

Te Pūkenga: The legal framework

Each Tertiary Education Institution (TEI) is a body corporate that is also a Crown entity. TEIs include Te Pūkenga – the New Zealand Institute of Skills and Technology, universities, and wānanga. Although Te Pūkenga subsidiaries are institutions, they do not have councils. Therefore, the following requirements do not apply to Te Pūkenga subsidiaries.

Being a council member

Term of appointment, how to manage conflicts, your duties as a member, and what you are liable for.

As a Council member, you need to be aware of...

- **Term:** Not more than four years ([section 323](#) of the Education and Training Act), although:
 - if your term expires before a successor is appointed, you continue to be a Council member until a successor's appointment takes effect;
 - you can resign as a Council member by giving a written notice to the chief executive of the institution ([section 339](#) of the Education and Training Act; [section 44](#) of the Crown Entities Act);
 - if you are an elected Council member, you can be removed by the Minister for just cause; otherwise, you can be removed by the Minister for any reason ([sections 37 and 38](#) of the Crown Entities Act).
- **Conflicts of Interest:** You must disclose any direct or indirect pecuniary interest you have in a matter being considered, or about to be considered, by the Council or any committee as soon as possible after the relevant facts come to your knowledge. That disclosure must be recorded in the minutes. You must not be present during the deliberations or take part in decisions relating to the matter unless the Council determines otherwise ([clause 8 of Schedule 11](#) of the Education and Training Act).
- **Individual Duties:** You have individual duties that are owed to the Minister and the Council, including to act in the interests of the institution as a whole, to not pursue your own interests at the expense of the Council's interests, to act with honesty and integrity, and to act in good faith ([section 339](#) of the Education and Training Act; [sections 53-57](#) of the Crown Entities Act).
- **Liability:** You are not liable for any liability of Te Pūkenga by reasons only of being a Council member. You have immunity from civil liability and can be indemnified for acts done or omitted, in good faith, and in performance or intended performance of the functions of Te Pūkenga or the Council ([section 339](#) of the Education and Training Act; [sections 120-126](#) of the Crown Entities Act).

Functions, duties and powers of a council

As a Council, you need to be aware of...

- **Functions:** The functions of the Council include:
 - the functions set out in [section 280](#) of the Education and Training Act (such as appointing a chief executive in accordance with the Public Service Act 2020, and monitoring and evaluating their performance; preparing and submitting a proposed plan (if seeking funding that requires a plan); and undertaking planning relating to the institution's long-term strategic direction); and
 - the functions set out in [section 315](#) of the Education and Training Act, such as providing, arranging, or supporting a variety of education and training; conducting research; improving the consistency of vocational education and training by using skill standards and working in collaboration with workforce development councils; and carrying out any other functions consistent with Te Pūkenga's role as an institution.
 The Council must also establish an academic board to advise the Council on academic matters, and exercise the powers that the academic board has been delegated ([section 324](#) of the Education and Training Act).
- **Council Duties:** The Council's duties are set out in [sections 49 to 52](#) of the Crown Entities Act (through [section 339](#) of the Education and Training Act). They include, for example, ensuring Te Pūkenga operates in a financially responsible manner that ensures the efficient use of resources and maintains its long-term viability. Members of Councils also have individual duties, as mentioned above.
- **Powers:** A Council has the powers that are reasonably necessary to enable it to perform its functions efficiently and effectively, with some exceptions. For example, in most cases the Secretary of Education must approve a sale or mortgage of assets, borrowing money, or leasing land or buildings for over 15 years ([sections 282 and 283](#) of the Education and Training Act). Te Pūkenga cannot disestablish itself and incorporate another institution ([section 283\(3\)](#) of the Education and Training Act).
- **Delegation:** A Council may delegate any of its functions and powers under the Education and Training Act to the chief executive, council members, committees or any other person approved by the Minister. The delegate may further delegate powers with prior written approval from the Council ([section 339](#) of the Education and Training Act; [sections 73-76](#) of the Crown Entities Act).
- **Statutes:** A Council may make statutes with respect to certain matters, including: good government and discipline; penalties; enrolment, courses and awards; and superannuation and benefits ([section 284](#) of the Education and Training Act).
- **Failure:** If a Council fails to fulfil its duties and functions, the institution may be considered to be an institution at risk. The chief executive of the TEC and the Minister can intervene in certain circumstances ([sections 329-338](#) of the Education and Training Act).

Operations of a council

As a Council, you need to be aware of...

- **Convening meetings:** The chairperson sets the place and time for the meeting. Three members can, through the chairperson, call a meeting. The Council cannot transact any business unless a majority of members are present. The chairperson has a casting vote on tied votes. Each Council can determine its own procedure for matters not covered in the Education and Training Act ([clause 16 of Schedule 11](#) of the Education and Training Act).
- **Notification of meetings:** Part 7 of the Local Government Official Information and Meetings Act 1987 specifies how Council meetings must be convened, and what documents must be available for public inspection in relation to each meeting (institutions are deemed local authorities for these purposes). Meetings must be open to the public unless certain circumstances apply. Resolutions passed at extraordinary meetings must be publicly notified.
- **Financial reporting:** Each Council must give an annual report and other documents to the Minister in accordance with the Crown Entities Act 2004 and [section 306](#) of the Education and Training Act.
- **Managing financial resources:** The Public Finance Act 1989 provides for the management of financial resources, and specifies accountability requirements. Each institution must invest in the same manner as the Treasury; must comply with the instructions issued by the Minister of Finance; and must comply with requests for information from the Secretary to the Treasury.

Public sector law

Other laws that apply to institutions and their Councils.

As a Council, you also need to be aware of the following laws...

- **Ombudsmen Act 1975:** The Ombudsman can investigate complaints about administrative acts, decisions or omissions of a Council or a Council member, and about access to official information.
- **Official Information Act 1982:** An institution must disclose official information it holds when requested, unless there is a good reason in the Official Information Act for withholding the information.
- **Protected Disclosures (Protection of Whistleblowers) Act 2022:** An institution must have a protected disclosures policy. A whistle-blower must follow the policy unless the whistle-blower considers that the head of the institution is involved in the serious wrongdoing.
- **Privacy Act 2020:** An institution must comply with the 13 privacy principles in [section 22](#) of the Act. A person can complain to the Privacy Commissioner if they believe that an institution has interfered with his or her privacy.
- **Administrative law:** Some Council decisions may be subject to judicial review. Decisions must be made according to law, fairly, and reasonably.
- **Health and Safety at Work Act 2015:** A guiding principle of the Act is that workers and others need to be given the highest level of protection from workplace health and safety risks, as is reasonable. Council members must do due diligence to make sure the institution understands and is meeting its health and safety responsibilities.