

Regulatory Impact Statement

STRENGTHENING AND MODERNISING THE FRAMEWORK FOR TERTIARY EDUCATION INSTITUTION INVESTMENT IN RELATED ENTITIES

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. It provides an analysis of options for better regulating Tertiary Education Institution (TEI) investment in related entities (for example, subsidiary companies) and reporting on those investments.

The main gaps in our analysis are that there has been no:

- direct consultation with the sector to inform the proposals
- attempt to simulate the response from providers to the changes (e.g. through a pilot project).

We do not consider that these gaps in our analysis would lead to perverse outcomes. This is because the proposed changes align the law with current and longstanding practice (i.e. practice since 1996). In developing the proposals, we have also worked closely with other government agencies with expertise in this area, namely the Office of the Auditor General, the Treasury and the Tertiary Education Commission.

Consequently, we are confident that our analysis will not cause an unnecessary regulatory burden on providers and that we are striking an appropriate balance between managing the Crown's ownership risk in TEIs and enabling ongoing innovation in the sector.

None of the options considered in this RIS are likely to impair private property rights or to override common law principles. The options will have minimal impacts on business costs.



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Executive summary

In the last 10 years, New Zealand's Tertiary Education Institutions (TEIs) have significantly increased their investment in related entities (subsidiaries and other commercially-focused entities). This increased investment is helping TEIs be more outward-looking and innovative and lowering their dependency on the Crown for funding.

Given the significant increase in the scale of investment in recent years, it is timely to assess whether the current regulatory framework for this investment is fit-for-purpose.

In assessing whether the framework is fit-for-purpose, we identified the following issues:

- section 65I of the Public Finance Act 1989 (which requires TEIs to seek approval from the Minister of Finance for investment in related entities) is not being properly applied, yet doing so would be onerous and could stifle important TEI business
- the Crown Entities Amendment Act 2013 inadvertently removed the requirement for TEI financial reporting at parent level, a key part of the Government's financial risk monitoring of TEIs and their investments
- the Crown currently has insufficient information to monitor a poorly performing related entity that poses a risk to its parent TEI.

To address these issues we recommend:

- aligning the law with current practice so TEIs are only required to seek approval from the Minister of Finance when seeking to invest surplus cash in a security, other than a bank deposit or a government bond
- reinstating the requirement for TEI financial reporting at parent level
- giving the Minister responsible for Tertiary Education a new power to require detailed reporting on a related entity where there is reason to believe that the entity may pose a risk to a TEI.

The proposed changes will ensure TEIs' related entity investment practices support the Government's objectives for the sector, and that the Crown can access the information it needs to help TEIs manage risks posed by related entities. This will be achieved without placing an undue compliance burden on TEIs.

Status quo and problem definition

What are related entities?

Related entities are organisations owned, controlled or significantly influenced by a tertiary education institution (TEI). Examples of related entities include TEI research subsidiaries, TEI trading ventures like conference and catering services, and some student accommodation services.

What do TEIs use related entities for?

TEI related entities are mainly used:

- to carry out contracted research or to commercialise research and intellectual property
- to operate facilities of various kinds, such as accommodation and recreation facilities
- for the provision of education abroad.

Related entities have become increasingly important in helping TEIs be outward-looking and innovative and in the delivery of non-core services. For example, in 2014, the tertiary sector's largest related entity, Auckland UniServices (a subsidiary of the University of Auckland), generated \$11.5 million in commercialisation income, and was responsible for 124 invention disclosures and 111 patent applications. Auckland UniServices now operates in 37 countries and its activity has generated \$1 billion in cumulative revenue over the last 10 years.

Risks posed by TEI related entities

While enabling TEIs to perform important and beneficial activities, the increasing number of related entities also has the potential to expose them to risk. A poorly performing related entity can impact materially on the overall financial performance of a TEI, and undermine its ability to perform its core roles of education and/or research.

An example of this was Tai Poutini Polytechnic's investment in the Qatar Technical Institute. Tai Poutini established this related entity to deliver Qatar's only training in scaffolding and construction safety. The polytechnic anticipated that this business would be profitable by 2012. However, this venture resulted in significant losses for Tai Poutini and in 2011, the decision was taken to close its operations. It is difficult to ascertain the full cost to Tai Poutini from this failed investment due to information gaps in related entity reporting. Tai Poutini's 2011 annual report showed losses of over \$1 million for loans forgiven to its related entities.

Investments in related entities that adversely affect the financial performance of a TEI also pose a risk to the Crown. This is because the Crown has an interest in the supply of tertiary education and has made substantial capital and operating investments in TEIs over time. Moreover, although TEIs are largely autonomous, the Crown is generally seen as needing to accept residual liability if a TEI's poor performance leads to institutional failure.

Poor performing foreign-based TEI related entities also pose a strategic risk to New Zealand's export education goals, as they could damage New Zealand's educational reputation.

The risk posed by related entities is most acute for smaller, regional TEIs that do not have the financial reserves, diversity of revenue streams or student base that larger providers, such as the University of Auckland, benefit from. Consequently, they are less able to absorb the impact of a poorly performing related entity on their core business.

This risk is also present for larger TEIs, which, while better able to absorb the impact of a poor performing related entity, may invest in more and larger entities, thus, increasing the chance of problems occurring.

Increasing investment in related entities

New Zealand's TEIs are increasingly investing in related entities. In a 2013 review, the Ministry of Education (the Ministry) identified 165 related entities in which TEIs hold investments. Of these, 112 were established in the last 10 years. The review also found that the scale of investment in related entities had increased significantly over the last 10 years.

Problems with the regulatory framework for TEI's investment in related entities

Given the significant increase in both the number of, and scale of investment in, related entities in recent years, it is timely to assess whether the current regulatory framework for this investment is fit-for-purpose.

In this context, fit-for-purpose means a regulatory framework that enables and encourages the kind of innovative, outward-looking activity currently being pursued by related entities like Auckland UniServices, but which is sufficiently robust to ensure that the Government can identify and support TEIs to address, poorly performing related entities.

In assessing the current legislative framework, we have identified:

- problems with applying section 65I of the Public Finance Act 1989 to regulate TEI investments in related entities
- problems with the changes to TEI reporting requirements via the Crown Entities Amendment Act 2013
- that the Crown currently has insufficient information to monitor ownership risks posed by TEI related entities.

Problems with applying section 65I of the Public Finance Act 1989 to authorise TEI investments in related entities

TEIs have the power to invest money and to acquire securities in related entities under section 192(1)(a) and (d) of the Education Act 1989. This power is subject to section 203(4) of the Act, which applies section 65I of the Public Finance Act 1989.

Section 65I of the Public Finance Act 1989 requires the Minister of Finance to approve all investments, other than deposits with a bank or in public securities. This means that the Minister of Finance needs to approve TEI investments in related entities.

This is problematic for the following reasons:

- TEIs were advised in the mid-1990s that this process did not apply to investments for educational purposes (such as the creation of related entities that support their educational mission)

- when establishing related entities, TEIs have rarely sought consent and are therefore in breach of the legislation
- if TEIs were required to follow the section 65I process, it would place a heavy compliance burden on them and could potentially stifle innovation
- Treasury has advised that section 65I is not intended to regulate Crown entities' strategic investments, but to regulate the investment of surplus cash.

Problems with the changes to TEI reporting requirements via the Crown Entities Amendment Act 2013

TEIs are a distinct type of Crown entity; therefore, not all parts of the Crown Entities Act 2004 apply to TEIs. The main distinction between TEIs and other Crown entities is the institutional autonomy afforded to TEIs through section 161 of the Education Act 1989.

The Crown Entities Act 2004 was amended in 2013 to align financial reporting requirements with International Financial Reporting Standards. These amendments, which took effect on 1 July 2014, reduced reporting requirements for TEIs.

Prior to these amendments, Crown entities were required to prepare financial statements at:

- the group level (i.e. a consolidated report of the financial performance of the Crown entity and all its subsidiaries)
- parent level (i.e. a report detailing the financial performance of the parent Crown entity)
- subsidiary level (i.e. financial performance reports from each of the Crown entities' subsidiaries).

The 2013 amendments moved the requirement for a Crown entity to prepare group financial statements from section 154(2) to section 156A of the Act and, in doing so, inadvertently removed the requirement for TEIs to prepare separate financial statements for the parent and its subsidiaries.

These changes do not reflect the policy intent of the 2013 amendments to the Crown Entities Act 2004, which were not intended to affect TEI reporting.¹ Furthermore, because financial reporting at parent level forms an important part of Tertiary Education Commission's (TEC) financial risk monitoring, the removal of these reporting requirements makes it more difficult for the TEC to monitor the financial implications and risks of TEI investments in related entities.

Insufficient information to monitor ownership risks posed by TEI related entities

The absence of a requirement for TEIs to report on their related entities to the Government, means the Government currently has limited information on related entities. This makes it difficult to monitor and manage the potential ownership risks posed by these entities. It also means that if a related entity poses a risk to the performance of a TEI, the Government may not be aware of this until it has become a sufficient problem to materially impact the TEI's performance.

¹ This is because the institutional autonomy afforded to TEIs through section 161 of the Education Act 1989, makes them distinct from other Crown entities and means they present a different level of risk.

Objectives

The Tertiary Education Strategy (TES) sets the Government's priorities to improve the contribution of tertiary education for New Zealand. It contributes to the Government's ambitious goals, through the Better Public Services targets and Business Growth Agenda, to improve economic and social outcomes for all New Zealanders.

The latest TES signals a shift towards a more outward-facing tertiary education system with strong links to industry, community and the global economy.

Related entities have an important role to play in enabling this shift. For example, achieving TES priority 5, *strengthening research based-institutions*, will rely on increasing the relevance of tertiary research to end users. The prominent role of TEI related entities in the commercialisation of research and intellectual property makes them an important vehicle for the delivery of this priority. Similarly, achieving TES priority 6, *growing international linkages* (a key contributor to the Government's efforts to double the value of international education), will rely on TEIs creating enduring relationships with overseas partners and showcasing the quality of New Zealand's education system to the world. TEIs' provision of education overseas, which is increasingly being delivered through related entities, will be a key contributor to this goal.

The objective of the proposals in this paper is to enable the Crown to identify and support TEIs to address poor related entity performance, without stifling the innovation that high performing related entities enable and which is helping deliver the Government's tertiary education priorities. As such, we have assessed the options presented against the following criteria:

- impact on TEIs' institutional autonomy
- impact on TEIs' compliance burden
- impact on the availability of information on the performance of TEIs' related entities.

Regulatory impact analysis

This regulatory impact analysis considers a number of options to address the issues we have identified with the current regulatory framework.

Problems with using section 65I of the Public Finance Act 1989 to authorise TEI investments in related entities

Options identified:

- Option 1: Require TEIs to seek approval from the Minister of Finance for investment in related entities, as per section 65I of the Public Finance Act 1989.
- Option 2: Legislative change to create a pre-investment approval process whereby TEI investment in related entities requires the consent of the Secretary of Education (Treasury option).
- Option 3: Legislative change to clarify that section 65I of the Public Finance Act 1989 applies only with regard to investing surplus cash.

Option 1: Require TEIs to seek approval from the Minister of Finance for investment in related entities, as per section 65I of the Public Finance Act 1989

This option would ensure that TEIs are no longer in breach of the Public Finance Act 1989, and would strengthen the Government's ability to intervene in investments that could put the performance of a TEI at risk, before those investments are made.

However, the Treasury has advised that section 65I of the Public Finance Act 1989 is inappropriate for authorising TEI investment in related entities. Section 65I is designed for the Treasury to regulate investment of cash that is temporarily surplus to the Crown's requirements. Such investments are restricted to deposits with a bank, in public securities, or in any other securities that the Minister of Finance may approve for the purpose. Section 65I was not intended to regulate the establishment of related entities.

Furthermore, the process for obtaining an approval under section 65I of the Public Finance Act 1989 would be complex and burdensome. This is because it would require an assessment by the Treasury and advice to the Minister of Finance, in addition to an assessment by the Ministry of Education and the TEC. Strictly applying the current law would place a significant burden on TEIs, which may stifle investment and innovation.

Option 2: Legislative change to create a pre-investment approval process whereby TEI investment in related entities would require the consent of the Secretary for Education

Option 2 is Treasury's preferred option. It would amend the Education Act 1989 to require TEIs that invest in related entities, to gain prior approval from the Secretary for Education, as they are currently required to do when seeking to borrow, dispose of assets or raise finance. It would also allow the Minister responsible for Tertiary Education to set a formula exempting TEIs from the requirement to gain consent under specified circumstances, as is currently the case for borrowing or asset disposals.

TEIs would no longer be required to seek the approval of the Minister of Finance for investments in related entities.

Under this option, the power to approve TEI investments in related entities would lie with officials, rather than a Minister of the Crown. This would mean that applications for consent

could be processed more quickly and would respect the operational independence of TEIs from the Government of the day. It would no longer be mandatory for TEIs to always gain prior consent before investing in related entities, which would further reduce the compliance burden. Furthermore, it would mean that all powers concerning TEI investment, regardless of the type of investment, would come under one Act, making it clear to TEIs what their obligations are and simplifying the legislative regime.

However, while preferable to the status quo, this option would still add an extra compliance burden on TEIs compared to current practice. Given the important and increasing role that related entities play in TEIs becoming more outward-focused, this extra burden would likely be significant and could negatively impact their ability to deliver on the Government's priorities for tertiary education.

There is also a risk that this option could be interpreted by TEIs as reducing their institutional autonomy, and that they would see it as an unacceptable extension of the Secretary for Education's powers.

Option 3: Legislative change to clarify that section 65I of the Public Finance Act 1989 applies only with regard to investing surplus cash

Option 3 would amend the Education Act 1989 to clarify that section 65I of the Public Finance Act 1989 applies to TEIs only with regard to investing surplus cash. If a TEI wished to invest surplus cash, other than in bank deposits or public securities, then approval from the Minister of Finance would be necessary, as at present. As noted above, this is consistent with what section 65I was designed to do.

Clarifying that section 65I applies to TEIs only with respect to surplus cash would leave TEIs free to invest in related entities as they wished, as long as those investments were in accordance with the requirement in section 192 of the Education Act 1989 (i.e. that TEIs only perform actions which relate to their core functions of education and research, or which can be performed in association with those functions).

This option has advantages over both the status quo and option 2. By not requiring pre-investment vetting of TEI investment in related entities, it minimises the compliance burden on TEIs. It also acknowledges the institutional autonomy of TEIs and their responsibility to manage their own business.

The main disadvantage of this option is that there would be no pre-investment risk assessment process specifically targeted at TEI investments in related entities. This could make it more difficult to monitor and manage the ownership risk posed by these TEI related entities.

In reality though, this is already the case. TEIs have not been following the section 65I process since 1996. Furthermore, during this time there have been relatively few instances of related entities posing an ownership risk to the Crown. To that extent, this option aligns the law with current practice and legitimises the status quo.

To protect against potential future ownership risks posed by related entities, we propose to amend the current legislative framework to give the Minister responsible for Tertiary Education, the power to require detailed reporting on a related entity where there is reason to think the entity may pose a risk to a TEI (see recommendation 3). The TEC will also incorporate a stronger focus on TEI related entities into its existing monitoring and risk management mechanisms, to identify and manage risks as early as possible.

Problems with the changes to TEI financial reporting requirements made through the Crown Entities Amendment Act 2013

As discussed above, amendments to the Crown Entities Act in 2013 inadvertently reduced reporting requirements for TEIs, making it harder for the TEC to carry out risk monitoring.

Options identified:

- Option 1: Require TEIs to prepare financial statements at the group level only (*status quo*).
- Option 2: Legislative change to require TEIs to prepare group, parent and subsidiary financial statements.
- Option 3: Legislative change to require TEIs to prepare both parent and group financial statements.

Option 1: Require TEIs to prepare financial statements at the group level only (status quo).

Under this option, TEIs would be treated like most other Crown entities in being required to produce financial reports at the group level only.

This option has two main disadvantages. It fails to recognise that reporting at parent level has traditionally formed an important part of the TEC's monitoring of TEIs' financial risk, and of the public's understanding of the value of taxpayers revenue for their funding of TEIs. It also runs counter to the policy intent of the 2013 changes to the Crown Entities Act 2004, which were not intended to affect TEI reporting.

Option 2: Legislative change to require TEIs to prepare group, parent and subsidiary financial statements

Option 2 would amend the Crown Entities Act 2014 to reinstate requirements for group, parent and subsidiary reporting for TEIs.

This option has a number of advantages over the status quo. Requiring TEIs to report at parent and subsidiary level, as well as group level, would better enable the TEC to understand the performance of TEIs' core educational business, and any potential risks to that performance. It would also increase transparency of TEI investments in related entities.

However, this option would mean TEIs would be subject to a more onerous reporting framework than other Crown entities, which would still only be required to report at group level. This disparity in treatment could generate opposition among TEIs, including being seen as infringing on their institutional autonomy.

Option 3: Legislative change to require TEIs to prepare both parent and group financial statements

This option would amend the Crown Entities Act 2004 to reinstate the requirement for parent and group, but not subsidiary, financial reporting for TEIs.

Like option 2, this option is preferable to the status quo as it would increase the transparency of the performance of TEIs' core business and investments in related entities, better enabling the Government to manage its ownership risk in TEIs. It also has the advantage over option 2 of being less onerous for TEIs, as they would not have to report separately on each of their related entities.

A minor risk associated with this option is that there could be occasions when subsidiary reporting provides important information that the Government would not otherwise have access to. For example, if the poor performance of one related entity is being masked in the group report by the strong performance of another.

This risk will be mitigated by our proposal to give the Minister responsible for Tertiary Education the power to require information about related entities that pose an ownership risk (see recommendation 3), and by the TEC broadening its monitoring focus to include the performance of TEIs' related entities.

Insufficient information to monitor the ownership risks posed by TEI related entities

Options identified:

- Option 1: No general requirement that related entities report to the Government (*status quo*).
- Option 2: Use current legislative settings to acquire information about related entities.
- Option 3: Legislative change to give the Minister responsible for Tertiary Education a new information-gathering power.

Option 1: No general requirement that related entities report to the Government (status quo)

Under this option, the Government would only have access to information from related entities where the parent TEI voluntarily reports the information, or where there is a separate requirement for that particular type of related entity to produce financial reports (for example, under the Charities Act 2005, charities are required to file an annual report, which includes a copy of the charity's financial accounts).²

This low compliance option is likely to be favoured by TEIs. However, this option would provide the Government with very limited information about TEI related entities, making it difficult to monitor and manage the potential ownership risks posed by these entities. A likely consequence would be that the Government only becomes aware of poor performing, high risk related entities, when they have become a sufficient problem to materially impact on a TEI's performance, and thereby present an ownership risk to the Crown.

Option 2: Use current legislative settings to acquire information on related entities

Under section 159YC of the Education Act 1989, the Ministry of Education and TEC can require a funded tertiary education organisation to supply financial, statistical or other information.

Under the Crown Entities Act 2004, the Minister of Finance has the power to require information from TEI subsidiaries, where he/she judges the information to be in the interests of public accountability (i.e. where it is necessary for the public to see how its taxes are being spent).

The power under both Acts could be used to acquire information about the operation of related entities, which would increase the quantity and quality of information the Government has to monitor the ownership risks posed by TEI related entities.

² Many related entities have charitable status.

However, there are limits to what these powers allow. For example, section 159YC of the Education Act 1989, does not enable the Ministry or the TEC to acquire information about a related entity unless it is held by the parent TEI. Also, there is some doubt about the applicability of this section of the Act to related entities, which are not publicly funded and in most cases are not TEOs.

Likewise, under the Crown Entities Act 2004, the Minister of Finance can only require information from subsidiaries, not related entities that take other legal forms³, and only for the purpose of public accountability (not for risk monitoring). This is important as in some cases, poorly performing related entities will pose a risk to the financial stability of their parent TEI (including its core business of teaching and research). However, because the TEI's investment in the related entity is through self-generated funding, and not from the public funds that support core teaching and research activity, this investment may not meet the public accountability threshold.

Consequently, whilst under this option, the Government's information on related entities would be significantly richer, there would still be gaps. These gaps, combined with the additional compliance burden on TEIs are the big disadvantages of this option.

Option 3: Legislative change to give the Minister responsible for Tertiary Education a new information gathering power

This option would give the Minister responsible for Tertiary Education, the power to require information about a related entity if there are grounds to believe the related entity poses a risk to the TEI and, therefore, the Crown.

It would essentially extend the Minister of Finance's powers to require information from subsidiaries or multi-parent subsidiaries of a Crown entity group, to the Minister responsible for Tertiary Education (though only with respect to TEIs and their related entities). These powers currently fall under sections 156B and 157A of the Crown Entities Act 2004. This option would also remove the Minister of Finance's power, under section 157 of the Crown Entities Act, to exempt multi-parent subsidiaries of TEIs from a requirement to prepare statements or reports, ensuring that the Minister responsible for Tertiary Education's new information gathering power applies comprehensively.

This modification would enable the Minister responsible for Tertiary Education to require information from a related entity, regardless of its form. It would also broaden the grounds for such a request to include risk monitoring, not simply public accountability.

This option is preferable to the status quo because it would provide richer information on the performance of related entities, and allow greater oversight of the risks posed by these entities. It is also preferable to option 2, as it would allow the Minister responsible for Tertiary Education to require information on TEI related entities, irrespective of their legal form.

Another significant advantage of this option is that it would ensure information can be acquired to protect the interests of the Crown, and the TEI, without placing an across-the-board compliance burden on TEIs.

The success of this option is partly dependent on the reinstatement of the requirement for TEIs to prepare financial statements at parent, as well as group level (see recommendation 2). By enabling the TEC to distinguish the performance of TEIs' core educational business

³ The way subsidiaries are defined in the Crown Entities Act 2004 means the Minister of Finance can only require information from companies that are controlled by Crown entities and incorporated under the Companies Act 1993.

from TEI investments in related entities, parent and group level reporting will help identify if additional information is needed about a TEI related entity.

The main risk associated with this option, is that giving the Minister additional powers to gather information from TEIs could be viewed by TEIs as an infringement of their institutional autonomy. This risk is largely mitigated by the Minister only being permitted to use this power where there are reasonable grounds to believe that a related entity requires more intensive oversight.

Consultation

The Ministry of Education consulted with the Treasury, the Office of the Auditor-General (OAG), Education New Zealand and the TEC on the proposed changes to the regulatory framework for investment in related entities.

Treasury's view is that it is important to balance the autonomy and independence of TEIs against the need for accountability and risk management, while also encouraging innovation in the sector.

Treasury would prefer some form of pre-investment risk assessment before the acquisition or establishment of a related entity by a TEI – essentially option 2 of the three options considered as a solution to the problems with applying section 65I of the Public Finance Act to authorise TEI investments in related entities. Treasury considers that the compliance burden associated with this option could be minimised by having a formula or other mechanism, which would mean that individual approval would not be required for low-risk investment in related entities.

In the absence of a pre-investment risk assessment, the Treasury favours reinstating the requirement that TEIs prepare parent, group and subsidiary financial statements. It also agrees that the TEC would need to broaden its monitoring focus, including being more proactive in its monitoring to identify and manage risk as early as possible, and focusing on whether the investment is core business. The Treasury is also of the view that the TEC should issue guidance to TEIs on the establishment and operation of related entities, including how to avoid and mitigate risk.

Consultation was not undertaken with the sector because the changes proposed in this paper largely align with monitoring and reporting practices that, prior to the changes made through the Crown Entities Amendment Act 2013, had been in place for many years.

However, we expect that the sector will have views on our recommendation to give the Minister a new information gathering power. The sector will have opportunities to submit their views on this, and the other proposed amendments, as part of the Select Committee process.

The Ministry has also recently written to TEIs to indicate legislative amendments are likely, including a return to requiring parent and group reporting, and to encourage TEIs to continue with their current reporting practices.

Conclusions and recommendations

Related entities are important vehicles for TEIs to contribute to the Government's vision of a more outward-facing tertiary education system. As such, the regulatory framework governing these entities must not be overly burdensome and must allow innovation to thrive.

We recommend three legislative changes, which will ensure that TEIs and their related entities can contribute as fully as possible to the Government's ambitious goals for the tertiary system, whilst also allowing for potential risks to be identified and managed.

Recommendation 1

We recommend that the Education Act 1989 be amended to clarify that section 65I of the Public Finance Act 1989 applies only with regard to investing surplus cash.

This legislative change would align the law with current practice, and ensure that the important TEI business, enabled by TEI related entities, is not unnecessarily stifled by Government regulation.

Recommendation 2

We recommend amending the Crown Entities Act 2004 to require TEIs to prepare both parent and group financial statements.

This legislative change will increase transparency around the performance of TEIs, better enabling the TEC to carry out its risk monitoring function. It would be supported by TEC developing guidance for TEIs to consider when making decisions about investments in related entities.

Recommendation 3

We recommend that the Minister responsible for Tertiary Education be given a new power to require detailed reporting on a related entity where there is reason to believe that the entity may pose a risk to a TEI.

This legislative change recognises the need for a level of monitoring that appropriately balances protecting the interests of the Crown with the compliance burden on TEIs.

Implementation plan

The above recommendations have been included in the Education Legislation Bill 2015 (ELB 2015). We expect the implementation of each of the recommendations to occur immediately following Royal Assent to the Bill.

Once enacted, the primary vehicle for implementing the proposals would be through the TEC incorporating the proposals into its existing monitoring framework. The proposed changes would also be supported by the TEC developing and issuing guidance for TEIs on issues to consider when investing in related entities. This guidance would also be taken into consideration by OAG and appointed auditors when auditing TEIs' financial statements and reports.

The implementation of these recommendations would not result in significant new compliance costs for TEIs, TEC, OAG or appointed auditors. Recommendation 1 reduces the overall compliance burden on TEIs, while the increased compliance burden associated with recommendation 2 is largely mitigated by TEI reporting requirements still being less burdensome than they were prior to July 2014.

There would be an incremental increase in regulatory burden, if the Minister exercises the proposed power to require additional information about a related entity (recommendation 3). However, this would be balanced by that information being required to protect the interests of the parent TEI and the Crown.

There are some risks associated with the implementation of these recommendations. TEIs might perceive the proposed new powers afforded to the Minister responsible for Tertiary Education as a reduction of institutional autonomy. We have sought to mitigate this risk by proposing that the Minister only be permitted to use this power where there are reasonable grounds to believe that a related entity requires more intensive oversight.

Monitoring, evaluation and review

A formal evaluation has not been planned at this stage. However, we will seek feedback from TEIs on the implementation of this framework and will look to recommend adjustments to the framework, if and when appropriate.