

SUMMARY OF DISCUSSION DOCUMENT:

WĀNANGA SECTOR FRAMEWORK

September - October 2022



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We are seeking feedback on a proposal to create an enabling framework for the Wānanga sector

TE KAUPAPA PURPOSE

The Ministry of Education and Te Wānanga o Raukawa, Te Wānanga o Aotearoa, and Te Whare Wānanga o Awanuiārangi (the Wānanga) are considering legislative changes to better recognise:

- the individual and collective mana and tino rangatiratanga of the Wānanga,
- the Tiriti o Waitangi/Treaty of Waitangi-based relationship between the Wānanga and the Crown, and
- the unique role that the Wānanga play in the tertiary education system.

The Ministry and the Wānanga have developed a shared proposal to create an enabling framework for the Wānanga sector. This enabling framework would allow each Wānanga to work in collaboration with the Ministry to develop new rules in terms of who they are accountable to and how, their purpose and functions, and their governance structures. These rules currently sit in the Education and Training Act 2020 (the E&T Act), and we refer to them as 'administrative settings.'

The Associate Minister for Education (Māori Education), Hon Kelvin Davis intends to progress work on the administrative settings for Wānanga in this term of Government (before next year's Parliamentary Election).

This work is part of a broader kaupapa that also seeks to address long-standing concerns of the Wānanga relating to funding, quality assurance of educational provision, and supporting mātauranga Māori. The proposed changes will provide a foundation, based in Te Tiriti o Waitangi/the Treaty of Waitangi, to advance work on these issues.

KO NGĀ TAIPITOPITO WHAT YOU NEED TO KNOW

This summary document provides a high-level overview of the background for this work and the options that we are consulting on. You can find more detail about the proposed options in the full discussion document, available at <https://conversation.education.govt.nz/conversations/wananga-sector-framework-proposal>.

You can find more information about how to provide your feedback at the end of this document.



HE AHA E PANONI AI? WHY DO WE NEED CHANGE?

Each of the Wānanga emerged as a response from iwi to poor educational outcomes for Māori in the Pākehā "mainstream education" system. For over 30 years, the Wānanga have delivered 'by Māori, for Māori' education and achieved education outcomes (particularly for taura Māori) at a scale that is not matched elsewhere in our education system. Wānanga play a critical role in the revitalisation, transmission and normalisation of te reo Māori and mātauranga Māori. They also provide a vital tertiary pathway for learners who have been disenfranchised from the education system due to their past experiences of education.

But the administrative rules applying to Wānanga do not reflect their mana as partners, or the mana of te reo and mātauranga Māori as taonga, under Te Tiriti o Waitangi/the Treaty of Waitangi. They also do not reflect the unique role that Wānanga play in the education system.

As a result, these settings have constrained the ability of Wānanga to operate and best meet the needs of their kaiāwhina, kaimahi, taura and their wider communities.

HE AHA NGĀ ĀRAITANGA? WHAT ARE THE PROBLEMS?

Wānanga are currently tertiary education institutions (TEIs) under the E&T Act, along with universities and Te Pūkenga - New Zealand Institute of Skills and Technology. Wānanga have generally not had the opportunity to be involved in shaping policy development and legislative reform over the last 30 years. They have not had the opportunity to co-design the administrative settings that apply to them.

The rules are based on the traditional university model, which does not reflect their unique role and collective mana of the Wānanga.

In general, the administrative rules that apply to the Wānanga are the same ones that apply to universities. This includes rules about their governing bodies (how they are appointed, their makeup and what they can do), what TEIs can do, and who they are accountable to and how (e.g. auditing, financial accountability and reporting requirements).

But Wānanga are not universities, and applying the same rules to these institutions does not always make sense.

One way that Wānanga and universities are treated the same is the Tiriti o Waitangi/Treaty of Waitangi rule relating to their governing bodies and councils that one member must be Māori. This rule does not reflect the unique partnership relationship between Wānanga and the Crown under Te Tiriti o Waitangi/the Treaty of Waitangi, that universities do not have. Requiring Wānanga to have just one Māori council member does not reflect their mana, or their reality as kaupapa Māori organisations.

When the rules for Wānanga are different to the rules for universities, some people consider that Wānanga are treated as lesser institutions. For example, to be established as a TEI, there are five characteristics that organisations must meet (among other things), and they are all linked to the traditional role of a university. New universities have to meet all five of the characteristics, while new Wānanga only have to meet one of five. This rule does not recognise that the essential characteristics of Wānanga are different to those of universities. The requirement that Wānanga only meet one of the five characteristics to become a TEI can also be seen to imply that there are lower standards to become a Wānanga than a university. This does not reflect the mana of the Wānanga or their role, or the importance of te reo mātauranga Māori as taonga.

The current rules establish a system of accountability to the Crown only, which does not reflect the relationship between kāwanatanga and tino rangatiratanga expressed in Te Tiriti o Waitangi/the Treaty of Waitangi.

The E&T Act establishes a system of accountability for Wānanga as TEIs to the Crown only.

As TEIs, the Wānanga are considered Crown entities. Crown entities are organisations that are legally separate from the Crown, which the Crown considers it holds an ownership interest in. The Ministry acknowledges that this interest is contested by the Wānanga.

Currently only the Crown can establish and disestablish Wānanga under the E&T Act, and Wānanga are accountable to the Crown for both financial and educational performance. Ministers have a key role in overseeing and managing the Crown's interests in Crown entities, for example, through appointing people to Councils, setting direction and funding levels, and monitoring entity performance. The Minister's monitoring agency, the Tertiary Education Commission (TEC), provides the Minister with information, analysis and advice about the effectiveness, efficiency, and educational and financial performance of the TEI. The governance settings that apply to TEIs are also very prescriptive – for example, the proportion of individuals that must be appointed to a TEI's council by the Minister is set out in the E&T Act.

These accountability settings do not align with the role of the Wānanga both as expressions of the tino rangatiratanga of their founding iwi as appropriate, and as organisations with tino rangatiratanga.





HE TIROHANGA WHĀNUI KI NGĀ PANONITANGA E TONOA ANA THE PROPOSED CHANGES AT A GLANCE

To address these issues, the Ministry and the three Wānanga have developed proposals together to design new legislative administrative settings for the Wānanga.

The goal of these proposals is to ensure the administrative settings for the Wānanga are consistent with Te Tiriti o Waitangi/ the Treaty of Waitangi, while maintaining confidence in the tertiary education system as a whole.

We are proposing to establish a new enabling framework in the E&T Act to set out:

- the characteristics of a Wānanga and the process for establishing a Wānanga, and
- a framework to enable each individual Wānanga to work with the Crown to co-develop bespoke (custom) administrative settings (within a particular set of parameters) depending on their accountability.

This framework would enable two options for individual Wānanga in legislation:

- **Option 2a - Bespoke TEI:** a Wānanga continues to be considered a TEI, with bespoke purpose, function and governance arrangements, or
- **Option 2b - New statutory entity:** a Wānanga becomes a new type of statutory entity which keeps its focus on education provision and but has provides greater independence in terms of its administrative arrangements, including accountability to iwi.

Other options considered

In addition to the proposed enabling framework approach, the Ministry also considered the following alternative options to meet the aspirations of the Wānanga (set out in more detail in the discussion document):

- co-developing administrative settings to apply to the Wānanga sector as a whole, or
- developing separate pieces of primary legislation for individual Wānanga.

The Ministry's preferred option is the enabling framework, because it best fulfills the criteria of:

- a) Recognising the unique public roles and functions that each Wānanga undertakes and fulfils for their learners, whānau, communities and founding iwi, and in the tertiary education system
- b) Facilitating an appropriate sharing of accountability for Wānanga, that reflects the Māori-Crown partnership
- c) Facilitating recognition of the mana of the Wānanga, both collectively and individually; and
- d) Facilitating certainty and minimising transition risks in tertiary education system.

While co-developing administrative settings to apply to the Wānanga sector as a whole would allow for greater recognition of the role and mana of the Wānanga generally, it would not recognise the unique role and aspirations of each individual Wānanga or their individual interests in terms of accountability. (e.g. who they are accountable to, and how this accountability should be expressed).

Developing separate pieces of primary legislation for each Wānanga could perform better under criteria a)-c) than co-developing sector-wide administrative settings. However, this option has a higher risk of unintended consequences due to the breadth of possibilities. Primary legislation is also harder to change than secondary legislation is unintended consequences arise.

The Ministry considers that the proposed enabling framework strikes the best balance between facilitating certainty - by maintaining a common set of characteristics and overall framework for the Wānanga - and recognising the unique role of each Wānanga, their individual interests in terms of accountability, and the collective mana of the Wānanga.

Key questions:

- Do you agree with our analysis and preferred option for the overall approach to the design of a legislative framework for Wānanga? Why/why not?
- How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal?

HE TIROHANGA HŌMIROMIRO KI NGĀ PANONITANGA E TONOA ANA THE PROPOSED CHANGES IN DETAIL

This section provides you with more detail about how the proposed enabling framework would work, the proposed new characteristics of Wānanga and a proposed new requirement for establishing a Wānanga. Information about how to provide your feedback is included in the next section.

The enabling framework (Issues 1 and 3 in the discussion document)

Bespoke TEI entity

A Wānanga may wish to retain its TEI status but undertake governance decisions in a more partnership-based way. Under this sub-option, the Crown and an individual Wānanga would work together to agree new administrative arrangements that could cover the:

- purpose of that Wānanga
- functions of that Wānanga and its council
- governance arrangements that best support the purpose and functions of the organisation. This would include arrangements relating to the appointment, composition, suspension, or removal of members of the council and associated arrangements.

The Crown and the individual Wānanga would agree the limitations on the nature of the governance arrangements. Any new duties and functions of councils would be in addition to the existing duties and functions in the E&T Act or would not reduce accountability arrangements under the Act.

New statutory entity

Under this sub-option, a Wānanga may be re-established as a new type of statutory entity within the education system, retaining the status of a legislated tertiary education provider that continues to focus on the provision of education for the public good.

The Crown and that Wānanga would work together to agree new statutory arrangements that cover the following matters:

- the purpose of that Wānanga;
- the functions of that Wānanga and its council;
- the governance arrangements, including arrangements relating to the appointment, composition, suspension, or removal of members of the council;
- the duties of that Wānanga and its council;
- the powers of that Wānanga and its council;
- who that Wānanga is accountable to for educational and financial performance, and what it must do in relation to this;
- who monitors the entity, what interventions might apply and who can decide to intervene and in what circumstances
- financial matters, and reporting provisions, and
- other matters that are necessary or desirable to clarify the administrative arrangements of that Wānanga and its council, and its relationship with the Crown.

For an independent Wānanga, the Crown would not have the same responsibilities if the organisation fails, so would not operate any associated controls it currently has to prevent a TEI's failure. Instead, a line of accountability for the ongoing viability of the Wānanga would be provided back to other bodies, such as iwi, groups of iwi or hapū, or other Māori. The legislated status and role of a Wānanga in the provision of education means that it will have requirements for transparency, such as operating under the Official Information Act 1982 and the Ombudsmen Act 1975.

Like the bespoke TEI option, there would be minimum requirements for the scope of what the Crown and Wānanga could agree in the reconstitution of an independent Wānanga. For example, its purpose would need to continue to reflect its role as a provider of education.

Discussion

Provisions in the E&T Act that are not administrative rules would continue to apply to Wānanga unchanged. These include provisions about academic freedom, student dispute mechanisms, learner wellbeing and safety, student loans and allowances, fees and more. Current funding and quality assurance mechanisms for Wānanga in the E&T Act would also remain in place.

The two options above represent two possible approaches to accountability – to the Crown, on one hand, and to iwi or iwi groupings on the other. For example, a Wānanga may wish to continue to be a TEI if it sees value in this status, but vary aspects of its governance arrangements to better reflect a partnership approach to governance and decision-making. Another Wānanga may seek to be removed from the TEI framework and have its administrative settings reflect accountability to others, such as its founding iwi or other groups that reflect the communities it operates in. It is important that the Crown facilitate optionality within the proposed enabling framework.

Balancing the need for that optionality, however, is the need for certainty. That is why, rather than proposing providing a spectrum of optionality, we have proposed two distinct options.

Key questions:

- Do you agree with the proposed enabling framework for the Wānanga sector? Why/why not?
- How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal?
- Are there other benefits or risks that we have not identified?

HE TIROHANGA HŌMIROMIRO KI NGĀ PANONITANGA E TONOA ANA THE PROPOSED CHANGES IN DETAIL (*cont.*)

General administrative settings for Wānanga (*Issue 2 in the discussion document*)

Characteristics of Wānanga

The characteristics of Wānanga as described in the E&T Act currently do not align with the unique role of the Wānanga in the tertiary education system or their role as Te Tiriti o Waitangi/ the Treaty of Waitangi partners. The proposed Wānanga sector framework would provide a new set of characteristics that an applicant organisation would need to meet in order to be established as a Wānanga.

The three Wānanga and the Ministry propose that the characteristics should acknowledge the following aspects (which are outlined in further detail in the discussion document):

- Role of iwi in the organisation's establishment
- Kaitiakitanga of Te Reo Māori, Tikanga and Mātauranga Māori
- Promotion and maintenance of community well-being
- Consistency with Tikanga and Mātauranga Māori in governance and operations
- Critic and conscience of society through an ao Māori lens
- Role and contribution to indigenous scholarship internationally
- Association with higher learning, and relationship between its teaching and intellectual endeavours (including research) on a wide diversity of subject matter.

Establishment of a new Wānanga

Currently Wānanga (as TEIs) can only be established by Order in Council on the recommendation of the Minister of Education. Before making a recommendation, the Minister must be satisfied that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole. The Minister must also consult relevant institutions, organisations representing institutions, and other stakeholders; be satisfied that the entity meets one or more of the five characteristics of a TEI; and take into account the unique characteristics of a Wānanga.

We propose that, when considering the establishment of a new Wānanga, in addition to the current requirements, the Minister must also seek advice from Te Tauīhu o Ngā Wānanga (the representative body of the three Wānanga) on whether the proposed Wānanga meets the characteristics of a Wānanga set out above and give special regard to that advice. This process would clarify how the requirements apply to Wānanga, and recognise the mana of the existing Wānanga and their expertise in assessing whether or not an organisation meets the characteristics of a Wānanga.

Discussion

The standard established by the proposed new characteristics is on a par with the characteristics needed to become a university and recognises the work that Wānanga have done to build the sector over the last 30 years. But this high bar may mean that new providers would need to be relatively well-established private training establishments (PTEs) to have an opportunity to be recognised as Wānanga in the future.

Key questions:

- Do you agree with the proposal to lay out the key characteristics that define Wānanga collectively? Why/why not?
- Do you agree with the proposal to clarify the process for establishing a new Wānanga? Why/why not?
- How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal? How can the Crown support the aspirations of other iwi/Māori in the context of the Wānanga sector, and the tertiary education system more broadly?

Te Tiriti o Waitangi/the Treaty of Waitangi consistency (*Issue 4 in the discussion document*)

The proposals outlined above are intended to better align the statutory administrative settings for wānanga with Te Tiriti o Waitangi/the Treaty of Waitangi. We are interested in hearing your views on how effectively they do that.

This includes understanding how this proposal will affect others, including PTEs that are closely aligned with iwi/Māori, and iwi that have an interest in tertiary education provision.

We are also interested in hearing whether and how other legislative mechanisms are needed to support the Ministry's objectives that the administrative settings for Wānanga are consistent with Te Tiriti o Waitangi/the Treaty of Waitangi – particularly in light of historical Crown decision-making relating to the Wānanga.

The Ministry would need to consider how any Te Tiriti o Waitangi/Treaty of Waitangi clause in the sector framework would fit within the E&T Act. The E&T Act, where the proposed Wānanga sector enabling framework would sit, contains several Te Tiriti o Waitangi/Treaty of Waitangi clauses. Section 9 of the E&T Act, for example, is a descriptive Te Tiriti o Waitangi/Treaty of Waitangi clause, and links to wider Te Tiriti o Waitangi/Treaty of Waitangi clauses in the E&T Act.

Key questions:

- Do the policy and legislative changes discussed above reflect a Te Tiriti o Waitangi/Treaty of Waitangi-consistent approach to the administrative settings for Wānanga? Why/why not?
- How can we best ensure any legislative changes are applied in a Te Tiriti o Waitangi/Treaty of Waitangi-consistent way?



Te Wānanga o Aotearoa

TE HĀTEPE UIUINGA ENGAGEMENT PROCESS

Te Wānanga o Raukawa, Te Whare Wānanga o Awanuiārangi, Te Wānanga o Aotearoa, and the Ministry of Education want to ensure that these proposals have input from kaimahi, kaiāwhina, taura and their whānau and others in Wānanga communities who will be affected by the decisions.

The Wānanga will be hosting engagements with their communities on these proposals.

The Ministry of Education will also be hosting engagements on the proposed options, with the opportunity to provide feedback, and is seeking public submissions.

To participate and provide feedback, you can also:

- Visit the Kōrero Mātauranga website <https://conversation.education.govt.nz/conversations/wananga-sector-framework-proposal> and complete the online submission form.
- Send us an email to: wananga.consultation@education.govt.nz

The consultation is open until 28 October 2022.

KA AHATIA KI Ō WHAKAHOKI KŌRERO? WHAT WILL HAPPEN WITH YOUR FEEDBACK?

Following this consultation, the Ministry of Education will provide an anonymised summary of submissions to Te Wānanga of Raukawa, Te Whare Wānanga o Awanuiārangi, and Te Wānanga o Aotearoa. Te Wānanga of Raukawa, Te Whare Wānanga o Awanuiārangi, and Te Wānanga o Aotearoa, as well as the Associate Minister of Education (Māori Education) and the Minister of Education will consider the views expressed and feedback received through the consultation. We will update our website on how the work is progressing, including timelines and next steps, following policy decisions.

All submissions received by the Government will be subject to the Official Information Act 1982.

Please set out clearly in your submission if you object to the release of any information in the submission, and in particular, which part (or parts) you consider should be withheld, together with your reasons for withholding the information. The Ministry of Education will consider such objections when responding to requests under the Official Information Act 1982.