

**Education (Polytechnics)
Amendment Bill**

Government Bill

As reported from the committee of the whole
House

Education (Polytechnics) Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Anne Tolley

Education (Polytechnics) Amendment Bill

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3

Part 1

Substantive provisions

*Amendments to existing provisions of principal Act
relating to tertiary education*

4 Interpretation	3
5 Institutions to be governed by councils	4
6 Section 168 repealed	4
7 Constitutions of councils of new institutions	4
8 Amendment of constitution	5
9 Requirements as to constitutions of councils	5
10 Section 172 repealed	5
11 Term of office	5
12 Vacation of office	5
13 Chairperson and deputy chairperson	6
14 Criteria for risk assessment of institutions	6

New provisions relating to polytechnics

15 New Part 15A inserted	6
--------------------------	---

Education (Polytechnics) Amendment Bill

Part 15A

Special provisions relating to polytechnics

	222A	Specialist help	6
	222B	Performance improvement plans	7
	222C	Crown manager	8
	222CA	Protection of Crown managers	10
	222D	Powers may be used concurrently	10
	222E	Polytechnic council may request intervention	10
16		New headings and sections 222AA to 222AP inserted	11
		<i>Polytechnic councils</i>	
	222AA	Constitution of polytechnic councils	11
	222AAB	Statutes relating to appointment of members by polytechnic councils	12
	222AB	Membership of more than one polytechnic council	12
	222AC	Matters to be considered when appointments made	12
	222AD	Term of office	13
	222AE	Reappointment and re-election	13
	222AF	Chairperson and deputy chairperson	13
	222AG	Duties of members of polytechnic councils	15
	222AGA	Accountability for individual duties	16
	222AH	Removal of members	17
	222AI	Process for removal	17
		<i>Combination of polytechnic councils</i>	
	222AJ	Voluntary combination of councils	17
	222AK	Constitution of combined councils	18
	222AL	Effect of combination	18
	222AM	Dissolution of combined council	19
	222AN	Effect of dissolution	19
	222AO	Initial membership of polytechnic councils after dissolution of combined council	20
		<i>Combined academic boards</i>	
	222AP	Polytechnic councils may establish combined academic boards	21
		<i>Enabling school students to attend tertiary high school at Manukau Institute of Technology</i>	
17		Enabling school students to attend tertiary high school at Manukau Institute of Technology	22

Part 2
Transitional matters

18	Interpretation	23
19	Initial membership of reconstituted councils	24
20	Members of existing polytechnic councils to go out of office	25
21	Council continues to be same body	25
22	Temporary power of direction	25

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 March 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 222AK**

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

“**designated polytechnic**—

“(a) after 28 February 2010 and before 1 May 2010 means a polytechnic designated for the purposes of **Part 15A** by the Governor-General by Order in Council:

“(b) on or after 1 May 2010 means any polytechnic 5

“**polytechnic council**—

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

“(b) includes a combined council

“**reconstitution day**,—

“(a) in relation to a polytechnic designated for the purposes of **Part 15A** by the Governor-General by Order in Council, means the day on which the order comes into force: 10

“(b) in relation to any other polytechnic, means 1 May 2010”. 15

5 Institutions to be governed by councils

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

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

“(a) subsection (1)(a) does not apply to a polytechnic; and 20

“(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 the polytechnic, be construed as a reference to its council as constituted under this Part or **Part 15A** (as the case requires).” 25

6 Section 168 repealed

Section 168 is repealed.

7 Constitutions of councils of new institutions

Section 169 is amended by adding the following subsection: 30

“(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

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

- “(2) Subsection (1) does not apply to the council of a designated polytechnic.” 5

9 Requirements as to constitutions of councils

Section 171 is amended by adding the following subsection:

- “(12) Subsections (1) to (11) do not apply to the constitution of the council of a designated polytechnic (for which **sections 222AA and 222AK** provide).” 10

10 Section 172 repealed

Section 172 is repealed.

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 the council of a designated polytechnic (for which **section 222AD** provides).” 15

12 Vacation of office

- (1) Section 174(1) is amended by omitting “(other than the chief executive)”. 20

- (2) Section 174 is amended by inserting the following subsection after subsection (1):

“(1A) **Subsection (1)** does not apply to—

“(a) the chief executive of an institution that is not a designated polytechnic; or 25

“(b) the chief executive of a designated polytechnic who has been appointed by its council pursuant to a statute requiring it to appoint the chief executive a member of its council.”

- (3) Section 174 is amended by inserting the following subsection after subsection (2): 30

“(2A) Subsection (2) does not apply to the council of a designated polytechnic.”

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 the council of a designated polytechnic (for which **section 222AF** provides).” 5

14 Criteria for risk assessment of institutions

Section 195A(1) is repealed and the following subsections are substituted:

- “(1) The Secretary must, after consulting institution councils, determine— 10
- “(a) criteria for assessing the level of risk to the operation and long-term viability of institutions; and
 - “(b) criteria for assessing the level of risk to the education performance of the students enrolled at polytechnics.
- “(1A) In the case of criteria for assessing the level of risk to the education performance of the students enrolled at polytechnics, the requirement to consult institution councils applies to polytechnic councils only. 15
- “(1B) The Secretary may under **subsection (1)** determine criteria for assessing the level of risk to the operation and long-term viability of polytechnics only; and in that case,— 20
- “(a) the requirement to consult 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.” 25

*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 30****“222A Specialist help**

- “(1) 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 of the Tertiary Education 35

Commission may, by written notice to its polytechnic council, require the council to obtain specialist help.

- “(2) The notice must state—
- “(a) the help or kind of help to be obtained; and
 - “(b) the person or organisation, or kind of person or organisation, from whom or which it is to be obtained. 5
- “(3) As soon as is reasonably practicable after receiving the notice, the council must comply with it.
- “(4) The council must—
- “(a) provide the information and access, and do all other things, reasonably necessary to enable the person or organisation engaged to provide the help; and 10
 - “(b) to the extent that the help provided is advice, take the advice into account in performing its functions and duties; and 15
 - “(c) pay the person or organisation’s reasonable fees and expenses.

“222B Performance improvement plans

- “(1) 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 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 performance improvement plan for the polytechnic. 20
- “(2) The notice must state— 25
- “(a) the matters to be addressed by the draft plan; and
 - “(b) the outcomes that implementation of the draft plan is intended to achieve; and
 - “(c) the times by which those outcomes should be achieved; and 30
 - “(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)**. 35

- “(4) If the council complies with **subsection (3)**, the chief executive of the Tertiary Education Commission may,—
- “(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
- “(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. 10
- “(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.
- “(7) The council must take all reasonably practicable steps to implement a plan approved under this section. 15

“**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. 20
- “(1A) The Minister must not appoint the Crown manager without— 25
- “(a) giving the polytechnic’s council written notice of—
 - “(i) his or her intention to do so; and
 - “(ii) his or her reasons for intending to do so; and
 - “(b) allowing the council a reasonable time to respond to the notice; and
 - “(c) considering any written submissions received from the council within that time. 30
- “(1B) Whether a time is reasonable in any particular case may depend (among other things) on the urgency of the matters the Crown manager will have to deal with.
- “(2) The notice must state— 35
- “(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
- “(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. 5
- “(2A) As soon as is practicable after appointing the Crown manager, the Minister must publish in the *Gazette* a notice stating that he or she has done so.
- “(3) While there is a Crown manager appointed for the polytechnic,— 10
- “(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 15
- “(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— 20
- “(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. 25
- “(3A) The Crown manager must perform any function under **subsection (3)(a)** (and exercise any power in order to do so) in accordance with this Act; and, in particular, have regard to sections 160 and 161.
- “(3B) **Subsection (3A)** does not limit the generality of **subsection (3)(a)(ii)**. 30
- “(4) The council must pay the Crown manager’s reasonable fees and expenses.
- “(5) If the Crown manager’s appointment has not earlier been revoked, the Minister must consider whether the reasons for it still apply— 35
- “(a) no later than 12 months after it was made; and
- “(b) no later than 12 months after he or she last considered whether they still apply.

- “(6) For the purpose of **subsection (1)**,—
- “(a) there is a serious risk to the operation or long-term viability of a polytechnic if, according to criteria determined under **section 195A(1)**, there is or is likely to be a serious level of risk to its operation or long-term viability; and 5
- “(b) the education performance of the students at a polytechnic is at risk if, according to criteria determined under **section 195A(1)**, their education performance is at risk. 10
- “(7) **Subsection (6)** does not limit or affect the generality of **subsection (1)**.

“**222CA Protection of Crown managers**

A Crown manager is not personally liable for any act done or omitted by him or her, or for any loss arising out of any act done or omitted by him or her, if he or she did or omitted the act in good faith, in the course of performing his or her functions. 15

“**222D Powers may be used concurrently**

- “(1) **Sections 222A to 222C** do not limit or affect sections 195B to 195D. 20
- “(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. 25

“**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— 30

“(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.”

16 New headings and sections 222AA to 222AP inserted

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

“Polytechnic councils

“222AA Constitution of polytechnic councils

- “(1) The council of a designated polytechnic must comprise—
- “(a) 4 members appointed by the Minister: 10
 - “(b) 4 members appointed by the council in accordance with its statutes.
- “(2) A person is not eligible for appointment or election as a member of the council of a designated polytechnic if—
- “(a) he or she is subject to a property order under the Protection of Personal and Property Rights Act 1988; or 15
 - “(b) there has been made under that Act in respect of him or her a personal order that reflects adversely on his or her—
 - “(i) competence to manage his or her own affairs in relation to his or her property; or 20
 - “(ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare; or
 - “(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 25
 - “(d) he or she has at any time been removed from office as a member of a polytechnic council under **section 222AH.** 30
- “(3) No act or proceeding of, or of any committee of, the council of a designated polytechnic is invalid because of—
- “(a) a defect in the appointment or election of a member of the council or committee; or 35
 - “(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.

“**222AAB Statutes relating to appointment of members by polytechnic councils**

- “(1) Every polytechnic council must have in place statutes relating to the appointment of members under **section 222AA(1)(b)**. 5
- “(2) The statutes may (in respect of any of the 4 appointments it has power to make)—
- “(a) require the appointment of a member—
- “(i) of a stated description; or 10
- “(ii) holding a stated office; or
- “(iii) nominated by a stated institution or institutions, or an institution or institutions of a stated description; or
- “(iv) elected by people of a stated description: 15
- “(b) provide for the process by which—
- “(i) nominations may be called for and considered:
- “(ii) elections may be held and their results may be determined.
- “(3) **Subsection (2)** does not limit the generality of section 194. 20

“**222AB Membership of more than one polytechnic council**

A person who is a member of a polytechnic council may be appointed a member of another polytechnic council.

“**222AC Matters to be considered when appointments made**

- “(1) It is desirable in principle— 25
- “(a) that the council of a designated polytechnic should include Māori; and
- “(b) that, so far as is possible, the council of a designated polytechnic should reflect the ethnic and socio-economic diversity of the community it serves. 30
- “(2) The Minister—
- “(a) must have regard to the principles in **subsection (1)** when appointing members of the council of a designated polytechnic; but
- “(b) must appoint people who (in the Minister’s opinion) 35 have enough experience of governance to fulfil their in-

dividual duties as members of the council and the functions, duties, and responsibilities of the council.

“(3) The council of a designated polytechnic must appoint as members people who (in the council’s opinion)—

“(a) have relevant knowledge, skills, or experience; and 5

“(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.

“**222AD Term of office**

“(1) The person appointing a member of the council of a designated polytechnic must, when making the appointment, state the day on which it takes effect and its term. 10

“(1A) The term must be no more than 4 years.

“(1B) The term of office of a member of the council of a designated polytechnic begins on the later of the following: 15

“(a) the day on which his or her appointment takes effect:

“(b) the expiry of the term of office of his or her predecessor.

“(3) Notwithstanding **subsection (1B)**, if the term of office of a member of the council of a designated polytechnic expires before a successor is appointed, the member continues in office until the day on which the appointment of a successor takes effect. 20

“(4) **Subsection (3)** does not apply to a member who was before 1 May 2011 appointed under **section 222AA(1)(b)**.

“**222AE Reappointment and re-election** 25

Any member of the council of a designated polytechnic can be reappointed for a second or later term.

“**222AF Chairperson and deputy chairperson**

“(1) The Minister may at any time the council of a designated polytechnic 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: 30

“(a) a student enrolled at the polytechnic: 35

- “(b) the chief executive of the polytechnic (or in the case of a combined council, of one of the polytechnics concerned):
- “(c) in the case of a council that is not a combined council, an employee of the polytechnic’s chief executive: 5
- “(d) in the case of a combined council, an employee of the chief executive of one of the polytechnics concerned.
- “(2) The Minister may at any time, by written notice to the member concerned, dismiss the chairperson or deputy chairperson of the council of a designated polytechnic from office as chairperson or deputy chairperson. 10
- “(2A) The Minister must not dismiss the chairperson or deputy chairperson without first consulting him or her on the proposed dismissal.
- “(3) The Minister must give to the polytechnic council a copy of a notice under **subsection (1) or (2)**. 15
- “(4) The chairperson or deputy chairperson of the council of a designated polytechnic—
- “(a) may by written notice to the Minister resign as chairperson or deputy chairperson; and 20
- “(b) ceases to hold office as chairperson or deputy chairperson if he or she—
- “(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. 25
- “(4B) The chairperson or deputy chairperson of the council of a designated polytechnic who resigns must give a copy of the notice of resignation to the council.
- “(5) The chairperson or deputy chairperson of the council of a designated polytechnic holds office as chairperson or deputy chairperson for the term for which he or she was appointed (but may be reappointed), unless earlier he or she dies, is dismissed, resigns, or ceases to hold office by virtue of **subsection (4)(b)**. 30 35
- “(6) Notwithstanding **subsection (5)**, if the term of office of the chairperson or deputy chairperson of the council of a designated polytechnic 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 the council of a designated polytechnic may be referred to by any title (other than Chancellor or Pro-Chancellor) the council determines. 5

“222AG Duties of members of polytechnic councils

- “(1) A member of the council of a designated polytechnic, when acting as a member of the council in any circumstances,—
- “(a) must—
- “(i) act with honesty and integrity; and 10
- “(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 15
- “(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— 20
- “(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 25
- “(c) must not disclose any information to which **subsection (3)** applies to any person, or make use of, or act on, that information, except—
- “(i) in the performance of the council’s functions; or 30
- “(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.
- “(1A) The fact that a member of the council of a designated polytechnic was appointed by the council in accordance with a statute providing for the appointment of a member (or 2 or more members) to represent the interests of a stated institution 35

- or of people or institutions of a stated description does not displace or limit the member's duty under **subsection (1)(a)(ii)** to act in the interests of the polytechnic as a whole.
- “(2) A member of the council of a designated polytechnic may disclose, make use of, or act on information to which **subsection (3)** applies if— 5
- “(a) he or she has earlier been authorised to do so by the council; or
- “(b) disclosing, making use of, or acting on it will not, or will be unlikely to, prejudice the council or the polytechnic. 10
- “(3) This subsection applies to information that—
- “(a) a member of the council of a designated polytechnic has in his or her capacity as a member of the council; and
- “(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. 15

“**222AGA Accountability for individual duties**

- “(1) The duties of a member of the council of a designated polytechnic (**council member**) under **section 222AG (individual duties)** are duties owed to the Minister and the council. 20
- “(2) A council member who does not comply with his or her individual duties may be removed from office under **section 222AH**.
- “(3) The council of a designated polytechnic may bring an action against a council member for breach of any individual duty. 25
- “(4) Except as provided in **subsections (2) and (3)**, a council member is not liable for a breach of an individual duty.
- “(5) This section does not affect any other ground for removing a council member from office.
- “(6) **Subsection (4)** does not affect anything for which a council member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach concerned. 30
- “(7) **Subsection (4)** does not affect anything for which a council member who is the chief executive of the polytechnic council concerned may, as chief executive, be liable under this Act or any other Act or rule of law, arising from the act or omission that constitutes the breach concerned. 35

“222AH Removal of members

“(1) The Minister may at any time, for just cause, remove a member of the council of a designated polytechnic from office.

“(2) The removal must be made by written notice to the member (with a copy to the council). 5

“(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. 10

“(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). 15

“222AI Process for removal

The Minister may remove a member of the council of a designated polytechnic under **section 222AH** with as little formality and technicality, and as much expedition, as is permitted by— 20

“(a) the principles of natural justice; and

“(b) a proper consideration of the matter; and 25

“(c) the requirements of that section.

*“Combination of polytechnic councils***“222AJ Voluntary combination of councils**

“(1) The Minister may combine the polytechnic councils of 2 or more designated polytechnics if— 30

“(a) each of them has (in a written report complying with **subsection (2)**) recommended that they should be combined; and

“(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. 35

- “(2) Each report must recommend a constitution for any combined council that might be constituted, and state—
- “(a) the council’s reasons for wishing to combine; and
 - “(b) the results of the council’s consultations.

“222AK Constitution of combined councils 5

- “(1) The Minister combines polytechnic councils by notice in the *Gazette*, stating—
- “(a) a constitution for the resulting combined council; and
 - “(b) the day on which the combination takes effect.
- “(2) The Minister must ensure that a combined council has an even balance between members appointed by the Minister and members appointed by the council. 10

“222AL Effect of combination

- “(1) The combination of any polytechnic councils does not affect the individual status, identity, or character of the polytechnics concerned. 15
- “(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: 20
 - “(b) every statute of any of them (other than a statute relating to the appointment of members under **section 222AA(1)(b)**)—
 - “(i) becomes a statute of the combined council (and may be amended or repealed accordingly); but 25
 - “(ii) until amended so as to apply to the others, applies only to the polytechnic by whose council it was made:
 - “(ba) every member of any of the polytechnic councils combined goes out of office: 30
 - “(c) the assets and liabilities of each of the polytechnics concerned immediately before their combination continue to be assets and liabilities of that polytechnic:
 - “(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 (with- 35

out having been made or otherwise become redundant) becomes an employee of the combined council.

- “(3) Neither the Crown nor a combined council is liable to make a payment to, or otherwise compensate, a person in respect of the person’s going out of office as a member of a polytechnic council under **subsection (2)(ba)**. 5

“**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. 10
- “(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 desirable to enable the swift and efficient establishment of a polytechnic council for it. 15

“**222AN Effect of dissolution** 20

- “(1) On the dissolution of a combined council,—
- “(a) each of the polytechnics concerned must have a polytechnic council, as required by this Act:
- “(b) each polytechnic council has—
- “(i) any of the obligations and rights the former polytechnic council of the polytechnic had immediately before the establishment of the combined council; and 25
- “(ii) any of the obligations and rights the combined council had immediately before the dissolution that have arisen in relation to the polytechnic: 30
- “(c) every statute of the combined council that relates to all the polytechnics concerned (other than a statute relating to the appointment of members under **section 222AA(1)(b)**) becomes a statute of each of them: 35
- “(d) every statute of the combined council that does not relate to all the polytechnics concerned (other than a

- statute relating to the appointment of members under **section 222AA(1)(b)** becomes a statute of the polytechnic to which it does relate (or, as the case requires, of each of the polytechnics concerned to which it does relate): 5
- “(da) every member of the combined council goes out of office: 5
- “(e) a person who immediately before the dissolution 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 polytechnic council established or to be established for it. 10
- “(2) For the purposes of **subsection (1)(a)(ii) (1)(b)(ii)**.— 15
- “(a) a combined council may, after the publication of the 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 15
- “(b) the combined council’s determination is binding on all the polytechnic councils established or to be established for the polytechnics concerned. 20
- “(3) Neither the Crown nor a polytechnic council is liable to make a payment to, or otherwise compensate, a person in respect of the person’s going out of office as a member of a combined council under **subsection (1)(da)**. 25
- “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. 30
- “(2) Other members of a new polytechnic council—
- “(a) may be appointed before the dissolution; and
- “(b) must be appointed within 3 months after the dissolution.
- “(3) The appointment of a member of a new polytechnic council takes effect on the later of the day on which it is made and the dissolution. 35

- “(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. 5
- “(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. 10

“Combined academic boards

“222AP Polytechnic councils may establish combined academic boards

- “(1) The councils of 2 or more designated polytechnics may, by written agreement,— 15
- “(a) establish a single, combined academic board for all the polytechnics concerned; or
- “(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. 20
- “(2) A combined council may, by resolution,—
- “(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. 25
- “(3) A combined board must include—
- “(a) the chief executive of each of the polytechnics concerned; and
- “(b) at least one member of the staff of each of the polytechnics concerned; and 30
- “(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 35

- would then serve only one polytechnic, opting out disestablishes it).
- “(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. 5
- “(6) Section 182(1) applies to a combined academic board as if it were a board established within each of the polytechnics concerned.
- “(7) For the purposes of section 222,— 10
- “(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):
- “(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). 15
- “(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. 20

“Interventions”.

Enabling school students to attend tertiary high school at Manukau Institute of Technology 25

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

- (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. 30
- (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. 35

- (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. 5
- (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—
- (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 10
- (b) amending an agreement approved under **subsection (5)**. 15
- (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.
- (6) In this section,—
- board and registered school** have the meanings given by section 2(1) of the principal Act 20
- 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
- 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 25
- 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. 30

Part 2 Transitional matters

18 Interpretation

In this Part,—

- (a) **principal Act** means Education Act 1989; and

35

- (b) **reconstituted polytechnic council** means a polytechnic council as constituted for a polytechnic on its reconstitution day; and
- (c) terms defined in section 159 of the principal Act have the meanings given by that section. 5

19 Initial membership of reconstituted councils

- (1) Before its 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.
- (2) Other members of a reconstituted polytechnic council— 10
 - (a) may be appointed before its reconstitution day; and
 - (b) must be appointed within 3 months after that day.
- (2A) Every member of a reconstituted polytechnic council who is before 1 May 2011 appointed under **section 222AA(1)(b)** of the principal Act must be appointed for a term ending no later than the close of 30 April 2011. 15
- (2B) A reconstituted polytechnic council must ensure that every vacancy of either of the following kinds is filled no later than 11 June 2011:
 - (a) a vacancy that arises at the close of 30 April 2011 because a member appointed under **section 222AA(1)(b)** of the principal Act goes out of office at that time: 20
 - (b) a vacancy that—
 - (i) arises at a time before the close of 30 April 2011 because a member appointed under **section 222AA(1)(b)** of the principal Act goes out of office at that time; and 25
 - (ii) has not been filled before the close of 30 April 2011.
- (2C) **Subsection (2A)** overrides **section 222AD(1A)** of the principal Act. 30
- (3) The appointment of a member of a reconstituted polytechnic council takes effect on the later of the day on which it occurs and its reconstitution day.
- (4) If on its 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, au- 35

- thorise him or her to act as a member of the council until the vacancy is filled.
- (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 its reconstitution day, make the statutes required by **section 222AAB** of the principal Act.
- 20 Members of existing polytechnic councils to go out of office** 10
- (1) On its reconstitution day,—
- (a) all members of a polytechnic council immediately before that day go out of office; and
- (b) all people appointed or elected a member of the council before that day under **section 19** take up office. 15
- (2) **Subsection (1)**—
- (a) is subject to **section 19(4)**; and
- (b) overrides **section 222AD(3)** of the principal Act.
- (3) Neither the Crown nor a polytechnic council is liable to make a payment to, or otherwise compensate, a person in respect of the person's going out of office as a member of the council under **subsection (1)(a)**. 20
- 21 Council continues to be same body**
- (1) On and after its reconstitution day, a polytechnic council— 25
- (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.
- (2) **Subsection (1)** is subject to **section 22**.
- 22 Temporary power of direction** 30
- Before its 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 that its council as reconstituted can deal effectively with the business before it on and after that day; and— 35

Education (Polytechnics) Amendment Bill

- (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.

Legislative history

20 August 2009	Introduction (Bill 70-1)
26 August 2009	First reading and referral to Education and Science Committee
20 November 2009	Reported from Education and Science Committee (Bill 70-2)
10 December 2009	Second reading
15 December 2009	Committee of the whole House (Bill 70-3)
