

Recognition of organisations as Industry Training Organisations

Operational Policy Consultation Paper

April 2010

Name	Reference & Status	Distribution
Recognition of organisations as ITOs	OPERATIONAL POLICY CONSULTION PAPER	ITO sector Contact: industrytrainingprogrammes@tec.govt.nz

Purpose

1. This paper has been prepared as part of the consultation relating to the operational policy for industry training.
2. The Tertiary Education Commission (TEC) is seeking to better understand the factors that it might take into account when making any changes to its operational policy. This paper is also intended to provide information to the sector on the broad direction that the TEC intends to take on matters raised by this paper.
3. The TEC invites feedback from the tertiary education sector on the options presented in this paper and on any other relevant matters regarding recognition, *Gazetted* coverage, standard setting role and employer choice. Please use the separate Feedback Template to submit responses.

Aims

4. In undertaking this consultation, the TEC will be guided by the following aims:
 - *Minimising transaction and compliance costs*: the operational policy framework should take account of administrative and compliance costs, and where possible seek to reduce these.
 - *Maximising transparency and accountability*: the recipients of Government funding should be accountable for the results they generate, and related information should be available to interested parties.
 - *Minimising any perverse incentives*: the operational policy framework should be designed in such a way as to minimise and mitigate any perverse incentives.
 - *Maximising value for money*: the operational policy framework should ensure a strong focus on results and avoid arrangements that would lead to the funding of activities by government that would otherwise be funded by other parties.
 - *Providing an appropriate degree of dynamism for Industry Training Organisations (ITOs) based on performance*: the operational policy framework should provide suitable incentives for ITOs to manage and improve their own performance.
 - *Providing for consistent treatment of other forms of industry training*: the operational policy framework should take account of other forms of industry training and contribute, where possible, to a common approach.

Principles

5. The consultation on the operational policy governing industry training will be based on the following principles and considerations:
 - upholding the aims of the consultation process (outlined above);
 - learning from the implementation of the industry training system over the past 17 years;

- drawing on relevant experience and expertise across the tertiary education sector;
- exposing proposed changes to scrutiny;
- providing sufficient information on the general approach that the TEC intends to take in relation to the matters discussed; and
- avoiding costly or time-consuming changes unless there are good reasons for believing they will bring significant improvements over time.

Scope

6. This paper has been prepared as part of the TEC's wider consultation on industry training operational policy. This paper aims to provide information to the sector about the direction the TEC intends to pursue in relation to the recognition of organisations as ITOs.
7. The TEC is also undertaking a policy review of the industry training system. Feedback on this paper in relation to a number of issues will also be considered as part of the policy review.
8. This consultation aims to achieve the following outcomes:
 - a. Summarise the current process followed in relation to applications for recognition of organisations as ITOs and applications for extensions of coverage;
 - b. Describe the issues with the current process and those specifically related to *Gazetted* coverage, standard setting and employer choice;
 - c. Seek feedback on the meaning of "*Gazetted* coverage" including the nature of *Gazetted* coverage in relation to an ITO's three statutory roles outlined in section 6 of the Industry Training Act (the Act);
 - d. Develop a suitable means of clearly describing an ITO's "coverage" and suggest a more consistent method of articulating an ITO's *Gazetted* coverage statement to ensure clarity and transparency for industry;
 - e. Clarify, in particular, policy relating to *Gazetted* coverage where there is a perception that industry coverage may be held by more than one ITO;
 - f. Clarify the standard setting role of an ITO in relation to their *Gazetted* coverage statement;
 - g. Seek feedback on a framework for standard-setting where a generic qualification needs to be used across more than one industry or where the subject matter does not fall within one defined industry;
 - h. Develop a framework for approving funding for arranging training outside an ITO's *Gazetted* coverage; and
 - i. Suggest operational policy in relation to the "employer choice" policy and clarify the circumstances where employer choice may apply and the criteria required to grant its application.
9. All the sections covered in this paper are closely related. The paper addresses each of the sections individually but may at certain times refer to earlier sections.

Method

10. To inform the approach about the direction the TEC intends to pursue in relation to *Gazetted* coverage, standard setting, employer choice and recognition of ITOs, this paper will:
 - summarise the current application process for recognitions of organisations as ITOs;
 - outline the considerations relevant to the application for recognition (and or extensions of coverage), and those specifically related to *Gazetted* coverage, standard setting and employer choice;
 - outline some considerations relevant to *Gazetted* coverage, standard setting, employer choice and recognition of ITOs;
 - outline the existing arrangements for *Gazetted* coverage, standard setting, employer choice and recognition of ITOs;
 - define the audience(s) for the information;
 - examine options for decision making; and
 - suggest an approach for policies relating to applications for recognition as an ITO, extensions of coverage for ITOs, *Gazetted* coverage, standard setting, employer choice and recognition of ITOs.

Government's objectives

11. The Government's objectives for tertiary education include raising the skills and knowledge of the current workforce to increase the productivity of individuals, and to underpin the ability of firms to innovate and adapt to competitive challenges. ITOs have an important role to play by providing, for example, opportunities for employees to complete nationally recognised qualifications, and creating effective pathways towards advanced trade qualifications at level four and above.
12. Cabinet also agreed in May this year to re-balance the tertiary education system by shifting away from the current emphasis on central steering and front-end planning and moving towards greater responsiveness to market signals [CAB Min (09) 15/13].
13. Cabinet agreed on the following mechanisms to achieve these shifts:
 - incentives to ensure that tertiary education primarily responds to demand from students and employers;
 - improve quality assurance measures, and back-end accountability; and
 - stronger links between funding and past performance.

Relevant Legislation

14. Organisations are recognised as ITOs under the Industry Training Act 1992 (the Act). The role of the TEC is to compile the information required to assist the Minister for Tertiary Education (the Minister) in the decision-making process.

The information requirements for making this decision are primarily evidence-based.

15. Under the Act, the Minister must be satisfied of an organisation's ability to meet the mandatory requirements of section 6 of the Act and must have regard to the considerations outlined in section 7.
16. Under the Act, when an organisation applies for recognition as an ITO, the Minister may:
 - grant the ITO full recognition under section 5 of the Act (this recognition expires 5 years after it is granted (s9(1)) - there is no lesser period provided for);
 - grant the ITO provisional recognition (s8) (not exceeding three years)¹; or
 - decline to recognise an ITO if not satisfied that it should be recognised under section 5 or 8 of the Act.²
17. At any time during the recognition period, the Minister may also issue a notice under section 9 of the Act that could lead to the cancellation of an organisation's recognition as an ITO. A section 9 notice can occur if he or she considers that the organisation's performance is inadequate because it is not meeting one or more of the mandatory requirements under section 6 of the Act.
18. The process of recognition of ITOs establishes a performance threshold for ITOs that is distinct from the TEC's decision to fund an ITO. It also provides a mechanism to assess the performance of ITOs in a manner appropriate to their role in the tertiary education system (as envisaged by the Act).
19. The recognition of an organisation as an ITO requires the Minister for Tertiary Education to be satisfied that the applicant meets the necessary legal criteria under the Act.
20. The TEC's role is to consider applications against the criteria and requirements of the Act and to make recommendations to the Minister. The TEC is required to consult with NZQA and to seek the views of relevant industry bodies and others parties.
21. In order for an organisation to be granted recognition, the Minister must be satisfied that the organisation can effectively and efficiently
 - a) set for the industry in respect of which the ITO wishes to be recognised skill standards that the qualifications authority is likely to be prepared to register;
 - b) develop arrangements for the delivery of industry training that will enable trainees to attain those standards and the monitoring and assessment of that training in attaining those standards;
 - c) provide leadership within the industry on matters relating to skill and training needs by:

¹ The Minister may grant an ITO provisional recognition where he or she is satisfied that by taking certain actions the organisation will be able to meet all the requirements of sections 6 and 7 of the Act and considers that it is appropriate that in the meantime the TEC should be able to fund the organisation.

² The Minister may also grant an ITO full recognition under Section 5 of the Act for some industries, and provisional recognition under section 8 of the Act for other industries.

- identifying current and future skill needs;
 - developing strategic training plans; and
 - promoting training that will meet those needs of the employers and employees; and
- d) develop arrangements for the collective representation of employees in the governance of the organisation.
22. Section 7 of the Act states that the Minister must have regard, before recognising an organisation, to:
- a) the extent to which the organisation represents and is funded by employers of people engaged in the industry (industry cash contribution);
 - b) the organisation's knowledge of and likely responsiveness to the level of demand in that industry for industry training;
 - c) the organisation's resources of skill and knowledge generally;
 - d) the organisation's intentions in relation to the involvement of people employed in that industry in setting skill standards and providing leadership on matters relating to current and future skill and training needs, developing strategic training plans and promoting training that will meet the needs of both employers and employees;
 - e) the desirability of avoiding unnecessary duplication of effort in doing those things;
 - f) the extent to which the organisation intends that the industry training whose delivery is to be arranged should extend through a range of levels in the framework for national qualifications in post-school education and training developed by the NZQA;
 - g) whether the organisation has performed satisfactorily at other times; and
 - h) whether the organisation has taken reasonable steps to avoid fragmentation and to provide a clear and representative industry focus for each organisation.
23. Section 10A of the Act enables the TEC to give funding approval to a proposed plan of an ITO under which it seeks to manage the delivery of training to the employees of a particular employer who is not part of the industry specified in the Gazette notice relating to the ITO.
24. An ITO may be funded to deliver training to employers outside the ITO's *Gazetted* coverage under section 10A. This includes training other than that for which the ITO is the standard-setting body (section paragraph 10A(c) of the Act refers). It is also useful to note that in the Act there is no provision to set standards outside an ITO's coverage.

Commerce Act 1986

25. The aim of the Commerce Act is to promote competition in markets within New Zealand. It prohibits conduct that restricts competition (restrictive trade practices) and the purchase of a business's shares or assets if that purchase leads to a substantial lessening of competition in the market. The Commerce Act applies to all TEOs, including ITOs. When ITOs are negotiating any matters relating to coverage, they need to be aware of their obligations under the

Commerce Act 1986. This may also be the case in relation to how ITOs arrange training with employers and also amongst themselves.

Considerations

26. The following considerations are relevant when discussing approaches to recognition, ITO coverage, standard setting and employer choice:
- a. In some instances, ITO coverage is already established;
 - b. ITOs can request changes to coverage. While the TEC cannot impose such changes the Minister of Tertiary Education can by initiating a section 9 notice under the Act;
 - c. The need for clarity about how *Gazetted* coverage is developed relates to each of ITOs' three statutory functions;
 - d. The need to define coverage in terms of both industry classification codes (ANZSIC) and also NZSCED codes;
 - e. The need for certainty in terms of industry coverage for ITOs and industry;
 - f. The extent to which it is expected that ITOs should maintain exclusive areas of operation;
 - g. The extent to which competition is expected between ITOs;
 - h. The extent to which collaboration is expected between ITOs;
 - i. The need to avoid unnecessary duplication of effort and fragmentation;
 - j. The need to have suitable mechanisms for the development of generic qualifications that may be across different ITOs;
 - k. The need to ensure that ITOs are arranging training for qualifications, including generic qualifications for firms within their recognised industries only (unless authorised under section 10A).

Audience

27. Parties interested in recognition of ITOs and coverage will include:
- employers, trainees (and their families);
 - schools and community groups;
 - the staff, management and Boards of ITOs;
 - other Tertiary Education Organisations;
 - peak bodies for industry and related groups; and
 - the TEC, other government agencies, and the Minister for Tertiary Education.

Consultation Feedback

28. The TEC invites and welcomes any comments from the tertiary education sector. Individuals as well as organisations are welcome to provide feedback on

the direction and options outlined in the paper and on how these can be further developed.

29. All feedback relating to this Consultation paper should be responded to using the feedback templates provided on the TEC website. Please only send a response using the feedback templates provided.
30. Send any feedback to industrytrainingprogrammes@tec.govt.nz. All feedback should include the subject line “**ITO operational policy – feedback**” and be submitted no later than 5pm, Wednesday 30 June 2010.

What happens next

31. The consultation will inform the TEC’s approach to:
 - a. advising the Minister regarding applications for recognition and/or extension of coverage;
 - b. defining coverage in an ITO’s coverage statement;
 - c. considering requests for funding approvals;
 - d. defining the process for the development of generic qualifications, including the process for funding approvals for these; and
 - e. considering requests from employers for alternative ITO involvement.
32. Feedback from this consultation on the issue of whether *Gazetted* coverage statements provide ITOs with a monopoly to arrange training and set standards for their *Gazetted* industries will inform the policy review. Similarly to what extent ITOs should or could compete for the arrangement of training in relation to grey areas within *Gazetted* coverage statements will also inform the policy review being undertaken by TEC.

Section 1 – Application for recognition as an ITO

33. It is important to note that the following applies to ITOs applying for a further period of recognition and for organisations who are applying for recognition as an ITO for the first time.
34. The recognition of an organisation as an ITO requires the Minister for Tertiary Education to be satisfied that the applicant meets the necessary legal criteria under the Act. Recognition of an organisation as an ITO for a particular industry (ies) is a regulatory activity that in effect provides the organisation with a 'license' to operate as an ITO.
35. The TEC's role is to consider applications against the criteria and requirements of the Act and to make recommendations to the Minister. The TEC is required to consult with external agencies like NZQA and to seek the views of relevant industry bodies and others.
36. The TEC assesses the application against sections 6 and 7 of the Act to ensure that applicants can effectively and efficiently set national standards, develop, assess and monitor training arrangements, and provide leadership to the industries they are seeking to cover (possible metrics used by the TEC to assess applications for recognition are considered in the operational policy paper "*Relating Performance to the Recognition of ITOs*").
37. The Minister expects the TEC to provide sufficient information to enable an informed and statutorily compliant decision to be made. The Minister's information requirements are primarily evidence-based. In practice, the TEC compiles the information required to assist the Minister in the decision-making process.
38. To date, the recognition of an organisation as an ITO has been considered to provide the organisation with a 'monopoly licence' to act as the ITO for a particular industry. The ITO becomes the sole body that can set standards and qualifications on the NQF for that industry.
39. Operational policy to date has assumed that recognition under the Act has allowed an ITO to operate exclusively in relation to the three statutory roles of standard setting, arrangement of training and leadership for its *Gazetted* coverage only.
40. While recognition is a condition of TEC funding, the fact that an ITO is recognised does not necessarily mean that the ITO will be funded by the TEC. The Act and the Education Act 1989 require the TEC to take into account a number of factors as outlined in the *Gazetted* Decision Making Criteria.
41. Although an application for recognition of an organisation as an ITO in respect of a particular industry (ies) can happen at anytime and is not exclusive to the ITO who has already been granted recognition for the coverage, the TEC has not, until 2009, received applications under the Act for recognition of more than one ITO in a single industry. In practice this has meant that TEC policy has been that, once a single ITO is recognised for an industry, this confers a degree of exclusivity.
42. The granting of recognition to an ITO for a period of 5 years provides an ITO with a monopoly license for them to set standards, arrange training and provide

leadership for their gazetted industries. While there is no “barrier” to entry to the market, the recognition process has, not until recently been viewed as contestable. In many cases employers and industry have also not been aware that they may also have a choice in terms of which ITOs they support.

Current approach to recognition and extensions of coverage

43. This section of the paper outlines the current operational policy relating to the process of recognition of ITOs.
44. The TEC advises the ITO of the recognition processes normally up to one year prior to the ITO’s recognition expiry date.
45. The overall recognition function is based on an assessment of whether or not the organisation can effectively and efficiently carry out its functions as set out in the Act. The organisation must provide evidence to the TEC that it has the support of the employers within the industry for which it is seeking coverage. This includes financial support which is recognised through the cash contribution of industry, recorded by the organisation.
46. The organisation submits detailed and meaningful evidence of support from the relevant industry groups. This is usually in the form of letters of support from individual employers, industry associations and other such related and relevant bodies.
47. The organisation may seek at this time to revise its coverage statement by removing an area of coverage where agreement has been reached with an industry and another ITO on where the training might be covered; or by applying for an extension of coverage for a new or extended area of industry coverage, or by changing the wording to clarify exact coverage details.
48. Approval for an extension of coverage requires employer and industry support and may require further evidence of support to be supplied by the organisation which provides evidence of how the extension will avoid unnecessary duplication of effort before the TEC will consider an extension request.
49. Further aspects the TEC takes into account include:
 - evidence that governance and management are robust; and
 - evidence that the ITO has systems and procedures in place to enable it to carry out its core statutory functions.
50. The TEC seeks feedback from NZQA on the ITO’s ability to manage the development and registration of standards and qualifications on the National Qualifications Framework and that it undertakes its national moderation role as required by NZQA.
51. Specific to the recognition of the ITO is a results focused audit undertaken by Audit New Zealand audit³ and an external evaluation and review of the ITO by NZQA. Both compliance and quality assurance processes are undertaken within the 12 month period prior to recognition although the TEC may require Audit New Zealand or NZQA (or other appropriate body) to carry out a compliance audit of an ITO at any time if deemed to be necessary.

³ Audits are discussed in more detail in the operational policy paper relating to the Audit of ITOs

52. The results of the compliance and quality assurance processes, the assessment of industry support and the management of the organisation are taken into account along with consultation with other government agencies such as NZQA prior to recommending a further period of recognition. Any issues identified that may impact on the recognition are discussed with the organisation and usually resolved prior to the TEC making its recommendations to the Minister.
53. The TEC's expectation is that an ITO wishing to extend its coverage into a new industry or industries will provide:
- extensive evidence as to how it will meet its obligations under the Act; and
 - adequate information for the Minister to address the mandatory considerations set out in the Act.
54. Under the Act, when an organisation applies for recognition as an ITO for a particular industry (including applications for extensions of coverage), the Minister may:
- grant the ITO full recognition under section 5 of the Act (this recognition expires 5 years after it is granted (s9(1)) - there is no lesser period provided for);
 - grant the ITO provisional recognition (s8) (from 1 day to three years);
 - grant the ITO full recognition under Section 5 of the Act for industries where there appears to be industry support, and provisional recognition under section 8 of the Act for industries where there appears to be mixed industry support; or
 - decline to recognise an ITO if not satisfied that it should be recognised under section 5 or 8 of the Act.

Full Recognition (5 years)

55. Full recognition is granted to an organisation if the Minister is satisfied of its ability to meet all the statutory requirements in sections 6 and 7 of the Act for all the industries within the organisation's *Gazetted* coverage.

Provisional Recognition

56. The Act does not specify a minimum time period for which an ITO may be provisionally recognised. The TEC considers that the Minister has a statutory discretion as to the period of such recognition, and that the period itself does not need to be 'negotiated' with the ITO prior to the Minister's decision. In principle, the Minister can provisionally recognise an ITO for any period between 1 day and 3 years.

Full and Provisional Recognition

57. It is also possible under the Act for the Minister to grant an organisation provisional recognition for some of the industries within its coverage, and be granted full recognition for the remaining industries. This might arise where an application from an ITO for recognition provides evidence of its abilities to meet the requirements of section 6 and 7 for some but not all of the industries within its coverage.

Extensions of coverage

58. In most cases ITOs apply to the TEC for an extension of coverage in order to include an industry (ies) within their *Gazetted* coverage statement. This enables them to set standards and arrange training for these industries.
59. While an application for an extension of coverage can happen at any time, ITOs generally only seek to revise their *Gazetted* coverage statements at the time of recognition.

Can ITOs apply for provisional recognition?

60. Organisations recognised as ITOs either fully or provisionally by the Minister may apply for a further period of recognition. The TEC would normally expect any application for recognition to be made for a period of five years.
61. The Minister may decide to specify certain actions that the organisation must take and in so doing recognise an organisation provisionally. This would indicate that an organisation seeking recognition is not able to provide evidence about its ability to meet the requirements for recognition as an ITO under sections 6 and 7 of the Act.
62. An organisation whose full recognition or provisional recognition has expired or been cancelled may seek recognition in accordance with section 5 and be recognised in accordance with section 5 (ie fully) or section 8(1) (ie provisionally). In making its recommendation to the Minister, the TEC would take into account all relevant matters including whether the organisation is currently provisionally recognised. In particular, whether any application for provisional recognition may result in more than three consecutive years of provisional recognition for an organisation.
63. An organisation that has identified that it cannot meet the requirements for full recognition should include with their application for provisional recognition the actions they propose to take to enable them to meet all the requirements of the Act, why they consider that the TEC should fund them in the meantime and specify the period of recognition (not exceeding three years in total) that they are seeking.

Current approach to coverage

64. When an organisation applies for recognition as an ITO, it seeks this recognition in respect of a particular industry (ies). Current operational policy has assumed that this means that the organisation seeks to undertake for the industry (ies) for which it is recognised the three statutory roles outlined in section 6 of the Act:
 - a) set for the industry in respect of which the ITO wishes to be recognised, skill standards that the qualifications authority is likely to be prepared to register;
 - b) develop arrangements for the delivery of industry training that will enable trainees to attain those standards and the monitoring and assessment of trainees attaining those standards;
 - c) provide leadership within the industry on matters relating to skill and training needs.

65. This approach has also assumed a level of exclusivity or a monopoly licence to operate as an ITO in respect of the ITO's *Gazetted* industry (ies).
66. To date, *Gazetted* coverage of ITOs has developed in an ad hoc manner. As such:
- the level of exclusivity/differentiation between ITO varies between industries;
 - in some industries there is a very clear delineation;
 - in some cases one ITO operates within a subset of an industry otherwise served by another ITO;
 - some ITOs cover a wide range of industries, some of which are unrelated to each other;
 - other ITOs have maintained their niche industries and represent a distinct industry; and
 - some ITOs have, over time, identified industries that may not be the best fit for their organisations, and have collaboratively worked with another ITO with which the industry may be better aligned.
67. Currently each ITO develops a coverage statement that is negotiated with the NZQA and TEC. All ITOs have existing coverage statements. However, these have not followed a standard template approach. They vary in length, level of detail and the way in which they describe their industries.
68. The National Qualifications Service (NQS) is the standard setting body for many generic standards and qualifications, such as first line management, communication skills and computing. This body sits within NZQA. Over time, this body has devolved many of its non-generic unit standards to ITOs, and in the majority of cases these unit standards have had a clear alignment with an ITO's industry coverage (e.g. core health and Careerforce).
69. The Māori Qualifications Service (MQS) is the standard setting body for most areas (non-industry specific) within field Māori. This body also sits within NZQA.
70. The Ministry of Education is responsible for setting standards based on the New Zealand Curriculum (NZC) or Te Mārautanga o Aotearoa (TMoA; 2007). These are mainly but not exclusively used by schools and wharekura. Achievement standards are aligned to levels 6 to 8 of the NZC and TMoA.

Current approach to standard setting and arrangement of training

71. The 2010 funding determination under which the TEC funds ITOs (otherwise known as the 159L Determination) states that:
- Training subsidised by the Industry Training Fund is for employees in industries under an ITO's recognised industry coverage, or in arrangements approved by the TEC under section 10A of the Industry Training Act.*
72. In an operational context and taking into account the 159L Determination above, ITOs are funded via Standard Training Measures (STMs). While the STM funding is provided to an ITO for it to undertake all three of its statutory

roles, the rate at which ITOs meet their contracted STMs is dependent on the arrangement of training (STMs are calculated based on the credits within a programme, the duration of the programme and the number of trainees enrolled in the programme).

73. The current economic climate has, in part contributed to a more competitive ITO environment in relation to the arrangement of training. In some cases ITOs have competed for the arrangement of training within similar or overlapping industries.
74. While the *Gazetted* coverage statement is considered to provide clarity and scope for an ITO, a number of grey areas have been identified within coverage.

Current approach to employer choice

75. In the case where an employer's business may cover more than one industry and the training may need to be arranged by more than one ITO, the employer may choose to work with all the relevant ITOs, or it may use section 10A of the Act, which allows to arrange all of its training by one ITO, for which it may not have *Gazetted* coverage.
76. An ITO may be funded to deliver training to employers outside the ITO's *Gazetted* coverage under section 10A. This includes training other than that for which the ITO is the standard-setting body (section paragraph 10A(c) of the Act refers). It is also useful to note that in the Act there is no provision to set standards outside an ITO's coverage.
77. Section 10A of the Act enables the TEC to give funding approval to a proposed plan of an ITO under which it seeks to manage the delivery of training to the employees of a particular employer which is not part of the industry specified in the *Gazette* notice relating to the ITO.
78. Under section 10A of the Act, there are only two grounds for the TEC to grant approval:
 - a. The current ITO does not have the capacity to provide satisfactory service; and/or
 - b. The employer faces significant administrative and compliance costs by using more than one ITO.
79. Approval is exceptions-based and the TEC must not consider the following in considering requests under section 10A:
 - a. The cost of training levies; and
 - b. Subsidies provided by an ITO to business for whose employees it proposes arranging training.

Commentary - Recognition and *Gazetted* coverage

Problem Definition

80. For organisations already recognised as ITOs, the TEC sends a letter notifying them of the expiry of the recognition normally a year prior.

81. Other interested parties including already recognised ITOs have not, to date, been actively informed that they could also make an application for recognition of this coverage at this time. This has led, in part, to ad hoc situations where an ITO has sought coverage already held by an ITO or the other standard setting bodies.
82. The process of recognition of ITOs has assumed a level of exclusivity in relation to the application process. This has meant that the recognition of an organisation in respect of the industry (ies) for which it is seeking coverage has not been viewed as contestable by the wider sector.
83. This view has in part contributed to recognition being viewed as a formality rather than an evidence-based process that provides assurance to industry and the Government that the organisation is performing well and can effectively and efficiently undertake the three statutory roles defined in the Act.
84. The current recognition and extension of coverage process does not:
 - provide certainty to ITOs that are performing well;
 - signal to incumbent ITOs where there are performance issues; and/or
 - signal contestability in the coverage held by ITOs and organisations who may wish to apply to be recognised ITOs.

Problem Definition - Gazetted Coverage

85. The current operational policy framework suggests that *Gazetted* coverage statements provide a level of exclusivity for all three statutory roles of an ITO in relation to their *Gazetted* coverage statements. This does not seem to align with the Commerce Act 1986 which aims to promote competition and prevent restrictive trade.
86. There is a need to clarify the relationship between an ITO's standard-setting role and its training arrangement role. The issue of whether *Gazetted* coverage statements provide ITOs with a monopoly to arrange training and set standards for their *Gazetted* industries will be explored as part of the policy review. Similarly to what extent ITOs should or could compete for the arrangement of training in relation to grey areas within *Gazetted* coverage statements will also be explored.
87. This section of the paper will summarise a number of operational situations where issues have arisen in relation to *Gazetted* coverage.
88. There are three situations where *Gazetted* coverage issues are not clear:
 - the extent to which *Gazetted* coverage relates to the three statutory roles of an ITO as legislated in the Act;
 - industries potentially covered by more than one ITO versus exclusivity of coverage; and
 - whether more than one ITO can set standards for an industry.
89. Currently ITOs set standards for their industries, but the arrangement of training can sometimes be broader than their standard-setting role. For example, there is always one ITO that sets standards for a particular qualification. To take one instance, the standard-setting body for the Competitive Manufacturing

Qualifications is FITEC. However, there are several ITOs that use these qualifications, and arrange the training of these qualifications in their respective industries. The same situation applies to other generic qualifications such as occupational health and safety, call centres and fork lift driving for example.

90. Since the 1990s, the NQS has devolved some generic standards to ITOs. In the majority of cases, these unit standards have had a clear alignment with an ITO's industry coverage (e.g. core health and Careerforce). There are some cases however where there is no direct link between the generic standards and the ITO who has assumed responsibility for these. In some cases this process has raised clarity and transparency issues with *Gazetted* coverage statements both in relation to an ITO's standard -setting body role and the arrangement of training role.
91. In most businesses requiring employee training, the business encompasses a range of industries covered by different ITOs, and may encompass discrete operational processes involving more than one ITO's coverage.
92. In reality the ways in which businesses operate do not lend themselves to being easily compartmentalised. Because of this, ITOs may compete for the arrangement of training in areas where there is scope to do so. These tend to be in "grey" areas or in areas where there is a generic qualification involved.
93. The extent to which ITOs should compete and collaborate in relation to their *Gazetted* coverage scope will be explored at a higher level through the TEC policy review. Operationally, this could be addressed in part through clearer *Gazetted* coverage statements which clearly identify the industry, or industries, for which an ITO is recognised.

Industries potentially covered by more than one ITO versus exclusivity of coverage

94. Generally, an ITO's recognition in a particular industry is:
 - a. designed to avoid unnecessary duplication of resources in a particular industry by clearly defining roles of each ITO; and
 - b. a necessary precondition for receiving TEC funding under an ITO's Investment Plan.
95. To date, the TEC's view has been that *Gazetted* coverage, as a default, effectively confers exclusivity in terms of the three statutory roles of ITOs.
96. Recently there have been some situations in which coverage has been sought for industries for which there is an incumbent ITO.
97. While more than one ITO can arrange training for an industry, it may be impractical for more than one ITO to provide leadership or set standards for an industry.

Whether more than one ITO can set standards for an industry

98. Currently, an ITO may be recognised for more than one industry and set standards for the industries for which it has coverage. While this has worked reasonably well for specific and discrete industries, there is the potential for more than one ITO to cover similar industries. As such, the setting of standards for these industries may lead to unnecessary duplication and fragmentation of the industry.

99. Under section 7 of the Act, the Minister must, when recognising an ITO, have regard to matters of avoiding unnecessary duplication and avoiding fragmentation⁴. Operationally this may mean that in areas where industries are not specific, or where there is overlap in the definition of distinct industries (grey areas), a number of ITOs may collaborate to set standards that are “relevant to *all* their industries”.
100. Fragmentation occurs when an industry is broken up into very small subsectors. This can lead to:
- lack of coherence within an industry;
 - many ITOs potentially being involved with one employer; and
 - each ITO being too small to be financially viable or to undertake its three statutory functions effectively.
101. Fragmentation could lead to:
- one ITO “cherry-picking” large businesses, which require lower administrative costs per trainee than small ones, leaving smaller more cost-intensive businesses to be managed by another ITO. This does not align with an ITOs statutory role to set standards for an entire industry rather than for a particular employer or enterprise; and
 - inconsistent development of strategic training plans and workforce development plans for the industry.

Options to consider - Recognition and *Gazetted* coverage

102. This paper proposes that the recognition process be viewed as a more contestable process that aims to:
- provide a monopoly license and full recognition to ITOs that are performing well;
 - signal to the sector where there are performance issues; and
 - signal coverage opportunities for new or existing ITOs; and/or
 - signal a degree of contestability into the system to raise performance.
103. Having signalled the above, other ITOs or organisations may have an opportunity to make an application for recognition of the industry (ies) for which the incumbent ITO currently has *Gazetted* coverage⁵.
104. When the Minister awards recognition, it results in an inherent monopoly being granted to an organisation. Monopolies confer a significant level of market power. There are already limitations on this in the industry training sector because Institutes of Polytechnics (ITPs) and Private Training Establishments (PTEs) can provide training that takes the form of industry training. However

⁴ Section 7 (e) and 7 (f) of the Act refers.

⁵ Given that the NQS, MQS and MoE set standards for generic qualifications, if an ITO is seeking to extend coverage into any of those areas already covered by these organisations, a different process is proposed. This process and proposed principles for this are detailed later in this paper.

there may be merit in introducing an element of contestability into the process of recognition to raise performance.

105. The availability of public information on performance will keep industries informed of the service they are receiving from the ITO which currently has coverage. The implications of the Commerce Act may also suggest that there should be competition with regard to who might gain exclusivity via recognition as the ITO with coverage for an industry.
106. The TEC would expect to receive applications from organisations who may wish to extend coverage at the same time as the ITO with *Gazetted* coverage seeks to be recognised so that the applications can be assessed and compared at the same time. It would not consider applications outside of this process for industries currently covered by any ITO.
107. ITOs who have been granted provisional recognition by the Minister (and have had conditions attached to the recognition which need to be met within the timeframe of the recognition period) can seek an extension to that provisional recognition, and in doing so would be tested against the conditions that the Minister imposed at the point of granting provisional recognition. In cases where an ITO's coverage sits within a subfield, it may be appropriate to define coverage at the subfield level.

Australian and New Zealand Standard Industrial Classification (ANZSIC) and New Zealand Standard Classification of Education (NZSCED) codes

108. This paper suggests that a *Gazetted* coverage statement should include ANZSIC codes and NZSCED codes. It also proposes that only one ITO be granted the standard setting body role for each field or sub-field on the NQF domain. This may avoid fragmentation of industries which may arise where there are multiple ITOs setting standards for multiple domains within one sub-field.
109. Clear *Gazetted* coverage statements will ensure that the TEC can effectively and accurately determine the matters to which the Minister must have regard, which include avoiding unnecessary duplication and fragmentation of the industry for which coverage is sought.
110. Many of the 'grey areas' around industry sectors can be clarified through the use of Australian and New Zealand Standard Industrial Classification (ANZSIC) codes, and the Industry Training Federation has undertaken some initial analysis on these.
111. The ANZSIC system provide a framework for organising data about businesses - by enabling grouping of business units carrying out similar productive activities. The ANZSIC codes provide a contemporary and internationally comparable industrial classification approach.
112. New Zealand Standard Classification of Education (NZSCED) codes could be related to the standard-setting body role of ITOs. They have been developed, in line with ISCED codes, to define areas of learning or skill development. They can apply across industries, both as defined by ANZSIC codes and as commonly understood.
113. Consequently, there is not a direct alignment between ANZSIC codes and NZSCED codes, and these codes may not be an exact fit for some ITOs. However, there may be intersects between ANZSIC and NZSCED codes. This

provides a possibility of defining coverage in terms of both codes: the “industry” is defined by ANZSIC codes in relation to leadership and training arrangements, while those NZSCED codes intersecting with that “industry” define the standard-setting role.

114. If NZSCED codes apply to more than one industry defined by ANZSIC codes, assignment to a specific ITO clarifies that aspect of “coverage”.
115. Traditionally NZQA set standards that did not relate to defined industries. While NZQA has moved much of this responsibility to ITOs, there remain domains for which NZQA is the standard-setting body (for example first line management).
116. As noted above (paragraph 88 refers) there have been some cases where the process of transferring unit standards has not always aligned with an ITO’s industry coverage. It may be useful to develop some principles that are considered when the NQS transfer generic unit standards to ITOs. These principles should also consider the alignment of the standards to the industry coverage of the ITO and whether these unit standards may fit within more than one ITO’s industry coverage.
117. In the case where the standards may sit within more than one ITO’s industry coverage, the NQS may consider to retain these standards to avoid duplication of effort in relation to the standard setting role of ITOs.
118. It is important to provide clarity and transparency regarding the industries for which ITOs have *Gazetted* coverage and for which they set standards and for which they can arrange training, while also ensuring that we are avoiding unnecessary duplication and fragmentation.
119. In the case where there is no “industry”, this paper suggests that the NZSCED codes could define which ITO, if any, will set those standards. The proposed operational policy relating to the setting of standards for generic qualifications or for qualifications for which there is no specific industry is covered later on in this paper.

Commentary- Standard setting and funding approval

Problem Definition-standard setting and funding approval

120. As noted above the Act is not clear as to whether a *Gazetted* coverage statement refers to the industries for which ITOs undertake all three statutory roles under the Act, or whether the *Gazetted* coverage statement refers solely to the industries for which the ITO is the standard setting body. The ITO which is currently recognised for an industry (ies) has a monopoly license to set standards, arrange training and provide leadership.
121. Currently there are several situations where the standard setting body role of ITOs is not entirely clear. These include:
 - arranging training delivery outside an ITO’s *Gazetted* industry coverage and/or of qualifications for which an ITO is not the standard-setting body but has accreditation for;
 - generic qualifications where more than one ITO requires the standards; and

- grey areas that exist within ITOs' *Gazetted* coverage.
122. Operational policy to date has assumed that the Act intends that an ITO can arrange for training of standards for which it is not the standard setting body for its *Gazetted* coverage only.
 123. The Act also allows for flexibility under section 10A, where an ITO may also be funded to deliver training to employers outside the ITO's *Gazetted* coverage. This includes training other than that for which the ITO is the standard-setting body (section paragraph 10A(c) of the Act refers). It is also useful to note that in the Act there is no provision to set standards outside an ITO's coverage. This section of the Act is covered in more detail in section 3 of this paper.
 124. Section 10 of the Act identifies activities for which an ITO can be funded under an Investment Plan. The Act also states that the arranging of training delivery is intended to enable trainees to attain the *skills for which the ITO sets standards for its industry*.
 125. This interpretation of the Act would therefore mean that an ITO can only receive funding approval for arranging delivery of qualifications for which it is the standard-setting body except in the following circumstances:
 - a. an employer has applied to the TEC to have that ITO arrange delivery of other training, under section 10A; or
 - b. the qualification is not developed in relation to an "industry" (for example OSH); or
 - c. by mutual agreement with other ITOs. This is the status quo for "section 10 approvals".
 126. The mutual agreement exception is the most commonly used mechanism by which ITOs apply for funding for the arrangement of training for qualifications for which they are not the standard setting body. This has however raised a number of issues either when agreement has not been given by other ITOs, or where ITOs compete in the same workplace for the arrangement of the training delivery for the particular qualification in question. It may be useful for ITOs to develop a set of decision making criteria that they apply to this.
 127. Historically, the mutual agreement option was employed to ensure that for qualifications that can be used in multiple industries (e.g. Occupational Health and Safety; Competitive Manufacturing (CMI) and First Line Management), ITOs could have access to the use of these for their respective industries.
 128. NZQA has devolved the standard setting body role for many of these generic qualifications. As such, individual ITOs have taken on the responsibility. In other circumstances, the development of qualifications that are applicable across several different industries, such as the CMI, still require a single ITO as the standard setting body.
 129. In some cases the development of these qualifications and the arrangement of the training for these has worked well within the ITO sector. An advisory group of ITOs has been established and qualifications developed that are applicable across all the industries.
 130. Where there has been one standard setting body, the application to TEC to approve the qualification for each respective industry has been a good system. However, recently there have been situations where an ITO has received a

qualification funding approval from the TEC to arrange training for the qualification for its *Gazetted* industries, and has operated outside of this scope.

Options to consider-standard setting and funding approval

131. In order for a process such as that outlined above to be developed, there is a need to develop a consistent definition of what is considered as a generic qualification. This paper proposes that a generic qualification is one which can not be defined by an industry, and is applicable to two or more industries. The most common examples include occupational health and safety, food quality assurance standards, computing, first line management, and 'soft' skills such as communication, literacy and numeracy.
132. Clarification of the TEC's role in such situations, and processes for addressing them is necessary. The operational policy for ITOs receiving funding to arrange training for qualifications for which they are not the standard setting body needs to be flexible for the employer, but needs to also ensure that fragmentation of the industry is avoided and that value for money is maintained.
133. The options outlined below aim to address the issues identified with the standard setting body role of an ITO in relation to *Gazetted* coverage, and suggest some factors that should be taken into account when developing qualifications in relation to generic qualifications and the arrangement of training in relation to the standards which ITOs set.

Generic Qualifications

134. The TEC may need to confirm that ITOs which arrange training for generic qualifications (for which they are not the standard setting body (ies)), can be funded for the arrangement of that training within their *Gazetted* industries only.
135. In the case of generic qualifications for which an ITO is the standard setting body, all ITOs, including the standard-setting ITO, can only be funded for arranging the training of these within their current *Gazetted* coverage other than under section 10A (employer choice).
136. As previously mentioned, there are some instances where the development of generic qualifications by a panel or advisory group of ITOs is working well in the sector. However there is no formal process which ITOs are required to follow for the development of a generic qualification. While it is likely that the ITO with the closest affiliation to these qualifications may be the standard-setting body, the TEC and NZQA need to ensure that consultation with all other ITOs that have an interest has been undertaken.
137. This process will not only ensure that the qualifications are fit for purpose and transferrable, but that the proliferation of qualifications is minimised. This paper therefore proposes that NZQA needs to cite evidence of genuine consultation of affected ITOs and/or the establishment of an advisory panel of affected ITOs, before NZQA registers a generic ITO owned qualification on the NQF.

Complaints about conflicts between ITOs regarding arranging training

138. Recently there have been a number of complaints regarding the arrangement of training of qualifications (mostly generic) outside an ITOs *Gazetted* coverage.
139. The TEC can lawfully investigate a complaint. This power is based on the TEC's functions under both the Industry Training Act and the Education Act 1989.
140. Section 159YA of the Education Act confers on the TEC the ability to approve an ITO's proposed Investment Plan and the activities that will be funded. The most likely remedy available to the TEC, if it considers that the ITO is not using funding in accordance with its Investment Plan, is to suspend funding in accordance with section 159YG of the Education Act.
141. This paper proposes that where an ITO is found to be in breach of their Investment Plan funding (159L Determination refers to arrangement of training within recognised industry (ies) only; paragraph 64 refers), that is where an ITO is arranging training for qualifications outside their *Gazetted* industries, or not approved through an employer choice mechanism and noted in their Investment Plan conditions, funding associated with that training may be recovered.
142. There may be a number of considerations the TEC would take into account when considering whether or not to place funding conditions in regard to training being arranged outside an ITO's *Gazetted* coverage. Some of the factors the TEC may wish to consider include previous history of complaints, previous employer choice exceptions and other performance indicators.

Commentary - Employer Choice

Problem Definition - employer choice

143. The wording of section 10A (employer choice) is open to interpretation. The Act appears to imply that an employer must be "in an industry" other than that for which the ITO has coverage. Operationally this interpretation presents a number of challenges, especially when one or more industries may be represented within an employer's business operation.
144. As an example, a firm may be thought of as being in the food processing industry. However, different parts of its operation are covered by food processing, can manufacture, transport, electrical, and plumbing. However, a single ITO may be currently servicing the training needs of that firm (because of the predominant 'purpose' of the firm). In order for another ITO to arrange the training for this firm there would need to be an employer choice application..

Options to consider - Employer Choice

145. As a default, this paper proposes that the TEC uses the employer's dominant operations as a proxy for which ITO would logically be the best placed to arrange delivery. Sound reasons would be required for an employer to use a different ITO as the sole arranger where the firm does not sit within the ITO's *Gazetted* coverage.
146. The options outlined below aim to develop clear operational policy in relation to employer choice, including the articulation of transparent and robust criteria which need to be considered during the application of the policy.
147. To be workable, it is useful to read section 10A as applying to training for an employer's employees where that training is not part of the ITO's coverage. This is the way section 10A has been applied to date.
148. It is not sufficient that it will simply be more convenient to the employer, or that the ITO is simply the employer's preference.
149. The first criteria under which an employer can apply to the TEC under section 10A refers to an ITO's capacity to provide a satisfactory service; not capability of providing that service. If capability were in question, this is more likely to relate to a recognition issue that would need to be addressed under section 6 of the Act.
150. In order to consistently apply the criteria across the sector, there may be a need to determine what is meant by a satisfactory service, perhaps in terms of guidelines or indicators.
151. The second criteria under which an employer can apply to the TEC under section 10A refers to *significant* costs. Marginally increased costs do not warrant approval. This is consistent with the Act's overall scheme – that ITOs have default exclusivity in relation to their industries that should not casually be overridden.

Questions for consultation

152. Do you think the process for recognition and extensions of coverage is clear, reasonable and transparent? How could this process be refined?
153. To what extent should ITOs maintain exclusive areas of operation in relation to each of their three statutory functions?
154. To what extent should ITOs compete with each other in each of their three statutory functions?
155. In general, what are the advantages and disadvantages of a competitive model versus a monopolistic model for the ITO sector?
156. To what extent does the approach need to vary depending on the specific industry characteristics? What general principles should apply, or serve as the starting point?
157. How should standard-setting for training that is not industry-specific be managed?
158. How should arrangement of delivery of that training be managed?

159. How do you think the status quo option of seeking ITO permission for qualification funding if you are not the standard setting body is working?
160. What would you classify as a generic qualification? Do you agree that an advisory panel should be established during the development of generic ITO owned qualifications, and that this panel should include the NQS, MQS or MoE representation as relevant?
161. Can you suggest any other principles that should be considered as part of the NQS's process for devolving generic standards to specific ITOs?
162. Do you think that those standards that have already been devolved, and do not align with a particular ITO's *Gazetted* coverage should be reviewed to ensure fit for purpose?
163. Do you agree that ITOs should only be allowed to arrange training of generic qualifications within their *Gazetted* industries unless the exceptions based employer choice option has been applied?
164. How would you ensure that ITOs are adhering to this policy?
165. Do you think a combination of ANZSIC and NZSCED codes as suggested will appropriately define an ITO's *Gazetted* coverage in terms of leadership and standard-setting, and in a consistent and clear way across industries?
166. Could you recommend any other codes that may provide a more accurate method of defining coverage?
167. How should ITOs work together in relation to generic ITO qualifications? Is current collaboration regarding development of standards common to a number of industries working satisfactorily?
168. Are there any successful examples of where the development or co-development of generic ITO qualifications across several industries?
169. Do you agree that arranging delivery should generally be restricted to training for which an ITO is the standard-setting body? Are the exceptions appropriate and sufficiently comprehensive?
170. Where an ITO is the standard-setting body for a generic qualification, should it automatically be able to arrange delivery of that qualification to any business in any industry, or should all ITOs have default exclusivity in respect of their own *Gazetted* coverage? This would mean all ITOs, including the standard-setting ITO, could only arrange delivery within their own coverage, as with any other qualification (subject to the same exceptions).
171. What should be the TEC's role in resolving situations where ITOs cannot agree on training arrangement issues? What resolution process would be best?
172. Do you think ITO's should take a lead role in working out disputes around coverage? Could you provide a process for this?
173. Are current processes for "employer choice" approvals suitable? How could they be improved?
174. Are the points discussed the best things for TEC to consider in relation to applications? Are there other relevant things TEC should consider?
175. Should "employer choice" be easier to exercise, harder, or is it about right?

176. What guidelines or indicators could be used to determine satisfactory service? Should these be based on performance outcomes?
177. How would you define significant costs? What evidence might be useful for employers to provide?