

Advanced Technology Institute Bill

Government Bill

As reported from the Education and Science
Committee

Commentary

Recommendation

The Education and Science Committee has examined the Advanced Technology Institute Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would establish a new Crown agent, the Advanced Technology Institute (ATI), to support science and technology-based innovation and its commercialisation by businesses. The ATI would act as an intermediary, connecting businesses in certain industries with researchers, and promoting commercial application of research discoveries.

It is our belief that in order to achieve benefit to New Zealand, the ATI needs to have robust and meaningful input from industry and the scientific and broader economic development communities, and not unnecessarily replicate and compete with scientific, industry, and commercialisation structures that are already in place and succeeding.

A significant majority of the submissions we received were supportive of the bill, and many of them proposed amendments, which will be discussed below. The majority of the committee considered many of these amendments were either covered under the framework of the Crown Entities Act 2004, or were better provided by non-statutory mechanisms. One submission was critical of the establishment of the ATI, claiming it would be a repetition of previous initiatives which in the submitter's view have failed. While we acknowledge the concerns raised in that submission, the majority of us consider that this bill, with the amendments suggested below, is likely to result in the ATI achieving its purpose. One submitter expressed the view that there is on-going uncertainty surrounding the ATI; removal of a research focus, and the implication of large-scale staff relocation, all risk putting the personnel situation of the new institute in jeopardy. They were concerned that this level of upheaval puts at risk important research skill and capability; if expertise is unable to transition it will be lost overseas.

The amendments we are recommending are generally by way of clarification; this commentary discusses the more significant of them.

Crown entity

During our consideration of the bill, one submitter suggested that the ATI should be an autonomous Crown entity, which has more independence from the Crown than a Crown agent. However, we note that Crown agents must give effect to Government policy; while other Crown entities must only have regard to Government policy. As the proposed functions for the ATI clearly envisage it giving effect to Government policy, we consider that a Crown agent is the most appropriate form of statutory entity for the ATI.

Statement of core purpose

One submitter proposed that the ATI should be required to adopt a statement of core purpose to avoid overlaps with other agencies. The majority of us disagree with this proposal, as statements of core purpose are not required by legislation, and are a specific mechanism developed for Crown Research Institutes to identify areas of specialty. However, we recognise that the ATI will require a similar purpose

document. We understand that the responsible Minister is currently considering similar non-statutory mechanisms for the ATI within the framework of the Crown Entities Act.

ATI board

Some submitters argued for the bill to be amended to require that the board membership reflect certain requirements, such as having technology transfer expertise, or that they reflect geographical representation from across New Zealand. However, we do not believe such provision is required. Section 29 of the Crown Entities Act requires responsible Ministers to appoint or recommend only persons who, in the responsible Ministers' opinion, have the appropriate knowledge, skills, and experience to assist the statutory entities to achieve their objectives and perform their functions; and responsible Ministers must take into account the desirability of promoting diversity in the membership of Crown entities.

We believe that section 29 of the Crown Entities Act provides sufficient guidance on the appointment of board members, as the mix of skills and experience required will change over time. We also note that board appointments are subject to circular CO (02) 16, which outlines ways of increasing the diversity of board membership. One submission proposed that geographical representation should reflect where the economic growth is, and the raw potential resides, and that it is essential to the make-up of the ATI Board. All Cabinet and Cabinet committee papers are now required to include a section headed "Representativeness of Appointment(s)" to confirm that full consideration has been given to the need for the membership of the body concerned to have an appropriate gender, age, ethnic, and geographical balance.

Stakeholder advisory group and special advisers

We recommend amending clause 10(4) and (5) to require the Minister to consult with the ATI board when appointing members to the stakeholder advisory group, and before setting terms of reference for the topics or subject areas on which the advisory group may advise the board. The bill as introduced enables the Minister to establish a stakeholder advisory group to advise the board on matters relating to the performance of its functions. Given the role the advisory group

is expected to play, we consider it appropriate for the board to be consulted on its membership, and to offer advice on the scope of the group's role.

The majority of us note that clause 10(4) sets out that the Minister must ensure as far as reasonably practical that the advisory group members have sufficient expertise to provide appropriate advice to the board, and must be broadly representative of the manufacturing sector, services sector, and research, science, and technology (RS&T) providers.

Some submitters argued for the bill to expressly provide for the inclusion of the tertiary sector in the stakeholder advisory group. However, the majority of us believe the bill is worded to include a broad definition of RS&T provider, which includes the tertiary sector and other universities. One submitter suggested that a representative of the stakeholder advisory group be allowed to attend the ATI Board meetings as a non-voting representative. However, the majority of us do not consider this necessary. Clause 10 requires the board to consider any advice it receives from the advisory group, and it is important that there be a clear division of roles between governance and advice.

One submitter suggested that clause 9 (which allows the Minister to appoint the chief executive of the Ministry as a special adviser to the board) should be deleted, claiming it is unwarranted. The majority of us feel that the purpose of this clause is to help ensure the board aligns its strategies and activities with Government policy. This clause is similar to provisions in legislation relating to other Crown entities (for example, New Zealand Trade and Enterprise and Education New Zealand) where advisors have proved successful. Given that the ATI will be a Crown agent (and not an autonomous Crown entity) it is appropriate to have this clause.

ATI's objectives, functions, and operating principles

We recommend amending clause 14(1)(b) to explicitly require the ATI to "collaborate" with businesses, RS&T providers, and others. The bill as introduced requires the ATI to engage proactively with these entities, but nothing further. The amendment we recommend would ensure the ATI worked cooperatively with existing research

facilities, and is intended to help to avoid unnecessary duplication, an issue that was raised by a number of submitters.

We recommend inserting new clause 4A to clarify the status of the examples given in clause 13(2) and (3) of ways the ATI might perform certain functions. Other submitters were concerned by the inclusion of these examples and suggested these examples be deleted and instead be discussed during the draft Statement of Intent's preparation, with the negotiation process allowing a constructive dialogue on the merits of the examples. However, the purpose of examples is to illustrate or clarify the point a provision is making. Importantly, an example does not limit the provision to which it relates. If an example and the provision to which it relates are inconsistent, the provision prevails over the example. We also note that such examples are commonly used in modern legislation, and that section 5(2) and (3) of the Interpretation Act 1999 make it clear that examples are part of the enactment in which they occur. Our amendment would make it clear that the purpose of the examples is to illustrate or clarify possible approaches to functions described in clause 13(1)(b) and (e), not to limit the ATI to these options.

We recommend amending clause 13(3)(a) to include RS&T providers among the types of organisation with which the ATI could collaborate on providing services to business. This change is intended to encourage the ATI to work collaboratively with other RS&T providers, and limit unnecessary duplication of research activity.

One submitter raised the issue that research providers do not necessarily need to own the intellectual property concerned, but can benefit in other ways, such as royalties.

We heard it suggested that we should include "engineering" in the ATI's functions in clauses 13(1)(a), (b), and (g), because engineering is not a subset of technology, but rather a discipline in its own right. However we feel that it is generally understood that the phrase "technology-based innovation" requires a range of complementary inputs, including engineering knowledge, scientific knowledge, design expertise, knowledge of manufacturing processes, commercialisation expertise, and so on. We also heard that we should amend the ATI's function in clause 13(1)(d) to undertake research and development "in collaboration with businesses", in order to ensure the ATI understands it is not a Crown Research Institute under a different guise. However, we feel that the recommendation is much nar-

rower than the clause as introduced. The ATI may need to undertake research and development on behalf of businesses or other organisations. This clause is intended to provide for some of Industrial Research Limited's (IRL) existing functions. Clause 14(1)(b) also requires the ATI to proactively engage with businesses, other RS&T providers, and other persons that the ATI considers relevant to the performance of its functions.

Submitters suggested that we insert an additional function: "to facilitate a pipeline of skilled people through tertiary study that are suited to employment in implementation of innovation in the NZ economy." The majority of us feel that this clause is outside the intended focus of the bill, as it covers the provision of tertiary education. The ATI has a role in fostering the mobility of skilled people, and will be expected to work closely with the Ministry of Education and the Tertiary Education Commission in performing its functions. Clause 13(2)(b) provides an example of "encouraging the exchange of staff, students, or other individuals between RS&T providers and businesses."

A submitter suggested that we amend clause 14(2)(a) to "the ATI must act fairly, reasonably, and transparently, and incorporate considerations of the long-term impacts of their decisions on established centres of excellence in this area." We feel that the inclusion of the word "reasonably" does not add further clarification beyond the word "fairly", and the remainder of the recommendation unnecessarily prioritises existing providers over new providers.

We also heard that we should replace clause 14(1)(d)(ii) with "to fill gaps in RS&T and to support and not duplicate the agreed activities of existing RS&T providers." The majority of us believe that the bill recognises the importance of the ATI's role in harnessing and building on the capability that currently exists across the system, rather than unnecessarily duplicating that capability by building its own to the detriment of other actors in the system. The majority of us believe clause 14(1)(d)(ii) gives effect to this intent. At the margins, however, some overlapping capability is likely and, in general, this is a positive for business as it gives them more choice and helps to ensure that research and development and innovation services are delivered cost-effectively. The majority of us believe the proposed clause would be unworkable as it would be impractical to eliminate all duplication in the system.

A submitter suggested that we insert a new clause 14(1)(d)(iii): “acts to fill gaps in capability by preferentially developing the capacity of existing providers.” We feel that the proposed provision unnecessarily prioritises existing over new providers. Another submitter suggested we insert an additional requirement that the ATI must “develop expert knowledge on the RS&T strengths of New Zealand institutional and business-to-business providers to the New Zealand advanced manufacturing sector and act in a manner that builds the role of such providers.” We feel this suggestion duplicates the function set out in clause 14(1)(b): “promote and facilitate networking and collaboration among businesses and between RS&T providers and businesses to assist businesses to undertake, or benefit from, science and technology-based innovation and related activities.”

Some submitters suggested that clause 12 should be redrafted to say that ATI’s main objective is to “increase the uptake of innovation by the manufacturing and services sectors of the New Zealand economy through increasing their investment in undertaking or applying scientific, engineering, or technological research and development.” The majority of us believe that the role of the ATI is broader than the recommended clause. The recommended clause implies the sole focus of the ATI is on increasing investment.

Net benefit

We note that clause 14(1)(a) requires the ATI to “aim to ensure that any activities it undertakes are for the net benefit of New Zealand”. Some submitters queried the interpretation of the term “net benefit”. We consider it appropriate to remove the word “net” so that the ATI undertakes its activities for the “benefit of New Zealand”. This is aligned with the other entities such as Crown Research Institutes. The committee recognises that the term “benefit” is wide enough to include a range of benefits, such as economic, environmental, social, and cultural.

Internal research capability and research funding

One issue that we considered was the internal research capability of the ATI. When the ATI is established, IRL will be a subsidiary of the ATI. The functions set out in the bill must provide for the functions

that IRL already performs. IRL currently undertakes research and development and will continue to do this in the future.

Relevant expertise and capability exists across a range of entities, including CRIs, universities, polytechnics, and the private sector. No single institution can expect to maintain all of the capability required, and therefore a key role of the ATI is to collaborate with RS&T providers and to harness their capability. However, the demand-side study undertaken to support policy developed clearly indicated the ATI should have a role in providing a range of services directly to business, including research, technology development, and business capability services.

One submitter was concerned about the potential impact that the ATI could have on other research organisations bidding for science functions. They also raised a concern regarding the high-value manufacturing sector and their view was that a large amount of commercially-relevant research is sufficiently innovative that no business partners may exist yet. The ATI will require functional in-house knowledge of research practices to determine what capabilities are required to provide for particular services. The majority of us consider that the nature and extent of internal research capability are for the board of the ATI to make. In undertaking research and development the bill is agnostic about whether the research capability sits inside or outside the ATI.

A number of submitters raised the potential conflict of the ATI being both a funder and service provider. Some submitters suggested either removing the function in clause 13(1)(f) (to allocate and administer RS&T funding) or delay the implementation of this funding. The majority view was that clauses 14(2) and (3) of the bill address this issue by requiring the ATI to implement systems and procedures to enable it to act fairly and transparently in carrying out its function of allocating and administering RS&T funding. We feel that by administering grants funding the ATI will offer firms direct access to research and development support. This is consistent with the objective of a one-stop shop for New Zealand businesses to access advice and support. Information about these systems and procedures must be made publicly available. The ATI would have to report on their implementation in its annual report. The Auditor-General would be required to report on the ATI's implementation of the systems and procedures as part of its annual financial audits of the ATI. These

provisions are similar to those that apply to NZTA in respect of land transport funding decisions, as provided for in the Land Transport Management Act 2003.

Transitional arrangements

One submitter suggested that clause 16 be redrafted so that the chief executives of the Ministry of Business, Innovation and Employment and New Zealand Trade and Enterprise could only make recommendations to transfer staff. The submitter considered that it would be inappropriate for the ATI to be forced to take staff that may not fit its intended mode of operation, and recommended redrafting this clause so that the ATI's chief executive would be responsible for recruiting employees, but the chief executives of MBIE and NZTE would be able to make recommendations to him/her on suitable candidates who could be considered for appointment. Having joint responsibilities would help protect the staff involved. We believe that the transfer of staff from MBIE and NZTE will relate to discrete functions that the ATI will be expected to perform. To maintain continuity of programmes and policies the existing staff will need to be transferred. The proposed provisions provide certainty to affected staff that they will be offered equivalent employment by the ATI. This is important for maintaining continuity of performance of these functions prior to and immediately following transfer to the ATI.

Consequential amendments

Crown Entities Act 2004

We recommend an amendment to Part 1 of the Schedule to exempt the ATI from the requirements of sections 164 and 165 of the Crown Entities Act 2004. The consequential amendments set out in the Schedule include an exemption for the ATI from the restrictions on acquisition of securities, borrowing, and giving guarantees and indemnities, as set out in sections 161, 162, and 163 of the Crown Entities Act. We consider that the ATI should also be exempt from section 164 (restrictions on use of derivatives) and section 165 (net surplus payable by certain statutory entities and Crown entity companies). We note that IRL is currently exempt from both sections 164 and 165 of the Crown Entities Act (along with sections 161, 162, and 163), and we consider that all these exemptions should apply for any organisation which is

responsible for the functions undertaken by IRL; such functions often require a multi-year approach to activities, which the exemptions in question would facilitate. The amendment we recommend would allow the ATI to take a multi-year approach to its activities, including those for which IRL would have been responsible.

Chief Metrologist

We recommend amending Part 2 of the Schedule, to omit two of the consequential amendments proposed to the National Standards Regulations 1976. Part 2 of the Schedule as introduced omits the reference to IRL in those regulations and replaces it with one to the ATI. However, the regulations also provide for the position of Chief Metrologist of the Measurement Standards Laboratory of New Zealand, which will continue to sit under IRL. We also recommend including a new definition of “Industrial Research Limited” in the regulations to reflect the fact that IRL will cease to be a Crown Research Institute.

One submitter questioned the appropriateness of transferring the Measurement Standards Laboratory to the Advanced Technology Institute. The submitter recognised that the laboratory provides advice and training to industry, and suggested that it might be more appropriate to place the core facility with the other key precision measurement facilities in the Institute for Environmental Science and Research Limited (ESR). ESR undertakes a large amount of chemical and biological measurement and is in effect the home of standardisation in New Zealand for such measurement. However, we believe that this matter is outside the intention of the bill. The establishment board is responsible for completing “due diligence” on the current staff, assets, and liabilities of IRL and advising on which should be transferred to the new entity directly, which should be transferred as part of the transition of IRL to a subsidiary of the new entity, and which should be considered for inclusion in other entities.

Minority views

New Zealand Labour Party

While the Labour Party supports this enabling legislation for the establishment of the Advanced Technology Institute, there are a num-

ber of changes we believe could strengthen the final form of the institute as it is established.

It is our belief that in order to achieve benefit to New Zealand, the ATI needs to have robust and meaningful input from industry and the scientific and broader economic development communities, and it must not unnecessarily replicate and compete with scientific, industry and commercialisation structures that are already in place and succeeding. The ATI needs to be part of a wider and interconnected economic development vision for New Zealand.

Labour members agreed with the view expressed by one submitter that the ATI alone cannot be successful in transforming high-value manufacturing in isolation. Such a transformation requires addressing the macro policy issues that overvalue the currency and the rules that allow having things (capital gains) to attract less tax than doing things. Labour members are of the view that the ATI needs to sit alongside research and development tax credits as a means of enabling and encouraging more New Zealand businesses to undertake research and development initiatives.

Process: We are concerned about the speed this legislation has been rushed through the select committee process, and do not feel that adequate time has been given to industry, the scientific community, the economic development communities, members of the public, and members of the committee to carefully consider important aspects of this bill. Instead of the usual four to six months afforded to a piece of legislation for the calling and hearing of submissions and consideration by the committee, this bill has been hurried through in 6 weeks. Opposition members of the committee have signalled their dissatisfaction with the timeframe. However, Government members voted down a motion to ask for an extension to the time allowed. The government has stated one factor in the decision was that the majority of submissions were in favour. We note, however, that even many of the submissions that were in favour have recommended changes that have not been carefully considered or adopted. Furthermore, there was one substantive submission from an industry grouping that raised fundamental questions about the probable success of the ATI. We are disappointed that there was not sufficient time to more fully examine these points. It is our opinion that this hurried timeframe has been to the detriment of the legislation.

Purpose of the ATI: Labour members believe that the ultimate function of the ATI is to operate for the benefit of New Zealand. The economic development goals that the ATI is being established to achieve are a means to an end in a stronger and larger export-focused manufacturing sector which provides well-paid and skilled jobs, and not an end in themselves. We agree with one submitter that this purpose needs to be taken seriously and for that reason should be included in clause 12 which sets out ATI's main objective and not merely listed as one of several operating principles set out in clause 14. We believe this change would make explicit the fundamental purpose of the institute.

ATI's collaboration within New Zealand's science system: The ATI is a new kind of entity that will sit alongside tertiary organisations, in-house capacity, and the CRIs in the provision of RS&T for our high-value manufacturing sector. It is our view, and one expressed by a number of submitters, that it is crucial that there not be unnecessary duplication and competition with pre-existing research provision by the ATI. The ATI must be built on a core culture of collaboration. For this reason, Labour members support the submission to more explicitly address this point in clause 14 of the bill. Specifically, we support the inclusion of the subclause to 14(1) stating that the ATI must "proactively seek to identify and collaborate with existing organisations that can support the delivery of ATIs functions and avoid unnecessarily undermining activities performed by existing organisations".

We agreed with one submitter that given IRL's important national research strength in high-value manufacturing and services, it is important that the merger into the ATI does not harm this national research strength and the proposed restrictions on its research activities will be detrimental to its existing strengths.

Another submitter noted the success of the adoption of statements of core purpose (SCP), as recommended by the CRI Taskforce, in developing more collegial approaches across the CRIs, and improving the functioning of the wider national innovation system.

SCPs are concise, clear, and transparent to all. It was noted they enable a trusting environment by making it clear who, across the Crown-owned research capability, has primary responsibility and accountability for the stewardship of the science capability and the creation of wealth and well-being for sectors and science areas. They

recognise that linking together this capability is crucial for innovation. Labour agrees with this view, and we support the inclusion of a requirement for ATI to have a SCP in clause 14. We do not consider the argument that there is no legislative requirement for the CRIs to do this to be a sufficient reason for not including this requirement in the ATI bill. SCPs have come about since the CRIs were created, and we consider ATI having an SCP a way to strengthen the national innovation network.

Funder/provider divisions: Labour agrees with a number of the submissions that raised concerns about the potential for conflict between the active functions of the ATI (research and development, and knowledge and technology transfer) and the enabling functions (principally funding) to third parties. We share the concerns that were expressed over government's intention as expressed in the ATI Cabinet paper over the placement of contestable funding from the TechNZ funding programme directly into the ATI. The move to have ATI as a funder has resulted in a perception of there being a potential for an unfair advantage from other R&D providers. For this reason, we agree with the submission that the funding model that would get the best buy-in from other research organisations would be to place a relative minimum of core funding into the organisation but have it work with a bigger pool of industry-linked project funding held by MBIE which ATI can access through partnered projects with other R&D institutions and industry partners.

We agree with the sentiment of the submitter who stated that ATI needed to be perceived as a “doing organisation” and less of a funding body, but are nonetheless comfortable with non-contestable funding, particularly around knowledge access, sitting within the organisation. For this reason, the New Zealand Labour Party recommend deleting clause 13(1)(f).

Input into operation of ATI: In order for the ATI to succeed, Labour members believe that there needs to be strong input from a variety of sectors, groups, businesses, and individuals. The ATI needs to be part of a broader economic development vision which requires the skills, experience, knowledge, and perspectives of a broad range of parties that reflect the geographic and business diversity of New Zealand's manufacturing sector.

We note that very few submissions were received from industry and businesses directly engaged in high-value manufacturing. As noted

earlier in this view, we consider this was in part a function of the rushed process. We did note, however, that in one of the few industry-led submissions there were serious concerns voiced that many of the decisions around with whom and how the ATI works with businesses will be made “by people who know little of the development mindset.”

Labour members are of the opinion that clause 10 of the legislation should make more explicit the need for strong industry representation on the stakeholder advisory group, and empower industry groups to have a say in their representation on this group. One of the reasons for this proposal is business feedback that ATI’s science and technology supports for emerging companies needs to be linked to appropriate capability development in marketing management in internationalisation. These interdependencies are seen as critical for the successful commercialisation of research and development, Labour notes the bill is silent on how this goal will be achieved.

Given the need for strong collaborations with tertiary RS&T providers, Labour members are of the view that the submission requesting that “RS&T providers” should be amended to “tertiary sector and other RS&T providers” in both clauses 10(4)(a) and (b). It is our belief that the ATI can only succeed if there are strong collaborations and connections between the institute and research being conducted in our tertiary institutions.

It was also noted by one submitter that the ATI will incorporate some of the functions currently carried out by NZTE, and that the New Zealand Trade and Enterprise Act 2003 contains provisions for engagement with the whole community interested in economic development clause 9(1). In particular, it points to the recognition in that Act of the interest of unions as representatives of employees, both in industries directly engaged in the economic development that NZTE assists, and in the wider economy. The submitter asked that these provisions be mirrored in the ATI bill. We agree with this recommendation, and believe that union representation should be added to clause 10(4)(b)(i).

We also agree with the submission that asked for geographic representation within the ATI. We believe strongly in regional economic development and agree with the argument that the ATI needs to have decision-makers who represent the expertise, contributions and needs of the regions of New Zealand; that there needs to be geographic rep-

resentation that takes into account where the economic growth is and where the potential resides. Labour believes that clause 10 of the legislation should make more explicit the need for this diversity of geographic representation on the stakeholder advisory group.

We also support the submission that asked that the relationship between the Stakeholder Advisory Group and the ATI board be strengthened.

Functions of the ATI: Labour members are of the view that in order for New Zealand to have an economy that is led by science and innovation there needs to be strong links between the ATI and the education sector. We are, therefore, supportive of one submitter's recommendation that a new subclause be added to clause 13 of the bill around the educational pipeline needed for the success of an economy based on science and innovation. Labour members are of the belief that the ATI should be empowered through clause 13 to provide advice into the primary, secondary, and tertiary educational sectors around the skills and knowledge required for the development and implementation of innovation in New Zealand. Such advice would sit alongside the functions of the Industry Training Organisations.

Conclusion: Labour members are of the view that in order for the ATI to succeed it needs to be open to the views of all stakeholders (industry, science, and employees) and to be an integrated part of a broader economic development vision. On its own, the ATI cannot successfully transform our economy and it needs to be seen as a broader set of policy initiatives that make RS&T more accessible to New Zealand businesses. It needs to work co-operatively and collaboratively within the pre-existing landscape of RS&T and technology commercialisation provision. It must be set up in a way that makes it clear that it is a valuable contributor and not a competitor to be feared.

Green Party of Aotearoa New Zealand

The Green Party supported this bill at first reading, albeit with some reservations, and hoped that some of the structural and operational issues of concern could be dealt with at select committee.

The select committee process has been truncated to an unreasonable extent, and the Government members of the committee, in common

with the responsible Minister, have been unable to give a satisfactory explanation for such haste.

We therefore find ourselves in the position of being obliged to submit a minority view in advance of the committee having adequately discussed or sought common ground on some key points of concern or difference.

The submissions received were generally supportive of the concept of establishing an organisation to facilitate a positive and productive relationship between the science and research sector, and New Zealand business. Most submitters also sought amendments to resolve potential shortcomings or concerns with the bill, and the truncated select committee process has not allowed sufficient time for due consideration of many of those concerns.

The submissions were without exception very well informed and raised valid and insightful issues, and it is unfortunate that in the interests of haste too little time has been allowed for reflection on the issues raised and amendments proposed.

Common themes in the submissions included:

- The danger that the new organisation would duplicate and/or disrupt existing successful programmes or relationships held by, for example, the commercialisation arms of a number of universities, or the members of EDANZ.
- The extent to which ATI would become a provider (in addition to the current activities of its proposed subsidiary, IRL) rather than a facilitator or “networking” organisation, and so become a direct competitor to existing providers.
- Concern about the ATI being both a funding agency and a provider of research.
- The likelihood that the inevitable disruption and uncertainty, particularly for (but not limited to) staff at IRL, could lead to a loss to the country of some valuable talent and experience.

At the time of writing, the committee has yet to properly address the issue of the “definition” of the reference to “net benefit” in clause 14(1)(a) of the bill, which could be interpreted as limiting the scope and aim of the organisation to solely financial or economic goals, rather than to recognise or acknowledge social, cultural, and environmental aspirations as well as the economic.

New Zealand First Party

New Zealand First opposed this bill at first reading on the grounds that we believed that many of the suggested functions were already being successfully delivered by other organisations in New Zealand. The majority of submissions bore out this contention and raised the concern of duplication of service along with increased competition for the very rare research dollar. However the majority of submitters did draw our attention to a pivotal role that ATI can play in the creation of relationships between these service providers that would enhance the current environment.

After considering all the submissions and working with the select committee, New Zealand First supports the bill. However there remains a single area of concern that we would like to see given greater attention in the legislation. The area of ATI competing for research funding and contracts requires more focus. We see the ATI's role as 80 percent relationship-building between business and research entities and 20 percent funding facilitation of research to increase a business's capacity to expand its exports and markets to the benefit of New Zealand as a whole.

To facilitate this we had requested of the committee that the word "identify" into clause 14 (1) (b) after the word "proactively" and before the word "engage" in an attempt to highlight that the ATI must know who is providing this service while not necessarily engaging with them in an attempt to address inadvertent duplication or competition.

Appendix

Committee process

The Advanced Technology Institute Bill was referred to the committee on 13 September 2012. The closing date for submissions was 1 October 2012. We received and considered 23 submissions from interested groups and individuals. We heard seven submissions. We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Nikki Kaye (Chairperson)

Catherine Delahunty

Hon Jo Goodhew

Colin King

Hon Nanaia Mahuta

Tracey Martin

Sue Moroney

Simon O'Connor

Scott Simpson

Dr Megan Woods

David Clendon replaced Catherine Delahunty for this item of business.

Advanced Technology Institute Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Steven Joyce

Advanced Technology Institute Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Advanced Technology Institute Act **2012**.
- 2 Commencement**
This Act comes into force on **1 February 2013**. 5

Part 1
Preliminary provisions

- 3 Purpose**
The purpose of this Act is to—
- (a) establish the Advanced Technology Institute and to provide for its main objective, functions, and operating principles; and
 - (b) provide for transitional and other matters.
- 4 Interpretation**
In this Act, unless the context otherwise requires,— 15
ATI means the Advanced Technology Institute established by **section 6**
board means the board of ATI

IRL means Industrial Research Limited, being a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992

MBIE means the Ministry of Business, Innovation, and Employment 5

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 10

NZTE means New Zealand Trade and Enterprise established under section 7 of the New Zealand Trade and Enterprise Act 2003 15

RS&T funding has the same meaning as in section 4 of the Research, Science, and Technology Act 2010

RS&T provider means—

- (a) ATI:
- (b) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992: 20
- (c) any other research organisation or person (whether in New Zealand or overseas) undertaking any activity, or providing any service, that enables businesses to undertake, or benefit from, science and technology-based innovation and related activities 25

shareholding Ministers has the same meaning as in section 10(1) of the Crown Entities Act 2004

technology platform means a facility that pools skills, resources, or equipment in a manner that is intended to enhance the scientific, technological, or other related capability or performance of the facility's users. 30

4A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions. 35
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

5 Act binds the Crown

This Act binds the Crown.

Part 2**Advanced Technology Institute****Subpart 1—Establishment of ATI**

5

*ATI established***6 Advanced Technology Institute established**

This section establishes the Advanced Technology Institute.

7 ATI is Crown entity

- (1) ATI is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 10
- (2) The Crown Entities Act 2004 applies to ATI except to the extent that this Act expressly provides otherwise.

8 ATI's board

The Minister must appoint at least 5, but not more than 9, 15 persons as members of the board.

9 Special advisers

- (1) The Minister may appoint the chief executive of the Ministry as a special adviser to the board.
- (2) The function of the special adviser is to assist the board to align 20 its strategies and activities with government policy.
- (3) The special adviser may attend any meeting of the board (or any committee of the board) but may not vote.
- (4) The board (or any committee of the board) must give the special adviser sufficient notice of its meetings and copies of all 25 documents and materials to be considered at each meeting.

10 Stakeholder advisory group

- (1) The Minister may establish a stakeholder advisory group (an **advisory group**) to provide advice to the board on matters relating to the performance of its functions. 30

- (2) The board must consider any advice it receives from the advisory group.
- (3) The members of the advisory group must be appointed by the Minister, on terms and conditions that the Minister determines, by written notice to each member. 5
- ~~(4) When appointing members of the advisory group, the Minister must ensure, as far as practicable, that—~~
- ~~(a) the advisory group's membership is broadly representative of the manufacturing sector, services sector, and RS&T providers; and~~ 10
- ~~(b) the members collectively have sufficient experience and knowledge of the manufacturing sector, services sector, and as RS&T providers to give appropriate advice to the board.~~
- (4) When appointing members of the advisory group, the Minister must— 15
- (a) consult with the board and have regard to its views; and
- (b) ensure, as far as practicable, that—
- (i) the advisory group's membership is broadly representative of the manufacturing sector, services sector, and RS&T providers; and 20
- (ii) the members collectively have sufficient experience and knowledge of the manufacturing sector, services sector, and as RS&T providers to give appropriate advice to the board. 25
- (5) The Minister may, after consulting the board and having regard to its views, give terms of reference on the topics or subject areas on which the advisory group may advise the board.
- (6) The advisory group must comply with any terms of reference given by the Minister. 30
- (7) The advisory group may determine its own procedure.
- 11 Board must not delegate certain powers**
- (1) The board must not delegate its power to—
- (a) borrow or lend money;
- (b) acquire or dispose of real property: 35
- (c) acquire or dispose of securities;
- (d) set up a subsidiary:

- (e) appoint a chief executive of ATI.
- (2) In other respects, section 73 of the Crown Entities Act 2004 applies to the board.

ATI's main objective, functions, and operating principles 5

12 ATI's main objective

ATI's main objective is to support science and technology-based innovation and its commercialisation by businesses, primarily in the manufacturing sector and services sector, in order to improve their growth and competitiveness. 10

13 ATI's functions

- (1) ATI's functions are to—
 - (a) foster an environment that encourages and supports businesses to improve their growth and competitiveness through science and technology-based innovation and related activities: 15
 - (b) promote and facilitate networking and collaboration among businesses and between RS&T providers and businesses to assist businesses to undertake, or benefit from, science and technology-based innovation and related activities: 20
 - (c) facilitate the transfer of knowledge and technology ~~from between~~ RS&T providers ~~to and~~ businesses:
 - (d) undertake research and development:
 - (e) provide services to businesses that contribute to ATI's main objective: 25
 - (f) allocate and administer RS&T funding:
 - (g) invest in persons or projects that may assist businesses to undertake, or benefit from, science and technology-based innovation and related activities: 30
 - (h) perform or exercise any other function or power imposed or conferred on ATI by any other enactment:
 - (i) perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.
- (2) Examples of the ways in which ATI may perform the function specified in **subsection (1)(b)** (which relates to promoting 35

- and facilitating networking and collaboration between RS&T providers and businesses) include—
- (a) supporting the development of technology platforms:
 - (b) encouraging the exchange of staff, students, or other individuals between RS&T providers and businesses: 5
 - (c) assisting businesses to identify and access grants and other assistance programmes that are intended to support science and technology-based innovation and related activities.
- (3) Examples of the ways in which ATI may perform the function specified in **subsection (1)(e)** (which relates to providing services to businesses) include—
- (a) undertaking research and development in collaboration with, or on behalf of, businesses or RS&T providers (or both): 15
 - (b) assisting businesses to access (within New Zealand or overseas) relevant expertise, intellectual property, equipment, facilities, or anything else that may assist those businesses to undertake, or benefit from, science and technology-based innovation and related activities: 20
 - (c) providing information to businesses about potential new technologies or scientific discoveries and assisting businesses to use them, develop them, or exploit them commercially:
 - (d) providing training and advice to assist businesses to undertake science and technology-based innovation and related activities (including how to access and manage technology or intellectual property): 25
 - (e) providing product analysis, process testing, calibration and certification, or other related measurement services. 30
- 14 Operating principles**
- (1) In meeting its main objective, and performing its functions, ATI must—
- (a) aim to ensure that any activities it undertakes are for the ~~net~~ benefit of New Zealand; and 35
 - (b) proactively engage and collaborate with businesses, other RS&T providers, and other persons that ATI

- considers relevant to the performance of its functions;
and
- (c) maintain an awareness of international trends and advances in science and technology; and
 - (d) ensure that any activities it undertakes or services it provides are undertaken or provided in an efficient and cost-effective manner that—
 - (i) has regard to businesses' commercial imperatives and time frames; and
 - (ii) utilises existing capability within or among RS&T providers.
- (2) In addition, in performing the function specified in **section 13(1)(f)** (which relates to allocating and administering RS&T funding), ATI must—
- (a) act fairly and transparently; and
 - (b) implement systems and procedures to enable it to give effect to the principle set out in **paragraph (a)**; and
 - (c) make information about those systems and procedures available on its Internet site; and
 - (d) include in its annual report under section 150 of the Crown Entities Act 2004 a report on its implementation of those systems and procedures.
- (3) The Auditor-General must, when carrying out a financial report audit of ATI under section 15 of the Public Audit Act 2001, report on ATI's implementation of the systems and procedures referred to in **subsection (2)**.

Subpart 2—Transition to ATI and other matters

Transfer of IRL

- 15 IRL to be subsidiary of ATI** 30
- (1) On the commencement of this Act, IRL—
- (a) ceases to be a Crown Research Institute and, accordingly, the Crown Research Institutes Act 1992 ceases to apply to IRL; and
 - (b) is deemed to be a subsidiary of ATI. 35
- (2) On the commencement of this Act, the shareholding Ministers must transfer their shares in IRL to ATI.

*Transfer of employees***16 Transfer of MBIE and NZTE employees to ATI**

- (1) The chief executive of MBIE must identify the employees of MBIE and the chief executive of NZTE must identify the employees of NZTE— 5
- (a) whose duties are, overall, more closely connected with the functions of ATI; and
 - (b) whose positions will, as a result of the establishment of ATI, cease to exist within MBIE or NZTE (as the case may be). 10
- (2) An employee who is identified under **subsection (1)** must be offered equivalent employment by ATI.
- (3) The employee is not entitled to receive any payment or other benefit on the ground that the position held by the employee in MBIE or NZTE (as the case may be) has ceased to exist if— 15
- (a) the position ceases to exist because the duties of the position are more closely connected with the functions of ATI; and
 - (b) the employee is offered equivalent employment by ATI (whether or not the employee accepts the offer). 20
- (4) In this section and **section 17, equivalent employment** means employment that is—
- (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions that are no less favourable overall than those applying to the employee immediately before the date the offer of employment is made to that employee; and 25
 - (d) on terms that treat the period of service with the relevant agency (and every other period of service recognised by that agency as continuous service) as if it were continuous service with ATI. 30
- (5) This section overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.

17 Transfer of employees of IRL subsidiary to ATI

An employee of IRL is not entitled to receive any payment or other benefit on the ground that the employee's position in IRL has ceased to exist if—

- (a) the position ceases to exist because the chief executive of ATI has determined that the employee's duties will no longer be carried out by IRL; and 5
- (b) the employee is—
 - (i) offered equivalent employment by ATI (whether or not the employee accepts the offer); or 10
 - (ii) offered and accepts other employment in ATI.

18 Terms and conditions of transferred employees

- (1) The employment of a transferred employee by ATI does not—
 - (a) constitute new employment for the purposes of the KiwiSaver Act 2006; or 15
 - (b) treat that employee as a new employee for the purposes of the Employment Relations Act 2000.
- (2) In this section, **transferred employee** means a person who is offered, and accepts, employment in ATI under **section 16 or 17**. 20

19 Government superannuation fund

- (1) Any person who, immediately before becoming an employee of ATI, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service as long as the person continues to be an employee of ATI. 25
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of ATI were Government service. 30
- (3) **Subsection (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of ATI is the controlling authority. 35

Consequential amendments

20 Consequential amendments

Amend the enactments set out in the **Schedule** as set out in that schedule.

Schedule Consequential amendments

s 20

Part 1

Amendments to Acts

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 1, insert in its appropriate alphabetical order and under the headings as shown: 5

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Advanced Technology Institute	✓	✓	✓	✓	✓

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order: “Advanced Technology Institute”.

Part 2

10

Amendments Amendment to regulations

National Standards Regulations 1976 (SR 1976/239)

In regulation 2, insert in its appropriate alphabetical order:

~~“Advanced Technology Institute means the Advanced Technology Institute established by **section 6** of the Advanced Technology Institute Act **2012**”.~~ 15

In regulation 2, ~~revoke~~ replace the definition of **Industrial Research Limited** with:

“Industrial Research Limited means Industrial Research Limited, being a company incorporated under the Companies Act 1993”. 20

In regulation 2, definition of **Measurement Standards Laboratory of New Zealand**, replace “Industrial Research Limited” with “the Advanced Technology Institute”.

Advanced Technology Institute Bill

Legislative history

10 September 2012
13 September 2012

Introduction (Bill 66–1)
First reading and referral to Education and Science
Committee
