

Regulatory Impact Statement

Proposals to improve the performance of industry training

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education.

The Minister for Tertiary Education, Skills and Employment initiated a policy review of the industry training system in 2011 due to concerns about the quality and evenness of industry training performance. Government expenditure on industry training more than trebled between 2000/01 and 2009/10. However, performance remained very low. The Minister proposed a package of changes to Cabinet to improve the performance of industry training and address issues highlighted in the review. The changes that require legislative amendment are:

- consolidate modern apprenticeships into New Zealand apprenticeships
- clarify the roles of Industry Training Organisations (ITOs)
- open up the skills leadership function to non-ITOs
- improve quality assurance mechanisms.

There were three broad regulatory options that would enable this package of changes to be implemented. This analysis assesses each option against whether the option chosen would best implement the package of proposed policy changes.

Option one would repeal industry training-specific legislation and instead regulate ITOs exclusively through the Education Act 1989 and use non-regulatory levers to implement changes. However, our analysis suggests that repealing the Industry Training Act 1992 would counteract some of the review's findings and that additional legislative measures are required to adequately implement some of the agreed changes. Option two would take a more prescriptive approach by amending the current legislation to prescribe more aspects of industry training. This is not favoured as more prescription would be too constraining and could hinder educational performance through reducing responsiveness and flexibility, which would undermine the review's findings. Option three would entail regulating to provide consistency and certainty over quality and accountability, while using non-regulatory measures to ensure responsiveness to industries needs and maximising flexibility. Option three would also allow the Government to set conditions on investment to match to its objectives for investing. Option three is the preferred option as this would best implement the policy changes.

Option three will result in slightly higher compliance costs for ITOs. However, we consider this is justified because of the system-wide improvements this will bring.

The proposals will not impair private property rights, market competition, or the incentives on businesses to innovate and invest, or override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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March 2013

Status quo

Industry training is government-subsidised workplace training that leads to qualifications and is targeted at entry-level and low-skilled workers. Industry training is supported by Industry Training Organisations (ITOs) that are industry-owned bodies.

Rationale for Government funding industry training

Government provides 70% of the cash cost of industry training in order to address specific market failures.

Lower skilled workers (and occupations) tend to have lower rates of training. Public subsidies (focused at levels 1 to 4) are intended to address the lower private investment and increase participation at these levels, and hence address equity concerns.

The Government also subsidises industry training as individual firms often prioritise training that is specific to the business over investment in general skills. This is particularly likely for small businesses, which are less able to structure career advancement opportunities that allow the firm to retain staff and capture the benefits of the transferable skills from training.

Training has spill-over benefits for an industry (by providing a pool of skilled workers) and for society (the improved employment outcomes and flow-on effects such as improved health and child development and lower social welfare costs). Public subsidies are also intended to address these externalities, and hence ensure that there is not net under-investment in training.

Why industry training is regulated

Government regulates the establishment of ITOs to ensure that there is a coherent industry body providing the qualifications design and unit standards for each industry that chooses to participate. ITOs provide an efficient mechanism for aggregating employers and purchase training, especially in an economy mainly consisting of small and medium enterprises.

The availability of common, transferable qualifications and a training organisation considering the needs of the industry as a whole is akin to a 'public good' which is unlikely to emerge without government intervention, particularly in industries with a high proportion of small firms. There are positive externalities associated with encouraging higher levels of education, such as improved health and social outcomes.¹ Education in the workplace reaches people who may be unlikely to enrol at tertiary providers and it takes place in a familiar setting. It therefore provides an opportunity for educational achievement for people who may have had limited success in school or provider-based education.

If there was no government investment in, or regulation of, industry training, employers would still undertake training, but it is likely that it would be atomised into smaller subsets and that it would be less likely to result in qualifications. This could damage the portability of skills within the labour market, as training would be variable between employers and the skills gained would be less transparent. It would also make the pathways for learners, particularly young learners, more opaque.

In addition, industry training is regulated to ensure there is consistency and certainty over the quality of qualifications and to provide appropriate accountability for public funding. The practical skills of many occupations are most effectively gained on the job with some off-job learning to provide the underpinning theory. Industry training incentivises the

¹ OECD (2006). *Education at a Glance 2006*, p157.; Ministry of Education (2009) *Cross-Strategy Indicators: Tertiary Education Strategy Monitoring 2009*, p13; Hodgen, Edith (2007) *Competent Learners @ 16: Competency levels and development over time – Technical report*, p 20.

credentialisation of these skills through nationally recognised qualifications. Completing nationally-agreed skill standards and qualifications increases labour market flexibility for employees and reduces transaction costs for employers making hiring decisions, as well as helping to address informational asymmetries in the marketplace via transparency of skills.

Current regulatory environment

Industry training is regulated through three Acts of Parliament: the Industry Training Act 1992, the Modern Apprenticeship Training Act 2000 and the Education Act 1989.

The Industry Training Act 1992 set out the recognition process for ITOs and the statutory roles of ITOs: setting skills standards for their industries, arranging training towards those skill standards, and providing leadership within their industries on matters relating to skills and training. These roles are activities for which ITOs may receive funding.

The Modern Apprenticeship Training Act 2000 was introduced to address under-representation of young people in industry training and encourage the uptake of apprenticeships. This Act provides for additional support to young people (aged 16 to 21 when they start their programme), through Modern Apprenticeship Co-ordinators (MACs)² who provide advice and mentoring to the Modern Apprentice and their employer, in programmes at levels 3 and 4 on the New Zealand Qualifications Framework.

Part 20 of the Education Act 1989 sets out the New Zealand Qualification Authority's (NZQA) role of approving programmes for ITOs and its quality assurance functions within industry training. Part 13A of this Act provides the mechanism for the Tertiary Education Commission (TEC) to fund ITOs through 159L funding determinations. The Act requires that funding mechanisms for ITOs are approved by the Minister and specifies the type of conditions that can be attached to funding determinations. It does not prescribe the exact funding conditions except in a few cases such as for information provision.

Problem definition

The Minister for Tertiary Education, Skills and Employment initiated a policy review of industry training in 2011 to take a fundamental look at the system and ensure it is achieving the best value for money.

Issues with industry training which led to the review

The review was initiated due to concerns about the quality and evenness of industry training performance. Government expenditure on industry training more than trebled from \$64 million in 2000/01 to \$204 million in 2009/10. In 2011, there were approximately 144,000 trainees and apprentices enrolled, including 14,300 Modern Apprentices, compared to an average of 25,000 per annum before 1992. However, performance, as measured by qualification completions and credit attainment, has remained very low. Not even one third of trainees achieved a qualification five years after starting their industry training programme. Moreover, an average of 53% of industry trainees and 36% of Modern Apprentices achieved no credits between 2000 and 2010, despite receiving government funding. In 2010, the TEC found that 96,831 people funded in 2008 (53% of all reported trainees) and 100,801 people funded in 2009 (54% of all reported trainees) did not earn a single credit, even though the ITOs were being paid training subsidies.

² MACs may be an ITO, a tertiary provider, a group training scheme or an independent organisation.

There were also other concerns about the ease of transitions between provider-based and work-based learning, and whether the current role of ITOs best supports formal industry training to meet the needs of the economy.

Problems with industry training found by the review

The review looked at the history of industry training, vocational training systems in other countries and the performance of the New Zealand industry training system. The review highlighted a number of issues currently hindering the performance of industry training:

- Industry training is highly variable in terms of the level of service to employers and trainees, connection to industry, and performance.
- Apprenticeship training within the industry training system is relatively underfunded, resulting in high fees to employers and risking the quality of the theory component of apprenticeships.
- Tensions between ITOs and tertiary providers have contributed to the proliferation of qualifications and hinder easy transitions between sectors for learners.
- The Modern Apprenticeship scheme lacks accountability. MACs are not responsible for completions and MAC contracts are generally rolled over from year to year.

Objectives

The industry training system should support employees to gain industry-relevant qualifications that improve their long-term labour market prospects, and that contribute strongly to meeting the skill needs of employers and contribute to Government's wider economic development goals.

Accordingly, any changes to industry training should ensure the industry training system is:

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

Regulation is only one lever to influence change. Any changes would also consider ways to improve industry training performance through other levers such as the TEC's performance and accountability criteria.

Regulatory impact analysis

In order to address the issues highlighted in the review and achieve the objectives stated above, the Minister proposed a number of changes to the Cabinet Business Committee [CBC Min (13) 1/5]. These changes were as follows:

- consolidate modern apprenticeships into New Zealand apprenticeships
- introducing a sustainable funding regime for New Zealand Apprenticeships and other industry training
- clarify the roles of ITOs
- undertake an "Apprenticeships Re-boot" initiative to increase the number of apprentices
- increase competition by allowing employers direct access to industry training funding
- open up the skills leadership function to non-ITOs
- improve quality assurance mechanisms.

The changes for which regulation requires consideration are:

- consolidate modern apprenticeships into New Zealand apprenticeships
- clarify the roles of ITOs
- open up the skills leadership function to non-ITOs
- improve quality assurance mechanisms.

The other changes are being implemented using existing mechanisms. There are three broad regulatory options that would enable this package of changes to be implemented.

Option one: regulating industry training exclusively through the Education Act 1989

The first option would repeal industry training-specific legislation and instead regulate ITOs exclusively through the Education Act 1989. Non-regulatory levers, such as tertiary funding and the investment plan process, would be used to implement changes. ITOs would essentially be treated the same as any other tertiary educational organisation. This would involve:

- clarifying ITOs' roles through the investment plan process
- repealing the Industry Training Act 1992 and the Modern Apprenticeship Training Act 2000
- amending the Education Act 1989 to expand sections relating to ITOs or include new sections on the regulation of ITOs
- relying on recent amendments to the Education Act 1989, that have strengthened and clarified the NZQA's role in the quality assurance of industry training, to address quality assurance concerns.

Clarifying ITOs' roles through investment plans that are agreed between ITOs and the TEC would potentially reduce transaction and compliance costs by removing recognition requirements. This would also increase flexibility to make any future changes to the roles of ITOs and the recognition process.

However, repealing the Industry Training Act 1992 would counteract the review's findings on the need for greater accountability. In the tertiary system, agencies' roles and functions are established under the Education Act 1989 or, in the case of ITOs, the Industry Training Act 1992. Defining ITOs' roles through investment plans would be unprecedented as roles of all other tertiary organisations are defined in legislation. This would reduce the level at which decisions are taken over filling an industry representative role and create a risk that ITOs would not be subject to an appropriate level of scrutiny. This would also reduce certainty and transparency over ITOs' functions and the recognition process.

There are other potential problems from removing specific legislation for industry training. ITOs are significantly different from other providers in the tertiary sector as they arrange training and set standards, but are prohibited from delivering training. ITOs are prohibited from delivering training because for one organisation to set standards for industry, arrange and deliver training would create a conflict of interest reducing competitive tension in the system. Without specific legislation for industry training, it is unlikely ITOs could be restricted from delivering training. It is also unclear what mechanism would determine responsibility for setting industry standards as industry training is industry-led, with ITOs owned by their industries.

One way of introducing a fully integrated apprenticeship scheme would be through repealing the Modern Apprenticeship Training Act 2000. Apprenticeships, as a particular type of industry training, could be covered by regulation of the industry training system generally.

Some of the issues the review highlighted with quality assurance are due to the lack of clarity over the NZQA's role in the quality assurance of industry training and its limited levers it possesses for direct intervention. As part of the recognition process of ITOs, the Minister

must consult the NZQA, but the Industry Training Act does not specify what the NZQA provides advice on or the quality assurance criteria that ITOs must meet.

Recent amendments to the Education Act 1989 have extended powers that the NZQA has for other tertiary education organisations to ITOs – such as the ability to access information and place conditions on programme approvals and issue compliance notices. The NZQA also gained new functions to set statutory rules for the approval of ITO programmes of training and to make rules for standard-setting bodies and the moderation of assessment. Therefore, one option for addressing concerns over quality assurance mechanisms is to make no change and to simply rely on the new powers granted to the NZQA as being sufficient to address past problems.

However, the recent amendments to the Education Act 1989 do not clarify the role of the NZQA in recognising ITOs. Clarifying the role of the NZQA in the recognition process is important as it is vital to have clear roles and criteria guiding the establishment of ITOs. Therefore, relying on the Education Act 1989 without further amendment to address quality assurance concerns raised by the review would not be sufficient to appropriately strengthen quality assurance mechanisms.

While there are some advantages to regulating industry training exclusively through the Education Act 1989, this option is not recommended as repealing the Industry Training Act 1992 would not adequately implement changes.

Option two: a more prescriptive approach

An alternative would be to take a more prescriptive approach by amending current legislation to precisely prescribe important aspects of the industry training system. For example, under option three, New Zealand Apprenticeships would be broadly defined in the Industry Training Act 1992, but the level of prescription could be increased to include apprenticeship requirements, such as the requirement that a New Zealand Apprenticeship will result in a New Zealand qualification at level 4 comprising a minimum of 120 credits, that currently sit outside of legislation.

This option is not recommended, as more prescription would be too constraining and could hinder educational performance through reducing responsiveness and flexibility, which would undermine the review's findings. Given that the review found the industry training system works relatively well, more prescription would be a disproportionate response to the review's findings. A greater focus on prescription would also risk focusing the system on process, rather than outcomes.

Option three: a mixed model of regulatory and non-regulatory measures

The option we recommend is to regulate when necessary to provide greater consistency and certainty over quality, while using non-regulatory measures where possible to ensure responsiveness to industry's needs while maximising flexibility and educational performance.

Non-regulatory measures can be utilised where possible, such measures to increase performance, to give effect to the changes needed to improve the industry training system. Addressing the underfunding of apprenticeship training and improving performance expectations for ITOs would continue to be administered through investment plan guidance and ministerial funding determinations, as this would provide flexibility and responsiveness to changing conditions. More competitive tension will be introduced into the system by allowing employers direct access to the industry training fund to incentivise ITOs to provide excellent service to employers and trainees. Uptake of apprenticeships will be encouraged by the Reboot initiative and increases in apprenticeship funding.

The regulatory measures would involve:

- clarifying ITOs' roles by amending the Industry Training Act 1992

- opening up skills leadership to non-ITOs organisations through removing the statutory requirement for ITOs to provide skills leadership
- amending the Industry Training Act 1992 to give the NZQA a formal role in the recognition of ITOs and address gaps in the quality assurance framework
- repealing the Modern Apprenticeship Training Act 2000 and amending the Industry Training Act 1992 to introduce an integrated apprenticeship scheme.

As ITOs roles are currently defined in legislation, it is appropriate to clarify their roles through amending the Industry Training Act 1992, rather than via investment plan guidance. Clarifying the roles of ITOs through legislation will signal to ITOs to focus on the activities they do best - arranging training and standard setting for their industries, improve service and performance of ITOs and encourage industry to assume a role in skills leadership. ITOs could also continue to undertake this role if they so wished. Using legislation to define roles of ITOs will also ensure they are accountable to an appropriate level of scrutiny.

The most effective way of opening up skills leadership to non-ITOs organisations is to remove the statutory requirement for ITOs to provide skills leadership as this provides disincentives for other organisations to take a role in skills leadership. Alternatively, it would be possible to amend the current legislation to give non-ITO organisations as well as ITOs a skills leadership function. However, as ITOs would still have a skills leadership role defined in legislation this could create potential problems in the accountability and enforcement of skills leadership.

Amending the Industry Training Act 1992 to give the NZQA a formal role in the recognition of ITOs and address gaps in the quality assurance framework has many advantages. This would acknowledge the importance of organisational performance in producing quality educational outcomes and address the current lack of specificity about the NZQA's role in this process. Furthermore, it would strengthen recent improvements in the role the NZQA has in the quality assurance of ITOs, which would help to improve the educational quality of industry training. This may mean somewhat higher compliance costs for ITOs, but additional compliance would be proportional to performance.

As some apprenticeships are defined in legislation (Modern Apprentices) and others are not (all other industry training apprentices), introducing a fully integrated apprenticeship scheme would require either amending the Modern Apprenticeship Training Act 2000 to integrate all apprentices into Modern Apprenticeships or repealing the Modern Apprenticeship Training Act 2000 and bringing apprenticeship training under the Industry Training Act 1992.

It makes more sense to regulate apprentices through the Industry Training Act 1992, rather than amending the Modern Apprenticeship Training Act 2000 to introduce a fully integrated apprenticeship scheme for the following reasons. Modern Apprentices have only accounted for approximately 10% of all industry trainees over the last five years. It would not make sense to integrate the majority of apprentices into a scheme that is currently undertaken by only a minority of apprentices. Furthermore, there have been problems with the performance of the Modern Apprenticeship scheme due to lack of accountability, as MACs are not responsible for completions and MAC contracts are generally rolled over from year to year.

We recommend this option as this option implements the policy changes with the least regulation that is necessary, while maintaining system flexibility. Taken collectively, the various aspects of this option would ensure there is a stable environment for industry to invest in and that there is appropriate accountability over Government's investment in industry training. In addition, this option provides the best method of raising educational achievement and provides the ability for the Government to set conditions on its investment to match to its objectives for investing.

Consultation

As part of the review, extensive consultation on industry training has been undertaken with employers and industry associations, ITOs, MACs, tertiary education providers and other interested parties.

Feedback was received through employer interviews and a survey, submissions to a discussion paper on “Key roles in industry training”, and consultation on the “Proposal to improve the performance of the Government’s investment in industry training”.

The results from the employer interviews, survey and discussion paper informed the development of a consultation paper outlining proposals to improve the performance of industry training. Consultation on this document was undertaken in August and September 2012. A total of 332 submissions were received from employers (188), industry associations (53), ITOs (23), tertiary providers (25), non-ITO MACs (9), and other submitters (32).

All the background pages and consultation documents for the review are available on the Ministry of Education’s website.³

Consultation on policy changes

The TEC, Ministry of Business, Innovation and Employment (MBIE) and the NZQA were all consulted on, and provided advice about, policy changes to industry training.

Consultation on legislative changes

The TEC, MBIE, the Treasury and the NZQA will be consulted on legislative changes. An implementation advisory group, made up of experts from industry, ITOs, MACs and tertiary providers, has been established, in part, to advise the Minister on the new regulatory settings.

Conclusions and recommendations

The preferred option for change will help to improve the educational quality of industry training, increase engagement with industry and result in better value for money for the Government’s investment in industry training.

There will be some minor costs, such as greater compliance costs for ITOs, but these costs will be more than outweighed by the benefits derived from the proposed changes.

Implementation

The legislative changes will come into effect from 1 January 2014.

The repealing of the Modern Apprenticeship Act 2000 will require transitional arrangements for MACs currently providing services to apprenticeships. The transitional arrangements for MACs are that independent MACs who are active in 2013 continue to attract the same level of funding for their Modern Apprentices as in the current Modern Apprenticeship scheme until those apprenticeships are completed for a maximum of four years from 1 January 2014. The Industry Training Act 1992 will require amending to take into account these transitional arrangements.

The key risk associated with the legislative changes is that the legislation does not achieve the system changes we want to industry training. This risk is mitigated through the extensive consultation undertaken as part of the review and the input the implementation sector advisory group will provide the Minister on these changes. In addition, legislative change is only one mechanism we propose be used to improve system performance.

Monitoring, evaluation and review

³<http://www.minedu.govt.nz/NZEducation/EducationPolicies/TertiaryEducation/PolicyAndStrategy/ReviewIndustryTraining.aspx>

There are no plans to specifically and separately monitor, evaluate or review the proposed changes. The effectiveness of the changes will be monitored by the Ministry of Education, the TEC and the NZQA as part of business as usual to ensure there are improvements to educational outcomes and performance.

The TEC will monitor the performance of ITOs through the Industry Training Register, a data collection system that is intended to provide near real-time data collected from ITOs' Trainee Management Systems.

The NZQA will conduct a review of industry training quality assurance. In addition, it will monitor the quality assurance of ITOs through its regular external evaluation and review (EER) mechanisms. Every four years, the NZQA conducts EER reviews of ITOs providing an independent judgement of the quality and value of ITO performance and their capability in self-assessment. ITO performance is measured by the extent to which the training outcomes represent quality and value for employers, industry, trainees and government. Capability in self-assessment is measured by the extent to which ITOs systematically use information to understand their performance and bring about improvement.