Tertiary Education Commission
Te Amorangi Mātauranga Matua

Governance Guide

For council members of tertiary education institutions

Our purpose

To shape a dynamic system that delivers lifelong learning and equips learners, communities and employers for success

Tō mātou kaupapa

Tāreia te pūnaha kia hihiri, ko te ako taumano te hua – kia rite ai ngā ākonga, ngā hapori me ngā kaituku mahi mō te angitu

Our vision

A resilient, prosperous New Zealand – where every person has the skills, knowledge and confidence to create a fulfilling life

Tō mātou tirohanga whakamua

Kia tū aumangea, kia taurikura ā Aotearoa – kei a te katoa ngā pūkenga, te mātauranga me te whakamanawa e tipu ai te mauri ora

Ngā mihi

Contents

Introduction

THIS GOVERNANCE GUIDE PROVIDES:

- an introduction for new council members
- a reference for existing council members, and
- guidance for TEI staff who support the work of the council.

The purpose of this guide is to provide council members of tertiary education institutions (TEIs) with an introduction to the tertiary education sector with particular focus on the governance of TEIs. We intend the guide to be used by the council members and council support staff of all TEIs.

It provides high-level guidance and is to be read in conjunction with the governance information contained on the TEC website (www.tec.govt.nz). We encourage councils to use this to support their activities.

The guide includes the legislative framework for TEIs and their councils, information on key central agencies, an overview of the Tertiary Education Strategy, the Investment Plan process, and information on accountability and performance monitoring of TEIs.

The online version of this guide includes hyperlinks to relevant legislation, eg, sections of the Education and Training Act 2020.

APPENDICES TO THIS GUIDE INCLUDE
- Appendix 1: A governance self-review tool
- Appendix 2: Managing conflicts of interest
- Appendix 3: Some essential online references
- Appendix 4: A glossary covering terms commonly used by the tertiary education sector.

The guide is a living document, and will be amended as circumstances change, information becomes available, and in response to your feedback. Your comments and suggestions are valuable. Please offer any feedback via governance@tec.govt.nz

Council members contribute a wide variety of skills and diversity of thought to the council table. They enable good governance through positive relationships built on trust, respect and collegiality.

1 Good governance

Enablers of good governance

As well as members who bring a balance of skills and diversity of thought, enablers of good governance include:

• positive council–chief executive relationships, working together towards the same outcomes
• good quality, well-presented information for council members
• efficient and effective council operation
• an effective council Chair.

A governance self-review checklist can be found in Appendix 1 of this guide.

Code of conduct

A code of conduct, or council charter, is a set of principles to guide council members' behaviour in performing their governance roles. It enables the council to set the tone for the TEI. The table below summarises the key principles of a code of conduct.

Honesty, integrity and transparency	Act with honesty and integrity.
	Undertake responsibilities in a manner that respects other council members and the employees of the TEI.
	Ensure that your actions do not discredit the TEI, yourself, any other council member or any employee of the TEI.
Act in the best interests of the TEI	Diligently prepare for and attend council meetings.
	Keep skills and knowledge current, and be familiar with the TEI's activities and operating environment.
	Apply knowledge, skill and experience with reasonable care and diligence.
	Do not engage in activities that could affect objectivity as a council member or damage the TEI's reputation.
Act fairly and impartially	Observe independence and objectivity.
	Declare any business and personal connections that could negatively impact involvement in council discussions and decisions.

Use council information and council position appropriately

Respect the confidentiality of information received as a council member and use it only for its proper purposes.

Decline gifts, benefits and positions that may compromise independence or create perceived obligations.

Accept responsibility for the council's decisions and actions, even if they contradict a personal view.

Exercise due care and diligence

Work to improve the TEI's performance and efficiency, and use its resources carefully and only for intended purposes.

Understand the educational, financial and strategic implications when considering issues and making decisions.

Understand and robustly enquire into financial and other information provided to the council.

A positive council-chief executive relationship

A TEI's performance is influenced by the ongoing relationship between its council and chief executive.

Some councils adopt an expectations statement, which outlines the main expectations the council and the chief executive have of each other.

QUALITIES OF POSITIVE, OPEN RELATIONSHIPS

Confidence and trust in each other's capabilities

Understanding and agreeing on each other's roles

Constructive questioning – critical enquiry

Strong communication skills

Operating in a collegial environment

Information sharing

Active debate and questioning

Challenging the 'norm'

Trust and value

Good quality, well-presented information for council members

Council members are not often closely involved with the TEI's day-to-day activities. So they rely on information provided to them on the TEI, its issues and its performance. Interpreting the information and using it to monitor the TEI are at the heart of good governance.

High quality, well-presented information also allows council members to focus on productive and substantive discussion. Poor quality information or presentation can take members away from core governance responsibilities as they have to work harder to clarify content and meaning.

Council members are responsible for ensuring the information they receive is clear and complete, of good quality and in a format that meets their needs. They need to keep asking questions until they can properly understand and evaluate the answers they receive.

ASSESSING INFORMATION

Council members can assess the robustness and appropriateness of information by asking:

- ☐ Does it include the full range of information the council needs to carry out its roles?

- ☐ Is the right balance of information provided across all the council roles?

- ☐ Does it reflect the content and format agreed between the council and management for the information package?

- ☐ Does the content and format specifically match what the council needs to check progress of the TEI's strategic plan, Investment Plan, business plans, key performance indicators and budgets?

- ☐ Is the information pitched at an appropriate level? Is it neither too detailed nor too high-level that there is insufficient information for council members to understand the issues?

- ☐ Is the content, style and format helpful to enable robust council discussion and debate, or does the council waste time trying to understand the information because of weak presentation?

- ☐ Does the frequency and timing of the information provided in each area of reporting align with the council's annual timeline and work programme?

Efficient and effective council operation

An efficient and effective council has:

- a focus on core governance roles
- fully involved council members
- a developed and useable work plan
- documented council policies that are upheld.

FOCUS ON CORE GOVERNANCE ROLES

40%
big picture: vision, strategy, direction

25%
monitoring: performance against strategy, business plan, Investment Plan, key performance indicators and budget, council and chief executive performance reviews

20%
dialogue and issues management: stakeholder dialogue, emerging issues

15%
conformance: compliance, risk management
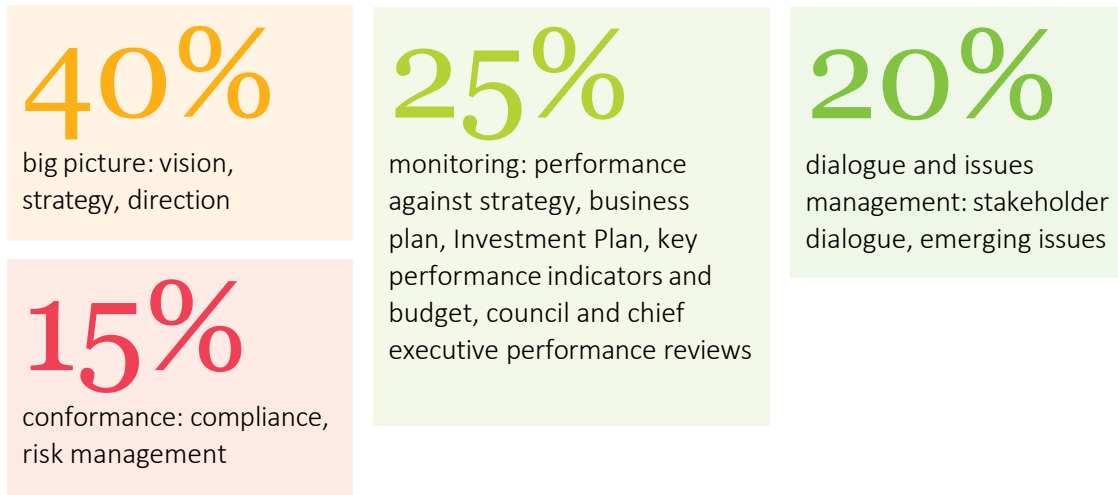
ACTIVE INVOLVEMENT OF COUNCIL MEMBERS

A council's success depends on the active involvement of council members. A council member should:

- always act in the TEI's best interest
- ask questions to inform decision making
- allocate enough time to the council role by attending meetings regularly and coming to them well prepared
- act as an ambassador for the TEI
- actively and constructively engage in council discussions and debates, and be willing to express opposing views
- be open to the views of other members and of management, and evaluate them constructively and objectively
- trust and respect other council members, the chief executive and the management team.

USING A COUNCIL WORK PLAN

An annual work plan is essential to council operation, with a month-by-month schedule to assess and monitor progress.

COUNCIL POLICIES

Policies may be included in a council charter, council members' handbook or other guidance as appropriate. Council policies will include roles and responsibilities, communication and media responses, managing conflicts of interest, expenditure and financial delegations, and business continuity and risk protocols.

An effective council Chair

The Chair's leadership is one of the most important drivers of an effective council. The Chair's role includes:

providing leadership for the council
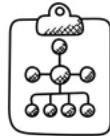
facilitating council business and meetings

achieving the right mix of skills and experience in appropriate council membership, including succession planning

ensuring efficient administration of council activities and meetings, including oversight of agenda development
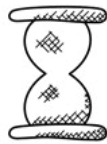
directing council discussions to make good use of time, focus on important issues and promote debate
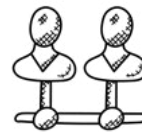
a positive relationship with the chief executive that enables free and frank discussion

leading council performance evaluation and development
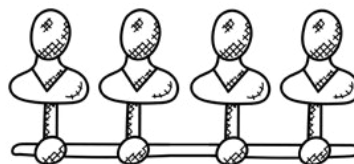
good stakeholder management that includes developing positive relationships with the Minister and the TEC, as well as representing the TEI with the media and at official functions

This section provides information on the sector, its legal framework, government education agencies and other organisations that work with tertiary education institutions.

2 The tertiary education sector

Tertiary education organisations

Tertiary education organisations (TEOs) provide or arrange tertiary education and training.

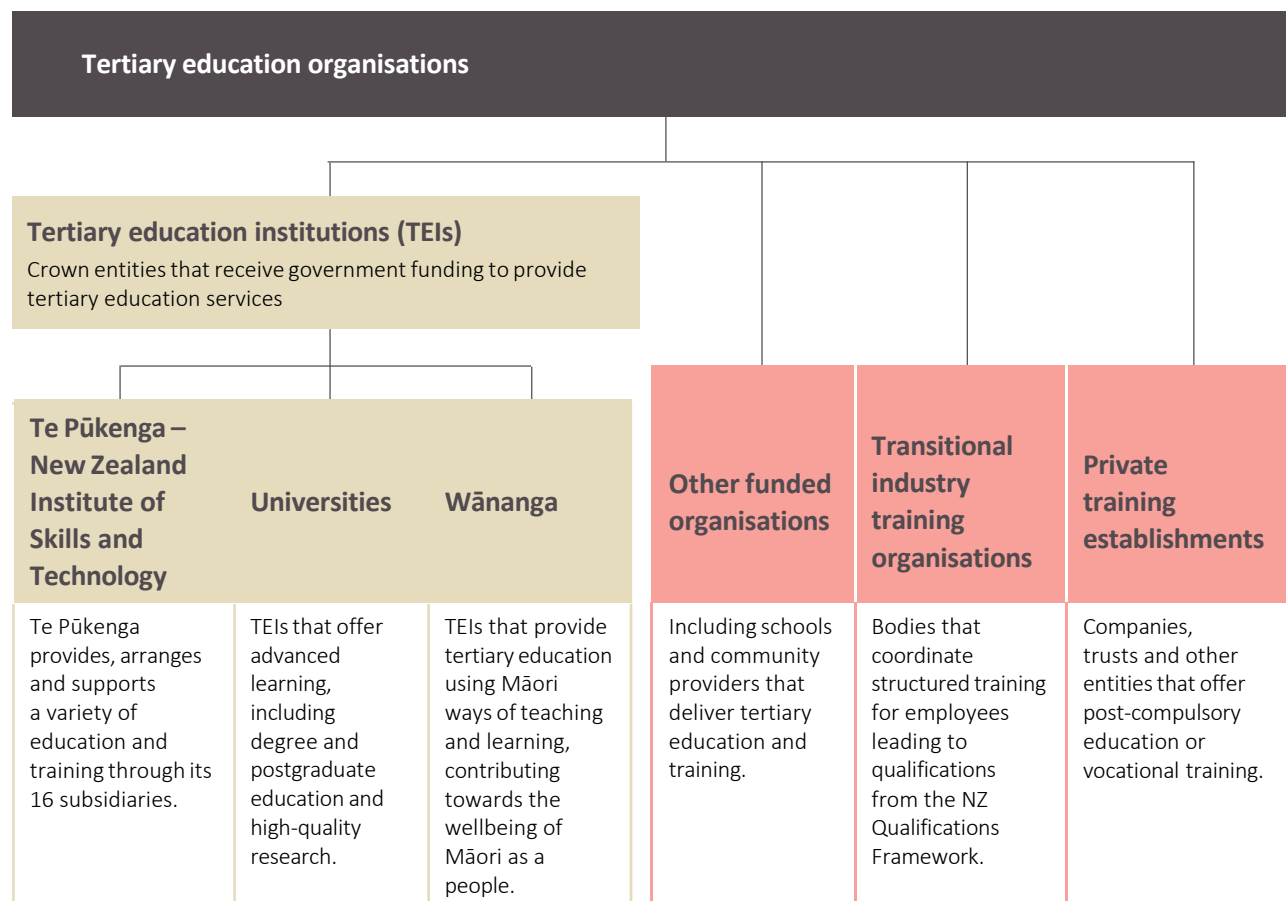| Tertiary education organisations					
Tertiary education institutions (TEIs) Crown entities that receive government funding to provide tertiary education services					
Te Pūkenga – New Zealand Institute of Skills and Technology	**Universities**	**Wānanga**	**Other funded organisations**	**Transitional industry training organisations**	**Private training establishments**
Te Pūkenga provides, arranges and supports a variety of education and training through its 16 subsidiaries.	TEIs that offer advanced learning, including degree and postgraduate education and high-quality research.	TEIs that provide tertiary education using Māori ways of teaching and learning, contributing towards the wellbeing of Māori as a people.	Including schools and community providers that deliver tertiary education and training.	Bodies that coordinate structured training for employees leading to qualifications from the NZ Qualifications Framework.	Companies, trusts and other entities that offer post-compulsory education or vocational training.

Tertiary education institutions (TEIs) are Crown entities and are made up of:

- Te Pūkenga – New Zealand Institute of Skills and Technology
- eight universities
- three wānanga.

Private training establishments (PTEs) provide education but are not Crown entities.

Transitional industry training organisations (TITOs) are not permitted to deliver education or training directly. They set industry training standards, purchase training (often from TEOs) and coordinate training, often workplace-based, for employees.

As part of the reform of vocational education (RoVE), the role of TITOs in coordinating training will be transferred to providers with other functions transferring elsewhere in the sector, including to the new workforce development councils (WDCs).

Workforce development councils (WDCs) will help industries take a lead in making New Zealand's workforce fit for purpose. They will:

- have a strategic view of the future skills needs of industries
- set standards, develop qualifications and help shape the curriculum of vocational education
- moderate assessments against industry standards and endorse programmes that lead to qualifications
- provide advice to the Tertiary Education Commission (TEC) on investment in vocational education
- determine the appropriate mix of skills and training for the industries they cover.

Legal framework

The legal framework for TEOs includes legislation specific to the education sector – the Education and Training Act 2020 (the Act) – and legislation that applies across the public sector, such as the Crown Entities Act 2004 and Public Sector Act 2020.

Education and Training Act 2020

The Act provides most of the legal framework and objectives for the tertiary sector. The Act:
- provides for the establishment and administration of TEIs
- sets out the framework for the Tertiary Education Strategy (TES) and the Investment Plan process
- identifies the functions of the TEC and other education agencies
- contains general provisions for TEI councils and some provisions specifically for Te Pūkenga and its council.

Education and Training Act 2020, s 252

The objective is to foster and develop a tertiary education system that:
(a) fosters, in ways that are consistent with the efficient use of national resources, high quality learning and research outcomes, equity of access, and innovation; and
(b) contributes to the development of cultural and intellectual life in New Zealand; and
(c) responds to the needs of learners, stakeholders, and the nation, in order to foster a skilled and knowledgeable population over time; and
(d) contributes to the sustainable economic and social development of the nation; and
(e) strengthens New Zealand's knowledge base and enhances the contribution of New Zealand's research capabilities to national economic development, innovation, international competitiveness, and the attainment of social and environmental goals; and
(f) provides for a diversity of teaching and research that fosters, throughout the system, the achievement of international standards of learning and, as relevant, scholarship.

Education and Training Act 2020, ss 266, 267, 318

TEIs have the independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability.

For universities and wananga s 267 applies, and, for Te Pūkenga s 318 applies, in exercising their academic freedom and autonomy. They must act in a manner that is consistent with:
- the need for institutions to maintain the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
- the need for institutions to be accountable and make proper use of resources allocated to them.

Academic freedom means the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions and to engage in research; and the freedom of the institution and its staff to regulate the subject matter of its courses and to teach and assess students in the manner they consider best promotes learning; and the freedom of its chief executive to appoint its own staff.

Other relevant legislation

Crown Entities Act 2004	Provides the framework for establishing, governing and operating Crown entities, and explains their relationship with each other, their board members, their responsible Ministers and with the House of Representatives. TEIs are Crown entities, but only the provisions listed in Schedule 4 apply to them. Additional provisions that apply to the Te Pūkenga are outlined in Part 2 of Schedule 4.
Public Finance Act 1989	Provides the framework for TEIs to manage financial resources, protect public assets and satisfy accountability requirements. It also places conditions on how TEIs can invest money.
Public Service Act 2020	Aims to ensure a modern, more joined-up and more citizen-focused public service. The Act provides the employment framework for the public sector and explicitly recognises the role of the public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi.
Local Government Official Information and Meetings Act 1987	Contains provisions for notifying TEI council meetings, public access to meetings and requests for and release of meeting papers.
Employment Relations Act 2000	Contains provisions concerning the employer and employee relationship in all TEOs.

Acts that may also apply include:

Health and Safety at Work Act 2015

Official Information Act 1982

Ombudsmen Act 1975

Privacy Act 1993

Protected Disclosures Act 2000

Public Records Act 2005

Education agencies

The Ministry of Education, the TEC, the New Zealand Qualifications Authority (NZQA) and Education New Zealand are the government education agencies most relevant to TEIs.

MINISTRY OF EDUCATION
EDUCATION.GOVT.NZ

- Advises the Government on policy and strategy
- Manages Vote Tertiary Education – the Budget
- Overall 'steward' of the education system
- Supports Youth Guarantee programmes
- Publications include the Tertiary Education Strategy, the International Education Strategy and the International Student Wellbeing Strategy

TERTIARY EDUCATION COMMISSION
TEC.GOVT.NZ

- Allocates government tertiary education funds
- Determines, through funding, if programmes can access student loans/allowances
- Negotiates and agrees providers' investment plans
- Monitors provider performance
- Advice to students and their families/whānau/'āiga on career and training options

NEW ZEALAND QUALIFICATIONS AUTHORITY
NZQA.GOVT.NZ

- Manages the New Zealand Qualifications Framework (NZQF)
- Overall quality assurance
- Directly manages quality assurance (except for universities)
- Administers codes of practice for the pastoral care of domestic and international students
- Fee protection for international students

EDUCATION NEW ZEALAND
ENZ.GOVT.NZ

- Promotes New Zealand as a study destination
- Supports New Zealanders studying overseas

Ministry of Education Te Tāhuhu o te Mātauranga

The Ministry of Education is responsible for providing an overall policy framework for tertiary education. It advises Ministers on developing the Tertiary Education Strategy (TES) and monitoring its success.

The Ministry is the steward of the education system, managing Vote Tertiary Education (the Budget), developing policy on international engagement, and monitoring the overall system.

Education and Training Act 2020, s 282 (4)

The Secretary for Education is the Ministry's chief executive and has some specific functions that are relevant to TEI councils. For example, TEIs cannot borrow, issue debentures or raise money outside certain limits without the consent of the Secretary.

Education and Training Act 2020, s 287, s 329

The Secretary is also responsible for deciding the criteria for assessing the level of risk for TEIs and publishing those criteria.

The Ministry publishes the Education Gazette Tukutuku Kōrero, New Zealand's source of education news, articles and career development opportunities for education professionals: gazette.education.govt.nz

Tertiary Education Commission Te Amorangi Mātauranga Matua

The Tertiary Education Commission (TEC) leads the Government's relationship with the sector and provides career services from education to employment. Each year the TEC invests around $3 billion in tertiary education to ensure New Zealanders are equipped with the knowledge and skills needed for lifelong success.

Education and Training Act 2020, s 409

It achieves this by:
- administering government funding through Investment Plans and contracts with tertiary education organisations (TEOs)
- monitoring the performance of individual TEOs and the sector as a whole
- collecting and sharing information about occupations and post-compulsory education and training
- providing support services for those involved in giving careers advice and in preparing students for employment, further education and training
- providing information and advice to the Government on these areas of responsibility.

The main interactions between a TEI council and the TEC include:
- discussions on establishing and revising the TEI's Investment Plan
- checking the TEI's progress on putting its Investment Plan into action
- monitoring and risk assessment, including capital asset management (CAM), educational performance, financial performance and governance capability
- requests for approval for borrowing and for disposal of assets above certain limits, on which the TEC advises the Secretary of Education
- Ministerial appointments to councils, induction and briefing days for council members.

New Zealand Qualifications Authority Mana Tohu Mātauranga o Aotearoa

The New Zealand Qualifications Authority (NZQA) ensures that qualifications are credible and robust nationally and internationally, so learners can succeed in their chosen endeavours and contribute to New Zealand society.

The NZQA is responsible for:
- managing the New Zealand Qualifications Framework (NZQF)
- administering the secondary school assessment system
- independent quality assurance of non-university tertiary education providers
- qualifications recognition and standard-setting for some specified unit standards.

The NZQA approves all qualifications delivered by Transitional ITOs, Te Pūkenga, PTEs and wānanga, but not universities.

It is also responsible for course approval and course accreditation, and the external evaluation and review (EER) and self-assessment of Transitional ITOs, Te Pūkenga, wānanga and PTEs.

Only those tertiary qualifications and providers that are quality assured by the NZQA can receive government funding.

Education New Zealand

Education New Zealand (ENZ) is New Zealand's government agency for building international education, which is the country's fourth-largest export earner. ENZ promotes New Zealand as a study destination and helps education providers and businesses take their services and products to the world. ENZ also supports New Zealanders studying overseas through scholarships.

With its industry partners, ENZ's role is to grow the value of New Zealand's international education industry and carry out the New Zealand International Education Strategy He Rautaki Matauranga a Ao.

ENZ is mostly funded by Crown funding through Vote Tertiary Education.

Other agencies and organisations

The following government agencies and organisations also play important roles in the tertiary education sector.

Public Service Commission Te Kawa Mataaho

The Public Service Act 2020, together with the Education and Training Act 2020, supports change already underway to ensure a modern, more joined-up and more citizen-focused public service.

Legislation requires a TEI to engage with the Public Service Commissioner when employing the chief executive (or Vice Chancellor) and when negotiating collective employment agreements.

Education and Training Act 2020, s 611

The TEI council is the employer of the chief executive. The conditions of employment are agreed on between the council and the chief executive. Before they are finalised, the council must also obtain written agreement from the Public Service Commissioner.

Education and Training Act 2020, s 593

Chief executives are the employers of all staff in TEIs and are therefore responsible for various employer-related functions, such as negotiating collective employment agreements. Before entering into any collective agreement, the chief executive, or their authorised representative, must consult with the Public Service Commission about the conditions of employment.

Ministry of Business, Innovation and Employment Hikina Whakatutuki

The Ministry of Business, Innovation and Employment (MBIE): the Labour, Science and Enterprise Group helps boost the economy by developing New Zealand's skill system, science and innovation systems, alongside labour market policy. MBIE conducts research that includes labour market analysis, forecasting jobs and skills, Māori labour market participation, and supplementary research.

Universities New Zealand Te Pōkai Tara

Universities New Zealand (UNZ) monitors the quality of university programmes, administers a range of scholarships and represents the universities in the public interest, both nationally and internationally. The eight universities, represented by their Vice-Chancellors, make up the membership of UNZ.

The Committee on University Academic Programmes (CUAP) considers academic matters across the university system, including programme approval and moderation procedures, advice and comment on academic developments.

The Academic Quality Agency for New Zealand Universities (AQA) is responsible for external academic quality assurance for universities.

Office of the Auditor-General

The Public Audit Act 2001

The Controller and Auditor-General (the Auditor-General) is the Officer of the New Zealand Parliament responsible for auditing public bodies.

Like all publicly-funded entities, TEIs are accountable to Parliament and the public for their use of public resources and their statutory powers. Each TEI publishes its annual report and sends copies to the Minister for presentation to Parliament.

The Auditor-General gives Parliament independent assurance that TEIs (and all public entities) are operating and accounting for their performance according to Parliament's intentions. The Auditor-General employs the public sector organisation Audit New Zealand and contracts with private sector accounting firms to carry out these annual audits.

The Office of the Auditor-General publishes reports and guidance arising from its work. These include a report on governance and accountability and guidance on managing conflicts of interest.

This section introduces the Tertiary Education Strategy (TES), how the Tertiary Education Commission (TEC) funds tertiary education organisations (TEOs) to deliver its priorities, and how funding is agreed between the TEC and education providers.
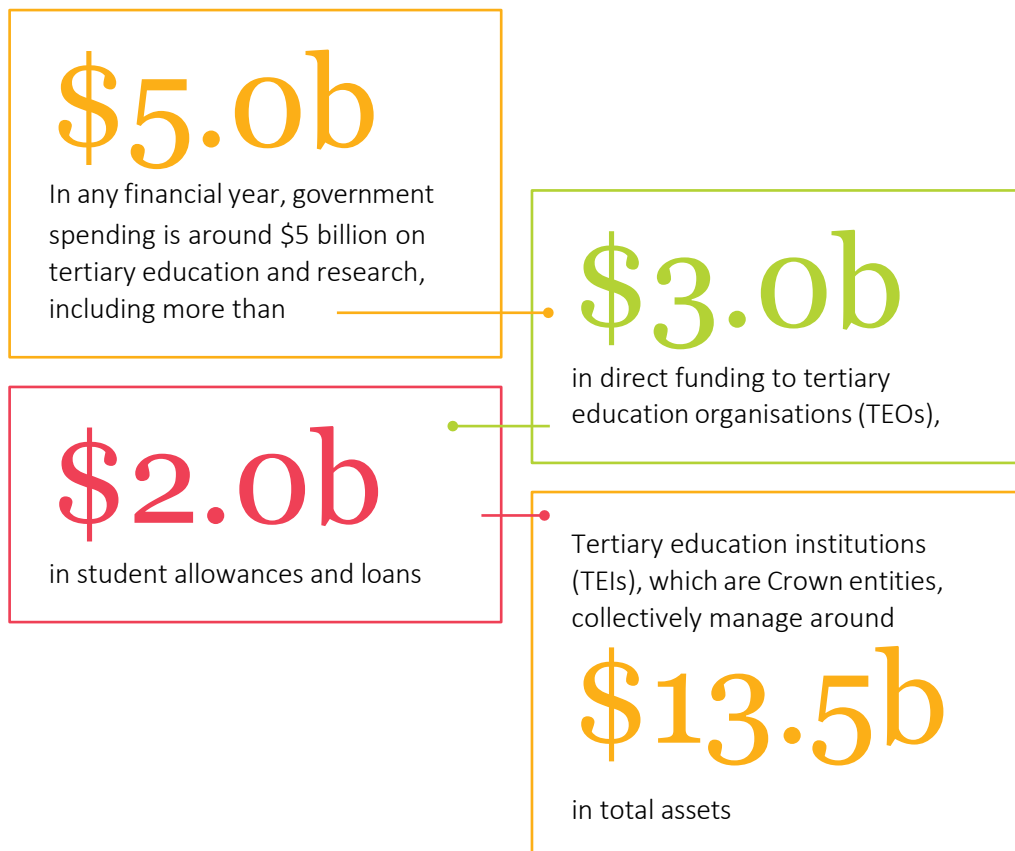
3 The tertiary education strategy

Tertiary education offers a passport to success in modern life

> Tertiary education offers a passport to success in modern life.
> It helps people improve their lives and the lives of those around them.
> It provides the specific tools for a career, and is the engine of knowledge creation.

New Zealand's tertiary education system is a significant national asset built up over generations. It is supported by the Government, mainly through the direct Student Achievement Component (SAC) funding, the Performance-Based Research Fund (PBRF), student allowances and student loans.

$5.0b
In any financial year, government spending is around $5 billion on tertiary education and research, including more than

$3.0b
in direct funding to tertiary education organisations (TEOs),

$2.0b
in student allowances and loans

Tertiary education institutions (TEIs), which are Crown entities, collectively manage around

$13.5b
in total assets

Tertiary education is vitally important to New Zealand. To ensure the tertiary education system can respond to change and continue to improve outcomes for learners and industry the Government sets out a long-term strategic direction through the Tertiary Education Strategy (TES).

Tertiary Education Strategy: the highest level policy document

The Tertiary Education Strategy is the highest level policy document relating to tertiary education organisations.
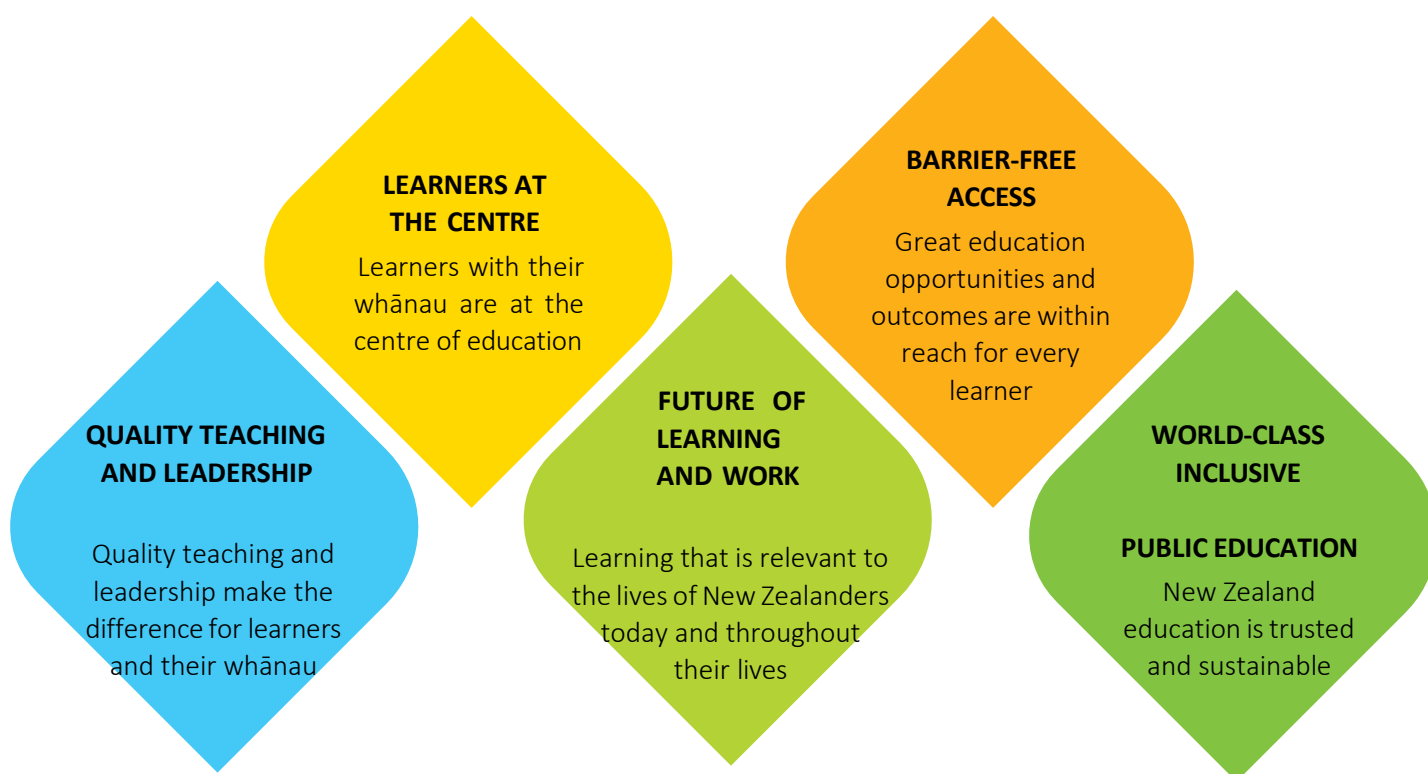
Education and Training Act 2020, s 7

The Tertiary Education Strategy (TES):

• reflects the Government's long-term strategic direction for tertiary education

• is a guide for the TEC and tertiary sector to the Government's strategic policy direction for tertiary education, plus its current priorities and those over the next three to five years

• sets the policy context for funding provided by the Government through the TEC, and each TEI is expected to pursue the objectives of the TES.

The TES and the National Education and Learning Priorities (NELP), which focus on schools and kura, set out the Government's priorities for education to ensure the success and wellbeing of all learners.

The TES, published in 2020, has five objectives and eight priorities that set the direction for the tertiary education system and an action plan to support implementation. The objectives are:

LEARNERS AT THE CENTRE
Learners with their whānau are at the centre of education

BARRIER-FREE ACCESS
Great education opportunities and outcomes are within reach for every learner

QUALITY TEACHING AND LEADERSHIP
Quality teaching and leadership make the difference for learners and their whānau

FUTURE OF LEARNING AND WORK
Learning that is relevant to the lives of New Zealanders today and throughout their lives

WORLD-CLASS INCLUSIVE PUBLIC EDUCATION
New Zealand education is trusted and sustainable

A TEI investment plan needs to show how the TEI intends to respond to the TES objectives and priorities.

To download the latest TES, go to www.education.govt.nz.

TEC supports the TES through investment decisions

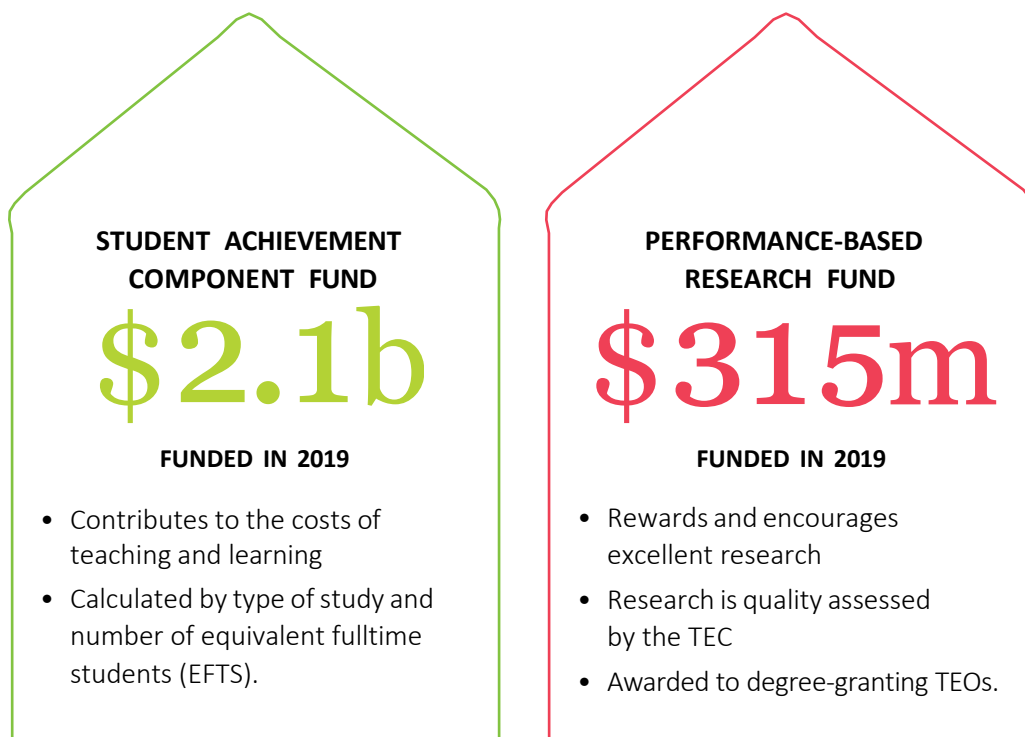**The TEC is focused on better outcomes for learners and for New Zealand.**

In allocating funding, we focus on three goals:

- improving outcomes for learners
- improving economic and social outcomes for New Zealand
- a more effective system stewardship by the TEC.

The TEC wants to support a more sustainable and adaptable sector through creating greater funding flexibility for TEOs to innovate and contribute to government priorities. To support this, we are developing and using better forms of measurement, information and tools for making investment decisions.

Funding sources

The majority of funding for TEIs comes from the Government's two largest tertiary education funds.

STUDENT ACHIEVEMENT COMPONENT FUND

$2.1b

FUNDED IN 2019

- Contributes to the costs of teaching and learning
- Calculated by type of study and number of equivalent fulltime students (EFTS).

PERFORMANCE-BASED RESEARCH FUND

$315m

FUNDED IN 2019

- Rewards and encourages excellent research
- Research is quality assessed by the TEC
- Awarded to degree-granting TEOs.

Investment Plans

Education and Training Act 2020, s 425 and Schedule 18 (4-24)

Most government funding for TEIs is conditional on the TEI submitting an Investment Plan for approval by the TEC.

The TEI must use the Plan to explain what the institution will do with the investment and how it will contribute to the Government's current and medium-term priorities as specified in the TES.

The TEC issues guidance about the content of Investment Plans and the information to be included.

Preparing an Investment Plan is often an iterative process between a TEI and the TEC. The TEC will want to ensure the Plan is specific, and applies the decision-making criteria outlined in the Act when considering the proposed plan.

Investment Plans can cover a period of up to three years, but TEIs report annually against them. Continued funding is dependent on complying with the Plan.

Each year the TEC publishes guidelines for developing and submitting a TEI Investment Plan, which includes an outline of what TEC looks for when assessing the Plan.

FOR MORE INFORMATION, VISIT
tec.govt.nz/funding/funding-and-performance/investment/plan-guidance

Ōritetanga – our focus on learner success

We want a tertiary education system that supports all New Zealanders to set and achieve tertiary and career goals that will deliver good outcomes for them and for the country. This means a particular focus on improving outcomes for Tertiary Education Strategy priority groups, including Māori learners, Pasifika learners, and learners with disabilities.

At TEC we have set an organisational target that, by 2022:
- we will be funding provision in which Māori and Pasifika learners participate and achieve in similar patterns with other learners,
- Māori and Pasifika participation in tertiary education will be at levels and in fields of study that should, over time, deliver parity of post-study outcomes for these learners.

Over time, our investment will shift toward courses, qualifications, programmes, and tertiary education organisations that are doing the best job at delivering good outcomes for learners and employers. This will happen through a combination of proactive adjustments tertiary education organisations make to their delivery, our investment decisions, and learner choice informed by better learner information and career counselling.

As part of our investment plan process we will require TEOs to submit a learner success plan. The learner success plans prompt TEOs to think more deeply about their learners and are underpinned by the TEC's Learner Success Framework. Based on domestic and international evidence, the Learner Success Framework will help TEOs identify their learners' needs and what systemic changes are required to ensure all learners can succeed.

To do the above, we will support TEOs to grow their capability to shift from individual interventions and pockets of focus to a systemic learner focus in all aspects of their operations. We have piloted the Learner Success Framework with several TEOs and will be looking to refine and implement the approach across the tertiary sector. We will share lessons from these projects with all TEOs and progressively upload tools and resources to our website for TEOs to use.

TEC website – Ōritetanga – tertiary success for everyone

Tertiary education institutions are governed by councils whose roles and functions are set out in the Education and Training Act 2020.

4 Tertiary education institutions and their councils

Types of tertiary education institutions

Tertiary education institutions are Crown entities* that receive government funding to provide tertiary education services.

Education and Training Act 2020, s 268

There are three types of tertiary education institutions:

Te Pūkenga has functions to provide or arrange, and support, a variety of education and training, including vocational, foundation, and degree-level or higher education and training and to conduct research, with a focus on applied and technological research.

A university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning.

A wānanga is characterised by teaching and research that maintains, advances and disseminates knowledge and develops intellectual independence, and helps the application of knowledge regarding āhuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom).

Education and Training Act 2020, s 305

Certain provisions of the Crown Entities Act 2004 apply to all TEIs and their Crown entity subsidiaries and council members are the board for the purposes of this Act.

*From 1 January 2024, Te Wānanga o Raukawa will become a non-crown entity TEI.

Powers of tertiary education institutions

The powers of TEIs, and the restrictions on those powers, are set out in section 282 of the Education and Training Act 2020.

Education and Training Act 2020, s 272

Each TEI is a body corporate capable of owning assets, suing and being sued, and doing all that a body corporate may do.

Education and Training Act 2020, s 282

TEIs can only use their powers for the purpose of carrying out:

- functions characteristic of institutions of the class to which the TEI belongs
- functions of a kind that the TEI's council believes may be performed "conveniently, and without disadvantage to the performance of those characteristic functions", and are appropriate for institutions of the class to which the institution belongs.

If a TEI wants to enter into a transaction or to undertake a particular activity outside its usual or characteristic activities, the council must use reasonable judgement about whether it has the power to do so.

Actions or activities that may affect the Crown's long-term ownership interest in TEIs need the written consent of the Secretary for Education or must be within limits specified by the Minister responsible for tertiary education. These include the power to:

(a) sell or otherwise dispose of assets or interests in assets

(b) mortgage or otherwise charge assets or interests in assets

(c) grant leases of land or buildings or parts of buildings

(d) borrow, issue debentures, or otherwise raise money.

However, the consent of the Secretary for Education is not required if:

- selling or otherwise disposing of, or mortgaging an asset where the value does not exceed an amount determined by the Minister
- the total term of the lease including any right of renewal does not exceed 15 years
- borrowing, issuing debentures, or otherwise raising money where the amount does not exceed an amount determined by the Minister.

The role of councils

Powerful, informed and engaged councils are an essential precondition for sustainable educational success – for the TEI, its learners and the communities it serves.

Effective councils provide clear strategic leadership and set and monitor the achievement of challenging targets. They have well-informed members who have a good understanding of stakeholders and the institution's strengths and areas for improvement, and who challenge the management team about the institution's performance. Effective councils also self-review and regularly reflect on their performance.

The role of the governing council includes:

- determining the strategic direction of the institution, as this underpins every decision the governing body makes; its strategic plan, its allocation of resources and performance goals for its executive – and ensuring that priorities align with the TES
- setting the educational strategy and being the primary guardians of educational quality and excellence for the TEO as a whole
- ensuring the institution remains sustainable and financially viable
- identifying, managing and mitigating risk
- demanding transparency in performance and results – data and metrics that will show to what extent the TEO is meeting its goals and delivering quality outcomes for learners
- strengthening its own capability to ensure the TEO's financial health, long term sustainability and educational success.

Councils and the Treaty of Waitangi

As Crown entities, TEIs and their councils are expected to meet the Crown's wider Treaty of Waitangi and Māori-Crown obligations.

Specific provisions in the Education and Training Act 2020 and other education legislation provide for Māori-Crown relationships and Treaty obligations in the tertiary education system.

For example, section 281 of the Education and Training Act establishes a duty on the part of the councils of tertiary education institutions to acknowledge the principles of the Treaty of Waitangi in the performance of their functions and the exercise of their powers.

Given these legislative provisions, general Treaty law and associated government policies, it is important that TEIs have mechanisms in place to both understand and manage their Treaty of Waitangi-based obligations. Council members need to be familiar with these obligations and seek assurance that the chief executive and management are meeting them.

A framework for engagement with Māori

As a matter of good practice, the Office for Māori Crown Relations Te Arawhiti advises that engagement with Māori, and the Māori-Crown relationship itself, should be guided by the following values:

- **Partnership** – the Crown and Māori will act reasonably, honourably and in good faith towards each other as Treaty partners.
- **Participation** – the Crown will encourage, and make it easier for Māori to more actively participate in the relationship.
- **Protection** – the Crown will take active, positive steps to ensure that Māori interests are protected.
- **Recognition of cultural values** – the Crown will recognise and provide for Māori perspectives and values.
- **Using mana-enhancing processes** – recognising the process is as important as the endpoint; the Crown will commit to early engagement and ongoing attention to the relationship.

These values are consistent with Court-determined Treaty principles. They provide a basis for working with Māori to respond to their range of needs, aspirations, rights and interests and provide active partnership with Māori in the design and implementation of processes and outcomes sought.

They also provide an overarching frame for education systems that support good tertiary and careers outcomes for all New Zealanders. For successive governments this has meant a particular focus on improving outcomes for Māori who have traditionally been underserved by the education system.

Functions of councils

Education and Training Act 2020, s 280

The functions of a TEI council are:

(a) to appoint a chief executive to appoint a chief executive and to monitor and evaluate his or her performance and to monitor and evaluate his or her performance

(b) to prepare and submit a proposed plan if the institution is seeking funding under a funding mechanism that provides for funding via plans

(c) if the institution has a plan –

     i) to ensure the institution is managed in accordance with that plan; and

     ii) to determine policies to implement that plan

(d) to determine the policies of the TEI in relation to the management of its affairs

(e) to undertake planning relating to the institution's long-term strategic direction.

Education and Training Act 2020, s 284

Councils and the boards of Te Pūkenga subsidiaries may also make their own rules ("statutes") that are consistent with the Act. These could include areas such as:

• governance and discipline (including penalties)

• appointment of council members and election of council members by staff and students

• courses of study and enrolment

• awards and prizes that may be granted.

Each council should have a procedure for updating and reviewing its own statutes and the TEI's other policies.

Duties of councils

Education and Training Act 2020, s 281

It is the duty of each TEI council, in the performance of its functions and the exercise of its powers:

(1) (a) to strive to ensure that the institution attains the highest standards of excellence in education, training and research

    (b) to acknowledge the principles of the Treaty of Waitangi

    (c) to encourage the greatest possible participation by the communities served by the institution so as to maximise the educational potential of all members of those communities with particular emphasis on those groups that are under-represented among the students of the institution

    (d) to ensure that the institution does not discriminate unfairly against any person

    (e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability

    (f) to ensure that proper standards of integrity, conduct and concern for the public interest and well-being of students attending the institution are maintained.

(2) In addition, Te Pūkenga's council must comply with section 97 of the Crown Entities Act 2004 in respect of its subsidiaries. The boards of the subsidiaries cannot do anything that Te Pūkenga council cannot do.

Council members' duties

Education and Training Act 2020, Schedule 11(10)

As well as the duties of each TEI council as a whole, individual council members have duties which include:

- to act with honesty and integrity, in the interests of the institution as a whole, in a manner that promotes the performance of the functions characteristic of the institution, and in good faith, and not pursuing their own interests at the expense of the council's interests
- to exercise the care, diligence and skill the reasonable person would exercise in the same circumstances, taking into account the nature of the council, the nature of the action and the position of the member as a member of an TEI council, and the nature of their responsibilities
- to not disclose, use or act on any information obtained as a member of the council except in the performance of the council's function, or as required by law, or in complying with the requirements for members to disclose their interests.

Delegation of council authority
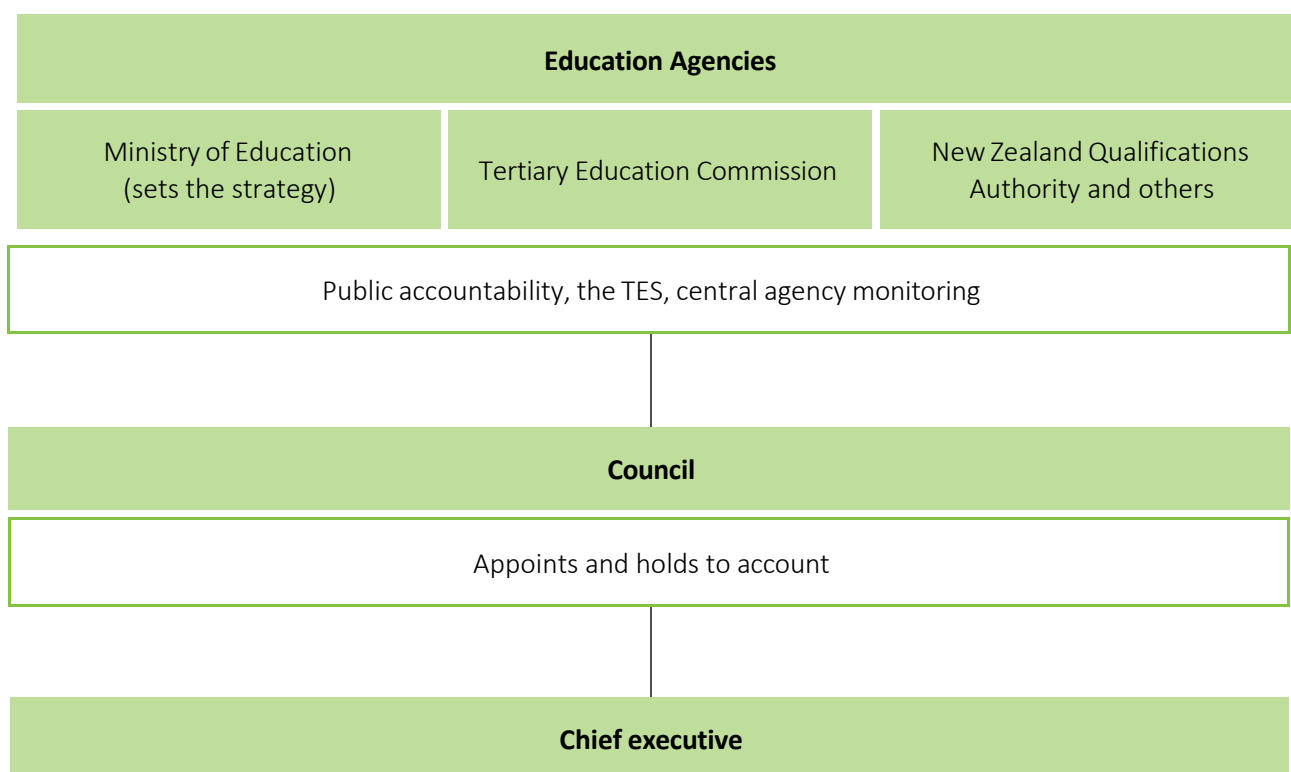
Education and Training Act 2020, s 285

The council may delegate in writing any of its functions or powers to the chief executive or a council committee, except the power to appoint a chief executive. With the council's approval, the chief executive or council committee can pass the delegation further to a TEI staff member.

The council must delegate the chief executive the authority required to manage the TEI. This enables the council to fulfil its responsibility to hold the chief executive accountable.

The council may delegate its authority but not its responsibility.

A delegation under this section does not affect or prevent the performance of any function or the exercise of any power by the council. It also does not affect the council's responsibility for the actions of any person acting under the delegation.

Although this section does not apply to Te Pūkenga's council, ss 73 to 76 of the Crown Entities Act 2004 applies to Te Pūkenga.

Education Agencies		
Ministry of Education (sets the strategy)	Tertiary Education Commission	New Zealand Qualifications Authority and others
Public accountability, the TES, central agency monitoring		

Council
Appoints and holds to account

Chief executive

Council meetings

Recent legislation includes provisions that cover convening meetings, who may chair a meeting and that meetings may be held by audio or audio visual means subject to certain conditions: Education and Training Act 2020 Schedule 11 (16).

This is in addition to the provisions about meetings in Part 7 of the Local Government Official Information and Meetings Act 1987.

PUBLIC NOTIFICATION OF MEETINGS

Local Government Official Information and Meetings Act 1987, s 46

Both council and council committee meetings need to be notified to the public.

Meetings must be publicly notified within statutory timeframes.

Any amendments to the meeting details, such as location or time, could be published on the TEI's website.

EXCLUDING MEMBERS OF THE PUBLIC

Local Government Official Information and Meetings Act 1987, s 48

There are grounds for excluding members of the public from a meeting of a council or committee or part of a meeting.

These grounds are designed to maximise, rather than minimise, council business that is conducted in public and they should be applied to achieve this.

Resolutions are required to exclude the public and must specify the:
- general subject of each matter to be considered when the public is excluded
- specific reason for the resolution covering each matter being considered
- section of the legislation providing the grounds for exclusion.

If any members of the public are to remain in a meeting from which others are excluded, their identities and reasons for remaining must be stated.

Following any discussion from which the public is excluded, a resolution is required to return the council to the public meeting and to specify what discussion and decisions from the closed meeting may be released to the public.

Council membership should reflect the ethnic and socioeconomic diversity of the communities the TEI serves. Important factors in the selection of council members include integrity, knowledge, skills and their ability, working with other members, to fulfil the council's responsibilities.

Composition and membership

Skills and experience are the most important factors in the selection of council members.

SELECTING COUNCIL MEMBERS

Education and Training Act 2020, s 278 and s 321

To be appointed, candidates must:

- have relevant knowledge, skills and experience
- be able to fulfil their individual duties
- together with other members of the council, be capable of undertaking all the council's responsibilities.

University and wānanga councils

Education and Training Act 2020, s 276(1)

University and wānanga councils have between eight and 12 members.

If the council has 10, 11 or 12 members, the Minister appoints four of those members; if the council has eight or nine members, the Minister appoints three members.

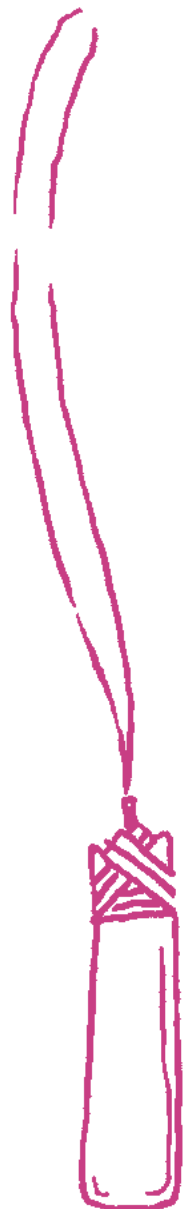**Education and Training Act 2020, s 278(1)**

Council membership should reflect – so far as is possible – the ethnic, gender, socio-economic and diversity of abilities of the communities the TEI serves.

Membership of Te Pūkenga's council

Education and Training Act 2020, s 320(1)

Te Pūkenga's council must have at least eight, but not more than 12 members, as follows:

- one member must be a person who is a member of, and elected by, its staff committee
- one member must be a person who is a member of, and elected by, its students' committee
- one member must be a person who is a member of, and elected by, its Māori advisory committee; and
- the rest of the members must be appointed by the Minister.

Term of appointment

Education and Training Act 2020, Schedule 11(6) and s 323

All council members are appointed for no more than four years. Shorter terms – of two or three years – may be used by the Minister or the council to help in succession planning. This enables the terms of office to be staggered so that members' terms do not all expire at the same time. Members may be reappointed for a further term (although university and wānanga constitutions specify the maximum number of terms that can be served).

If a council member's term of office expires before a successor is appointed, the member continues in office until reappointed or replaced.

Electing a Chair and Deputy Chair

Education and Training Act 2020, Schedule 11(15)

For universities and wānanga, the council elects the Chair (or university Chancellor) and the Deputy Chair (Pro Chancellor) from among its members. The term of office is for a period that does not exceed the term of their appointment as a council member, and incumbents are eligible for re-election.

The chief executive, employees of the TEI and students are not eligible for these two roles.

Education and Training Act 2020, s 322(1)

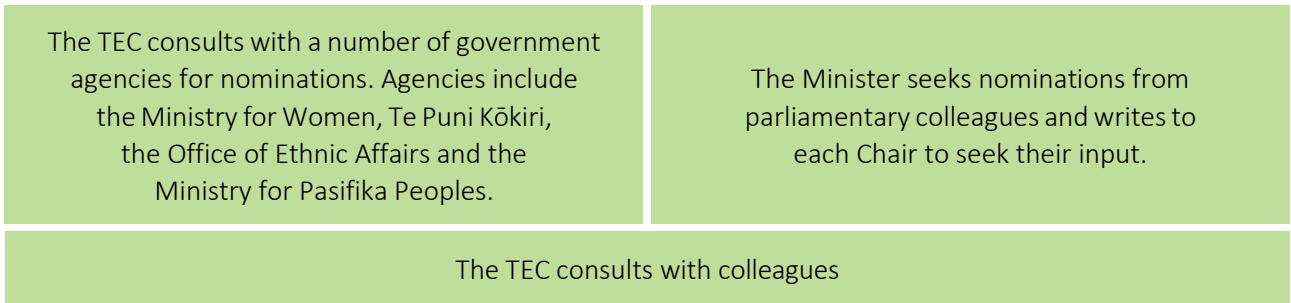The Minister appoints the Chair and Deputy Chair of Te Pūkenga's council.

Note: For simplicity, this document uses the terms "Chair" and "Deputy Chair" in references to all types of tertiary education institutions.
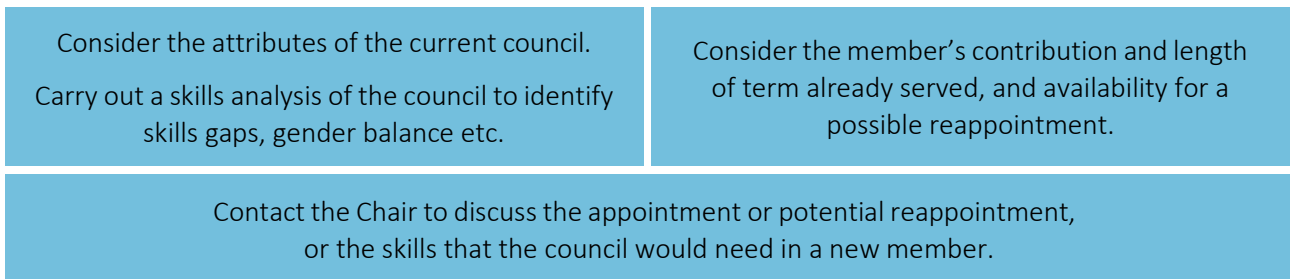
Ministerial appointment process

The TEC manages the process of ministerial appointments on behalf of the Minister of Education. The process generally includes three phases: consultation, consideration and communication.
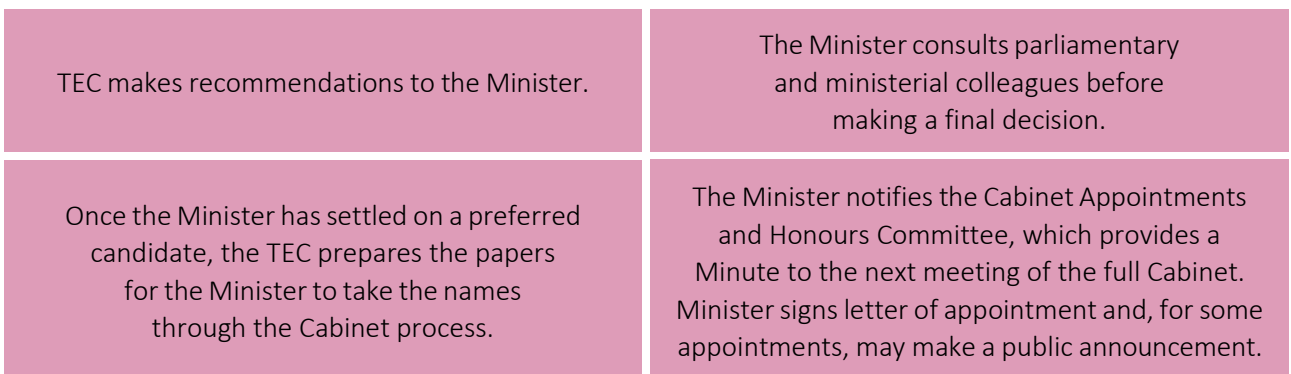
Consult

The TEC consults with a number of government agencies for nominations. Agencies include the Ministry for Women, Te Puni Kōkiri, the Office of Ethnic Affairs and the Ministry for Pasifika Peoples.

The Minister seeks nominations from parliamentary colleagues and writes to each Chair to seek their input.

The TEC consults with colleagues

Consider

Consider the attributes of the current council.

Carry out a skills analysis of the council to identify skills gaps, gender balance etc.

Consider the member's contribution and length of term already served, and availability for a possible reappointment.

Contact the Chair to discuss the appointment or potential reappointment, or the skills that the council would need in a new member.

Recommend and Appoint

TEC makes recommendations to the Minister.

The Minister consults parliamentary and ministerial colleagues before making a final decision.

Once the Minister has settled on a preferred candidate, the TEC prepares the papers for the Minister to take the names through the Cabinet process.

The Minister notifies the Cabinet Appointments and Honours Committee, which provides a Minute to the next meeting of the full Cabinet. Minister signs letter of appointment and, for some appointments, may make a public announcement.

Fees paid to council members

The Minister sets a fee range using the Cabinet Office Fees Framework.

The fee range set considers factors such as size, complexity, and workload. The Minister may review the band, or the group from time to time if the operating environment changes.

Education and Training Act 2020 Schedule 11(17)(1). University and wānanga councils may approve members' fees within Band 2 Group 3A up to the maximum.

Crown Entities Act 2004 s47(1)(a). Te Pūkenga's council members fees are determined by the Minister. The range for Te Pūkenga is Band 1 of Group 3A.

Vice-Chancellors and Kaiwhakatere may be council members but cannot receiving a fee. Where other staff members are nominated for or elected to Council, each council decides whether the staff member should receive a fee. In doing so the Council should consider whether the role as a council member forms part of, or is in addition to, a normal workload.

Student members elected or nominated to Council are paid at the same rate as any other member.

If a Council sets up an advisory panel that is not a sub-committee of the Council, then a daily fee may be paid to members of that panel under Group 4 of the Fees Framework.

Disclosures of interest

Council members who have an interest in a matter being considered or about to be considered need to disclose the nature of their interest.

Education and Training Act 2020, Schedule 11(8)
The Act states:

(1) A member … who has an interest in a matter being considered or about to be considered shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council or committee.

(2) A disclosure … shall be recorded in the minutes of the meeting … and the member shall not unless the council decides otherwise –

   (a) be present during any deliberation of the council or committee with respect to that matter; or

   (b) take part in any decision of the council or committee with respect to that matter.

For the purpose of the Act, a council member has an interest in a matter if they have any direct or indirect pecuniary interest, or the matter relates to their conditions of service as the chief executive or as a staff member of the TEI.

A conflict of interest arises when a council member has an interest that conflicts (or may conflict or be perceived to conflict) with the interests of the TEI. That is, the interest held could create an incentive for the member to act in a way that may not be in the best interest of the TEI. If that is the case, there is a conflict – even if the member would not act on that incentive.

The public sector has established benchmarks for assessing whether a conflict exists, and perceptions about potential conflicts may be as important as an actual conflict. It is good practice for disclosure of members' interests to be a preliminary agenda item at all meetings and for a full disclosure of interests to be provided on an annual basis and published via the TEI's website.

The TEC has published guidance for TEI councils to manage conflicts of interest:

TEC website – A guide to managing conflicts of interest for TEI councils

Liability of council members

Normally, everyone is legally responsible for their acts and omissions, whether in their own right or on behalf of someone else, but this is modified for TEI council members.

Education and Training Act 2020, Schedule 11(19)
No member of the council of an institution is personally liable for any act done or committed by them as a council member or by the council as long as they acted:
(a) in good faith; and
(b) in pursuance of or intended pursuance of the functions of the institution or of the council.

This means that, although council members are immune from personal liability for things they or the council might do, this immunity is not absolute.

The immunity does not apply to acts or omissions that are not in good faith, and it does not apply to acts and omissions beyond the functions of the TEI or the council. Council members therefore have potential residual liabilities that might not be covered by the immunity under Schedule 11(19) of the Act.

Accountability for individual duties

The duties of a council member under Schedule 11(10) are duties owed to the Minister and the council.

A council member who does not comply with their individual duties may be removed from office under Schedule 11(12). A TEI council may bring an action against a council member for breach of any individual duty. Council members are individually accountable for their duties to the council and the Minister.

This section does not apply to a member of Te Pūkenga's council. However, **s 59 of the Crown Entities Act 2004** applies to Te Pūkenga and this has the same effect.

Removal of council members

Council members may be removed by the council or by the Minister.

Education and Training Act 2020, Schedule 11(7)

A council may remove one of its members, other than the chief executive, by resolution if that person:

- has been removed as a council member of some other institution
- is declared bankrupt, is subject to a property order under the Protection of Personal and Property Rights Act 1988 or is subject to a personal order under that Act, which reflects adversely on his or her competence or capacity to communicate decisions in relation to personal care
- fails to attend three consecutive council meetings without giving the Chief Executive prior notice
- without reasonable excuse, fails to comply with the Act's provisions regarding disclosure of interest.

Additional rules are also in place on the removal of the council members for "just cause", which includes misconduct, inability to perform the functions of a council member, neglect of duty, breach of the collective duties of the council or the individual duties of a member (depending on the seriousness of the breach).

If a university or wānanga council believes that the actions of a member may justify his or her removal from office, it must provide a written report to the Minister stating the reasons for believing that the actions may justify the council member's removal; information in support of those reasons; and the council's recommendation. The Minister may remove the member from office if satisfied that there is just cause to do so.

Education and Training Act 2020, Schedule 11(12)

In all cases, the removal must be made by written notice to the member (with a copy to the council) and the notice must state the day on which the removal takes effect and the reasons for the removal. The Minister must notify the removal in the Gazette as soon as is practicable after giving the notice.

These sections do not apply to the removal from office of a member of Te Pūkenga's council. The **Crown Entities Act 2004, s 37** sets out the provisions for the removal from office of a member of an autonomous Crown entity, and these provisions apply to Te Pūkenga.

TEIs are held accountable through their annual reports and through the investment planning and performance monitoring role of the Tertiary Education Commission.

6 Accountability and performance

Accountability

The Education and Training Act 2020 (the Act) strikes a balance between the independence and autonomy of tertiary education institutions (TEIs) and the need for them to be accountable as public organisations.

TEIs are held accountable through their annual reports and through the investment planning and performance monitoring role of the Tertiary Education Commission (TEC).

The Act also provides for intervention mechanisms where a TEI is considered to pose a risk to its learners or to the Crown.

Academic quality in a TEI is monitored by a TEI's academic board and by external quality assurance bodies.

While TEIs are defined in the Act as independent and autonomous institutions, they are regarded as Crown entities for accountability and reporting purposes, and are covered by the accountability mechanisms in the Crown Entities Act 2004. The relevant provisions of the Education and Training Act 2020 and the Crown Entities Act 2004 need to be read together to gain a full picture.

The Crown Entities Act 2004 provides Te Pūkenga with an additional requirement to produce a Statement of Intent (SoI) and a Statement of Performance Expectations (SPE).

Crown Entities Act 2004, s 6 – Application of this Act to tertiary education institutions

Annual reports

Every TEI must prepare an annual report.

Education and Training Act 2020, s 306

The TEI annual report, like those of many public and private organisations, is an important mechanism for communicating with, and showing accountability to, a wide range of stakeholders. For this reason, it usually includes reports from the Chair/Chancellors/chief executives highlighting activities and achievements in the year. It also typically includes a range of operational data and statistics to present a picture of the TEI's performance in the year under review in comparison with earlier years.

The TEI must provide its annual report with fully audited financial statements, the statement of service performance and the statement of responsibility to the TEC for the Minister. The Minister is required to present each TEI annual report to the House of Representatives within five working days of receiving it or, if Parliament is not in session, as soon as possible after the start of the next session of Parliament.

> **The Education and Training Act 2020 s 306(4) specifies what needs to be reported in the annual report in addition to the requirements of the Crown Entities Act 2004**
>
> A council shall include in every annual report:
>
> (a) a summary of its equal employment opportunities programme for the year to which the report relates; and
>
> (b) an account of the extent to which the council was able, during the year to which the report relates, to meet the equal employment opportunities programme for that year; and
>
> (c) an account of the extent to which the council has eliminated unnecessary barriers to the progress of students; and
>
> (d) an account of the extent to which the council has avoided the creation of unnecessary barriers to the progress of students; and
>
> (e) an account of the extent to which the council has developed programmes to attract students from groups in the community –
>
> > (i) under-represented in the institution's student body; or
> >
> > (ii) disadvantaged in terms of their ability to attend the institution; and
>
> (f) in the case of an institution that has a plan, a statement of service performance for that financial year reporting on the performance of the institution as compared with the proposed outcomes described in that plan.

Financial statements

The annual report must include the financial statements prepared for the council for that year plus an audit report and a statement of responsibility signed by the Chair/Chancellor and the chief executive.

Crown Entities Act 2004, s 155

The statement of responsibility must confirm the signatories' responsibility for:

- the preparation of the financial statements and the statement of service performance and the judgements in them
- establishing and maintaining a system of internal controls designed to provide reasonable assurance about the integrity and reliability of the financial reporting
- the financial statements and statement of service performance fairly reflecting the financial position and operation of the TEI.

Education and Training Act 2020, s 306, Crown Entities Act 2004, s 154

If the TEI is a parent of a Crown entity group, the financial reporting must be both at the parent-level and consolidated at group-level. This allows the financial results of the parent to be readily compared with the group's results.

The financial statements must:

- comply with GAAP – generally accepted accounting practice, a set of objective principles and requirements for improving the consistency and transparency of performance reporting
- include any other information or explanations needed to fairly reflect the financial operations and position of the TEI
- include previously forecast financial statements for comparison with the actual financial statements.

The TEI must forward these statements to the auditor no later than 90 days after the end of the financial year.

Statement of service performance

The statement of service performance (SSP) is an important part of the TEI annual report. The purpose of the SSP is to enable readers to assess how well the TEI has performed during the reporting period and provide useful information for accountability and decision-making. This must include a report on the achievements of the TEI against the Performance Commitments section of the Investment Plan, which focuses on performance indicators and targets relating to the priorities in the Tertiary Education Strategy.

Legislation requires SSPs from 2019 onwards to also comply with GAAP. The Office of the Auditor-General has provided guidance on the changes to every TEI council:

OAG website – Tertiary Education Institutions: Changes to the requirements for performance reporting in annual reports

Compulsory Student Services Fees

TEIs that charge their students a compulsory student services fee (CSSF) must comply with the Ministerial Direction on Compulsory Student Services Fees for 2019. This includes a requirement for TEIs to report on the fee in their annual reports. The report must provide the following information:

• the fee charged per equivalent full-time student (EFTS). This includes the amount charged for each type of student (for example, international students, distance students, part-time students, or students at different campuses)
• a description of each type of student service that the fee supports
• a statement of the CSSF income and expenditure for each type of student service
• a statement that demonstrates how the CSSF accounting requirements are being met.

The TEC's website provides more information on CSSFs, including a guide on complying with the Ministerial Direction and an example of what to include in a CSSF report.

Tertiary Education Commission performance monitoring

The TEC monitors TEIs through a number of lenses: financial, educational, governance and management, capital asset management, and external risk factors.

The TEC has a legal responsibility to monitor TEIs, to:
• protect the Government's investment in tertiary education
• assure the Minister of Education of their viability and sustainability
• ensure positive outcomes for students.

Through its monitoring, the TEC is seeking to gain assurance that the TEI council is robustly and appropriately leading the TEI and effectively holding senior managers to account.

Financial performance

Education and Training Act 2020, s 281 (1)(e)

One of the statutory duties of a TEI council is to ensure the institution operates in a financially responsible manner, resources are used efficiently, and the institution stays viable.

Te Pūkenga's council must also comply with section 97 of the Crown Entities Act 2004 in respect of its subsidiaries and ensure they operate according to Te Pūkenga's direction and within its financial framework and direction.

The ability of a TEI to manage within budget and approved funding is a critical element of its accountability as a Crown entity and as a recipient of funding through the Investment Plan.

TEC's monitoring will expect to see these responsibilities reflected in the financial performance reporting of the TEI.

Education and Training Act 2020, s 405 and s 406

The chief executive of the TEC has a duty to assess whether the operations or long-term viability of TEIs are at risk and report to the Minister about this. The purpose of this duty is to protect the public investment in TEIs, the interests of students and the national interest in the tertiary education system.

The financial monitoring by the TEC occurs within a framework that uses several financial indicators and targets to assess the financial viability and financial sustainability of each TEI on a scale of "minimum" to "high" risk.

The TEC's chief executive can require a TEI to provide financial and other information about its activities. For Te Pukenga, this includes requiring Te Pukenga's council to provide information about the activities of any of its related entities.

Risk assessment criteria for all TEIs are published in the New Zealand Gazette and reviewed every two years.

TEC website – Financial monitoring of tertiary education institutions

Educational performance

Education and Training Act 2020, Schedule 18 (4)

A TEO's Investment Plan must describe its proposed outcomes in relation to the tertiary education programmes and activities for which funding is sought, and the performance indicators that the TEO will use to measure whether those outcomes have been achieved.

The TEC provides TEOs with information about any specific metrics they must use when specifying outcomes and performance indicators (performance commitments), and in some cases will specify minimum performance commitments for TEOs. TEOs should propose additional performance commitments as required.

An Education Performance Indicator Commitments (EPIC) template is provided to TEOs to assist them with these. This will include the need to set targets which will contribute to parity of participation and achievement for Māori and Pacific learners.

The TEC provides TEOs with a Learner Success template to assist them to describe their approach to improving outcomes for all learners.

Where TEIs receive funding for programmes and activities from the TEC, the TEC may undertake audits or investigations to ensure compliance with any conditions placed on that funding. Conditions are attached to different funds to ensure funding is used to support eligible learners and programmes, and to ensure funding is used appropriately to best support outcomes for learners.

Governance capability

The council is the governing body of each TEI, and is responsible for its own performance as well as the financial and educational performance of its TEI.

Effective councils provide clear strategic leadership and set and monitor the achievement of challenging targets. They have well-informed members who have a good understanding of stakeholders and the institution's strengths and areas for improvement, and who challenge the management team about the institution's performance. Effective councils also self-review or reflect on their performance on a regular basis.

It is important that TEI councils adopt best practice in carrying out their governance roles, have systems and processes to support those roles and a structure that facilitates best practice. Positive dynamics within the council, and between the council and chief executive, are major contributors to the overall effectiveness of the council and performance of the TEI as a whole.

We expect council members to keep up to date with:
• the challenges and opportunities their institution faces and the regional environment in which it operates
• the Government's priorities for the tertiary education sector, and
• their own professional development in governance.

To help the TEC with its assessment of the governance performance of TEIs and to help TEI councils with assessing their own performance, the TEC has developed a governance guide and health check.
This comprises four key sections:
• council skills and experience
• strategic leadership
• institutional performance
• best practice council operations.

Capital asset management

The tertiary education sector collectively manages around $10.5 billion in land and buildings. This makes it one of the largest social asset portfolios across the capital-intensive government agencies.

The Government has an interest in these assets being effectively managed. This includes:
- owning the right assets
- managing the assets
- funding the assets
- managing risks to the Crown balance sheet.

These are all critical elements to the ongoing provision of high-quality and cost-effective public services.

The TEC maintains an overview of the capital asset management plans across the TEI sector. The Government's expectation is that all state sector agencies, including TEIs, will use:
- better business case methodology
- a capital asset system and process assessment tool
- project assurance for high-risk or high-value projects
- periodic assessment of capital asset management systems and processes
- annual capital intentions reporting.

Crown interventions

Education and Training Act 2020, s 287-293 and s 329-338

The Crown can intervene in a TEI in one or more of three ways if there are reasonable grounds to do so and if the TEI's operation or long-term viability are at risk:
- The TEC's chief executive can request a council to provide specified information.
- The Minister can appoint a Crown Observer to the council.
- The Minister can appoint a Commissioner to replace a council.

For Te Pūkenga, additional interventions are available and may be used concurrently with other interventions. The TEC's chief executive has the power to require Te Pūkenga council to obtain specialist help and/or to prepare a performance improvement plan for Te Pūkenga or for a related entity.

Quality

The quality of courses, programmes and qualifications offered is an important factor in a TEI achieving outputs and outcomes that are valued by students, employers and the community.

Academic boards

Education and Training Act 2020, s 324 and Schedule 11(18)

All TEI councils must establish an academic board that includes the chief executive, staff and students. The council must request advice from the academic board and consider it before determining any matter relating to courses of study or training, awards and other academic matters.

Academic boards are responsible for a range of programme-related academic approvals and are involved in the evaluation and internal audit of academic quality, using the framework of an academic quality management system.

The legal requirement to establish an academic board creates a unique relationship between the council and the academic activities of the TEI. The scope of that relationship is more extensive than issues of academic quality, and the requirement reflects an expectation that TEI councils will be involved in, and have an understanding of, the educational activities and educational performance of their TEIs.

This includes the targets within the Performance Commitments section of their Investment Plans, and both the actual performance, and performance relative to other TEIs, on the educational performance indicators.

External academic quality assurance

External academic quality assurance in TEIs is provided in two principal ways.

1. The New Zealand Qualifications Authority (NZQA) oversees academic standards for qualifications in New Zealand and the New Zealand Qualifications Framework. It is also responsible for assuring the academic quality of Te Pūkenga, PTE and wānanga programmes and qualifications. NZQA's external evaluation and review (EER) results in an expression of confidence level for each provider on its educational performance and the quality of its self-review processes.
2. Universities New Zealand Te Pokai Tara (the New Zealand Vice-Chancellors' Committee) has the power for programme approval and accreditation for universities that is held by NZQA for the rest of the tertiary education sector.

Universities New Zealand delegates its powers to the Committee on University Academic Programmes (CUAP). CUAP undertakes its programme approval and accreditation functions within policies, such as the gazetted criteria for programme approval, developed by NZQA following consultation with the university sector.

CUAP and NZQA liaise regularly, meet quarterly, and CUAP nominates university representatives to working groups assembled by NZQA when invited to do so.

The Academic Quality Agency for New Zealand Universities (AQA) is an independent body set up by Universities New Zealand. It supports New Zealand universities in achieving standards of excellence in their academic research and teaching. Universities self-review their programmes, and the AQA reviews those self-assessments and highlights opportunities for continuous improvement.

The appendices include
additional resources
to support you in your
governance role.

7 Appendices

Appendix 1: Governance self-review

Governance self-review contributing to continuous improvement of the council's performance is fundamental to best practice governance. It is a gauge of the council's effectiveness. Self-review assists in identifying issues, gives the council an opportunity to introduce changes or improvements in process, and ensures performance targets are monitored.

These questions are designed as a starting point for conversation and self-review.

Your role

- [ ] Has your council had a recent discussion on its role and the role of management?
- [ ] Has your council reviewed its composition, skills requirements and skill gaps in the past year?
- [ ] Are you and your fellow council members thoroughly familiar with the legal requirements?
- [ ] Do you have a code of conduct for council members?
- [ ] Has the council recently discussed the role and expectations for the Chair?
- [ ] Have you recently reviewed the position description and delegated authorities of the chief executive?
- [ ] Does the chief executive understand their role in relation to the council?

Council processes

- [ ] Have you recently reviewed what you expect from council meetings?
- [ ] Is your agenda under constant review?
- [ ] Is the number, level of detail, format, information, content and lead-time of council papers satisfactory?
- [ ] Do the minutes provide the right amount of detail?
- [ ] Does your council have a calendar that lists dates of council and committee meetings and the key events for council member attendance?
- [ ] It is recommended that forthcoming meetings are publicised on the website.
- [ ] Do you have the right number and type of committees?
- [ ] Are there terms of reference for each committee setting out its roles, composition and any decision-making powers?

Council functions

- [ ] Is the council providing leadership on the institution's strategic development?

- [ ] Is the council setting achievable performance targets and effectively monitoring the institutional performance?

- [ ] Do council members make appropriate use of their contacts and networks to further the goals of the TEI?

- [ ] Are the financial and non-financial key performance indicators provided to the council appropriate?

- [ ] Are the systems that provide the key performance indicator data accurate and efficient?

- [ ] Are there systems in place to make sure the TEI is complying with the law in everything they do?

- [ ] Is an appropriate risk management process in place?

- [ ] Is there a formal chief executive evaluation process in place, which at appropriate points involves the whole council?

- [ ] Are there formal delegations from the council to management, and at the different levels of management?

Council performance

- [ ] Can council members obtain the information required for effective monitoring and decision-making?

- [ ] Is there a regular council evaluation process in place?

- [ ] Is there a formal council member development programme in place with training opportunities and regular briefings?

- [ ] Is there a sufficiently frequent rotation of council members that ensures that new blood regularly joins the council, while ensuring that council memory is retained?

- [ ] Does the council appoint the best new council members to enhance and complement the existing skills base?

Image supplied by BCITO

Appendix 2: Managing conflicts of interest

While each member is responsible for their conflicts of interest, the council needs processes to:

• help members identify conflicts and declare their interests

• ensure interests are recorded and conflicts properly managed.

The chief executive of a TEI also needs to show the council that the TEI is using internal policies and practices to record staff interests where a conflict or potential conflict may arise.

Processes for managing conflicts of interest

DISCUSSION WITH THE CHAIR

If a council member is unsure if a conflict of interest exists, they should discuss it with the council Chair.

POLICY AND PROCEDURES

A declaration of interest policy, including procedures to deal with conflict of interest matters, should be developed and made available to all council members.

REGISTER

Councils should set up a register of members' interests that is updated regularly.

MEETING AGENDA ITEM

Declarations of interest should be a regular agenda item at the beginning of a council meeting to establish whether any council member has a potential conflict of interest on any agenda item.

COUNCIL MINUTES

Any declaration of interest and potential conflict of interest should be recorded in the council minutes along with the process for managing the conflict.

Appendix 3:
Essential resources for council members

New Zealand Legislation website	Education and Training Act 2020
TEC website	Ōritetanga Learner Success Framework Reform of Vocational Education (RoVE)
Ministry of Education website	Tertiary Education Strategy
Kōrero Mātauranga website	Education Conversation
Education Counts website	Profiles and Trends – New Zealand's Tertiary Education Sector Tertiary Education Statistics
Office of the Auditor-General website	Managing Conflicts of Interest: Guidance for public entities Reflection from our audits: Governance and accountability

Appendix 4: Glossary of terms

Term	Description
Academic Quality Agency for New Zealand Universities (AQA)	An independent body established and owned by Universities New Zealand that reviews academic quality monitoring systems and advises on good practice and quality-assurance issues.
academic year	The financial year used by tertiary education institutions in New Zealand, as defined in the Education Act 1989; corresponds with the calendar year, 1 January to 31 December. (The Crown's financial year is usually 1 July to 30 June.)
Adult and Community Education (ACE)	Provides community-based education, foundation skills and pathways into other learning opportunities that meet the needs of the community.
Ako	Effective teaching and learning for and with Māori learners and the conditions that support it.
AMFM	Annual Maximum Fee Movement policy, which sets limits on fees that TEOs can change learners enrolled in SAC level 3 and above funded courses.
Centres of Research Excellence (CoREs)	Networks of researchers working together. Each CoRE is hosted by a university. Partner organisations include other universities, Crown research institutes and wānanga.
Centres of Vocational Excellence (CoVE)	A group from across a sector that works together to grow excellent vocational provision, and share high-quality curriculum and programme design across the vocational education system.
Community Education (CE)	The Community Education Fund is for adult and community education and literacy, numeracy and English language provision.
compulsory student service fee (CSSF)	A fee that TEOs can charge domestic students to help fund the costs of delivering student services such as health care and recreational activities.
consortium	A cooperative arrangement among groups or institutions. We fund TEOs as part of a consortium for Māori and Pasifika Trades Training and ICT Graduate Schools.
course	A component of a qualification that may also be known as a paper, module or unit; has aims and curriculum content, and includes assessment that measures the extent to which the learning outcomes have been met.
credit	One credit represents a notional 10 hours of learning, practice and assessment time with respect to the outcomes and contexts of a standard. One full-time year of study equates to 120 credits or 1 EFTS (equivalent full-time student).

Term	Description
Crown research institutes (CRIs)	Crown-owned companies that carry out scientific research for the benefit of New Zealand.
Direct Funding Scheme	Allows employers to access the Industry Training Fund directly (not via an ITO). These employers have significant numbers of industry trainees, groups of employers, Group Training Schemes and current Modern Apprenticeship Coordinators.
distance education	Education with students and the instructor separated by geographic distance, with learning facilitated by correspondence study, audio conferencing, video conferencing, email or online.
DualPathways Pilot	Allocates a portion of Youth Guarantee funding to successfully prepare and transition students from the world of education into the world of work. Tertiary education providers and secondary schools will work in collaboration and partnership with employers/industries.
Education and Training Act 2020	The Act came into force on 1 April 2020 and superseded all previous education and training legislation. The aim is an education system that: (a) provides all learners with the skills, knowledge, and capabilities they need to fully participate in the labour market, society, and their communities; and (b) supports their health, safety, and well-being; and (c) quality assures education, institutions and educators; and (d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.
educational performance indicators (EPIs)	A group of performance indicators that give a view of how well tertiary providers are helping their students to achieve. They are: • course completions • first-year retention • cohort-based qualification completion • student progression.
e-learning	Education, both formal and informal, using electronic delivery methods such as internet-based learning delivery packages, CD-ROM, video conferencing, websites or email to manage the relationship between teachers and learners.

Term	Description
equivalent full-time student (EFTS)	A measure of consumption of education (or the size of a qualification in relation to workload). One EFTS unit is defined as the learner workload in a single academic year (12-month period) by a learner enrolled full-time; usually 120 credits on the New Zealand Qualifications Framework (NZQF).
external evaluation and review (EER)	The New Zealand Qualifications Authority's periodic process that independently reviews the educational performance and self-assessment capabilities of Te Pūkenga, wānanga and private training establishments; focuses on the valued outcomes of tertiary education instead of a traditional audit approach that measures inputs and processes.
fees-free	The Fees Free Tertiary Education and Training policy was introduced in January 2018. It makes the equivalent of one year of tertiary study or training fees-free for new students and trainees.
Financial Monitoring Framework (FMF)	The FMF provides an initial assessment of the financial wellbeing of a TEI or TEO. TEC website – Financial Monitoring Framework Guidelines for TEIs
financial performance monitoring	The Tertiary Education Commission is required to monitor tertiary education organisations (TEOs) which receive funding from the TEC.
Gateway Fund	Provides senior secondary students (Year 11 and above) with access to structured workplace learning including specific assessment methods.
ICT Graduate Schools	The purpose of ICT Graduate Schools is to deliver industry-focused ICT education, and ICT research and development, built on connections between tertiary education organisations and businesses.
Independent Tertiary Education New Zealand (ITENZ)	A recognised industry peak body representing 14 large PTEs around New Zealand.
Investment Plan	Describes how a tertiary education organisation (TEO) will achieve government priorities set out in the Tertiary Education Strategy. Includes a TEO's mission and role in the tertiary sector and all the programmes and activities it runs.
Learner Success Framework	The Learner Success Framework template is for tertiary education organisations (TEOs) to use to describe their approach to improving outcomes for all learners.
Māori and Pasifika Trades Training (MPTT)	A programme that provides fees-free tertiary places for Māori and Pasifika learners to enable them to acquire the skills and attributes to take up a New Zealand Apprenticeship at level 4 or higher on the NZQF.

Term	Description
Ministry of Education (MoE)	The Government's lead policy advisor on the New Zealand education system.
mix of provision	The provisions in an Investment Plan that set out the activities the TEO intends to provide.
New Zealand Qualifications Authority (NZQA)	The Crown entity charged with ensuring that New Zealand qualifications are robust and credible nationally and internationally.
New Zealand Qualifications Framework (NZQF)	A qualification system designed and administered by NZQA to structure New Zealand qualifications.
New Zealand Standard Classification of Education (NZSCED)	The subject-based classification system for courses and qualifications at universities, Te Pūkenga, wānanga and private training establishments.
Performance-Based Research Fund (PBRF)	Funds research and research-based teaching on the basis of measured research quality in tertiary education organisations. Aims to increase or maintain the quality of research and research-based teaching and learning and to improve investment in research within the tertiary sector. The TEC administers the fund.
performance monitoring	The monitoring TEC carries out for the TEOs we fund.
private training establishments (PTEs)	Private training establishments can deliver foundation level programmes and qualifications, up to higher level post-graduate qualifications. PTEs are diverse in terms of mission, scale of operation, location, culture and educational subject area. PTES are not Crown entities.
programme of study	A collection of courses, classes or work in which a student enrols and that lead to meeting the requirements for one or more qualifications.
provision	Education or learning provided by a tertiary education organisation.
qualification	A course or suite of courses that together lead to the award of a qualification that is quality-assured and registered on the New Zealand Qualifications Framework (NZQF).
Reform of vocational education (RoVE)	The outcome is to introduce reforms aimed to create a strong, unified, sustainable system for all vocational education that delivers the skills that learners, employers and communities need to thrive.
Regional Skills Leadership Groups (RSLGs)	Groups established in 2020 as part of the programme to reform vocational education and support better ways of meeting future skills and workforce needs in our regions and cities.

Term	Description
Single Data Return (SDR)	An electronic collection of learner enrolment and completion information. Required by the Ministry of Education and the TEC for funding, monitoring performance, publishing performance information and statistical reporting purposes.
statement of service performance (SSP)	A report or group of reports that provides primarily non-financial information recording performance against specified objectives.
Student Achievement Component (SAC)	Government funding contribution or subsidy to the costs of teaching and learners and other costs driven by student numbers.
StudyLink	A division of the Ministry of Social Development (MSD) which administers Student Allowances, Student Loans and Jobseeker Support Student Hardship for people undertaking study.
tertiary education institution (TEI)	An institution established under s 268 of the Education and Training Act 2020. The Crown has an ownership interest in TEIs, which include Te Pūkenga, universities and wānanga.
Transitional industry training organisation (TITO)	As part of the reform of vocational education the role of TITOs will be partly absorbed by Te Pūkenga and its subsidiaries, with other functions transferring to the new WDCs.
Te Pūkenga	The role of Te Pūkenga is to provide or arrange, and support, a variety of education and training, including vocational, foundation, and degree-level or higher education and training across New Zealand, to conduct research, with a focus on applied and technological research, and to respond to and meet the needs of the regions and their learners, industries, employers and communities.
Tertiary Education Strategy (TES)	Sets out the Government's long-term strategic direction and its current and medium-term priorities for tertiary education. It is required under the Education and Training Act 2020.
TES priorities	The priorities set out in the Tertiary Education Strategy.
tuition fees	Fees charged to students for tuition by tertiary education providers; may differ across tertiary education institutions (TEIs) and within a TEI, and between domestic and international students.
university	A TEI defined under Section 268(d) of the Education and Training Act 2020 characterised by a wide diversity of teaching and research, especially at a higher level. It maintains, advances, disseminates and assists the application of knowledge, develops intellectual independence and promotes community learning.

Term	Description
Universities New Zealand Te Pōkai Tara (UNZ)	Responsible for the quality of university programmes, it administers a range of scholarships and represents the universities in the public interest, both nationally and internationally.
University Quality Audits	Five-yearly whole-of-institution audits carried out by the Academic Quality Agency for New Zealand Universities; focus on the ability of institutional processes to support each university's achievement of its specified outputs and outcomes.
wānanga	New Zealand's three wānanga provide quality education using Māori ways of teaching and learning, contributing towards the survival and wellbeing of Māori as a people. Wānanga also have a continuing role to play in re-engaging learners into education.
Workforce Development Councils (WDCs)	WDCs will enable industry leaders to work together to identify workforce needs and support the vocational education system and employers to meet those needs. WDCs are an important component of the reform of vocational education and provide the mechanism by which industry will take a lead in preparing its workforce for the needs of today and into the future.
Youth Guarantee (YG)	Provides fees-free tertiary places for eligible domestic students aged 16 to 19 years who are studying towards NCEA levels 1 or 2 or another qualification at levels 1, 2, or 3 on the New Zealand Qualifications Framework (NZQF).

The TEC's website has a more comprehensive glossary of terms.
TEC website – Glossary