TEU | TERTIARY EDUCATION UNION
TE HAUTŪ KAHURANGI

8 February 2020

The Hon. Chris Hipkins
Minister of Education
By e-mail attachment

Tēnā koe Minita,

RoVE and Privatisation

We believe that privatisation has been a key factor in undermining both the efficacy of New Zealand's vocational education system and the viability of polytechnics. Private providers of vocational education and training:

- Add significantly to competition for students and the (shrinking) funding that comes with them;
- 'Cherry pick' provision, competing particularly in the most profitable areas; and,
- Undercut public providers in the training they deliver to students, in their operations and facilities, and in the terms and conditions of staff.

To some extent, this applies to Private Training Establishments (PTEs) that are not run for profit as well as those that are. ~~The Minister has~~You have made clear his view that there is a role for industry-based PTEs in filling gaps in the provision of training left by polytechnics and wānanga. We accept that there is such a role but note that those gaps have increased in number and size as polytechnics have cut back courses under financial strain.

In this letter we attempt accurately to describe the risk that one of the central intentions of the Reform of Vocational Education will be not be realised, and make recommendations aimed at minimising this risk. The intention in question is that of the function of ITOs in arranging work-based training and apprenticeships (which includes arranging campus-based block courses and support and assessment services for work-based ākonga/learners) transfer mainly to the new unified national provider, 'NZIST'. The risk is that this process will be short circuited by ITOs seeking to continue some degree of control and interest over this function into the future. This could be achieved by ITOs transferring assets – and then staff – to PTEs that they have established or in which they have taken an interest.

We see two main mechanisms by which this could occur:

1. There are enabling mechanisms – and insufficent safeguards - in the RoVE legislation.
2. ITOs could alienate assets to intermediary trusts or other vehicles prior to 1 April when the legislation is due to come into effect and then proceed, in a new form, to establish or invest in – and operate – PTEs.

The net assets of ITOs vary, but may be substantial – e.g. $14M for Skills Org., $20 M for Primary ITO, $25M for BCITO. The Industry Training and Apprenticeships Act 1992 prohibits an ITO from operating or having any interest in a provider of education and training. This has been flouted by some ITOs insofar as they have themselves provided training, to some extent or another. More generally, they claim that underfunding of work-based training has forced them to move away from contracting polytechnics to provide training towards lower cost options including PTEs and contracting trainers directly.

The eleven existing ITOs become Transitional ITOs on 1 April 2020, when the VET Reform Bill comes into force. They are required by the legislation to produce a transition plan (deadline circa 1 July 2020), with guidance from TEC, describing how they will:

- transfer responsibility for their function in setting industry skill standards to one or more WDCs;
- transfer responsibility for arranging work-based training and apprenticeships to one or more providers specified by the Tertiary Education Commission;
- transfer assets of the (transitional) ITO to one or more Workforce Development Councils or to providers specified by the Commission. (new)

(Schedule 1, clause 51)

Presumably, the plan must also describe how they will:

- transfer responsibility for their function in providing employers with brokerage and advisory services to one or more WDCs – services that must be approved by the Tertiary Education Commission,

although this is not currently specified in the legislation.

The Minister may direct that funding be provided to a provider to support work-based training on behalf of employers if it will facilitate the successful transfer of work-based training and apprenticeships from ITOs to providers (Schedule 1, clause 52).

Assets of ITOs may be transferred to WDCs (although such a plan is not part of their transitional plan according to clause 51 – an oversight perhaps), as per Schedule 1 Clause 55, but the Minister can't require such a transfer under clause 51.

The most important part of the legislative framework, however, is subclause 3 of Clause 47 of Schedule 1 which negates the existing prohibition of ITOs from operating or having an interest in any provider of training. This new clause allows transitional ITOs to operate registered PTEs, once the transitional ITO has transfered all its industry standard setting functions to one or more WDCs.

The questions now arise:

- Where are the assets of ITOs likely to go?
- And where are training advisors and related staff in ITOs who are currently engaged in the developing and maintaining of training arrangements and supporting of work-based ākonga/learners likely to go?

There are a number of reasons for thinking that, other things being equal, the assets of ITOs and the training advisors in ITOs who are currently engaged in the developing and maintaining of training arrangements and in supporting work-based ākonga/learners more generally are likely to go to PTEs connected to transitional ITOs. The reasons are:

1) PTEs are an attractive place for former ITOs to put their assets, where the same directors and managers may have control over them. Investment from other sources would also be possible in these PTEs – and there is nothing prescribing that they be not-for-profit.
2) Such PTEs are an attractive place for training advisors and related staff currently in ITOs to find new employment or contracts for services (those that don't go back to their trade):
    a) It may seem the least radical change for them, with familiarity and continuity in operational arrangements and working conditions.
    b) They may be offered familiar or attractive terms and conditions of employment or terms and conditions in contracts for services. They may be offered attractive terms of transition – signing bonuses if they have been offered and refused employment at NZIST and are thus unable to receive redundancy pay. They may receive some form of redundancy compensation if they have not been made such an offer as well as continuity of service and so on.
3) Clause 482 (1) (i) of the VET Reform Bill requires that 'brokerage and advisory' services to employers around work-based training transfer to WDCs. This certainly provides an avenue for existing interests in (transitional) ITOs that go to WDCs to serve the existing interests of ITOs that transfer to one or more PTEs.
4) The situation of training advisors looking to move from an ITO to a provider would not be constrained with respect to a PTE as it is by Subpart 3 clause 56A (new) which applies if the activities of an ITO in developing and maintaining training arrangements are transferrred to an NZIST subsidiary or wānanga. In the latter case redundancy payments would not be allowed, nor could (apparently) attractive contracts for services be offered.
5) PTEs can undercut public provision with lower quality services and employment in a wide range of respects. None of the requirements of public provision, especially as contained in the NZIST Charter, apply to them.

The main obstacle to this shortcircuit – a short circuit that would obviate the intended role of NZIST – is Clause 51 (1) (a) (iii) which states that the transitional ITO's transition plan must provide for the transfer of the assets of the transitional ITO to any one or more providers **specified by the commission**.

However, we are concerned that the Commission may not feel, now or in the future, that it has the Ministerial mandate or legislative authority to set criteria for the specification of providers that maximise the opportunity for NZIST, in accordance with the intention of the reforms, if that intention is not sufficiently clearly expressed in the legislation or relevant regulation. Too much strain will fall on the attitude and authority of the Commission.

With regard to the second mechanism identifed above – ITOs transferring assets to intermediary bodies prior to 1 April 2020 – we note the following paragraph from the Ed Insider of 7 February, expressing a view that has no doubt already come to your attention:

The Minister will no longer be able to set a condition over whether transitional ITOs (TITOs) apply their assets to a WDC (but could direct the assets be used elsewhere). TEC will have the power to direct how TITOs' assets are allocated to a provider or providers under a transition plan. Very unusually, the explanatory notes in the select committee's report back did not cover either of these issues, which are not minor drafting changes. We reiterate our comment on the original Bill that ITOs that wish to utilise their surplus assets in a specific way should fully implement those decisions by 31 March 2020 – after that date they will have limited freedom of action under the proposed legislation.

Our recommendations:

1. Transitional ITOs must **not** be allowed to have an interest in, or operate PTEs, in accordance with the law as it currently stands. The proposal from select committee to include the new clause Schedule 1. (47) (3) should be rejected.
2. The functions of ITOs in developing and maintaining arrangements for work-based training and apprenticeships should be allowed only to transfer to IST subsidiaries (or IST itself) or wānanga.
3. PTEs should be required to meet the same standards for programmes and courses, for operations, for the treatment of students and for the engagement and wellbeing of staff as those set out in the Charter for NZIST.
4. One way to require that PTEs meet the same standards as those required of NZIST – which may be only a partial mechanism – is via WDCs, utilising their power to endorse programmes and the requirement that they work collaboratively with providers.

   Proposed amendment to Clause 485 of RoVE Bill.

   485 (2) In performing its functions, a workforce development council -
   c) must, to the extent that is necessary or desirable in the circumstances, work collaboratively with -
   - **(i) providers and, with regard to all providers, require the observance of all elements of the NZIST Charter (Schedule 22 of the Act)**
   - **(ii) wānanga, and respect the special character of wānanga under section 162(4)(b)(iv)**

   Re-number subsequent clauses

Thank you for your attention to these matters. We look forward to your response.

Nāku noa, nā

Sharn Riggs
National Secretary, TEU

Michael Gilchrist,
National President, TEU