



# 2015

## Changes to university and wānanga governance

Image courtesy of Victoria University



At the Tertiary Education Commission, we are able to provide advice and answer your questions about the process of forming a new council.

### **New legislation makes significant changes to university and wānanga governance**

The major changes are:

- the number of council members is reduced to between 8 and 12
- representative requirements are removed
- relevant knowledge, skills and experience are the most important factors in selecting council members – for both Ministerial appointments and council appointments
- duties and accountabilities of individual council members are clearly set out
- at least one Māori member needs to be included in the council
- greater flexibility in terms of office, which changes to up to four years; the same flexibility applies when a member replaces another who leaves office before the end of their term.

## What are the changes?

The table below sets out the changes to university and wānanga governance, which affect the provisions currently outlined in sections 169 to 171 and 173 to 179 of the Education Act 1989.

Item	Old provision	New provision
<b>Council size</b>	<b>12 to 20 members</b>	<b>8 to 12 members</b>
Council membership	Required membership: <ul style="list-style-type: none"> <li>• Ministerial appointees (four on all councils)</li> <li>• the Chief Executive</li> <li>• students</li> <li>• staff</li> <li>• union representatives.</li> </ul>	Required membership: <ul style="list-style-type: none"> <li>• three Ministerial appointees on councils of eight and nine members</li> <li>• four Ministerial appointees on councils of 10, 11 or 12 members.</li> </ul> Other membership is flexible and appointed by the council.
Members' capabilities	The Minister and councils should strive to ensure that councils have sufficient members with management expertise.	Minister and councils appoint members with relevant knowledge, skills or experience.
Members' duties	Duties for the council as a whole are outlined, but there are no provisions about the individual duties of council members.	Council members' are to act with honesty and integrity, in good faith, and with reasonable care, diligence and skill.  Council members are not to disclose certain information.
Members' accountabilities	No provisions for the removal of individual council members for misconduct or breach of duty.	On the recommendation of a council, the Minister can remove a council member for just cause.  Councils can bring an action against a member for breach of any individual duty.
Representation of Māori on councils	No requirement for Māori to be represented on councils.	Councils must include at least one member who is Māori, and both the Minister and councils must consider this when making appointments to councils.
Membership of more than one council	No provisions relating to membership of more than one council.	A person can be a member of more than one council of a tertiary education institution.
Term of office	The term of office for council members is four years except for student members, who hold office for one year.  Co-opted members hold office for a period not to exceed four years.	All council members would serve a term of no more than four years. The length of the term is decided by the council for council appointees and the Minister for Ministerial appointees.
Casual vacancies <i>Also applies to polytechnics</i>	If a council member leaves office before the end of their term and creates a "casual vacancy", their successor is appointed only to the end of their predecessor's term.	An appointment to a "casual vacancy" is for the standard term of office of up to four years.
Ineligibility for council membership	No restrictions on eligibility for council membership based on prior performance.	Anyone who has previously been removed from a council is ineligible for council membership.
Frequency of election of Chancellor and pro Chancellor or Chair and Deputy Chair of the wānanga	One year.	At the discretion of the council but no longer than the term for which the Chancellor and Pro Chancellor or Chair or Deputy Chair is appointed to the council.
Council members' interests <i>Also applies to polytechnics</i> <i>Does not apply to wānanga or Auckland University of Technology</i>	University (except Auckland University of Technology) and polytechnic councils may be bound by the Local Authorities (Members' Interests) Act 1968, which restricts eligibility for membership of a council by disqualifying anyone with an interest in the institution of over \$25,000.	Conflict of interest provisions in the Education Act 1989 continue to apply but university and polytechnic council members are no longer subject to disqualification under the provisions of the Local Authorities (Members' Interests) Act 1968.

## What does your council need to do?



### Note the timeline

A new council can take over as soon as the new constitution has been gazetted by the Minister – on the date that is specified in the new constitution. The deadline for having the new council in place is 30 June 2016.



### Draw up the new constitution

The existing council draws up a new constitution that is in line with the new legislation and includes the date on which the new council takes over – the date of “reconstitution” (no later than 30 June 2016). At the same time, councils may wish to consider the information to be included in the associated council statutes, which can be used to describe how members are appointed.



### Send the new constitution to the Minister

Councils provide their draft constitution to the Minister no later than 30 April 2016. Ideally, all new constitutions will be received by the Minister’s office well before this date, preferably by the end of 2015. If a council does not provide its new constitution to the Minister by 30 April 2016, the Minister will determine the new constitution by notice in the Gazette.



### Gain Ministerial approval

The Minister will confirm each new constitution by notice in the Gazette. The Minister cannot withhold approval of the new constitution as long as:

- the Minister’s office receives the constitution by 30 April 2016
- the Minister is satisfied that the new constitution complies with the legislation.



### Appoint new council members

Once the new constitution has been gazetted, the outgoing council can appoint the new members according to the legislation and the new constitution. The new members should be appointed before the date of reconstitution and no later than three months after that date. Note the term of office is now “up to four years” and councils may wish to take the opportunity to stagger members’ terms.



### Minister appoints members to the new council

Before the date of each council’s reconstitution, the Minister appoints three or four council members, depending on the size of the council as set out in the constitution.



### Farewell the outgoing council

All members of the outgoing council vacate office on the day before the date of reconstitution. New members normally take office on the date of reconstitution.



### Hold the first meeting of the new council

The first meeting of the new council is to be held as soon as practicable after the date of reconstitution.



### Elect the Chancellor or Chair

At the first meeting of the new council, members elect the office holders: the Chancellor and Pro Chancellor or the Chair and Deputy Chair. The office holders are elected for a term that does not exceed their term as council members.

#### Note:

- the new council has the same rights and obligations as the old council
- no member of the old council is eligible for compensation for loss of office if they are not appointed to the new council.



Image courtesy of AUT



Image courtesy of University of Otago



Image courtesy of Te Whare Wānanga o Awanuiārangī



Image courtesy of Waikato University



## Your new constitution – the essentials

There are just four essentials:

- + **Name of the council**
- + **Date** that the new constitution comes into effect
- + **Number** of council members
- + **Maximum** number of terms that can be served (this includes terms served before the 2015 legislative changes).



## Information and advice

### Please contact:

governance@tec.govt.nz  
or phone 04 462 5200

## Some of the arrangements stay the same...

Item	Status quo
Appointment of council post holders	Chancellor and Pro Chancellor or Chair and Deputy Chair are elected by the council.
Mechanisms for determining council size and membership	Councils establish their size and membership through a constitution. Minister confirms that a proposed constitution meets legislative requirements and publishes the constitution as a notice in the Gazette.
Number of occasions a member can be appointed	Constitutions must include provisions setting out the maximum number of terms of office that a member may serve on the council.
Disclosure of interest	Interests must be disclosed, and members are to exclude themselves from speaking or voting on matters in which they have an interest.
Fees and allowances	Fees and allowances paid are decided by each council on the basis of the Cabinet Office Fees Framework and within the upper limit determined by the Minister.
Who cannot be a council member?	A council member may be dismissed if they are declared bankrupt, become subject to a personal property order, or fail to attend three consecutive meetings without notice or fail to disclose a conflict of interest.

## You may also want to think about...

- **Membership** of the council:
  - » appointment: how council members are selected and appointed and, if elected, by whom
  - » how stakeholders' views – including those of staff, students, and the local community – are taken into account
  - » knowledge, skills and experience needed in members
  - » gender balance on the council
  - » Māori membership.
- **Fees paid** – as determined by the council within the parameters of the Cabinet Office Fees Framework and the maximum set by the Minister.
- **All council members** must always act in the interests of the institution as a whole, whether or not they are from a stakeholder group.
- **Conflicts of interest** – the need for a member to declare an interest and not to speak or vote on any matter in which that council member has an interest.
- **Sub committee structure** and terms of reference for council committees.

*The council may want to include these matters in council statutes.*



Image courtesy of Lincoln University



Image courtesy of Te Wānanga o Aotearoa



Image courtesy of the University of Canterbury