

Education (Polytechnics) Amendment Bill

Government Bill

Explanatory note

General policy statement

The polytechnic sector faces particular educational and financial challenges, which are likely to be exacerbated by an increasingly constrained funding environment. The public policy objectives of this Bill are—

- to improve the governance capability and effectiveness of polytechnic councils; and
- to allow the Crown to more effectively respond to the risks posed by polytechnics with educational or financial performance issues.

Governance arrangements

The Bill addresses the first objective by introducing new governance arrangements for polytechnics. The aim is to build the capability of polytechnic councils for decisive and responsive decision-making by—

- reducing the size of polytechnic councils from between 12 to 20 members, to 8 only; and
- the Minister for Tertiary Education appointing fifty percent of members; and

- appointments being made on the basis of relevant skills and experience, particularly governance experience.

The Bill reflects aspects of the unique context within which polytechnic councils operate, by retaining, and in some instances strengthening, the representative nature of councils.

The emphasis on improved governance is reinforced by the introduction of new individual duties to be placed on polytechnic council members, which reflect those set out in the Crown Entities Act 2004. Particular emphasis is placed upon the primary responsibility of a council member to serve the interests of the institution. The new duties, when combined with the collective duties already specified in the Education Act 1989, will provide greater clarity and certainty regarding the expectations on and responsibilities of council members. In order to assist with the recruitment of suitable candidates for council membership, especially in rural areas, the Bill introduces measures to facilitate collaborative governance arrangements. As an example, the Bill clarifies that individuals can sit on more than 1 polytechnic council.

The interventions framework

The Bill addresses the second objective by amending the Education Act 1989 to create a more flexible interventions framework for the polytechnic sector; one which allows for a gradually escalating series of responses to situations of risk. The current interventions framework is insufficiently graduated to enable the Crown to intervene appropriately where a polytechnic is at risk (either because of educational or financial performance issues) and in a manner commensurate with the level of risk.

Miscellaneous amendments

At present, each individual polytechnic has an academic board. The Bill provides for 2 or more polytechnic councils and combined councils to establish a combined academic board. It is intended that this will facilitate collaboration between polytechnics, and improve administrative efficiency.

The Bill modifies the application of certain provisions of the Education Act 1989 so as to enable the Manukau Institute of Technology to establish a tertiary education high school. This is a trial pro-

ject, which is aimed at reducing the numbers of young people leaving school without adequate qualifications. Eligible students in years 11–13 will be transitioned towards achieving a tertiary qualification. Also, minor technical amendments are made to the tertiary education Parts of the Education Act 1989, with the aim of updating the Act through removal of redundant provisions.

Clause by clause analysis

Clause 1 relates to the Bill's title.

Clause 2 provides that—

- *clauses 5, 7 to 9, and 11 to 13*, which make to Part 15 of the principal Act amendments consequential on the new provisions inserted by *clause 16*, come into force on the day on which *clause 16* comes into force (1 May 2010);
- *clause 16*, which inserts into the principal Act new provisions relating to the governance of polytechnics, comes into force on 1 May 2010;
- the rest of the Bill comes into force on the day after assent.

Clause 3 provides that the Bill amends the Education Act 1989.

Part 1

Substantive provisions

Amendments to existing provisions of principal Act relating to tertiary education

Clauses 4 to 14—

- amend certain provisions in Part 15 of the principal Act (and also section 159 of the principal Act, which contains certain definitions); and
- repeal some spent provisions in Part 15.

Part 15 relates to the administration of tertiary institutions (that is to say, polytechnics, specialist colleges, universities, and wananga); and the effect of the amendments is to exclude the application of some its provisions to polytechnics, because new provisions to be inserted into the principal Act by *clauses 15 and 16* provide differently for polytechnics. Apart from these express exclusions, Part 15 will continue to apply to polytechnics to the same extent as they apply to the other classes of tertiary institution.

Clause 4 inserts definitions of “combined council”, “constitutents”, “polytechnic council”, and “polytechnic reconstitution day” (which is 1 May 2010) into section 159(1) of the principal Act.

Clause 5 comes into force on 1 May 2010. It amends section 165 of the principal Act, which provides for every tertiary institution to be governed by a council constituted under Part 15, and also provides that references in any law to the council or other governing body of an institution are to be read as references to its council constituted under Part 15.

The amendment has the effect that after the polytechnic reconstitution day—

- the council of a polytechnic will not be constituted under Part 15 (but under the *new Part 15A*); and
- references to the council or other governing body of a polytechnic are to be read as references to its council constituted under *new Part 15A*.

Clause 6 repeals section 168 of the principal Act, which is a spent provision requiring the governing bodies of tertiary institutions in existence when the Education Amendment Act 1990 came into force to recommend new constitutions for themselves.

Clause 7 comes into force on 1 May 2010. It amends section 169 of the principal Act, which is a mechanism for establishing a constitution for a newly established tertiary institution. The effect of the amendment is that the section does not apply to the constitution for a newly established polytechnic. This is instead provided for by *new section 222AA* (as proposed to be inserted by *clause 16*).

Clause 8 comes into force on 1 May 2010. It amends section 170 of the principal Act, which is a mechanism for amending the constitution of a tertiary institution. The effect of the amendment is that the section does not apply to the constitution of a polytechnic. *New section 222AA* (as proposed to be inserted by *clause 16*) provides that the constitution of a polytechnic is fixed.

Clause 9 comes into force on 1 May 2010. It amends section 171 of the principal Act, which states requirements for the constitutions of tertiary institutions. The effect of the amendment is that the section does not apply to the constitution of a polytechnic. *New sections 222AA and 222AK* (as proposed to be inserted by *clause 16*) state the requirements for the constitutions of polytechnics.

Clause 10 repeals section 172 of the principal Act, which is a spent transitional provision relating to the first councils of tertiary institutions in existence when the Education Amendment Act 1990 came into force.

Clause 11 comes into force on 1 May 2010. It amends section 173 of the principal Act, which prescribes the terms of office of members of the councils of tertiary institutions. The effect of the amendment is that the section does not apply to the terms of office of members of the councils of polytechnics. *New section 222AD* (as proposed to be inserted by *clause 16*) prescribes the terms of office of members of the councils of polytechnics.

Clause 12 comes into force on 1 May 2010. It amends section 174 of the principal Act, which provides for members of the councils of tertiary institutions to go out of office in certain circumstances. *New section 222AD* (as proposed to be inserted by *clause 16*) requires one member of the council of a polytechnic to be a member of its academic board, appointed by the council on the nomination of that board. And *new section 222AK* (also proposed to be inserted by *clause 16*) requires a combined council to be a member of the academic board of one of the polytechnics concerned, appointed by the council on the nomination of one or other of the academic boards of the polytechnics concerned, or of all of them jointly. The effect of the amendment is that such a member of the council of a polytechnic goes out of office when he or she ceases to be a member of the academic board.

Clause 13 comes into force on 1 May 2010. It amends section 177 of the principal Act, which provides for the election of a chairperson and deputy chairperson of the council of a tertiary institution. The effect of the amendment is that the section does not apply to the chairperson and deputy chairperson of a polytechnic. *New section 222AF* (as proposed to be inserted by *clause 16*) provides for the chairperson and deputy chairperson of the council of a polytechnic to be appointed by the Minister.

Clause 14 amends section 195A of the principal Act, which requires the Secretary of Education, after consulting the councils of tertiary institutions, to determine criteria for assessing the level of risk to the operation and long-term viability of tertiary institutions. The effect of the amendment is that the Secretary—

- can determine separate criteria for polytechnics; and

- in doing so, needs to consult only the councils of polytechnics. Any separate criteria determined can be in addition to or instead of those for other tertiary institutions.

New provisions relating to polytechnics

Clause 15 inserts into the principal Act a *new Part 15A*, containing *sections 222A to 222E*, which provide for certain interventions into the affairs of polytechnics.

New section 222A empowers the chief executive of the Tertiary Education Commission to require a polytechnic council to obtain specialist help.

The chief executive can do so only if he or she believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk.

The chief executive must specify—

- the help or kind of help to be obtained; and
- the person or organisation (or kind of person or organisation) from whom or which it is to be obtained.

The council must then engage that person or organisation (or a person or organisation of that kind), and—

- must give the person or organisation all the information, access, and other help, reasonably necessary to enable the help to be provided; and
- if the help provided is advice, take the advice into account.

The council must pay the person or organisation's reasonable fees and expenses.

New section 222B empowers the chief executive of the Tertiary Education Commission to require a polytechnic council to prepare and give to him or her a draft performance improvement plan for its polytechnic.

Once again, the chief executive can do so only if he or she believes on reasonable grounds that a polytechnic, or the education performance of the students at a polytechnic, may be at risk.

The chief executive must specify—

- the matters to be addressed by the draft plan:
- the outcomes that implementation of the draft plan is intended to achieve:

- the times by which those outcomes should be achieved;
- the performance measures to be used to determine whether those outcomes have been achieved;
- the day by which the draft plan must be given to the chief executive.

If by the day specified, the polytechnic council gives the chief executive a draft plan addressing the matters specified, the chief executive can—

- approve the draft plan; or
- approve some other plan (whether it is a modified version of the draft plan or a different plan).

A polytechnic council must take all reasonably practicable steps—

- to conduct its affairs in accordance with an approved plan; and (in particular)
- to achieve the outcomes stated in the plan by the times stated in the plan for them.

New section 222C empowers the Minister to appoint a Crown manager for a polytechnic.

The Minister can do so only if satisfied on reasonable grounds that the operation or long-term viability of a polytechnic is at risk, or that the education performance of the students at a polytechnic is at risk.

The Minister can decide—

- the functions of the polytechnic's council to be performed by the Crown manager; and
- conditions subject to which the Crown manager may perform the functions; and
- any matters the Crown manager may advise the council on.

While there is a Crown manager appointed for a polytechnic, the Crown manager may perform any of the functions determined by the Minister, and the polytechnic's council—

- must not perform any of the functions; and
- must give the Crown manager all the information, access, and other help, reasonably necessary to enable the Crown manager to perform the functions.

New section 222D makes clear that—

- the powers of intervention into the affairs of polytechnics given by *new sections 222A to 222C* are in addition to the

powers available in respect of tertiary institutions generally under sections 195B to 195D of the principal Act; and

- powers given by 2 or more of those sections may be exercised at the same time.

New section 222E gives a polytechnic council a right to ask the Minister or chief executive of the Tertiary Education Commission to intervene in its affairs under a particular provision of the principal Act, and requires the Minister or chief executive—

- to consider any argument or evidence supplied by the council; and
- to consider whether or not to act under the provision.

But having done so, the Minister or chief executive can then (if any necessary conditions are met) act under another of those provisions giving him or her power to act.

Clause 16 comes into force on 1 May 2010. It inserts into the principal Act *new sections 222AA to 222RR*, which provide for the governance of polytechnics.

Polytechnic councils

New section 222AA prescribes a constitution for all polytechnic councils. A polytechnic council must comprise—

- 4 members appointed by the Minister:
- a member of the polytechnic's academic board nominated by that board and appointed by the council:
- a student member (appointed by the polytechnic's students association if membership of the association is compulsory, or otherwise elected by students enrolled at the polytechnic):
- a member, nominated by people living in the community served by the polytechnic, or by bodies operating in that community, appointed by the council:
- the polytechnic's chief executive.

With one exception, provisions relating to eligibility for appointment or election as a member of a polytechnic council and elections of student members are the same as those for other tertiary institutions. A person is not eligible for appointment or election if he or she has at any time been removed from office as a member of a polytechnic council under *new section 222AH*.

New section 222AB allows a person to be a member of more than one polytechnic council.

New section 222AC states matters to be considered when appointments of members of polytechnic councils are made.

Subsection (1) provides that it is desirable in principle—

- that a polytechnic council should include Māori; and
- that, so far as is possible, a polytechnic council should reflect the ethnic and socio-economic diversity of the community it serves.

Subsection (2) provides that the Minister—

- must have regard to *subsection (1)* when appointing members of a polytechnic council; but
- must appoint people who have enough experience of governance to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.

Subsection (3) provides that a polytechnic council must appoint as members people who—

- have relevant knowledge, skills, or experience; and
- are likely to be able to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council.

New section 222AD relates to the terms of office of appointed and elected members of polytechnic councils. These are—

- not more than 4 years for a member appointed by the Minister;
- 1 year for a member nominated by a polytechnic's academic board;
- 1 year for a student member;
- not less than 2 years and not more than 4 years for a member nominated by people living in the community served by a polytechnic.

New section 222AE provides that any member of a polytechnic council can be reappointed or re-elected.

New section 222AF relates to the chairperson and deputy chairperson of a polytechnic council, each of whom—

- is to be appointed by the Minister from the members of the council other than the student member, the polytechnic's chief executive, and employees of the chief executive; and

- may at any time be dismissed by the Minister.

New section 222AG imposes duties on members of polytechnic councils.

A member of a polytechnic council, when acting as a member of the council in any circumstances,—

- must—
 - act with honesty and integrity:
 - act in the interests of the polytechnic as a whole:
 - act in a manner promoting the performance of the functions characteristic of a polytechnic, and the duties of the council:
 - act in good faith, and not pursue his or her own interests at the expense of the council's interests; and
- must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account—
 - the nature of the council:
 - the nature of the action:
 - the position of the member as a member of a polytechnic council, and the nature of the responsibilities undertaken by him or her; and
- must not disclose any information acquired as a member of the council, or make use of, or act on, the information, except—
 - in the performance of the council's functions; or
 - as required or permitted by law; or
 - with the authority of the council; or
 - if disclosing, making use of, or acting on it will not, or will be unlikely to, prejudice the council or the polytechnic; or
 - in complying with requirements for members to disclose interests.

New section 222AH empowers the Minister to remove an appointed or elected member of a polytechnic council from office, for just cause. *Subsection (6)* provides that just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the polytechnic council or

the individual duties of members (depending on the seriousness of the breach).

New section 222AI allows the Minister to remove a member of a polytechnic council from office as informally and quickly as the principles of natural justice and a proper consideration of the matter permit.

Combination of polytechnic councils

New section 222AJ empowers the Minister to combine the councils of 2 or more polytechnics if—

- each of them has recommended that they should be combined; and
- he or she is satisfied that each of them has consulted the constituents of its polytechnic on the desirability of combination.

New section 222AK provides that the Minister combines polytechnic councils by a notice in the *Gazette* stating a constitution for the resulting combined council, and the day on which the combination takes effect.

In determining the constitution for a combined council, the Minister must have regard to the following requirements:

- the council must have an even balance between members appointed by the Minister and other members:
- the council must have at least one member elected by students enrolled at the polytechnics concerned:
- the council must have at least one member appointed by the council on the nomination of one or other of the academic boards of the polytechnics concerned, or of all of them jointly:
- the council must have at least one member appointed by the council on the nomination of members of the community served by the polytechnic:
- the chief executives of the polytechnics concerned must all be members of the council.

New section 222AL states the effect of combining polytechnic councils—

- each polytechnic retains its individual status, identity, and character:

- the resulting combined council is the successor of each of the polytechnic councils combined, and has all the obligations and rights it had before combination:
- every statute of any of the polytechnic councils combined becomes a statute of the combined council, but until amended so as to apply to the others, applies only to the polytechnic by whose council it was made:
- the existing assets and liabilities of each of the polytechnics combined continue to be assets and liabilities of that polytechnic:
- the existing chief executive of each of the polytechnics combined continues to be the chief executive of that polytechnic, but becomes an employee of the combined council.

New section 222AM empowers the Minister to dissolve a combined council on the recommendation of that council.

Before recommending that the Minister dissolve it, a combined council must consult the constituents of the polytechnics concerned.

A combined council may, before dissolution, make in respect of any of the polytechnics concerned any statutes it thinks necessary or desirable to enable the swift and efficient establishment of a council for it.

New section 222AN states the effect of the dissolution of a combined council—

- each of the councils has any of the obligations and rights the former polytechnic council of its polytechnic had before the establishment of the combined council, and any of the obligations and rights the combined council had before the dissolution that have arisen in relation to the polytechnic:
- relevant statutes of the combined council becomes statutes of each new polytechnic council:
- the existing chief executives of the polytechnics concerned continue to be the chief executives of those polytechnics, but each becomes an employee of the relevant new polytechnic council.

New section 222AO provides for the initial membership of polytechnic councils after the dissolution of a combined council.

Before the dissolution, the Minister must make the appropriate ministerial appointments to each new polytechnic council. Other members of a new polytechnic council—

- may be appointed or elected before the dissolution; and
- must be appointed or elected within 3 months after the dissolution.

If on dissolution there is a vacancy in a new polytechnic council, the Minister may authorise any member of the dissolved combined council to act as a member of the new council until the vacancy is filled.

Combined academic boards

New section 222AP empowers 2 or more polytechnic councils to establish a combined academic board for their polytechnics, and also empowers a combined polytechnic council to establish a combined academic board for its polytechnics.

A combined academic board must include—

- the chief executive of each polytechnic;
- at least one member of the staff of each polytechnic;
- at least one student of each polytechnic.

Enabling young students to attend tertiary high school at Manukau Institute of Technology

Clause 17 removes obstacles to the enrolment of secondary school students—particularly secondary school students under 16—in certain courses (referred to as “tertiary high school courses”) to be offered at Manukau Institute of Technology (“MIT”).

The clause provides that—

- a person enrolled at a registered school does not cease to be enrolled at the school by becoming enrolled at MIT in a tertiary high school course (and thus, if under 16, continues to comply with the statutory requirement to be enrolled at a registered school);
- a person who enrolls at MIT in a tertiary high school course does not lose eligibility to enrol at a registered school (and thus, if under 16, can comply with the statutory requirement to be enrolled at a registered school by enrolling at a new regis-

tered school if for any reason he or she ceases to be enrolled at the school at which he or she was enrolled when enrolling at MIT):

- a person both enrolled at a registered school and enrolled at MIT in a tertiary high school course must be treated as complying with the statutory requirement for people under 16 to attend school if he or she attends the classes comprising the course whenever they are available;
- a school board and MIT's council may submit to the Secretary of Education for approval an agreement stating their respective obligations (both to the students concerned and to each other) and rights in relation to the safety, welfare, and educational programmes of students enrolled at both the school and MIT.

Part 2

Transitional matters

Part 2 deals with the transition from the polytechnic councils at present constituted to the reconstituted polytechnic councils that will come into existence on the commencement of *clause 16*.

Clause 18 defines certain terms used in *Part 2*.

Clause 19 provides for the initial membership of reconstituted polytechnic councils.

Before the polytechnic reconstitution day, the Minister must make the appropriate ministerial appointments to each reconstituted polytechnic council. Other members of a reconstituted polytechnic council—

- may be appointed or elected before the polytechnic reconstitution day; and
- must be appointed or elected within 3 months after that day.

If on the polytechnic reconstitution day there is a vacancy in a reconstituted polytechnic council, the Minister may authorise any member of the former council to act as a member of the reconstituted council until the vacancy is filled.

Clause 20 provides that on the polytechnic reconstitution day all existing members of a polytechnic council go out of office, and all new members of a reconstituted council appointed or elected before that day take up office.

Clause 21 makes clear that a reconstituted council is the same body as its predecessor.

Clause 22 gives the Minister a temporary power of direction before the polytechnic reconstitution day, to ensure that reconstituted councils can deal effectively with the business before them on and after the polytechnic reconstitution day.

Regulatory impact statement

This statement pertains to 2 separate policy matters that are addressed in the Education (Polytechnics) Amendment Bill:

- 1 the legislation regarding the governance arrangements and intervention framework for polytechnics:
- 2 the establishment of a Tertiary High School at the Manukau Institute of Technology.

For the sake of clarity, these are treated separately below in the order named.

1 Polytechnics

Executive summary

The polytechnic sector faces financial and educational performance problems that are likely to be exacerbated by an increasingly constrained funding environment. These problems often arise from or are worsened by ineffective governance, and the statutory intervention framework for polytechnics does not allow the Crown to readily address issues as they arise. The result is that polytechnics pose a relatively high risk to the Crown.

To reduce this risk, the Government intends to amend the governance arrangements and the intervention framework for polytechnics in the Education Act 1989. These amendments will improve polytechnic governance and will give the Crown more flexibility in responding to problems as they arise.

Adequacy statement

The Ministry of Education confirms that the regulatory impact statement is adequate.

Status quo and problem

Governance arrangements

There are 20 polytechnics in New Zealand. In 2007, they enrolled 207 000 learners, equating to 72 000 Equivalent Full-Time Students. They were allocated a funding baseline of \$596 million (GST exclusive) to invest in 2009¹. The sector is diverse. It ranges from large urban institutions that offer education over a broad range of subject areas, to smaller more rural and/or specialised institutions which support regions with varied needs.

Section 171 of the Education Act 1989 sets out the governance arrangements for polytechnics and other tertiary education institutions. It states that institutions are to be governed by councils with a minimum of 12 and a maximum of 20 members, including:

- 4 ministerial appointees:
- the chief executive of the polytechnic:
- at least 1 and up to 3 elected representatives of the polytechnic's academic staff:
- at least 1 and up to 3 elected representatives of the polytechnic's general staff:
- at least 1 and up to 3 elected representatives of the polytechnic's student body:
- an employer representative²:
- an employee representative³:
- if relevant, one or more representatives from a relevant professional body.

The large size of these councils, and the emphasis of their composition on representativeness over and above governance skill and experience, has resulted in ineffective governance at some institutions. It has also sometimes been difficult to find appropriately skilled can-

¹ Student numbers and EFTS are rounded to the nearest thousand. The budget figure is the Student Achievement and Tertiary Education Organisation Component baseline funding allocation for the 2009 calendar year, as announced following Budget 2008. Some funding that is available to multiple parts of the sector is not included in the total baseline indicated here.

² The legal position with regard to the operative effect of this provision is unclear, as it makes reference to the Labour Relations Act 1987 which has been repealed. This matter will be the subject of further work.

³ As per previous footnote.

didates who are willing to sit on councils that they regard as unwieldy or under-skilled. These problems have been concentrated in the polytechnic sector.

These governance issues have contributed to the financial and educational performance problems faced by polytechnics: in recent years, a number of polytechnics have required Crown interventions, and in some cases Crown loans have been used to maintain their viability. These problems are likely to be compounded by an increasingly constrained funding environment.

Intervention framework

The current framework for statutory interventions in tertiary education institutions is set out in sections 195A–195F of the Education Act 1989. It allows for 3 types of intervention:

- the chief executive of the Tertiary Education Commission (TEC) can require a polytechnic council to provide information;
- the Minister for Tertiary Education can appoint a Crown observer to the council;
- the Minister for Tertiary Education can dissolve the council and appoint a commissioner.

The first 2 interventions involve suggestion or persuasion, and the third step involves drastic direct action. There is no middle ground whereby the Crown can require a council to change its behaviour in specific respects without going to the extreme of dissolving it entirely. The Government has needed to use all 3 of these interventions in polytechnics in recent years (in some cases repeatedly), including the appointment of a Crown commissioner. It has not used the interventions in universities.

Policy work on broader issues facing the polytechnic sector is ongoing. In the meantime, to quickly address the legislative elements of the two problems identified above, the Government intends to amend the legislation regarding governance arrangements and the intervention framework for polytechnics.

Objectives

The objective of the changes to governance arrangements is to improve the governance capability and effectiveness of polytechnic councils.

The objective of the changes to the intervention framework is to allow the Crown to more effectively respond to the risk posed by polytechnics facing performance problems.

Alternative options

Governance arrangements

In developing this legislation the Government did not consider making fundamental changes to polytechnic governance models. This is because there is some urgency in making these changes, and far-reaching change would require analysis and consultation that could not be undertaken sufficiently quickly. It also did not seriously consider enlarging councils, as evidence from the private sector, along with anecdotal feedback from board and council members in New Zealand, suggests that smaller governing bodies are generally more effective than large ones.⁴

Instead, the Government considered 4 main alternatives to the existing council model, as well as their natural variations:

- Option 1: Restricting the number of academic staff, general staff, and student representatives on polytechnic councils to one each (currently 1 to 3):
- Option 2: Removing these representatives entirely, along with employer/employee and professional body representatives, leaving only the ministerial appointments and chief executive:
- Option 3: Requiring the Minister for Tertiary Education to appoint all council members (with smaller councils).

The latter 2 options were rejected as being inconsistent with the conception of tertiary education institutions as partnerships between the Crown and communities. This partnership ethos is fundamental to all tertiary education institutions and is reflected in the way that key stakeholders are represented on these institutions' governing bodies.

⁴ For example, see Huther, J. (1997), "An empirical test of the effect of board size on firm efficiency". *Economics Letters*, 53:4, July 1997, 259-264.

The first option was considered to be unbalanced in the opposite direction, with too much emphasis on representation and too little on governance capability. It would see councils comprise ten or eleven members: four ministerial appointments, the chief executive, an academic staff representative, a general staff representative, a student representative, an employer body representative, an employee body representative, and (if applicable) a professional body representative. Of these, only the four ministerial appointments would have to be appointed on the basis of their governance skill; suitably experienced candidates might be reluctant to accept appointments in these circumstances.

With respect to multi-institutional councils (see “Preferred option” below), the Government also considered providing for multi-institutional councils that would consider the interests of the polytechnics over which they governed collectively. This would mean that the interests of one institution could be traded off against the interests of another. This option raised substantive policy issues that were unable to be addressed in the Bill’s timeframe, and so has been included in the ongoing polytechnic policy work programme.

Intervention framework

For the sake of brevity and clarity, the multiple alternative options below are presented as broad policy choices.

Choice 1: More/fewer interventions

The core problem with the current intervention framework is its lack of graduated steps, and so in considering alternatives the Government concentrated on adding interventions rather than removing them.

As a starting point it considered the more graduated set of interventions that already exists in the compulsory schooling sector, as set out in Part 7A of the Education Act 1989. For each of these interventions not already mirrored in the tertiary framework, the Government assessed whether there was value in including a similar provision for polytechnics. In each case, it was decided that this was indeed valuable, because the more interventions the Crown has to choose from, the better it can tailor its response to an institution at risk.

This created a six-step framework, which was felt to be adequately sensitive to different levels of risk. The Government considered that

incorporating interventions beyond these six would have added administrative complexity without adding value.

Choice 2: Administration of interventions

The Government had to choose whether to vest the new powers of intervention with the Minister for Tertiary Education or with the chief executive of the TEC.

The Government ultimately considered that interventions up to and including the requirement to carry out a remedial plan (see below) should rest with the chief executive of the TEC. This is because these interventions fit naturally alongside the TEC's existing monitoring role and happen "at arm's length" from the institution.

The Government decided that interventions above this where the Crown interacts directly with councils in an ongoing way—ie, through the appointment of a Crown observer, a Crown manager, or a commissioner—should rest with the Minister for Tertiary Education.

Choice 3: Trigger for interventions

The Government had to decide on what grounds each of the new powers should be able to be exercised, ie, whether a polytechnic needed to be "at potential risk", "at risk", or "at serious risk", and whether the chief executive of the TEC or the Minister for Tertiary Education had to be "satisfied" that this was the case or believe it "on reasonable grounds".

The decisions about the appropriate degree/certainty of risk were determined with reference to the relevant policy objective and to standards set by the existing legislation.

In each case, the decision was made to include a "reasonable grounds" requirement for action, in order to safeguard institutional autonomy.

Preferred options

Governance arrangements

The preferred option is smaller polytechnic councils with an even balance between "representative" and purely skill-based ap-

pointments. The proposed amendment will provide for councils comprising 8 members:

- 4 members appointed by the Minister for Tertiary Education:
- the chief executive of the institution:
- 1 member appointed by the Academic Board from among its members:
- 1 student representative:
- 1 member appointed by the council, through a public nominations process, from the community served by the polytechnic (for example, representatives of local iwi or key local industries).

The Minister for Tertiary Education will appoint the chair and deputy chair.

The Minister for Tertiary Education will treat governance skill and experience as necessary conditions for appointment to councils. In addition the Minister will take into consideration the desirability in principle of Māori representation on each council, and the desirability in principle of having a council that reflects the ethnic and socio-economic diversity of the community served by the polytechnic.

Individual duties

Polytechnic council members will have individual duties set out in the Act (in addition to existing collective duties), with the primary duty being to act in the best interests of the polytechnic and with due care and diligence. The Minister for Tertiary Education will have the power to remove individual council members at any time in cases where he or she has “just cause” to do so. “Just cause” will be defined to include misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective or individual duties of members.

Multi-institutional councils

A provision will be made for multi-institutional councils, allowing one council to govern two or more institutions (treating the interests of each institution separately). The composition of multi-institutional councils will be determined by the Minister for Tertiary Education on a case-by-case basis.

Advantages and disadvantages

The preferred policy has the following advantages:

- councils will have a small and predictable membership that reflects the principle that while representation is important and desirable, a core of governance skill and experience is necessary to the effective operation of a council:
- the legislation will be clearer about the responsibilities of individual council members:
- multi-institutional councils will help to address the shortage of appropriately-skilled candidates for polytechnic councils.

It has the following disadvantages:

- some people may believe that the Minister for Tertiary Education will have more control over polytechnic councils, because of the greater proportion of ministerial appointments on the council (50%, compared to the current 20%–33%). However, ministerial appointments are not “ministerial representatives”—a council member is under a legal obligation to act in the interests of the organisation, irrespective of how he or she has been appointed. This common law obligation will be made explicit in the Education Act 1989:
- some people may feel that the Minister for Tertiary Education’s powers of removal of council members gives the Minister more control over councils. However, this power will be tightly circumscribed and constrained by a requirement to have “just cause”, which will be defined in the Act:
- polytechnic stakeholders (eg, students, staff, and/or local communities) are accustomed to a highly representative governance model at polytechnics. They may resent a shift to a model that places more emphasis than before on governance skill and experience, and has fewer “as of right” representative positions available.

The basic statutory duties of councils are unchanged and will therefore drive the governance decisions made by the council.

Intervention framework

The preferred option for the intervention framework for polytechnics will add 3 new provisions to the existing provisions. This will create

a more graduated framework for Crown intervention in polytechnics at risk:

- (a) the chief executive of the TEC can ask a polytechnic council for information:
- (b) the chief executive of the TEC can require the council to engage specialised help (**new**):
- (c) the chief executive of the TEC can require the council to prepare and carry out a performance improvement plan (**new**):
- (d) the Minister for Tertiary Education can appoint a Crown observer to the council:
- (e) the Minister for Tertiary Education can appoint a Crown manager to fulfil specific duties of the council (**new**):
- (f) the Minister for Tertiary Education can dissolve the council and appoint a commissioner.

The chief executive of the TEC will be able to require councils to engage specialised help or to prepare and carry out a performance improvement plan whenever he or she “believes on reasonable grounds” that a polytechnic may be at risk. The Minister for Tertiary Education will be able to appoint a Crown manager whenever he or she “believes on reasonable grounds that there is a serious risk to the operation or long-term viability of a polytechnic”. Under the current legislation, the Secretary for Education issues “risk assessment criteria” used to determine when intervention is appropriate; for avoidance of doubt, this provision will be amended to state explicitly that the Secretary can issue criteria that are specific to polytechnics.

Advantages and disadvantages

The preferred policy design has the following advantages:

- a wider range of graduated interventions allows for a more appropriate and tailored response by the Crown to a situation where a polytechnic is at risk. Earlier intervention is more cost-effective:
- adding more effective interventions “upstream” from dissolution of a council offers more protection to institutions’ autonomy, giving them more chance to solve their own problems while managing the risk to the Crown:
- giving the Minister for Tertiary Education the power to appoint a Crown manager formalises an existing practice.

It has the disadvantage that it is statutorily unusual to give the chief executive of one Crown entity (the TEC) the legislative authority to direct the actions of the governing body of another Crown entity (a polytechnic).

Implementation and review

The legislation is expected to come into force the day after assent, with the governance provisions coming into force later on 1 May 2010 (with transitional arrangements for councils stipulated in the Act). During the intervening period, preparations will be made for the effective and efficient implementation of the legislative changes.

The new governance arrangements will require advice and support to the Minister for Tertiary Education to enable the appointment of up to 80 new council members on 20 polytechnic councils. These appointments are likely to include many of the ministerial appointees already on councils. Advice will also be provided on the appointment of chairs and deputy chairs to these councils.

The implementation of the three new interventions will be supported by the development of new operational procedures and resources to underpin their implementation.

The changes will be reviewed as part of the ongoing policy work programme regarding polytechnics.

Consultation

The Department of Prime Minister and Cabinet, the Treasury, the Ministry of Social Development, the Department of Labour, the Ministry of Women's Affairs, the Ministry of Youth Development, Te Puni Kokiri, the Ministry of Pacific Island Affairs, the Tertiary Education Commission, the State Services Commission and the New Zealand Qualifications Authority were consulted in the course of developing the policy proposal.

The Treasury, the Tertiary Education Commission and the State Services Commission have been consulted on this Statement.

2 Manukau Institute of Technology tertiary high school

Executive summary

The Government intends to make an interim amendment to the Education Act 1989 to allow the proposed tertiary high school at Manukau Institute of Technology (MIT) to begin operating from the beginning of 2010.

The tertiary high school is to be established to trial a new concept. It will offer a 4-year course of study beginning in Year 11 for students who have been identified by their schools as unlikely to succeed in a conventional school setting, who are motivated to succeed in a tertiary setting, and whose parents support them in this.

Students would remain enrolled at their contributing secondary school for age-appropriate cultural and sporting activities. The tertiary high school will be part of Manukau Institute of Technology and not a registered school.

Adequacy statement

The Ministry of Education confirms that the regulatory impact statement is adequate.

Status quo and problem

Current legislation contains barriers to these arrangements. It requires students under the age of 16 to be enrolled at and attending a school. The MIT proposal is that students are enrolled at and attending the tertiary high school full-time from the beginning of Year 11. Many students at this time will not yet be 16.

Under the Education Act 1989, a board of trustees retains ultimate responsibility for its students even when they are undertaking off-site courses. The students at the MIT tertiary high school will spend their working day in the tertiary environment. In these circumstances the board of trustees of the school where they are also enrolled will have very little ability to exercise their statutory responsibility for the students.

Objective

New Zealand has too many young people who leave school without worthwhile qualifications. The Government would like to trial a tertiary high school as one way to reverse this trend and support students to staircase into obtaining tertiary qualifications. The objective of this amendment is to allow the trial to begin at the beginning of 2010.

Alternative options

Two options were considered that are consistent with existing legislation.

Option 1: Enrol only 16-year-olds

One option considered was to enrol only those Year 11 students who had turned 16 by the beginning of 2010. Most students are still 15 at this time and this would have resulted in an unviable intake because there would not be enough students enrolled.

Option 2: Delay opening

The other option considered was to delay the opening of the tertiary high school until broader legislative change could be enacted. There is an Education and Training Bill that has Category 4 on the 2009 legislation programme—to proceed to Select Committee in 2009. This will be used to make necessary changes to accommodate a range of initiatives at the secondary/tertiary interface. However, MIT has been working towards establishing the tertiary high school for some years and the Government is keen to see it begin at the start of 2010 so that this model of education can be evaluated.

Preferred Option

The preferred option is to include a short amendment to allow:

- MIT tertiary high school students who are under 16 to be deemed to meet the compulsory attendance requirements of the Act;
- arrangements for the safety, welfare and educational programmes of all students to be determined between the school

at which the student is enrolled and MIT Tertiary High School and approved by the Secretary of Education:

- any consequential amendments necessary to give effect to this.

This institution-specific amendment would be repealed when the broader regime of the Education and Training Bill is passed.

This option has the advantage that it would allow the proposed tertiary high school at MIT to begin operating from the beginning of 2010. The first intake will consist of up to 80 students from potentially 10 schools in South Auckland. It will benefit students who have been identified by their schools as unlikely to succeed in a conventional school setting. It will clarify the responsibility requirements of the institutions involved in a practical way.

This option will exempt students under 16 from the requirement to attend school. They will, however, have similar or greater attendance requirements at the tertiary high school and be undertaking National Certificate of Educational Achievement (NCEA) subjects as well as tertiary courses.

Although it requires MIT and the schools to enter into a formal arrangement regarding responsibilities for students, this is already an agreed procedure. No school is required to put students forward for the tertiary high school.

Implementation and review

The Ministry of Education, MIT and South Auckland schools are working towards implementation of the tertiary high school by the beginning of 2010, with an intake of up to 80 Year 11 students in Term 1. There will be a written agreement between the schools, the tertiary high school and the Secretary of Education that covers arrangements for the safety, welfare and educational programmes of the students. This will be reflected in an agreement between the tertiary high school, students and their parents.

The outcomes from the tertiary high school will be monitored and evaluated. The form of evaluation has not yet been determined.

Consultation

This regulatory impact analysis was prepared by the Ministry of Education. The Ministry has consulted with the Tertiary Education Commission and the New Zealand Qualifications Authority on the estab-

lishment of the tertiary high school. MIT has consulted widely in the South Auckland community about the tertiary high school proposal.

Hon Anne Tolley

Education (Polytechnics) Amendment Bill

Government Bill

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Education (Polytechnics) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education (Polytechnics) Amendment Act **2009**.

2 Commencement

- (1) **Sections 5, 7 to 9, 11 to 13, and 16** come into force on 1 May 2010. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Education Act 1989. 10

Part 1

Substantive provisions

Amendments to existing provisions of principal Act relating to tertiary education

4 Interpretation 15

Section 159(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**combined council** means a body constituted under **section 222AM**

“**constitutents**, in relation to an institution, means the people who (by virtue of section 163) constitute it 20

“**polytechnic council**

“(a) means the council of a polytechnic; and

“(b) includes a combined council

“**polytechnic reconstitution day** means 1 May 2010”. 25

5 Institutions to be governed by councils

Section 165 is amended by inserting the following subsection after subsection (1):

“(1A) On and after the polytechnic reconstitution day,—

“(a) subsection (1)(a) does not apply to a polytechnic; and 5

“(b) except in relation to matters that occurred before the commencement of this section, a reference in any law to the council or other governing body of an institution must, in relation to a polytechnic, be construed as a reference to the polytechnic’s council as constituted under this Part or **Part 15A** (as the case requires).” 10

6 Section 168 repealed

Section 168 is repealed.

7 Constitutions of councils of new institutions

Section 169 is amended by adding the following subsection: 15

“(4) Subsections (1) to (3) do not apply to the constitution for the council of a body that is, or is to be, established under section 162(2) as a polytechnic (for which **sections 222AA and 222AK** provide).”

8 Amendment of constitution 20

Section 170 is amended by adding the following subsection as subsection (2):

“(2) Subsection (1) does not apply to a polytechnic council.”

9 Requirements as to constitutions of councils

Section 171 is amended by adding the following subsection: 25

“(12) Subsections (1) to (11) do not apply to the constitution of a polytechnic council (for which **sections 222AA and 222AM** provide).”

10 Section 172 repealed

Section 172 is repealed. 30

11 Term of office

Section 173 is amended by adding the following subsection:

“(8) Subsections (1) to (7) do not apply to the term of office of a member of a polytechnic council (for which **section 222AD** provides).”

12 Vacation of office

Section 174 is amended by inserting the following subsections 5
after subsection (2):

“(2A) A member of a polytechnic council appointed by the council on the nomination of the academic board of the polytechnic concerned (or, in the case of a combined council, on the nomination of the academic board of one of the polytechnics 10
concerned, or of all of the academic boards of the polytechnics concerned, jointly) goes out of office on ceasing to be a member of that board.

“(2B) **Subsection (2A)** applies to a polytechnic council in place of subsection (2).” 15

13 Chairperson and deputy chairperson

Section 177 is amended by adding the following subsection:

“(9) Subsections (1) to (8) do not apply to the chairperson and deputy chairperson of a polytechnic (for which **section 222AF** provides).” 20

14 Criteria for risk assessment of institutions

Section 195A is amended by inserting the following subsection after subsection (1):

“(1A) The Secretary may under subsection (1) determine criteria for assessing the level of risk to the operation and long-term viability of polytechnics; and in that case,— 25

“(a) the requirement to consult with institution councils applies to polytechnic councils only; and

“(b) the criteria determined may be in addition to, or instead of, those determined for other institutions.” 30

New provisions relating to polytechnics

15 New Part 15A inserted

The following Part is inserted after Part 15:

**“Part 15A
“Special provisions relating to
polytechnics**

“222A Specialist help

- “(1) If he or she believes on reasonable grounds that a polytechnic, 5
or the education performance of the students at a polytechnic,
may be at risk, the chief executive of the Tertiary Education
Commission may, by written notice to its polytechnic council,
require the council to obtain specialist help.
- “(2) The notice must state— 10
- “(a) the help or kind of help to be obtained; and
- “(b) the person or organisation, or kind of person or organ-
isation, from whom or which it is to be obtained.
- “(3) As soon as is reasonably practicable after receiving the notice, 15
the council must comply with it.
- “(4) The council—
- “(a) must provide the information and access, and do all
other things, reasonably necessary to enable the person
or organisation engaged to provide the help; and
- “(b) to the extent that the help provided is advice, take the 20
advice into account in performing its functions and du-
ties; and
- “(c) pay the person or organisation’s reasonable fees and ex-
penses.

“222B Performance improvement plans

25

- “(1) If he or she believes on reasonable grounds that a polytechnic, 25
or the education performance of the students at a polytechnic,
may be at risk, the chief executive of the Tertiary Education
Commission may, by written notice to its polytechnic council,
require the council to prepare and give to him or her a draft 30
performance improvement plan for the polytechnic.
- “(2) The notice must state—
- “(a) the matters to be addressed by the draft plan; and
- “(b) the outcomes that implementation of the draft plan is 35
intended to achieve; and
- “(c) the times by which those outcomes should be achieved;
and

- “(d) the performance measures that will be used to determine whether those outcomes have been achieved; and
- “(e) the day by which the draft plan must be given to him or her.
- “(3) The council must prepare, and give to the chief executive of the Tertiary Education Commission by the stated day, a draft plan complying with **subsection (2)**. 5
- “(4) If the council complies with **subsection (3)**, the chief executive of the Tertiary Education Commission may,— 10
- “(a) approve the draft plan concerned; or
- “(b) after considering the draft plan, approve for the polytechnic some other plan complying with **subsection (2)** (whether a modified version of the draft plan or a different plan).
- “(5) If the council does not comply with **subsection (3)**, the chief executive of the Tertiary Education Commission may approve for the polytechnic any plan complying with **subsection (2)** the chief executive thinks appropriate. 15
- “(6) The chief executive of the Tertiary Education Commission must not approve any plan other than a draft plan given to him or her by the council before discussing it with the council. 20
- “(7) The council must take all reasonably practicable steps to implement a plan approved under this section.
- “**222C Crown manager**
- “(1) If he or she believes on reasonable grounds that there is a serious risk to the operation or long-term viability of a polytechnic, or that the education performance of the students at a polytechnic is at risk, the Minister may, by written notice to its polytechnic council, appoint a Crown manager for the polytechnic. 25 30
- “(2) The notice must state—
- “(a) the name of the Crown manager and the day on which his or her appointment takes effect; and
- “(b) the functions of the council to be performed by the Crown manager; and 35
- “(c) any conditions subject to which the Crown manager may perform those functions; and

- “(d) any matters the Crown manager may advise the council on.
- “(3) While there is a Crown manager appointed for the polytechnic,—
- “(a) the Crown manager may perform any of the functions stated in the notice appointing him or her; and—
- “(i) for that purpose has all the powers of the council; but
- “(ii) in performing any such function (and exercising any of those powers in order to do so) the Crown manager must comply with all relevant duties of the council; and
- “(b) the council—
- “(i) must not perform any of those functions; and
- “(ii) must provide the information and access, and do all other things, reasonably necessary to enable the Crown manager to perform those functions and exercise those powers.
- “(4) The council must pay the Crown manager’s reasonable fees and expenses.
- “(5) The notice may be amended or revoked; and if it is revoked, another may (immediately or later) be given.
- “(6) For the purpose of **subsection (1)**, there is a serious risk to the operation or long-term viability of a polytechnic if, according to the criteria published under section 195A(2), there is or is likely to be a serious level of risk to its operation or long-term viability.
- “(7) **Subsection (6)** does not limit or affect the generality of **subsection (1)**.
- “**222D Powers may be used concurrently**
- “(1) **Sections 222A to 222C** do not limit or affect sections 195B to 195D.
- “(2) To the extent that it is possible in practice, powers given by 2 or more of sections 195B, 195C, and **222A to 222C** may be exercised concurrently in respect of the same polytechnic or polytechnic council.

“222E Polytechnic council may request intervention

If a polytechnic council requests the Minister or chief executive of the Tertiary Education Commission (as the case requires) to act under any of sections 195C and 195D and **222A to 222C**, he or she—

5

“(a) must consider any argument or evidence supplied by the council; and

“(b) must consider whether or not to act under that section; but

“(c) may then (if any necessary conditions are satisfied) act under another of those sections giving him or her power to act.”

10

16 New headings and sections 222AA to 222AP inserted

The following headings and sections are inserted before **section 222A** (as inserted by **section 15**):

15

“Polytechnic councils

“222AA Constitution of polytechnic councils

“(1) A polytechnic council must comprise—

“(a) 4 members appointed by the Minister:

“(b) 1 member, being a member of the polytechnic’s academic board, nominated by that board and appointed by the council:

20

“(c) 1 student member,—

“(i) if membership of the polytechnic’s students association is compulsory, being a person appointed by the association in accordance with its constitution or rules:

25

“(ii) if membership of the polytechnic’s students association is not compulsory, being a person elected by the students at the institution at an election conducted in accordance with statutes made by the council:

30

“(d) 1 member, nominated by members of the community served by the polytechnic and appointed by the council:

“(e) the polytechnic’s chief executive.

35

“(2) A person is not eligible for appointment or election as a member of a polytechnic council if—

- “(a) he or she is subject to a property order under the Protection of Personal and Property Rights Act 1988; or
- “(b) there has been made under that Act in respect of him or her a personal order that reflects adversely on his or her— 5
- “(i) competence to manage his or her own affairs in relation to his or her property; or
- “(ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or 10
- “(c) he or she is a bankrupt who has not obtained his or her order of discharge, or whose order of discharge has been suspended for a term not yet expired or is subject to conditions not yet fulfilled; or
- “(d) he or she has at any time been removed from office as a member of a polytechnic council under **section 222AH.** 15
- “(3) No act or proceeding of, or of any committee of, a polytechnic council is invalidated because of—
- “(a) a defect in the appointment or election of a member of the council or committee; or 20
- “(b) a disqualification of a member of the council or committee; or
- “(c) a defect in the convening of a meeting; or
- “(d) a vacancy or vacancies in the membership of the council or committee. 25

“222AB Membership of more than one polytechnic council

A person who is a member (whether elected or appointed) of a polytechnic council may be elected or appointed a member of another polytechnic council. 30

“222AC Matters to be considered when appointments made

- “(1) It is desirable in principle—
- “(a) that a polytechnic council should include Māori; and
- “(b) that, so far as is possible, a polytechnic council should reflect the ethnic and socio-economic diversity of the community it serves. 35
- “(2) The Minister—

- “(a) must have regard to the principles in **subsection (1)** when appointing members of a polytechnic council; but
- “(b) must appoint people who (in the Minister’s opinion) have enough experience of governance to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council. 5
- “(3) A polytechnic council must appoint as members people who (in the council’s opinion)—
- “(a) have relevant knowledge, skills, or experience; and
- “(b) are likely to be able to fulfil their individual duties as members of the council and the functions, duties, and responsibilities of the council. 10

“222AD Term of office

- “(1) The person appointing a member of a polytechnic council must, when making the appointment, state the day on which it takes effect and (if the person has power to determine its term) its term. 15
- “(2) The term of a member’s office is—
- “(a) not more than 4 years for a member appointed by the Minister: 20
- “(b) 1 year for a member appointed by the council on the nomination of the polytechnic’s academic board:
- “(c) 1 year for a member appointed or elected under **section 222AA(1)(c)**:
- “(d) not less than 2 years and not more than 4 years for a member appointed by the council on the nomination of members of the community served by the polytechnic. 25
- “(3) Notwithstanding **subsection (2)**, if the term of office of a member of a polytechnic council appointed or elected under **section 222AA(1)** expires before a successor is appointed or elected, the member continues in office until a successor is appointed or elected. 30

“222AE Reappointment and re-election

Any member of a polytechnic council can be reappointed or re-elected for a second or later term. 35

“222AF Chairperson and deputy chairperson

- “(1) The Minister may at any time a polytechnic council has no chairperson or no deputy chairperson, by written notice to the member concerned stating the term for which the member is appointed, appoint as chairperson or deputy chairperson (as the case requires) of the council any member who is not one of the following: 5
- “(a) a student member:
 - “(b) the chief executive of the polytechnic (or in the case of a combined council, of one of the polytechnics concerned): 10
 - “(c) in the case of a council that is not a combined council, an employee of the polytechnic’s chief executive (whether or not the member appointed under **section 222AA(1)(b)**): 15
 - “(d) in the case of a combined council, an employee of the chief executive of one of the polytechnics concerned (whether or not a member appointed under **section 222AK(2)(c)**). 15
- “(2) The Minister may at any time, by written notice to the member concerned, dismiss the chairperson or deputy chairperson of a polytechnic council from office as chairperson or deputy chairperson. 20
- “(3) The Minister must give to the polytechnic council a copy of a notice under **subsection (1) or (2)**. 25
- “(4) The chairperson or deputy chairperson of a polytechnic council—
- “(a) may by written notice to the Minister resign as chairperson or deputy chairperson; and
 - “(b) ceases to hold office as chairperson or deputy chairperson if he or she— 30
 - “(i) ceases to be a member of the council; or
 - “(ii) becomes the chief executive or a member of the staff of the polytechnic, or a student enrolled at the polytechnic. 35
- “(5) The chairperson or deputy chairperson of a polytechnic council holds office as chairperson or deputy chairperson for the term for which he or she was appointed (but may be reap-

pointed), unless earlier he or she dies, is dismissed, resigns, or ceases to hold office by virtue of **subsection (4)(b)**.

“(6) Notwithstanding **subsection (5)**, if the term of office of the chairperson or deputy chairperson of a polytechnic council expires before a successor is appointed, he or she continues in office until a successor is appointed, unless earlier he or she dies, is dismissed, resigns, or ceases to hold office by virtue of **subsection (4)(b)**.

“(7) The chairperson or deputy chairperson of a polytechnic council may be referred to by any title (other than Chancellor or Pro-Chancellor) the council determines.

“222AG Duties of members of polytechnic councils

“(1) A member of a polytechnic council, when acting as a member of the council in any circumstances,—

“(a) must— 15

“(i) act with honesty and integrity; and

“(ii) act in the interests of the polytechnic as a whole; and

“(iii) act in a manner that promotes the performance of the functions characteristic of a polytechnic, and the duties of the council; and 20

“(iv) act in good faith, and not pursue his or her own interests at the expense of the council’s interests; and

“(b) must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account— 25

“(i) the nature of the council; and

“(ii) the nature of the action; and

“(iii) the position of the member as a member of a polytechnic council, and the nature of the responsibilities undertaken by him or her; and 30

“(c) must not disclose any information to which **subsection (3)** applies to any person, or make use of, or act on, that information, except— 35

“(i) in the performance of the council’s functions; or

“(ii) as required or permitted by law; or

“(iii) in accordance with **subsection (2)**; or

- “(iv) in complying with requirements for members to disclose interests.
- “(2) A member of a polytechnic council may disclose, make use of, or act on information to which **subsection (3)** applies if—
- “(a) he or she has earlier been authorised to do so by the council; or 5
- “(b) disclosing, making use of, or acting on it will not, or will be unlikely to, prejudice the council or the polytechnic.
- “(3) This subsection applies to information that—
- “(a) a member of a polytechnic council has in his or her capacity as a member of the council; and 10
- “(b) would not otherwise be available to him or her.
- “(4) **Subparagraphs (i) to (iii) of paragraph (b) of subsection (1)** do not limit the generality of that paragraph.
- “**222AH Removal of members** 15
- “(1) The Minister may at any time, for just cause, remove an appointed or elected member of a polytechnic council from office.
- “(2) The removal must be made by written notice to the member (with a copy to the council). 20
- “(3) The notice must state—
- “(a) the day on which the removal takes effect, which must not be earlier than the day on which the notice is received; and
- “(b) the reasons for the removal. 25
- “(4) The Minister must notify the removal in the *Gazette* as soon as is practicable after giving the notice.
- “(5) This section does not limit or affect section 174.
- “(6) For the purposes of **subsection (1)**, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the polytechnic council or the individual duties of members (depending on the seriousness of the breach). 30
- “**222AI Process for removal** 35
- The Minister may remove a member of a polytechnic council under **section 222AH** with as little formality and technicality, and as much expedition, as is permitted by—

- “(a) the principles of natural justice; and
- “(b) a proper consideration of the matter; and
- “(c) the requirements of that section.

“Combination of polytechnic councils

- “**222AJ Voluntary combination of councils** 5
- “(1) The Minister may combine the polytechnic councils of 2 or more polytechnics if—
- “(a) each of them has (in a written report complying with **subsection (2)**) recommended that they should be combined; and 10
 - “(b) he or she is satisfied that each of them has consulted the constituents of its polytechnic on the desirability of the combination of the councils.
- “(2) Each report must—
- “(a) contain a statement of the results of the polytechnic’s consultations; and 15
 - “(b) recommend a constitution for any combined council that might be constituted.
- “**222AK Constitution of combined councils**
- “(1) The Minister combines polytechnic councils by notice in the *Gazette*, stating— 20
- “(a) a constitution for the resulting combined council; and
 - “(b) the day on which the combination takes effect.
- “(2) In determining the constitution to state for a combined council, the Minister must have regard to the following requirements: 25
- “(a) a combined council must have an even balance between members appointed by the Minister and other members:
 - “(b) a combined council must have at least one member elected by students enrolled at the polytechnics concerned: 30
 - “(c) a combined council must have at least one member appointed by the council on the nomination of one or other of the academic boards of the polytechnics concerned, or of all of them jointly:
 - “(d) a combined council must have at least one member appointed by the council on the nomination of members of the community served by the polytechnic: 35

- “(e) the chief executives of the polytechnics concerned must all be members of the combined council.

“222AL Effect of combination

- “(1) The combination of any polytechnic councils does not affect the individual status, identity, or character of the polytechnics concerned. 5
- “(2) On the combination of any polytechnic councils,—
- “(a) the resulting combined council—
- “(i) is the successor of each of them; and
- “(ii) has all the obligations and rights each of them had immediately before their combination: 10
- “(b) every statute of any of them—
- “(i) becomes a statute of the combined council (and may be amended or repealed accordingly); but
- “(ii) until amended so as to apply to the others, applies only to the polytechnic by whose council it was made: 15
- “(c) the assets and liabilities of each of the polytechnics concerned immediately before their combination continue to be assets and liabilities of that polytechnic: 20
- “(d) a person who immediately before their combination was the chief executive of any of the polytechnics concerned is still the chief executive of that polytechnic, but (without having been made or otherwise become redundant) becomes an employee of the combined council. 25

“222AM Dissolution of combined council

- “(1) The Minister may, on the recommendation of a combined council, dissolve it.
- “(2) A combined council must not recommend that the Minister dissolve it without first consulting the constituents of the polytechnics concerned. 30
- “(3) The Minister dissolves a combined council by notice in the *Gazette* stating the day on which the dissolution takes effect.
- “(4) After the publication of the notice, and before the day stated in it, the combined council may make in respect of any of the polytechnics concerned any statutes it thinks necessary or 35

desirable to enable the swift and efficient establishment of a polytechnic council for it.

“222AN Effect of dissolution

- “(1) On the dissolution of a combined council,—
- “(a) each of the polytechnics concerned must have a poly- 5
technic council, as required by this Act:
 - “(b) each polytechnic council has—
 - “(i) any of the obligations and rights the former poly-
technic council of the polytechnic had immedi- 10
ately before the establishment of the combined
council; and
 - “(ii) any of the obligations and rights the combined
council had immediately before the dissolution
that have arisen in relation to the polytechnic:
 - “(c) every statute of the combined council that relates to all 15
the polytechnics concerned becomes a statute of each of
them:
 - “(d) every statute of the combined council that does not re-
late to all the polytechnics concerned becomes a statute 20
of the polytechnic to which it does relate (or, as the case
requires, of each of the polytechnics concerned to which
it does relate):
 - “(e) a person who immediately before the dissolution was
the chief executive of any of the polytechnics concerned 25
is still the chief executive of that polytechnic, but (with-
out having been made or otherwise become redundant)
becomes an employee of the polytechnic council estab-
lished or to be established for it.
- “(2) For the purposes of **subsection (1)(a)(ii)**,—
- “(a) a combined council may, after the publication of the 30
notice dissolving it, and before the day stated in the
notice, determine that any of its obligations or rights
have arisen in relation to a particular polytechnic; and
 - “(b) the combined council’s determination is binding on all 35
the polytechnic councils established or to be established
for the polytechnics concerned.

“222AO Initial membership of polytechnic councils after dissolution of combined council

- “(1) Before the dissolution of a combined council, the Minister must appoint the members of each of the new polytechnic councils required by its constitution to be appointed by the Minister. 5
- “(2) Other members of a new polytechnic council—
 “(a) may be appointed or elected before the dissolution; and
 “(b) must be appointed or elected within 3 months after the dissolution. 10
- “(3) The appointment or election of a member of a new polytechnic council takes effect on the later of the day on which it is made and the dissolution.
- “(4) If on the dissolution there is a vacancy in a polytechnic’s new council, the Minister may, by written notice to any person who was a member of the combined council immediately before that day, authorise him or her to act as a member of the council until the vacancy is filled. 15
- “(5) The Minister must give a copy of every notice under **subsection (4)** to the council concerned. 20
- “(6) A person authorised under **subsection (4)** must for all purposes be treated as a member of the council concerned until the vacancy concerned is filled.

“Combined academic boards

“222AP Polytechnic councils may establish combined academic boards 25

- “(1) Two or more polytechnic councils may, by written agreement,—
 “(a) establish a single, combined academic board for all the polytechnics concerned; or 30
 “(b) disestablish a combined academic board that (whether or not it was originally established for other polytechnics too) is now established for all the polytechnics concerned.
- “(2) A combined council may, by resolution,— 35
 “(a) establish a single, combined academic board for all the polytechnics concerned; or

- “(b) disestablish a combined academic board that it has established for them.
- “(3) A combined board must include—
- “(a) the chief executive of each of the polytechnics concerned; and 5
- “(b) at least one member of the staff of each of the polytechnics concerned; and
- “(c) at least one student of each of the polytechnics concerned.
- “(4) The polytechnic council of a polytechnic for which a combined academic board has been established under **subsection (1)** may, by written notice to the other polytechnic council or councils concerned, opt out of the board (and if the board would then serve only one polytechnic, opting out disestablishes it). 10 15
- “(5) As soon as is practicable after a combined academic board established under **subsection (1)** has been disestablished, each of the polytechnic councils concerned must establish an academic board for itself.
- “(6) Section 182(1) applies to a combined academic board as if it were a board established within each of the polytechnics concerned. 20
- “(7) For the purposes of section 222,—
- “(a) a combined academic board established under **subsection (1)** must, in relation to each of the polytechnic councils concerned, be treated as if it were a committee appointed by the council under section 193(2)(i): 25
- “(b) a combined academic board established under **subsection (2)** must be treated as if it were a committee appointed by the combined council concerned under section 193(2)(i). 30
- “(8) In relation to every polytechnic council for which a combined academic board is established (and to its polytechnic), a reference to the academic board of an institution in a provision of this Act other than this section is a reference to the combined academic board. 35

*“Interventions”.**Enabling school students to attend tertiary high school at Manukau Institute of Technology*

- 17 Enabling school students to attend tertiary high school at Manukau Institute of Technology** 5
- (1) For the purposes of section 20(1) of the principal Act, a person enrolled at a registered school does not cease to be enrolled at the school by becoming enrolled at MIT in a tertiary high school course.
- (2) A person is not ineligible to be enrolled at a registered school by virtue only of being enrolled at MIT in a tertiary high school course. 10
- (3) A person who is both enrolled at a registered school and enrolled at MIT in a tertiary high school course must be treated as complying with section 25(1) of the principal Act if he or she attends the classes comprising the course whenever they are available. 15
- (4) MIT’s council and the board of a registered school (being a school at which there are enrolled people who are also, or are also to be, enrolled at MIT in a tertiary high school course) must submit to the Secretary a written agreement— 20
- (a) stating their respective obligations (both to the people concerned and to each other) and rights in relation to the safety, welfare, and educational programmes of people enrolled at both the school and MIT; or 25
- (b) amending an agreement approved under **subsection (5)**.
- (5) The Secretary may (by written notice to the board and MIT’s council) approve an agreement submitted under **subsection (4)**; and in that case it has effect according to its tenor. 30
- (6) In this section,—
- board** and **registered school** have the meanings given by section 2(1) of the principal Act
- MIT** means the Manukau Institute of Technology
- MIT’s council** means the council (within the meaning of section 159(1) of the principal Act) of MIT 35

Secretary means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of Part 15 of the principal Act

tertiary high school course means a full-time course of study designated by MIT's council as being intended to be for, and to be limited to, students who are enrolled at a registered school. 5

Part 2 Transitional matters

- 18 Interpretation** 10
In this Part,—
- (a) **principal Act** means Education Act 1989; and
 - (b) **reconstituted polytechnic council** means a polytechnic council as constituted on the polytechnic reconstitution day; and 15
 - (c) terms defined in section 159 of the principal Act have the meanings given by that section.
- 19 Initial membership of reconstituted councils**
- (1) Before the polytechnic reconstitution day, the Minister must appoint the number of members of each reconstituted polytechnic council required by its constitution to be appointed by the Minister. 20
 - (2) Other members of a reconstituted polytechnic council—
 - (a) may be appointed or elected before the polytechnic reconstitution day; and 25
 - (b) must be appointed or elected within 3 months after that day.
 - (3) The appointment or election of a member of a reconstituted polytechnic council takes effect on the later of the day on which it occurs and the polytechnic reconstitution day. 30
 - (4) If on the polytechnic reconstitution day there is a vacancy in a polytechnic's council, the Minister may, by written notice to any person who was a member of the council immediately before that day, authorise him or her to act as a member of the council until the vacancy is filled. 35

- (5) The Minister must give a copy of every notice under **subsection (4)** to the council concerned.
- (6) A person authorised under **subsection (4)** must for all purposes be treated as a member of the council concerned until the vacancy concerned is filled. 5
- (7) A council may, before the polytechnic reconstitution day, make statutes relating to the election or appointment (in accordance with its proposed new constitution) of members of the reconstituted polytechnic council that will replace it.
- (8) **Subsection (7)** does not limit the generality of section 194 of the principal Act. 10

20 Members of existing polytechnic councils to go out of office

- (1) On the polytechnic reconstitution day,—
- (a) all members of a polytechnic council immediately before that day go out of office; and 15
- (b) all people appointed or elected a member of the council before that day under **section 19** take up office.
- (2) **Subsection (1)** is subject to **section 19(4)**.

21 Council continues to be same body 20

- (1) On and after the polytechnic reconstitution day, a polytechnic council—
- (a) is the same body as the council of the polytechnic concerned that existed immediately before that day; and
- (b) continues to have the obligations and rights it then had. 25
- (2) **Subsection (1)** is subject to **section 22**.

22 Temporary power of direction

- Before the polytechnic reconstitution day, the Minister may, by written notice to the chief executive of a polytechnic, give any directions he or she thinks reasonably necessary to ensure 30 that its council as reconstituted can deal effectively with the business before it on and after that day; and—
- (a) the chief executive must give the notice to the council as soon as is practicable after that day; and

- (b) the council must comply with the directions.
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