to consult the NZQA before recognising an ITO. However, the Act does not specify on what matters the NZQA must be consulted and does not require an organisation to satisfy any particular quality assurance standards in order to be recognised as an ITO.

Furthermore, the current regulation of ITO recognition only allows for the responsible Minister to provisionally recognise an ITO, or cancel its recognition, in response to unsatisfactory performance.

These regulatory tools are not sufficiently responsive to guarantee that any issues with organisational quality will be addressed promptly.

The Bill amends the Industry Training Act 1992 so that—

- the responsible Minister must consult the NZQA on whether an applicant organisation has the capability to meet the NZQA's prescribed quality assurance criteria for ITOs; and
- the responsible Minister may impose or amend any conditions on an ITO's recognition; and
- ITOs must comply with any conditions on their recognition, and with any applicable prescribed quality assurance criteria.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Reports produced as part of the policy review of industry training, including consultation documents and the final Cabinet paper, are available on the Ministry of Education website: http://www.minedu.govt.nz/NZEducation/EducationPolicies/TertiaryEducation/PolicyAndStrategy/ReviewIndustryTraining.aspx	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<i>Proposals to improve the performance of industry training.</i> The Ministry of Education. This RIS is accessible at: http://www.minedu.govt.nz/theMinistry/PublicationsAndResources/RIS.aspx	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Treasury advised that the RIS did not meet the threshold for assessment by the RIA team.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
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(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Analysis of the potential costs and benefits of decisions in response to the policy review of industry training, including the policy to be given effect by this Bill, is available in the paper that went to Cabinet finalising the changes to industry training: http://www.minedu.govt.nz/NZEducation/EducationPolicies/TertiaryEducation/PolicyAndStrategy/ReviewIndustryTraining/FinalDecisionsIndustryTrainingCabPaper.aspx</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Information on the NZQA's proposed approach to quality assurance criteria can be found here: http://www.nzqa.govt.nz/assets/About-us/Consultations-and-reviews/ITO-recognition-quality-assurance-criteria/ITO-recognition-criteria-consultation.pdf.</p> <p>This consultation paper explains how the quality assurance criteria fit within the evaluative quality assurance framework for ITOs, and provides information on the proposed compliance monitoring system, incentives and sanctions.</p> <p>The external evaluation and review process will continue to be the NZQA's principal tool for evaluating ITOs' performance. However, the changes in the Bill will enable the NZQA to take a stronger role in monitoring risk and compliance and securing compliance when there are quality issues and concerns. The NZQA already has a Sector Relationship Management unit that provides sector advice and support, and this unit's ambit will be extended to the ITO sector. Furthermore, the NZQA has sought feedback from ITOs on draft quality assurance criteria for ITOs (refer to the document linked to above).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

During the policy review of industry training and development of the Bill, officials have not identified any international obligations that are relevant to the policy being given effect by this Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

During the policy review of industry training and development of the Bill, officials have not identified any inconsistencies between the policy being given effect by this Bill and the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry of Justice's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>As part of the policy review of industry training, extensive consultation has been undertaken with employers and industry associations, ITOs, Modern Apprenticeships Coordinators (MACs), tertiary education providers and other interested parties, both before proposals were developed, and on the proposals.</p> <p>Feedback was received through employer interviews and a survey, submissions to a discussion paper, and consultation on proposals to improve the performance of the Government's investment in industry training. A total of 332 submissions from employers (188), industry associations (53), ITOs (23), tertiary providers (25), non-ITO MACs (9), and other submitters (32) were received during consultation on the proposals. All the background pages and consultation documents for the review are available on the Ministry of Education's website:</p> <p>http://www.minedu.govt.nz/NZEducation/EducationPolicies/TertiaryEducation/PolicyAndStrategy/ReviewIndustryTraining.aspx</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	[YES/NO]
<p>The NZQA's new powers have been analysed to ensure that they form a coherent framework that is consistent with its existing powers under the Education Act 1989. Information on the NZQA's proposed approach to quality assurance criteria can be found here:</p> <p>http://www.nzqa.govt.nz/assets/About-us/Consultations-and-reviews/ITO-recognition-quality-assurance-criteria/ITO-recognition-criteria-consultation.pdf</p> <p>The provisions relating to transition arrangements for Modern Apprenticeship Coordinators have been assessed in conjunction with the Tertiary Education Commission (the responsible operational agency) to ensure that they are workable, complete, and consistent with existing contractual arrangements.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
The Bill gives the NZQA the power to charge fees to ITOs to recover the costs of its new quality assurance powers.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill includes provisions empowering the making of deemed regulations.</p> <p>Under section 253 of the Education Act 1989 the NZQA may make rules, which are regulations for the purposes of the Regulations (Disallowance) Act 1989.</p> <p>Clause 24 of the Bill amends the Education Act 1989 to give the NZQA the power to make rules prescribing quality assurance requirements for ITOs.</p> <p>Clause 15, new section 11F, of the Bill will give the NZQA the power to make rules under section 253 of the Education Act 1989 prescribing the amount that every ITO is required to pay to the NZQA as an annual fee. This will enable the NZQA to recover the costs of its additional functions set out in clause 16, new section 13A(a), of the Bill.</p> <p>The Bill will enable the responsible Minister to issue a code of practice, by notice in the Gazette, which sets guidelines about the responsibilities of organisations that arrange apprenticeship training, employers, and apprentices, in relation to apprenticeship training (clauses 13F refers). Clause 13I of the Bill specifies that this code would be a disallowable instrument for the purposes of the Legislation Act 2012.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

