

DISCUSSION DOCUMENT:

# WĀNANGA SECTOR FRAMEWORK

September - October 2022



# DISCUSSION DOCUMENT

## PROPOSAL TO ESTABLISH ENABLING WĀNANGA SECTOR FRAMEWORK

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# Overview

The Ministry of Education (the Ministry), along with Te Wānanga o Raukawa, Te Wānanga o Aotearoa, and Te Whare Wānanga o Awanuiārangi (the Wānanga), are considering legislative changes to recognise the individual and collective mana and tino rangatiratanga of Wānanga, reflect Te Tiriti o Waitangi/Treaty of Waitangi-based relationship the Wānanga have with the Crown, and reflect the unique role they play in the tertiary education system.

This discussion document seeks public feedback on proposals for change. You can provide feedback in a written form or by attending consultation hui. Feedback is due by 4pm, Friday 28 October 2022.

See [conversation.education.govt.nz/conversations/wananga-sector-framework-proposal](https://conversation.education.govt.nz/conversations/wananga-sector-framework-proposal) for more information.

The legislative settings for the administration of Wānanga have been in place for more than 30 years. Over that time the Wānanga have continually raised concerns regarding the exercise of kāwanatanga and tino rangatiratanga, and in particular how those settings have constrained the development and operation of Wānanga.

The Wānanga and the Government agree that the Education and Training Act 2020 (E&T Act) does not adequately:

- reflect the essential characteristics that define Wānanga
- provide for the individual expression of their aspirations; or
- describe the nature of their relationship with the Crown, which they consider, and we (the Ministry) agree, is different from other tertiary education institutions (TEIs) and is based on Te Tiriti o Waitangi/the Treaty of Waitangi.

The Associate Minister of Education (Māori Education), Hon Kelvin Davis, intends to progress work on the administrative settings for Wānanga in this term of Government.

The Ministry has worked constructively with the Wānanga to develop proposals for legislative change to address these issues. At the forefront of the Ministry's approach to these proposals has been a focus on how we can be a good Tiriti/Treaty partner and work in true partnership with Wānanga. These proposals reflect a number of aspirations of the Wānanga and the Crown's kāwanatanga responsibilities in the tertiary education sector.

The Ministry's preferred legislative option is to create a high-level enabling Wānanga sector framework in primary legislation that would:

- set out new administrative provisions that will apply across all the Wānanga; and
- provide an Order in Council (OIC)<sup>1</sup>-making power to make specific arrangements for an individual Wānanga within defined parameters outlined in the E&T Act. The status quo would apply to the Wānanga until changes were made through an OIC process.

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<sup>1</sup> A type of [secondary legislation](#) that is made by the Executive Council presided over by the Governor-General. Most secondary legislation is made by way of Order in Council.



## Who has written this discussion document?

The Ministry of Education has written this discussion document. Te Wānanga o Raukawa, Te Wānanga o Aotearoa, and Te Whare Wānanga o Awanuiāraangi have reviewed drafts of this discussion document and are supportive of the proposals as a first step towards providing greater recognition of their roles and appropriate legislative acknowledgement of their individual autonomy.

This aligns with the Ministry's view that recognising the Tiriti/Treaty-based relationship between Wānanga and the Crown in legislation as proposed in this discussion document will provide a foundation upon which other areas of shared interest to the Wānanga (and their communities) and the Crown can be advanced to give expression to Te Tiriti/the Treaty.

The changes to legislative settings proposed in this document are part of a broader joint work programme between the Ministry and the Wānanga across four work streams. Further discussion on the history of this work programme is on page 9 below.

The other three work streams focus on:

- developing a funding framework that best supports educational delivery and outcomes of the Wānanga
- a quality assurance framework that enables the Wānanga to exercise tino rangatiratanga over their mātauranga while maintaining confidence in Wānanga educational delivery; and
- supporting the role and unique contributions of the Wānanga as kaitiaki of mātauranga Māori.

This work, which we are progressing alongside this administrative work stream with the Wānanga, does not at this stage require legislative change.

## What does this discussion document cover?

This discussion document sets out:

- an overview of the Wānanga sector and its relationship with the Crown
- the current legislative settings that apply to the Wānanga, why these settings are problematic, and options that have been considered to resolve these issues
- the legislative changes being proposed to establish an enabling Wānanga sector framework, the intent behind these changes, the impacts we expect to see, and the opportunities and risks that may result
- key questions we are seeking feedback on related to the proposed legislative changes; and
- the process for consultation and engagement on these legislative proposals and expected next steps.

This discussion document does not cover specific details of how individual Wānanga may wish to be reconstituted under the proposed Wānanga sector framework.

## **Companion proposal to reconstitute Te Wānanga o Raukawa**

Alongside the work to develop the proposals in this discussion document, the Ministry has been working with Te Wānanga o Raukawa on a proposal to reconstitute Te Wānanga o Raukawa. A companion discussion document outlines this proposal based on the enabling Wānanga sector framework proposed in this discussion document.

## **What is the timeline for this work?**

Submissions on the proposals outlined in this document are open from Tuesday 20 September 2022 until 4pm, Friday 28 October 2022. For more information about how you can engage, please see the 'how to have your say' section [page 29].

Following the public consultation and engagement process, the Ministry will summarise the submissions, refine the proposals as appropriate, and seek Cabinet agreement to final policy decisions in early December 2022.

## **What is the scope of this work?**

As noted above, the Wānanga have continually raised concerns about how the current legislative settings have constrained the development and operation of Wānanga as TEIs.

The proposals set out in this discussion document seek to appropriately recognise the unique relationship of Wānanga with the Crown, which is different to other types of tertiary education providers and is based on Te Tiriti o Waitangi/Treaty of Waitangi, as well as the unique role and contributions of Wānanga to education.

A tertiary education organisation (TEO) is any organisation that supplies tertiary education, training and/or assessment services. The tertiary education sector consists of hundreds of registered TEOs, many of which are Private Training Establishments (PTEs) that receive funding through the Tertiary Education Commission (TEC). All TEOs can apply for accreditation to assess for New Zealand Qualifications Framework (NZQF) qualifications.

A subset of TEOs are TEIs, which consists of universities, Te Pūkenga, and the Wānanga. The Crown considers that it has an ownership interest in TEIs, noting that this interest is contested by the Wānanga. The majority of students in tertiary education study in TEIs. In 2021, over 85 percent of learners participating in tertiary education were enrolled in TEIs – that is 311,000 learners enrolled at TEIs, of the total 358,000 learners participating in tertiary education.

The E&T Act sets out provisions for the administration of TEIs. The legislative proposals set out in this paper cover the provisions in Subpart 3 of Part 4 and Schedule 11 of the E&T Act that apply to Wānanga, including:

- establishment of Wānanga, including the characteristics of a Wānanga
- councils, including composition, the appointment process, and the detailed arrangements that support the governance of institutions
- functions and duties of councils
- powers of institutions and councils
- institutions at risk
- monitoring and interventions

- auditing, financial accountability, reporting, and transparency requirements and the application of the Crown Entities Act 2004, and
- academic freedom and institutional autonomy.

This work supports the Government's commitments to Te Tiriti o Waitangi/ The Treaty of Waitangi and strengthening the Māori-Crown relationship to ensure that the Crown can grow to be a better Te Tiriti/Treaty partner and work in true partnership with Māori. This work is also part of the Government's actions to support the implementation of the Tertiary Education Strategy, in particular priority eight (enhancing the contribution of research and mātauranga Māori in addressing local and global challenges). The Ministry's joint work programme with the Wānanga is also a Government action under the Ka Hikitia – Ka Hāpaitia outcome domain of Te Rangatiratanga (Māori exercising their authority and agency in education). Furthermore, this work aligns with discussion presented in *Manu Kōkiri – Māori Success and Tertiary Education: Towards a Comprehensive Vision*, in particular discussion around individual and collective mana, health and wellbeing, the role of iwi/Māori and mātauranga Māori in tertiary education and Te Tiriti o Waitangi/The Treaty of Waitangi.

### *Māori Medium Education / Kaupapa Māori Education (MME / KME) pathways*

The Ministry's work with the Wānanga also sits alongside a work programme to grow Māori medium education and Kaupapa Māori education (MME/KME) in early learning, schooling and tertiary education.<sup>2</sup> While our work with the Wānanga sector is distinct and separate from the MME/KME work programme, which is focused specifically on the Wānanga and their operating context within the tertiary education system, there is a shared focus on improving outcomes for Māori learners and growing the MME/KME system of delivery (which includes Wānanga).

In September 2021, Cabinet agreed that the Ministry develop a work programme to grow MME/KME, in conjunction with a Māori Medium Education Oversight Group (Te Pae Roa). The MME/KME work programme aims to address deep and enduring challenges including unmet demand, incomplete and unclear pathways, a lack of agency and authority by Māori over MME and KME, and significant workforce development requirements. The goal is increasing the number of taura Māori in MME and KME early learning and schooling to 30 percent of Māori learners by 2024, and growing pathways in tertiary education.

For the past 8 months, Te Pae Roa has consulted with Māori to gauge views on options for growing MME and KME. Cabinet will consider this work in October 2022 and decide next steps.

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<sup>2</sup> <https://www.education.govt.nz/our-work/information-releases/issue-specific-releases/growing-maori-medium-education>

# Part one: Background

## Overview of the Wānanga

Wānanga are currently TEIs under the E&T Act, along with universities and Te Pūkenga. Originally, Wānanga developed as Māori organisations and became registered tertiary education organisations to access tertiary education funding. Under this legislation, a Wānanga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom). Wānanga are distinguished by their ‘by Māori, for Māori’ educational provision and their focus on Māori as members of whānau, hapū and iwi. They therefore have important differences to other TEIs not just in what they teach, but in how they teach.

Te Taihū o Ngā Wānanga (Te Taihū), the representative body of the three Wānanga, notes that the Wānanga role and function is characterised by the pursuit of:

- a. the empowerment of whānau, hapū and iwi and the diverse communities the Wānanga serve specifically, through the delivery of tertiary education; and
- b. the advancement, maintenance, and protection of mātauranga Māori.

The Ministry considers that the Wānanga form an integral part of the current education system. Wānanga follow on from kōhanga reo (pre-schools), kura kaupapa Māori and kura ā-iwi (primary schools), and whare kura (secondary schools) in the pathway of Māori education.

While open to everyone, the majority of Wānanga students are Māori (54 percent of enrolments in 2021), and the development needs and aspirations of whānau, hapū and iwi remain a core focus of Wānanga. The Ministry also considers that the Wānanga play an important role in supporting achievement for learners who have been underserved by the compulsory education system and mainstream tertiary education and training.

While the Wānanga share common characteristics – such as their role in maintaining, developing and disseminating mātauranga Māori – each Wānanga is distinctive in its own right, and each have unique histories and aspirations.

**Annex 1** provides background information on each of the three Wānanga: Te Wānanga o Raukawa, Te Wānanga o Aotearoa and Te Whare Wānanga o Awanuiārangī.

## The role and contribution of the Wānanga in the tertiary education system

### Wānanga have a strong focus on supporting Māori learner success

The three Wānanga each emerged as a response from iwi to poor educational outcomes for Māori in the Pākehā “mainstream education” system. While the Wānanga serve all learners, they have a strong focus on Māori learner success, in particular on the educational success of the descendants of their founding iwi.

The Wānanga contribution to improving Māori educational success is characterised by:

- an emphasis placed on education in the iwi, hapū and whānau context; and
- a diversity of teaching and rangahau that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding mātauranga Māori and āhuatanga Māori according to tikanga.

In 2021, there were 18,655 tauira Māori enrolled in the three Wānanga. This represents 25 percent of tauira Māori in tertiary education. Tauira Māori studying at Wānanga have higher qualification completion and progression rates in certificates and diplomas than tauira Māori studying at other tertiary providers. Their completion rates in degree and above qualifications are broadly comparable to other tauira Māori in the tertiary system.

Of those tauira aged 25 years and over:

- 80 percent of tauira Māori who started a Level 1 to 2 certificate at a Wānanga completed or progressed to a higher level of study within 3 years, compared to an average rate of 71 percent for all tauira Māori at this level.
- 79 percent of tauira Māori who started a Level 3 to 7 certificate or diploma at a Wānanga completed or progressed to a higher level of study within 5 years, compared to an average rate of 71 percent for all tauira Māori at this level.

The Wānanga note that this contribution is based on their current range of provision and that they aspire to increase this, in line with the range of provision offered by universities and Te Pūkenga. Though this is not a direct result of the current legislative settings, it speaks to the broader aspirations of Wānanga.

A 2015 report looking at social and cultural outcomes for Wānanga students found that “Wānanga students were more likely to have higher levels of current proficiency in te reo Māori and speak Māori at home”.<sup>3</sup>

### Wānanga play a critical role in revitalisation and normalisation of te reo Māori and mātauranga Māori

As stated by the Waitangi Tribunal, the relationship between Wānanga as a system of delivery, te reo Māori and mātauranga Māori is ‘inextricable’.<sup>4</sup> This, among other things, sets Wānanga as institutions apart from the other TEIs such as universities and Te Pūkenga. Wānanga play an important role in the collation, protection, and development of mātauranga Māori and are the only tertiary provider for which that role is legislated. The statutory responsibilities of a Wānanga currently include the responsibility of carrying out teaching and research that assists the application of knowledge regarding āhuatanga Māori and tikanga Māori and within traditional Māori social structures.

Learners with a Māori language background – i.e. they have te reo Māori as a first language or have attended kōhanga, kura kaupapa Māori, kura ā-iwi or wharekura – make up a significant proportion of the Wānanga student population. Wānanga provide a vital pathway in tertiary education for kaupapa Māori education. According to the 2015 report mentioned above, 23 percent of adult Māori whose first language was te reo Māori, or who had attended kōhanga and/or kura, had enrolled at a Wānanga at some point.

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<sup>3</sup> [https://www.educationcounts.govt.nz/publications/tertiary\\_education/beyond-study/social-outcomes/social-and-cultural-outcomes-for-wananga-students](https://www.educationcounts.govt.nz/publications/tertiary_education/beyond-study/social-outcomes/social-and-cultural-outcomes-for-wananga-students)

<sup>4</sup> Waitangi Tribunal, The Wānanga Capital Establishment Report, p. 54



Māori gaining Level 4 or higher qualifications from Wānanga were nearly twice as likely to have te reo Māori as their first language, or have attended kōhanga, kura, than Māori who gained similar-level qualifications from other TEIs (21 % compared to 11%).

The Wānanga are also a significant contributor to the revitalisation of te reo Māori. In 2021, around 70 percent of all learners enrolled in a te reo Māori course in tertiary education were studying at a Wānanga (amounting to 23,385 learners in real terms). Over half of learners at Wānanga were Māori.

## **Waitangi Tribunal claims lodged by the Wānanga**

The relationship between the Wānanga and the Crown has been complex. While the Wānanga have made continual efforts to influence tertiary-related policy, funding, and legislative settings through engagement with the Crown, the high-level settings surrounding the Wānanga-Crown relationship have not shifted in a way that appropriately supports Wānanga to achieve their unique aspirations within the wider tertiary education system.

### **The Wānanga Capital Establishment (WAI 718) claim**

The Wānanga Capital Establishment Claim was lodged by the chief executives of the three Wānanga in 1998. They argued that Wānanga – which had each been established as TEIs throughout the 1990s, after operating as PTEs – had been disadvantaged relative to other TEIs in terms of capital funding support. Other TEIs had benefited from the Crown's 1990 policy of transferring asset ownership from the Crown to those TEIs free of charge. The Wānanga argued that it was contrary to Te Tiriti/the Treaty that those TEIs should inherit substantial capital assets, while they received no capital establishment funding.

The Tribunal agreed that the Crown's tertiary education policies had served to disadvantage the Wānanga and recommended that the Crown compensate Wānanga for past under-investment and fund them on a level comparable to other TEIs. The Crown acknowledged and accepted the Tribunal's findings and full and final settlements with each Wānanga were reached between 2000 and 2010. Settlements for all three Wānanga totalled \$175 million.

### **Te Wānanga o Aotearoa (WAI 1298) claim**

The Aotearoa Institute claim concerning Te Wānanga o Aotearoa, more commonly known as Te Wānanga o Aotearoa claim, was brought on behalf of the Aotearoa Institute Trust Board. It was lodged in 2005 and heard under urgency.

The WAI 1298 claim concerned disputed issues of control over Te Wānanga o Aotearoa, including what it can teach and to whom. The claim arose out of the tension between the Crown's right and responsibility to govern and the self-determination of the founding iwi, as found in and practised by its Wānanga.

The Tribunal found that the claim was well-founded. The Tribunal's primary recommendation was to reinforce the recommendation of WAI 718, six years earlier, to establish a partnership agreement as a mechanism to facilitate high level discussion. This agreement has yet to be completed.

The Tribunal's decision was accepted by the Crown and a full and final settlement was made in 2011 when the suspensory loan was converted into equity.

### **Te Wānanga o Raukawa Whakatupu Mātauranga (WAI 2698) claim**

The WAI 2698 claim was registered by representatives of Te Wānanga o Raukawa with the Waitangi Tribunal in December 2017.

The claim concerns two main issues:

- a. The impact of Crown tertiary education and science policies and funding mechanisms on the educational provision delivered by Te Wānanga o Raukawa and its contribution to the mātauranga continuum; and
- b. The tension between different understandings of tino rangatiratanga and kāwanatanga by Te Wānanga o Raukawa and the Crown and how they are expressed in Crown tertiary education and science policies and processes.

The Crown entered into a Relationship Protocol agreement with Te Wānanga o Raukawa in 2019. The Protocol provides a framework for discussing and resolving the issues raised by the WAI 2698 claim and sets the principles of engagement. The changes proposed in this document have, in part, been developed through the work between the Crown and Te Wānanga o Raukawa on the WAI 2698 claim.

### Moving towards a partnership approach

Past approaches to improving policy settings for Wānanga have invariably been issues-based and reactive, such as resolving Te Tiriti/Treaty of Waitangi claims relating to capital funding (WAI 718). This has required the Wānanga to initiate litigation from time to time when discussions have failed to satisfactorily address their concerns. Historically, Crown responses have not addressed the fundamental concerns of the Wānanga relating to the Māori-Crown partnership under Te Tiriti/the Treaty or provided recognition of their unique role in the tertiary education sector.

In August 2019, joint Ministers agreed that officials should work with the Wānanga sector to consider these policy issues more holistically. Ministers invited the Wānanga to engage with them and their officials to reform the current legislative and policy frameworks.

In June 2020, a joint work programme between the Ministry and the Wānanga was formalised to explore opportunities to address the Wānanga sector's long-standing and consistent concerns. Our joint work programme involves the Wānanga and the Crown working together to find new, proactive solutions, rather than just addressing symptoms as in the past.

## Part two: Understanding the issues

### Status quo

#### Administrative settings that currently apply to the Wānanga

The Wānanga are currently TEIs under the E&T Act, which are a form of Crown entity under the Crown Entities Act 2004. TEIs are stand-alone bodies corporate that are legally separate from the Crown, but in which the Crown considers it holds an ownership interest. The Ministry acknowledges that this interest, as applied to the Wānanga, is contested by the Wānanga in the context of the Māori-Crown partnership. TEIs operate at arm's-length from Ministers and retain independence as described in the academic freedom and institutional autonomy provisions of the E&T Act (section 267).

The administrative settings for TEIs set a tripartite relationship between responsible Ministers, the TEIs' governing body (which is a council) and monitoring agencies. Ministers have a key role in overseeing and managing the Crown's interests in TEIs, for example through their role in council appointments, setting direction and funding levels, and monitoring entity performance. The Minister's monitoring agency, the TEC, provides Ministers with information, analysis and advice about the effectiveness, efficiency, and educational and financial performance of the TEI.

The administrative settings for the Wānanga (as TEIs) are as follows:<sup>5</sup>

- **Establishment** – the E&T Act specifies that a Wānanga may be established by OIC on the recommendation of the Minister of Education, if the Minister is 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 stakeholders and take into account the characteristics of a Wānanga.
- **Council structure and functions** – the E&T Act specifies that councils of the Wānanga (and universities) must have between eight and 12 members who are selected based on skills and experience. The E&T Act also:
  - specifies the council should aim to reflect the ethnic and socio-economic diversity of the communities the institution serves, and that at least one member of the council must be Māori
  - sets four-year term duration for council members; and
  - sets out details about how a council operates, such as meeting procedures and the establishment of sub-committees etc.
- **Council appointment process** – Under the E&T Act, the responsible Minister appoints three to four members of each Wānanga (and university) council, depending on its overall council size. All other council members are appointed by the council in accordance with its own arrangements.

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<sup>5</sup> These generally apply to other TEIs such as Universities, though separate arrangements are provided for Te Pūkenga – New Zealand Institute of Skills and Technology.

- *Functions and duties of councils* – the E&T Act specifies the functions of a Wānanga council, which includes appointing a chief executive and submitting proposed funding plans to the TEC. The E&T Act also specifies the duties of the council which include ensuring the institution operates in a financially responsible manner and ensuring proper standards of integrity, conduct, and concern for the public interest and the wellbeing of students.
- *Powers of councils* – The E&T Act specifies that a Wānanga council has all powers reasonably necessary to enable it to perform its functions efficiently and effectively, including to provide courses of study or training, prescribe fees payable by students, and to grant fellowships, scholarships, bursaries, or prizes.
- *Powers of institutions* – The E&T Act specifies that a Wānanga has rights, powers and privileges, but that these must be exercised in line with performing the functions of the Wānanga. The E&T Act also specifies the limits on these powers, including for the disposal of assets and the granting of leases.
- *Monitoring* – the TEC collects information on the financial and educational performance of Wānanga (along with all TEOs, of which TEIs are a subset).
- *Interventions* – under the E&T Act, if certain criteria are met, the responsible Minister may:
  - appoint a Crown observer to the council of the Wānanga (or any other TEI); and
  - dissolve the council of a Wānanga (or any other TEI) and appoint a commissioner along with an advisory committee.
- *Auditing, financial accountability, reporting, and transparency requirements* – these requirements are set through several mechanisms which include:
  - funding determinations issued by the responsible Minister under the E&T Act which set out the requirements for how Wānanga (and all TEOs) may use funding received from the Crown
  - requirements under the E&T Act that Wānanga (and all TEIs) must seek approval from the Minister of Finance for non-public investments, approval from the Secretary for Education for the borrowing and disposal of assets, and that they must maintain New Zealand bank accounts
  - requirements under the E&T Act that Wānanga (and all TEIs) must provide to the responsible Minister and the Office of the Auditor General (OAG) annual report/financial statements, and statements of service performance; and
  - requirements under the Crown Entities Act 2004 that Wānanga (and all TEIs which are a form of Crown entity) are subject to a number of other Acts, including the Official Information Act 1982, the Ombudsmen Act 1975 and parts of the Public Service Act 2020.
- *Academic freedom and institutional autonomy* – the E&T Act confirms the intention of Parliament that the academic freedom and institutional autonomy of Wānanga are preserved and enhanced.

One of the purposes of the E&T Act is establishing and regulating an education system that honours Te Tiriti/the Treaty and supports Māori-Crown relationships. Section 9 of the E&T Act lists two specific examples in the administrative settings for TEIs that are intended to reflect Te Tiriti/the Treaty:

- Councils of institutions have a duty, in the performance of their functions and the exercise of their powers, to acknowledge the principles of Te Tiriti o Waitangi (section 281(1)(b))
- At least one council member of a TEI must be Māori (section 278(2)(a)), as discussed above.

These Tiriti/Treaty-specific settings apply to TEIs as a whole and are not specific to the Wānanga. They do not recognise their role in the Māori-Crown relationship, individually and collectively.

The E&T Act contains other provisions that affect the operation of Wānanga but are not affected by the proposal, for example, tuition funding, quality assurance of providers and education programmes, and learner wellbeing and safety.

## **The Crown's understanding of Te Tiriti/the Treaty in this kaupapa**

The Crown has acknowledged its Te Tiriti/Treaty obligations through Te Tiriti/Treaty settlements, the Cabinet Office circular on Te Tiriti o Waitangi/Treaty of Waitangi Guidance, Te Arawhiti guidance and other authorities. The E&T Act also provides recognition of the Crown's Te Tiriti/Treaty obligations, broadly at section 4, and more specifically at section 9.

The Crown has acknowledged Te Tiriti/Treaty obligations to consider partnership to Wānanga specifically, through the Deeds of Settlement for WAI 718 and WAI 1298, and through the signing of the Relationship Protocol with Te Wānanga o Raukawa.

The Ministry considers that Te Tiriti/the Treaty requires the Crown to consider its partnership and active protection obligations in the context of the kāwanatanga and tino rangatiratanga spheres. The Crown must also give consideration to the principles of equity and options. These principles should be considered in relation to the Wānanga in the first instance, but also to iwi and Māori more broadly. These broader groupings also have interests in Māori learner success in the tertiary education system, and the revitalisation, protection and transmission of te reo Māori, mātauranga Māori, and Wānanga as a system of delivery.

Underlying the Ministry's work are the following high-level Tiriti/Treaty assumptions:

- Each Wānanga as an organisation has tino rangatiratanga.<sup>6</sup>
- The Crown has an obligation to recognise the tino rangatiratanga of the Wānanga. The Crown's Te Tiriti/Treaty obligation is to foster, support, and assist their exercise of tino rangatiratanga.<sup>7</sup>
- The Crown also has obligations to recognise the tino rangatiratanga of other iwi/Māori in the context of the tertiary education system.
- Te reo Māori and mātauranga Māori are taonga.<sup>8</sup>

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<sup>6</sup> Waitangi Tribunal, The Report on the Aotearoa Institute claim concerning Te Wānanga o Aotearoa, p. 37 / Waitangi Tribunal, Te Whānau o Waipareira, p. xxv

<sup>7</sup> Waitangi Tribunal, The Wānanga Capital Establishment Report, p. 48

<sup>8</sup> Section 4, Te Ture mō te reo Māori 2016, The Māori Language Act 2016 // Waitangi Tribunal, The Wānanga Capital Establishment Report, p. xii



- Wānanga, as a system of learning that is inextricably linked with te reo Māori and mātauranga Māori, is a taonga.<sup>9</sup>
- The transmission of mātauranga Māori and Māori success in the education system are valid Te Tiriti/Treaty interests.<sup>10</sup>

These assumptions are derived from Articles 1-3 of te Tiriti o Waitangi/Treaty of Waitangi jurisprudence, including findings of the Courts and the Waitangi Tribunal, as well as Deeds of Settlement between Wānanga and the Crown.

The Waitangi Tribunal's *Wānanga Capital Establishment Report*, quoted below, has heavily informed our thinking about the Crown's active protection obligations in relation to Wānanga as a system of learning, mātauranga Māori and te reo Māori:

Wananga [sic] is an ancient process of learning that encompasses te reo and matauranga Maori. Wananga embodies a set of standards and values. As a verb, 'to wananga' is to make use of matauranga Maori in all its forms in order to teach and learn. It is clear that te reo Maori and matauranga Maori are taonga. Wananga is given life by these taonga, and in the reciprocal nature of the Maori world, wananga also serves to give life to te reo and matauranga. Each is dependent on the others to nurture, sustain, and develop. Wananga as a system of learning, and a repository of matauranga Maori, is a taonga in its own right, but it does not exist in isolation from te reo and matauranga Maori.

The *Wānanga Capital Establishment Report* has also informed our understanding of the Crown's relationship with Wānanga in the context of Te Tiriti/the Treaty:

Rangatiratanga involves, at the very least, a concept of Maori self-management. This can be seen in many of the Tribunal's previous reports. The wananga that have been recognised as TELs have all developed out of the efforts of Maori iwi groups to provide tertiary education to, in the first instance, their own people; in the second instance, Maori students; and, in the third instance, anyone who wishes to embrace this particular form of education. As such, the efforts of these tribal groups to create and sustain TELs are a vital exercise of rangatiratanga. The establishment of wananga as TELs recognised by the State represents an attempt to engage actively with the Crown in the exercise of rangatiratanga in the management of new forms of tribal and Maori education. The Crown's Treaty obligation is to foster, support, and assist these efforts. In doing so, the Crown needs to ensure that wananga are able to remain accountable to, and involved in, the communities that created them.

As discussed above, the Wānanga play an important and unique role in facilitating Māori learner success in the tertiary education system, despite significant system barriers. As they note in their own words:

Wānanga are playing a key role in ameliorating the deleterious impacts of educational underachievement by Māori and have made significant contributions to transformational change for whānau, hapū and iwi over the last three decades. This is despite the cultural, structural and political factors that continue to marginalise and undermine how and what we do, and our ways of knowing and being. Māori education (Kōhanga, Kura Kaupapa, Whare Kura and Wānanga) as we know it today, was born out of the historical resistance and struggle for the revival of our language and culture.

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<sup>9</sup> Waitangi Tribunal, *The Wānanga Capital Establishment Report*, p. 54

<sup>10</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei*, p. 558

There are broad-ranging Tiriti/Treaty interests held by the Wānanga and Māori more broadly in the tertiary education system – including the safety and wellbeing of staff and students, and the development of scholarship in alignment with the interests and needs of whānau, hapū, iwi and mātauranga Māori, and according to tikanga. The Ministry's work on administrative settings will not directly address these interests, but is intended to facilitate greater recognition of the tino rangatiratanga of the Wānanga in the education system to enable them to realise their interests. There is further work to be done to facilitate broader Tiriti/Treaty interests and fuller recognition of tino rangatiratanga to be realised in the tertiary education system. There is close alignment between these Tiriti/Treaty interests and the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

## Problem definition

The three Wānanga emerged as a response from iwi to poor educational outcomes for Māori in mainstream education. They were founded as iwi-based and iwi-led institutions. In order to achieve their goals for Māori and to grow as organisations, Wānanga were initially established as private training establishments (PTEs) and then transitioned to become TEIs in the 1990s.

The Wānanga fought hard to be recognised as TEIs, in the absence of other options, as a way for them to:

- achieve their strategic objectives as Māori tertiary providers
- formalise their status alongside universities and polytechnics; and
- expand their scope of provision, and to enable greater access to government funding.

Becoming a TEI has meant that the Wānanga are forced to fit into an education system that is led and directed by the Crown. In order to survive, Wānanga have had to focus on achieving the things the Crown values, and its priorities for achieving broader education outcomes for New Zealand.

While there were clear benefits to the Wānanga from becoming TEIs, fitting into this system has meant that the Wānanga have had less autonomy and ability to regulate their own affairs and respond to the objectives that iwi/Māori may have.

The Wānanga have generally not had the opportunity to be involved in shaping policy development and legislative reform over the last 30 years, or the opportunity to co-design the administrative settings applying to them. This is not aligned with contemporary understandings of the application of the principle of partnership in policy development.

For Wānanga, being forced to operate in this system has held back their evolution as Māori institutions and constricted their ability to flourish as Wānanga and best meet the needs of their founding iwi, their staff, their taura, and their wider communities.

*The administrative settings for Wānanga have not been designed with Tiriti/Treaty partners and do not adequately reflect the relationship between kāwanatanga and tino rangatiratanga as expressed in Te Tiriti/the Treaty*

The E&T Act establishes a system of accountability for Wānanga, as TEIs, to the Crown only. Only the Crown can establish and disestablish Wānanga under the Act, and Wānanga are accountable to the Crown for both financial and educational performance.

The 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.

*Administrative settings for Wānanga are based on the traditional university model and provide for a Crown accountability model. This does not reflect the unique role, and collective mana, of the Wānanga in te ao Māori*

We outline examples of this below.

### *Characteristics of institutions*

The five characteristics of a TEI set out in the E&T Act are seen to be closely linked to the traditional role of the university, rather than the role and functions of other forms of TEI, including Wānanga.

The characteristics of a TEI are:

- they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence
- their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge
- they meet international standards of research and teaching
- they are a repository of knowledge and expertise; and
- they accept a role as critic and conscience of society.

The requirement for new non-university TEIs to have only one of these characteristics can be seen to imply that Wānanga are lesser institutions, with lower standards for entry than universities. The same implication may be drawn for the provisions outlining the specific characteristics of universities and Wānanga respectively. Universities are described as being characterised by "a wide diversity of teaching and research, especially at a higher level", while Wānanga are described as being characterised by "teaching and research". This does not reflect the mana of the Wānanga or their role, or the importance of mātauranga Māori.

### *Governance arrangements of institutions*

The governance settings for Wānanga, as TEIs, are highly prescriptive and constrain their capacity to express their tino rangatiratanga.

One example is council member appointment processes. The E&T Act prescribes the number of members that an institution's council may have (eight to 12 members) and the basis for their appointment (ministerial or council). The number of members who must be ministerially appointed is set at four for councils of 10-12 members, or three for councils of eight to nine members.

The balance of council and ministerial appointments is intended to reflect the Minister of Education's accountability role for TEIs; within the TEI model, ministerial appointments are considered an important way to influence performance and strategic direction. However, these settings do not recognise te ao Māori interests in Wānanga performance and strategic direction. This lack of recognition may mean that a Wānanga has to make trade-offs when deciding council membership numbers.

For example, these settings do not recognise the role that others, such as founding iwi or other Māori, may play in the governance of a Wānanga. A Wānanga may keep council member numbers low to ensure that the ratio of iwi or Māori appointees to other appointees (including ministerial appointments) is not imbalanced.

While this ensures prominence of Māori voice on the council, limiting council membership numbers also limits access to a broader range of skills and talents. However, the Crown is not required to make the same trade-offs in relation to its interests in TEI council membership.

Further examples of highly prescriptive governance settings that do not reflect the unique role and context of Wānanga include:

- term limits for council members (four years), which do not reflect the enduring kaitiaki responsibilities that some council members may have in relation to a Wānanga; and
- rules about how academic policy is developed – for example, the required establishment of an academic committee, the makeup of which is restricted to staff and students and may not reflect a te ao Māori approach.

#### *The settings do not reflect the individual mana of the Wānanga*

In contrast to universities and Te Pūkenga, each individual Wānanga has a relationship to the Crown not only as a TEI but also as a partner under Te Tiriti/the Treaty. This partnership means that the Crown must recognise the tino rangatiratanga of each Wānanga, and this may involve enabling each Wānanga to operate under different administrative settings.

#### *The settings do not reflect an appropriate balancing of interests in the context of the Māori-Crown relationship*

The Crown has kāwanatanga interests in considering how it might better recognise the tino rangatiratanga of the Wānanga as a collective and as individual organisations. One of those interests is in maintaining the integrity of its existing institutional models, if Wānanga (and their founding iwi where relevant) consider that working within one of those models best serves its interests. Where a Wānanga may wish to maintain the line of accountability for financial and educational performance through to the Crown, a level of ongoing government oversight is likely to be required, while providing flexibility to better reflect the aspirations of that Wānanga and its relationships and obligations to taura, communities and iwi.

Where there is a preference to shift accountability lines for a Wānanga from the Crown to an iwi or iwi grouping, the Crown will also have kāwanatanga interests. The Crown continues to have obligations in relation to the Wānanga system of delivery, which is inextricably linked with te reo Māori and mātauranga Māori. As we have noted, Māori hold a Tiriti/Treaty interest in Māori success in education. The Crown also has an interest in supporting access, achievement and performance in Māori education.

The extent of the Crown's obligations and interests will be context specific. The Crown's levers to respond to the obligations and interests may be less overt in future, Wānanga would have more autonomy to meet their aspirations, and it will take time and a shared commitment to understand how the Crown and Wānanga can best work as partners. These obligations and interests have implications for how the Ministry has sought to design options in collaboration with the Wānanga.

#### **Key questions: Problem Definition**

1. Do you agree with this characterisation of the problem/opportunities presented? Why/why not?

## Part three: Proposals for legislative change

### Objectives of legislative change

The objectives of the proposed legislative changes set out in this section are to ensure the administrative settings for the Wānanga:

- are consistent with Te Tiriti o Waitangi/the Treaty of Waitangi – in particular, that they:
  - recognise the mana of the Wānanga and reflect the partnership relationship they have with the Crown; and
  - enable flexibility to reflect the unique purpose, role and functions of individual Wānanga in the tertiary education system; and
- maintain confidence in the tertiary education system as a whole.

We consider that achieving these objectives will support a flourishing Wānanga sector and set strong foundations for the future relationship between the Wānanga and the Crown.

Wānanga deliver benefits to the tertiary education system in terms of education outcomes (particularly for Māori taura), provision of te reo Māori education, and the development and transmission of mātauranga Māori that is by Māori for Māori and unique in the New Zealand context. This includes post-graduate mātauranga Māori qualifications, delivered according to tikanga. Wānanga also provide a vital tertiary pathway for learners who have been disenfranchised from the education system through their past experience of education. Wānanga provide these benefits at a scale that is not matched elsewhere in the education system and have built this capacity over decades. However, it is clear that the current administrative settings do not reflect their mana or their unique public role and functions and are limiting their ability to flourish as Wānanga and best meet the needs of their founding iwi, their staff, their taura, and wider communities.

A Tiriti/Treaty-based relationship between the Wānanga and the Crown, enshrined in legislation, would also provide a foundation upon which other areas of shared interest to the Wānanga (and their communities) and the Crown can be advanced to give expression to Te Tiriti o Waitangi/the Treaty of Waitangi – for instance, through changes to funding mechanisms and quality assurance.

### Analysis of options for legislative change

The sections below set out an overview and analysis of:

- **Issue 1:** Overall legislative design for the Wānanga sector which includes:
  - a. Option 1: Developing consistent administrative provisions for Wānanga in the E&T Act.
  - b. Option 2 (**preferred option**): Establishing an enabling Wānanga sector framework within the E&T Act.
  - c. Option 3: Developing separate primary legislation for individual Wānanga, outside of the E&T Act.



- **Issue 2:** Detail of the preferred legislative option, focusing on the characteristics of a Wānanga and Wānanga establishment provisions
- **Issue 3:** Detail of the preferred legislative option, focusing on how the OIC could enable different administrative settings for each Wānanga (within set parameters)
- **Issue 4:** Tiriti o Waitangi/Treaty of Waitangi consistency, focusing on alignment of the Wānanga sector framework overall with Te Tiriti/the Treaty.

## **Issue 1: Overall legislative design for the Wānanga sector**

We have considered three main options for the overall design of any changes to the legislative framework for Wānanga. Noting the Associate Minister for Education (Māori Education)'s intent to progress work on the administrative settings for the Wānanga in this term of Government, we also outline how these options, if preferred, could be implemented in line with these timeframes.

We also considered the option of shifting the Wānanga to become PTEs outside of the TEI framework. However, this option was discarded because it would not meet the objective of Tiriti/Treaty consistency as it would not recognise the mana or the unique public roles and functions of Wānanga.

There is a strong case for legislative change, as outlined in the problem definition section above. The option of maintaining the status quo was therefore ruled out.

### ***Option 1: Developing consistent administrative provisions for Wānanga in the Act***

Option 1 would involve the Crown and the Wānanga co-developing bespoke TEI settings for the whole Wānanga sector. This would allow the Crown and the Wānanga sector to develop administrative settings that are specific to the unique role and needs shared by all Wānanga. These administrative settings would be the same for all Wānanga.

The result of Option 1 would allow for a similar level of customisation as the unique administrative settings for Te Pūkenga—New Zealand Institute of Skills and Technology (subpart 4 of Part 4 of the E&T Act). If this option was progressed, each type of TEI (Wānanga, universities and Te Pūkenga) would have distinct administrative settings in their own respective subpart/part of the Act. If this option was progressed, an amendment bill could potentially be introduced next year.

### ***Option 2 (preferred option): Establishing an enabling Wānanga sector framework***

Option 2 would involve the Crown and the Wānanga co-developing an opt-in enabling legislative framework for the Wānanga sector. This enabling Wānanga sector framework would set out certain administrative settings that would be common to all Wānanga, namely the characteristics of a Wānanga and processes for establishing and disestablishing Wānanga.

This Wānanga sector framework would also enable each individual Wānanga to work with the Crown to co-develop bespoke administrative settings (within a particular set of parameters).

This Wānanga sector framework would be established in primary legislation (within the E&T Act). It would enable the creation of OICs on the recommendation of the Minister of Education for each Wānanga to progress bespoke administrative arrangements as **either** a bespoke TEI entity (Issue 3 – option 2a) or as a new statutory entity (Issue 3 – option 2b).

This would provide for the individual expression of the kaupapa and aspirations of each Wānanga. The scope of these OIC provisions and the application of other TEI provisions to Wānanga is discussed in further detail under Issue 2.

OICs can be developed once the legislative form of the sector framework is clear. Should Wānanga choose to progress changes to the administrative settings applying to them under the framework, each OIC will require intensive policy and legislative work.

### *Option 3: Developing separate primary legislation for individual Wānanga*

Option 3 would involve working with some or all of the Wānanga to establish separate primary legislation setting out their administrative settings and relationship with the rest of the legislative framework for tertiary education. This option would in theory allow for entirely bespoke arrangements for each Wānanga.

Should the Wānanga choose to progress changes to the administrative settings applying to them under the framework, each Act will require intensive policy and legislative work. Unlike the Option 2 process, progressing each individual Wānanga's primary legislation would require House time.

### *Assessment of overall legislative design options*

The following criteria were used to assess these three options for the overall legislative design:

- a) Recognises 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) Facilitates an appropriate sharing of accountability for Wānanga, reflecting the Māori-Crown partnership;
- c) Facilitates recognition of the mana of the Wānanga, collectively and individually; and
- d) Facilitates certainty and minimises transition risks in tertiary education system.

Criteria a) to c) reflect the Crown's understanding of its obligations under Te Tiriti/the Treaty in this context. In assessing the options, we have been mindful of the need to accord greater weight to the Crown's Tiriti/Treaty obligations within the tertiary education sector. Criterion d) reflects the importance of maintaining certainty and minimising the risk of unintended consequences within the tertiary education system, and for the Wānanga. It also reflects the nature of this policy development process, which is responding to the Associate Minister of Education (Māori Education)'s intent to progress legislative change in this term of Government. In order to implement any of the options outlined above in line with this commitment, policy development and legislative design and drafting will be required at pace. This raises the risk of unintended consequences which is present in any policy development process. There are currently over a hundred provisions applying to Wānanga as TEIs. Changes under any option would need to be carefully considered to ensure that they are able to meet the objectives sought and do not have unforeseen impacts on the Wānanga, or the wider tertiary sector.

**Table one** below sets out a summary analysis of these three legislative options against the above criteria.

**Table one – Summary analysis of legislative options**

|                                              | Option 1 – consistent Wānanga provisions                                                                                                                                  | Option 2 (preferred option) – enabling Wānanga sector framework                                                                                                                                                      | Option 3 – standalone primary legislation for individual Wānanga                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Recognises unique public roles and functions |                                                                                                                                                                           |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Facilitates shared accountability            |                                                                                                                                                                           |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Recognises the mana of the Wānanga           |                                                                                                                                                                           |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Facilitates certainty                        |                                                                                                                                                                           |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Overall                                      | While Option 1 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 Wānanga. | Would allow for recognition of mana of each Wānanga and their unique role and aspirations while facilitating certainty as compared to Option 3 by maintaining a common set of characteristics and overall framework. | Would allow for recognition of mana and unique role and aspirations of the individual Wānanga, but higher risk of unintended consequences, given the possible breadth of this option. Primary legislative change is harder to change than secondary legislation if issues arise. If standalone legislation for each of the Wānanga was not progressed at the same time, this could be seen as undermining the mana of the other Wānanga. |

| Key |                                         |
|-----|-----------------------------------------|
|     | Clear improvement on status quo         |
|     | Similar or mixed compared to status quo |
|     | Worse than status quo                   |

The Ministry considers that Option 2 – establishment of an enabling Wānanga sector framework – strikes an appropriate balance between the assessment criteria. It would allow for the administrative settings applying to each Wānanga to be calibrated to align with their unique characteristics but would do so within a consistent framework that maintains and promotes the mana of all Wānanga.

#### **Key questions: Overall approach to legislative design**

1. Do you agree with our analysis of options on the overall approach to the design of a legislative framework for Wānanga? Why/why not? Are there other options or changes to these options that we should consider?
2. Do you consider the proposed approach would achieve the policy intent? Why/why not?
3. How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal?
4. Are there benefits or risks that we have not identified?

## **Issue 2: Detail of the Wānanga sector framework – characteristics and establishment process**

### **Characteristics of a Wānanga**

#### *Status quo*

Under the E&T Act, “a Wānanga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom)”.

Furthermore, to be established as a TEI, a Wānanga must meet the Act’s national interest test by satisfying the Minister that the establishment of the institution is in the interests of the tertiary education system and the nation as a whole, and meet one or more of the following characteristics (in contrast, a new applicant to be a university must meet all of the following):

- they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence
- their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge
- they meet international standards of research and teaching
- they are a repository of knowledge and expertise and they accept a role as critic and conscience of society.

The current tests set a high bar. No entirely new Wānanga, or other TEI, has been established since the Wānanga became TEIs in the 1990s.

### *Proposed policy intent*

The proposed policy intent is to clearly lay out in legislation the key characteristics that define Wānanga collectively as unique among tertiary education institutions, and within the wider tertiary education system, consistent with te Tiriti/the Treaty.

### *Proposed approach to achieve this intent*

The proposed Wānanga sector framework would provide a new set of characteristics (distinct from the five set out above) that would need to be met for an applicant to be established as a Wānanga. These would apply in addition to the existing national interest tests.

The Wānanga and the Ministry propose that the characteristics should acknowledge the following aspects:

- **Role of iwi in their establishment**, recognising the shared identity of Wānanga as expressions of tino rangatiratanga and of mana, and the realisation of whānau, hapū and iwi aspirations.
- **Kaitiakitanga of te reo Māori, tikanga and mātauranga Māori**, signalling that they acknowledge and take seriously their responsibilities and obligations with respect to these taonga.
- **Promotion and maintenance of community well-being**, recognising that the responsibilities of the Wānanga towards their communities are wide-ranging and extensive, and that their work is expected to produce tangible benefits (social, spiritual, cultural, political and economic) within the communities they serve.
- **Consistency with Tikanga and mātauranga Māori in governance and operations**, reflecting that the Wānanga do not regard Tikanga or Mātauranga Māori as just topics of study; rather, they seek to express them in the way they operate.
- **Critic and conscience of society through an ao Māori lens**, mirroring the role others in the tertiary sector fulfil, but through the lens of Te Reo Māori, Tikanga and mātauranga Māori.
- **Role and contribution to international indigenous scholarship**, reflecting the role of a Wānanga within a growing, global network of indigenous tertiary institutions with shared interests and aspirations, and their contribution to the setting of international indigenous standards of scholarship and teaching.
- **Association with higher learning, and relationship between their teaching and intellectual endeavour (including research) on a wide diversity of subject matter**, recognising that:  
“mātauranga Māori” encompasses all branches of Māori knowledge, past, present and still developing. It is like a super subject because it includes a whole range of subjects that are familiar in our world today, such as philosophy, astronomy, mathematics, language, history, education and so on. And it will also include subjects we have not yet hear about. Mātauranga Māori has no ending: it will continue to grow for generations to come.”<sup>11</sup>

The proposed new characteristics enable the legislative settings of Wānanga to better reflect the essential characteristics that define Wānanga.

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<sup>11</sup> Mead, Tikanga Māori, pp 305-306



The proposed new characteristics would include and build on the current characteristics. While different, the Ministry considers they set an appropriately high bar for entry, on a par with characteristics needed to become a university.

It is appropriate for the sector to describe itself against this standard, which recognises the work Wānanga have done to build the sector over the last 30 years.

However, the high bar set by the proposed characteristics of a Wānanga may mean that new providers would need to be relatively well-established PTEs to have an opportunity to be recognised as Wānanga in the future. Potential newcomers (including iwi) may require significant capability building to meet the required characteristics. Furthermore, Māori organisations could be limited in their ability to become a Wānanga if their origins are not from an iwi. Together, these factors could potentially limit future growth of the Wānanga sector, although it is unclear whether, or how much more, restrictive they might be than existing requirements.

We are interested in 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. 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?

#### **Key questions: Characteristics of a Wānanga**

1. Do you support the policy intent of this proposal to lay out the key characteristics that define Wānanga collectively? Why/why not?
2. How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal?
3. Are there benefits or risks that we have not identified?
4. Are there other options that might better achieve the policy intent?

## **Establishment of Wānanga**

### *Status quo*

Under the E&T Act, Wānanga (as TEIs) can be established by OIC 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 and, consult relevant institutions, organisations representing institutions and other stakeholders, and be satisfied the entity meets one or more of the five characteristics of a TEI, and take into account the unique characteristics of a Wānanga. Under the Act, Wānanga are currently “characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom).”

### *Proposed policy intent*

The intent of the proposed policy change is to clearly lay out in legislation processes for establishing and disestablishing a Wānanga that reflect a partnership approach and maintain and enhance the mana of Wānanga collectively and individually.

### *Proposed approach to achieve this intent*

It is proposed that, when considering the establishment of a new Wānanga, in addition to the current requirements, the Minister must also seek advice from Te Tauihu o Ngā Wānanga on whether the proposed Wānanga meets the characteristics of a Wānanga and give special regard to that advice. This process would clarify how the requirements apply to Wānanga, recognise the mana of the existing Wānanga, and their expertise in assessing whether an organisation meets the characteristics of a Wānanga.

#### **Key questions: Establishment of a Wānanga**

1. Do you support the policy intent of this proposal to clarify the process for establishing a new Wānanga? Why/why not?
2. Do you consider the proposed approach would achieve the policy intent to better recognise the mana and expertise of the existing Wānanga in the establishment process? Why/why not?
3. How might you and/or your whānau, hapū or iwi, or organisation be affected by this proposal?
4. Are there benefits or risks that we have not identified?
5. Are there other options that might better achieve the policy intent?

### **Issue 3: Approach to the Order in Council provisions**

Given the preferred option of establishing an enabling Wānanga sector framework, this section outlines and seeks feedback on the kinds of administrative settings that could be amended via OIC for individual Wānanga.

#### **Proposed approach**

We propose that the Wānanga sector framework enables two high-level options for the administrative settings of an individual Wānanga:

- *Option 2a – Bespoke TEI entity*: Retain TEI status, with bespoke purpose, function and governance arrangements; or
- *Option 2b - New statutory entity*: Become a new type of statutory entity which retains the focus on education provision and provides greater independence in terms of bespoke arrangements, extending to accountability.

Many of the E&T Act provisions would continue to apply to Wānanga under both options. This includes provisions relating to academic freedom, student dispute mechanisms, learner wellbeing and safety, student loans and allowances, fees and more.

Current funding and quality assurance mechanisms in the E&T Act would also remain in place. Existing flexibility within these mechanisms will enable us to continue working with the Wānanga to develop a future funding framework for the sector and to consider changes to the quality assurance processes.

### *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 the Wānanga would work together to agree new administrative arrangements that could cover the:

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

There would be limitations on the nature of the governance arrangements that could be agreed. In addition, we consider at this stage that any new duties and functions of councils would be additional to the existing duties and functions in the Act or not reduce accountability arrangements under the Act.

Current monitoring and interventions settings would continue to apply.

### *New statutory entity*

A Wānanga may be re-established as a new type of statutory entity within the education system, retaining the status of a legislated tertiary provider that continues to focus on the provision of education for the public good. The Crown would continue to have an interest in the ongoing network of by-Māori for-Māori tertiary education, and in the taonga of te reo Māori and mātauranga Māori supported by the Wānanga system of tertiary education.

Currently the Crown's ability to appoint council members and influence the major financial decisions of a Wānanga enables it to protect its interest in Te Wānanga o Raukawa. For example, Ministers can appoint monitors, dismiss the board and appoint a commissioner.

As an independent Wānanga, the Crown would not have the same interests and responsibilities should the organisation fail and therefore would not operate the associated controls the Crown has to prevent this. 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. If the Māori organisation was not in a position to provide financial assistance, it would be up to them and the Crown to decide how it would respond to a Wānanga at risk of failure.

The legislated status and role of a Wānanga in the provision of education means they are not fully independent and there will be requirements in terms of transparency and accountability, such as operating under the Official Information Act 1982 and the Ombudsmen Act 1975.

Under this sub-option, parts of Subpart 3 of the E&T Act which describe the administrative settings that currently apply to Wānanga would no longer apply. The Crown and that Wānanga would work together to agree new statutory arrangements covering the following matters:

- the purpose of the Wānanga;
- the functions of the 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 the Wānanga and its council;
- the powers of Wānanga and its council;

- who the 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;
- financial matters, and reporting provisions; and
- other matters that are necessary or desirable to clarify the administrative arrangements of the Wānanga and its council and their relationship with the Crown.

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 a Wānanga, including aligning any changes to the characteristics of a Wānanga (as set in primary legislation) and reflecting its role as a provider of education. These requirements would need to ensure a model where risks and trade-offs are well understood, acknowledging both the opportunities created through greater autonomy for Wānanga and the ongoing interests of the Crown in Wānanga success and a strong network of Māori tertiary education provision.

## Discussion

The Ministry has also considered at a high-level the scope of the proposed enabling framework in the context of the criteria. The scope of the framework is intended to facilitate the tino rangatiratanga aspirations of the individual Wānanga, while maintaining the integrity of existing accountability models and ensuring certainty about the administrative settings applying to Wānanga.

The two options represent two possible approaches to accountability – to the Crown, on one hand, and to iwi or iwi groupings on the other. We consider this is consistent with Tiriti/Treaty principles of partnership and options, which recognise that Māori, as Tiriti/Treaty partners, have the right to choose their path. 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. These options are likely to reduce the ability of the Crown to intervene to protect its interest in ensuring that the education provided by Wānanga continues. Instead, the ability to intervene will be provided to iwi or other Māori organisations, who also have a strong interest in ensuring that education provided by Wānanga continues. In refining the options, there are choices about how to balance the opportunities and risks of change. We are interested in feedback about the implications of different choices for accountability and their impact on Wānanga and their communities.

Separate process requirements would also apply to each option. For example, in recommending an OIC relating to a Wānanga pursuing bespoke arrangements as a TEI, the Minister would need to be assured that the bespoke arrangements were consistent with the Crown entities regime. In recommending an OIC for an independent Wānanga, the Minister would need to ensure the entity was accountable to a rūnanga, iwi/hapū authority or similar Māori organisation.

We are interested in hearing feedback on whether our proposed scope for the enabling framework would be fit-for-purpose.

#### **Key questions: Approach to Order in Council provisions**

1. Do you consider the proposed approach to the Order in Council provisions would achieve the policy intent of facilitating the tino rangatiratanga aspirations of the individual Wānanga, while maintaining the integrity of existing accountability models and ensuring certainty? Why/why not?
2. How might you and/or your whānau, hapū or iwi, or organisation be affected by this approach?
3. What other benefits or risks that we have not identified?
4. Are there other options or changes to the proposed approach to the Order in Council provisions that might better achieve the policy intent?

#### **Issue 4: Tiriti o Waitangi/Treaty of Waitangi consistency**

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

As noted above, 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/the Treaty— particularly in light of historical Crown decision-making relating to the Wānanga.

One example of a legislative mechanism is a Tiriti/Treaty clause. Such clauses in legislation are intended to give specific legal recognition to te Tiriti/the Treaty and provide a safeguard for Māori rights and interests. They specifically mention te Tiriti/the Treaty.

These clauses take either an operative form or a descriptive form, as set out in the table below:

**Operative form** – places duty to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi, or be consistent with Te Tiriti/the Treaty, on decision-makers.

Decision-makers (and the courts) are required to determine what Te Tiriti/the Treaty requires.

For example, 'this Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi' (s4 Conservation Act 1987).

**Descriptive form** – describes how the legislation gives effect to Te Tiriti o Waitangi/The Treaty of Waitangi.

For example, "in order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,

(a) section..."



Te Arawhiti guidance, *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design*, notes that:

- provision for Te Tiriti/the Treaty in legislation is not reliant on having specific reference to it in legislation
- if a statutory mechanism to protect and provide for Māori interests, shared decision-making, and the Māori-Crown relationship is included, those matters should be expressly provided for (rather than relying on a ‘catch-all’ reference)
- where an operative clause is called for, it may be possible to combine a general operative Tiriti/Treaty clause with more specific measures.

Te Arawhiti guidance also notes the importance of coherency and consistency between like provisions. As we have noted above on page 12, the E&T Act, where the proposed Wānanga sector enabling framework would sit, contains several Tiriti/Treaty clauses. Section 9 of the E&T Act, for example, is a descriptive Tiriti/Treaty clause, and links to wider Tiriti/Treaty clauses in the E&T Act.

The Ministry would need to consider how any Tiriti/Treaty clause in the sector framework would fit within the E&T Act.

**Key questions: Tiriti o Waitangi/Treaty of Waitangi consistency**

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

## How to have your say

These proposals are a significant step in our joint work programme with the Wānanga and in the Government's work to ensure Māori are enjoying and achieving education success as Māori, as they develop the skills to participate in te ao Māori, Aotearoa and the wider world.

We look forward to hearing your views about the proposals.

To participate and provide feedback on the proposals, you can:

- Visit the Kōrero Mātauranga website [conversation.education.govt.nz/conversations/wananga-sector-framework-proposal](https://conversation.education.govt.nz/conversations/wananga-sector-framework-proposal) and complete the online submission form
- Send an email to [Wananga.Consultation@education.govt.nz](mailto:Wananga.Consultation@education.govt.nz)

The consultation is open from **20 September 2022** until 4pm, **28 October 2022**.

Following this consultation, the Ministry will collate and analyse the feedback provided and use this to inform joint Ministers. Joint Ministers will then consider any views expressed and feedback received through the consultation.

### *Your submission may be made public*

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 which part (or parts) you consider should be withheld, together with your reasons for withholding the information. The Ministry of Education will take such objections into account when responding to requests under the Official Information Act 1982.

# Glossary

|                    |                                                |
|--------------------|------------------------------------------------|
| <b>E&amp;T Act</b> | Education and Training Act 2020                |
| <b>OAG</b>         | Office of the Auditor General                  |
| <b>OIC</b>         | Order in Council                               |
| <b>MME / KME</b>   | Māori Medium Education/Kaupapa Māori Education |
| <b>NZQA</b>        | New Zealand Qualifications Authority           |
| <b>PTE</b>         | Private Training Establishment                 |
| <b>TEC</b>         | Tertiary Education Commission                  |
| <b>TEI</b>         | Tertiary Education Institution                 |
| <b>TEO</b>         | Tertiary Education Organisation                |
| <b>TES</b>         | Tertiary Education Strategy                    |

## Annex One: Background information on the Wānanga

The Wānanga have each provided the following descriptions of their unique contexts and roles:

### Te Wānanga o Raukawa

Te Wānanga o Raukawa was established in Ōtaki in 1981, by the ART Confederation (Te Āti Awa ki Whakarongotai, Ngāti Raukawa and Ngāti Toa Rangatira). Like other Wānanga, it is an expression of the mana of its founding iwi. It became a TEI in 1993.

In 1975 the Raukawa Marae Trustees, comprising representatives from the three iwi, launched Whakatupuranga Rua Mano. This iwi development strategy was underpinned by four principles: restoring and revitalising the marae of the Confederation; revitalising and protecting te reo; developing and retaining iwi members; and exercising tino rangatiratanga. Te Wānanga o Raukawa is a product of Whakatupuranga Rua Mano and strives to uphold its founding principles.

The purpose of Te Wānanga o Raukawa is to maximise its contribution to the mātauranga continuum for the survival of both hapū and iwi of the ART Confederation and Māori as a people. Course provision has been purposely designed to counter the threat of cultural extinction and to build a future where Māori thrive. All programmes of study at level 5 or above include compulsory papers in te reo (constituting 25 percent of the workload) and in iwi and hapū studies (a further 25 percent). The remaining 50 percent of each programme is made up of specialisation papers, for example, teaching, laws and philosophy, social work, management, and so on.

### Te Wānanga o Aotearoa

The Waipā Kōkiri Arts Centre (later Te Wānanga o Aotearoa) was established in Te Awamutu in 1984. Birthed by a group of passionate Māori locals with an idea to build a marae on the grounds of Te Awamutu College and to use that project as an opportunity to train young Māori youth.

One of the key elements in the Centre's philosophy, was to meet the demand for its much-needed services. Therefore, with demand ever increasing, the Centre branched out into other tribal areas. This in turn influenced a name change to the Aotearoa Institute, a name that reflected its increasingly pan-tribal nature. In 1988, the Aotearoa Institute lodged an application for TEI status, however it was not until 1993 that full Wānanga status was granted and the Institute became Te Wānanga o Aotearoa.

Today, Te Wānanga o Aotearoa is one of the largest tertiary education providers, delivering widely across all of Aotearoa with over 80 locations from Kaitiaki in the north all the way to Invercargill in the south. Over the last decade, Te Wānanga o Aotearoa has consistently delivered around 20,000 EFTS per annum to approximately 30,000 tauira. Programmes range from foundation to certificate, diploma, degree and Masters levels. Te Wānanga o Aotearoa's Te Reo, Mātauranga Māori and Toi provision has expanded over the years to include Social Services, Education, Business and Vocations in over 70 programmes annually.

## Te Whare Wānanga o Awanuiārangi

The Ngāti Awa Trust Board resolved to create a Wānanga in 1987 and Te Whare Wānanga o Awanuiārangi was formally established by the iwi in 1992. It became a TEI in 1997, following a complex process of recognition and registration.

The inspiration for the establishment of Te Whare Wānanga o Awanuiārangi came from Tā Hirini Mead, who considered that “education was to be a tool to empower our people away from the effects of colonisation and confiscation and into the future, properly equipped to face new challenges. We wanted to make tertiary education readily available to our people including the iwi of Mātaatua in the Bay of Plenty and we were aiming to attract Māori students as well as those wanting to learn at a Wānanga”.

Te Whare Wānanga o Awanuiārangi has three campuses, with more than 5,900 students in 2019, being provided with opportunities to study a number of subjects and professions, including performing arts, marae-based studies, teaching, nursing, environmental sciences, humanities, broadcasting and media, and postgraduate studies. Te Whare Wānanga o Awanuiārangi delivers programmes from foundation courses through to doctoral degrees (PhD and Professional Doctorate) and post-doctoral studies. Te Whare Wānanga o Awanuiārangi offers two doctoral qualifications, with an international cohort in Washington State and Hawai‘i.