

**SUBMISSION TO THE
EDUCATION AND SCIENCE COMMITTEE
ON THE
EDUCATION (POLYTECHNICS) AMENDMENT
BILL 2009**

BY

NZ ITP

*(A peak body working for 14 Institutes of Technology and
Polytechnics)*

29 SEPTEMBER 2009

INTRODUCTION

This submission is from a peak body representing 14 ITPs

1. This submission is from NZ ITP, the peak body established to provide advocacy services for 14 Institutes of technology and polytechnics (hereon referred to as polytechnics). Further information about NZ ITP is provided in Annex 1.
2. This submission has been authorised by the Board NZ ITP, following consultation with polytechnics. Our submission addresses a small number of core issues that are of concern across the polytechnic sector. Individual polytechnics will variously comment in more detail on these issues and also raise others that may be of more specific or individual concern.
3. We wish to be heard in person before the Education and Science Committee in support of this submission, and will be represented by James Buwalda (Chair) and Dennis Sharman (Director).

We generally support the public policy objectives for this Bill

4. We recognise the challenges facing polytechnics as the funding environment becomes increasingly constrained, and therefore support the public policy objectives for this Bill:
 - To improve the governance capability and effectiveness of polytechnic Councils; and
 - To allow the Crown to more effectively respond to the risks posed by polytechnics with educational and financial performance issues.
5. We further recognise the Government's intent to achieve more value from the polytechnic sector in a constrained funding environment, by lifting the overall level and quality of educational outcomes, and focusing more on the learning needs of young people. Good governance will be critical to ensure polytechnics can perform sustainably and deliver educational value to the communities they serve. Performance information should be used actively to identify and address risks in a timely way.
6. However, we see no reason why these objectives should apply differentially to polytechnics, rather than similarly to all Tertiary Education Institutions (TEIs).

Our submission recommends changes so these objectives can be better achieved

7. We believe the Bill can be significantly improved to better achieve its public policy objectives. Overall, we want to improve the Bill so that it can apply to all TEIs, in turn leading to improved governance capability and effectiveness and more effective Crown interventions across the whole tertiary education sector.
8. Our submission therefore focuses on amendments to strengthen the Bill. We highlight inconsistencies, omissions and risks of unintended consequences. In summary, we recommend:

- Substituting the word “Institution” for the word “Polytechnic” throughout, so the Bill applies similarly to all TEIS, rather than discriminating against polytechnics;
 - Increasing the number of Council members nominated by the community served by the polytechnic, allowing Councils to allocate at least one of these increased places for Maori, requiring the Minister to consult with the polytechnic and its communities before appointing members, and enabling Councils to elect the Chair and Deputy Chair;
 - Inserting an “avoidance of doubt” clause to ensure new provisions remain consistent with on-going commitments to protect and enhance institutional autonomy and academic freedom, and limiting new interventions to managerial and administrative actions;
 - Ensuring Councils include no more than two members who are also members of another Council, no Council member may serve on more than two Councils, and the purpose of any voluntary combination of Councils is limited to governance capability and processes; and
 - Graduating the interventions framework, starting with information and support for Councils to respond to emerging risks, before expressing a loss of confidence in a Council through the imposition of a Crown manager, and requiring criteria for interventions to be transparently defined and applied.
9. Our submission includes a strong focus on protecting and reinforcing the value of polytechnics, particularly in their contributions to building skilled communities. We therefore start with a brief commentary on this contribution, to provide a point of reference for evaluating the impacts of the Bill’s proposals as well as our own submissions on these proposals. Our substantive submission then:
- Challenges the proposed discrimination against polytechnics, suggesting instead that the Bill’s proposals should apply to all TEIs;
 - Reinforces the strong ownership and governance interests of the communities served by polytechnics;
 - Highlights risks to institutional autonomy and academic freedom, and how these risks could be mitigated;
 - Proposes limits on multi-Council appointments and voluntary combinations, to protect linkages between polytechnics and the communities they serve; and
 - Suggests changes to the proposed intervention mechanisms, so they complement rather than conflict with the proposals for strengthening governance.

THE DISTINCTIVE CONTRIBUTION AND VALUE OF THE POLYTECHNIC SECTOR

Our distinctive focus is on building skilled communities

10. Polytechnics build skilled communities throughout New Zealand, by providing relevant, high-quality and innovative vocational education and training. Polytechnics' key strength is links with their communities and regions. The relevance and value of vocational education and training therefore depend strongly on aligning polytechnic courses with the interests and needs of the polytechnic's communities, while also meeting nationally recognised performance standards. Links with employers are a critical feature, giving students access to work experience opportunities and industry-standard equipment, while also giving tutors on-going access to industry practice.
11. New Zealand's 20 polytechnics have students learning at sites from Kataia to Invercargill, or through distance learning. The sector includes large urban polytechnics and smaller rural and/or specialised polytechnics supporting regions with varied needs.

We enrol more adult learners than any other part of the tertiary education sector

12. We equip students with the skills needed to develop strong careers, not just job-specific skills. With more than 200,000 New Zealanders enrolled, polytechnics are the most popular place for adults to learn. Polytechnics prepare the heart of the future work-force, with students of all ages enhancing their productivity in the workforce and developing new skills and knowledge to apply to real-life situations. Many learners want specific skills linked to their immediate personal and labour market needs.
13. Polytechnics are open to all, providing access to those new to tertiary education and customised training to those seeking to top up their skills. Nearly two-thirds of learners enrolled at polytechnics have been in employment before they study, and more than one-quarter had no prior qualification. Polytechnics are the prime location for students to develop foundation skills to open up future opportunities.
14. Small classes, convenient locations, flexible delivery and a diverse student body make polytechnics approachable and accessible. Programmes ranging from foundation skills to post-graduate study all share a vocational orientation and are all delivered to an international standard.

THE BILL SHOULD APPLY TO ALL TERTIARY EDUCATION INSTITUTIONS – NOT JUST POLYTECHNICS

15. **We recommend amending the Bill to:**

- **Substitute the word “Institution” for the word “Polytechnic” throughout.**

16. We believe the public policy objectives for this Bill (improving governance capability and effectiveness, and allowing the Crown to more effectively respond to risks associated with educational and financial performance issues) should apply to all tertiary education institutions, rather than polytechnics alone.

No clear evidence has been presented to justify discrimination against polytechnics

17. Notwithstanding the explanatory note to this Bill, asserting that the “polytechnic sector faces particular educational and financial challenges”, we are not aware of any evidence justifying discriminatory treatment of polytechnics as a class of institution, as proposed by this Bill.

18. Principles of strong and effective governance should apply to all TEIs, just as they apply broadly to wide ranging organisations in the public and private sectors. There is no obvious reason why building the capability for decisive and responsive decision making should therefore apply to polytechnics alone.

19. A Government review in 2007¹ specifically noted that it is important to ensure that government has the statutory power to respond where it identifies serious risks, regardless of the type of institution. This review further noted that, although the government had so far only used the statutory interventions to respond to identified risks in polytechnics or wananga, that did not mean that other TEIs – such as universities – have not triggered risks at levels one or two of the risk criteria.

All TEIs should be similarly treated on merit

20. We believe it is wrong to legislate, without clear evidence or consultation, for discrimination against polytechnics as a class of institution, by imposing greater control, easier interventions, and different performance standards than for other TEIs. While some individual polytechnics have got into difficulty, the performance of the sector as a whole should not be confused with these individual results. All TEIs should be similarly treated on merit, rather than discriminated on the basis of category. The Bill’s focus on polytechnics implies a prejudice that, as a class of institution, polytechnics are suspected of lower competence.

¹ Minister of Tertiary Education, 2007: Review of the Operation of the Tertiary Education Institutions at Risk Legislation, Sections 195A to 195F of the Education Act 1989. Presented to the House of Representatives pursuant to section 195G(c) of the Education Act 1989.

STRONG COMMUNITY INVOLVEMENT SHOULD BE AN INTEGRAL PART OF GOOD GOVERNANCE

21. **We recommend amending the Bill to:**
- **Increase the number of Council members nominated by the community served by the polytechnic, and allow Councils to allocate at least one of these increased places for Maori;**
 - **Require the Minister to consult with the polytechnic and its communities before appointing members; and**
 - **Enable Councils to elect the Chair and Deputy Chair.**
22. These recommendations are consistent with Section 181(b) and (c) of the Education Act 1989, which require Councils to:
- Acknowledge the principles of the Treaty of Waitangi; and
 - 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.
23. Section 222AA should therefore be amended so the numbers appointed by the Minister and drawn from the community are balanced, thereby recognising the ownership interests of the polytechnics' communities. This could be achieved by increasing the number of members nominated by the community (and appointed by the council) to at least 3 and preferably 4.
24. Section 222AC should be amended so that the Minister, before making appointments, is required to consult with the polytechnic and the community it serves to seek advice on the skills and experience required to strengthen Council performance and effectiveness. Section 222AC should also be amended, to replace the word "but" with the word "and" at the end of clause 2(a), thereby removing the implication that Maori and people reflecting the ethnic and socio-economic diversity of the community served by a polytechnic may not have enough experience of governance.
25. Section 222AF should be amended, so the Council elects a Chair and Deputy Chair.

The community served by each polytechnic has a legitimate governance interest

26. We believe the Bill's provisions are inconsistent with its public policy objective of improving governance capability and effectiveness. Specifically, the Bill's provisions limit the extent to which Council governance can be informed and supported by the polytechnics' communities.
27. The value of vocational learning provided by each polytechnic depends strongly on its relevance to the needs of learners in the community it serves. These needs will vary

significantly from one polytechnic to the next, reflecting demographic, business and other community differences.

28. These community interests are different in character from the Crown's interests, but this does not reduce their significance. The quality of governance will therefore reflect how well such community interests are understood and considered, so partnership between the Crown and the community served by each polytechnic should be a core governance principle.
29. However, the Bill places only limited value on community interests in the constitution and expectations of polytechnic Councils. By reducing the involvement, support and commitment from polytechnics' communities, the Bill's proposals could seriously undermine the character and value of vocational education and training delivered.
30. Our recommended changes to the Bill should therefore ensure that governance mechanisms reflect the Crown and polytechnics' communities working in partnership, to strengthen the alignment of vocational education and training provided by each polytechnic to the needs of the community each respectively serves.

Strengthening governance need not mean losing representativeness

31. The explanatory notes for this Bill endorse the principle of representativeness in relation to Council constitution, reflecting the unique context within which polytechnic Councils operate. We note that the Bill states that *it is desirable in principle* that polytechnic Councils should include Maori and reflect the ethnic and socio-economic diversity of the community it serves (Section 222AC). However, other provisions could collectively limit the extent to which this will be achieved in practice. For example, provisions permitting multi-institution appointments (by the Minister) and voluntary combination (of two or more polytechnic Councils) will tend to limit the extent to which appointments can specifically reflect the community of each polytechnic.
32. There is no fundamental reason why Council members appointed from nominations made by the community served by a polytechnic cannot also bring strong governance skills. The Bill, as currently drafted, implies that people nominated by polytechnics' communities are unlikely to have enough governance experience. We agree that governance skills and experience are important, but don't believe this should preclude more community nominees being appointed to each polytechnic Council.

The Bill overlooks the constrained roles of the CEO and the staff and student representatives

33. We endorse the change proposed in Section 222AG (1) (a) (ii) of this Bill, requiring all Council members to act in the interests of the polytechnic as a whole, as this is a core governance principle. However, we don't believe this new provision will work consistently with the constitution of Councils also proposed in this Bill.

34. Independence is generally a core requirement for Council members to act in the interests of the polytechnic as a whole. Employees – such as the CEO and the staff representative – cannot be independent and therefore may not be able to make a full contribution to governance. As a “client” of the polytechnic, the student representative is similarly constrained.
35. Reserving three (out of eight) positions on a polytechnic’s Council for the CEO and staff and student representatives is therefore inconsistent with the public policy objective for this Bill of improving governance capability and effectiveness. In reality, the Bill proposes Councils with only 5 independent members, of whom 4 are to be appointed by the Minister. We therefore believe that the assertion (in the Explanatory note for the Bill) that the Minister of Tertiary Education is appointing fifty per cent of members understates the actual level of “control” that may be exercised by the four Ministerial appointments on each polytechnic Council.
36. We recognise the value of staff and student perspectives for polytechnic Councils, particularly in line with the commitment to educational performance and outcomes. However, we believe it is inappropriate to assume that staff and student representatives can bring the same independence and make the same governance contribution as is expected from members appointed by the Minister and the community served by a polytechnic.

Strong Ministerial control could alienate polytechnics’ communities

37. The 4:1 ratio of Ministerial and community appointments to the polytechnic Council therefore skews final control very strongly towards the Crown. This in turn could isolate, if not alienate the polytechnic s’ communities.
38. Isolating or alienating the polytechnic s’ communities could undermine both the educational relevance and value of a polytechnic’s programmes. The community served by a polytechnic can contribute significantly to the design and delivery of the polytechnic’s programmes, but such contributions will usually depend on a sense of “ownership” of the polytechnic by the community it serves. The community served by a polytechnic is extremely unlikely to feel genuinely involved in governance where it is able to contribute only one member to the Council.

Proposals for the Minister Crown to appoint the Chair/Deputy Chair inappropriately extend the level of Crown control

39. The Bill’s proposal that the Minister should have the power to appoint and remove the Chair and Deputy Chair would add a new level of Crown control over the governance of polytechnics. Furthermore, this proposal is at odds with principles of good governance – whereby members of a governing Board should themselves elect the Chair/Deputy Chair.

PROTECTION OF INSTITUTIONAL AUTONOMY AND ACADEMIC FREEDOM MUST CONTINUE

40. **We recommend amending the Bill that so that it does not conflict with or undermine institutional autonomy and academic freedom, by:**
- **Inserting an “avoidance of doubt” clause; and**
 - **Limiting new interventions to managerial and administrative actions (and excluding academic actions).**
41. These recommendations are consistent with Section 161 of the Education Act 1989, which states that *“it is the intention of Parliament that academic freedom and the autonomy of institutions are to be preserved and enhanced”*.
42. A new Section 222F should be added, confirming that nothing in Sections 222A to 222E should conflict with or undermine institutional autonomy and academic freedom. This new section would have the effect of confirming that new interventions can only be applied in a way that continues to preserve and enhance academic freedom and institutional autonomy.
43. Sections 222A to 222C should be amended by including a new clause, in each of these sections, specifying that the notice given by the Crown (the Tertiary Education Commission in Sections 222A and 222B, and the Minister in Section 222C) must state that the intervention must be limited to managerial and administrative actions. This would have the effect of precluding intervention on academic matters.

Strengthening the Crown’s capability to control the operations of a polytechnic could undermine academic freedom and institutional autonomy

44. The bill proposes significantly strengthening the Crown’s capability to control the operations of a polytechnic, through a combination of Council appointments (including Chair and Deputy Chair) and interventions (including the requirement to take on specialist advice, and the right to appoint a Crown Manager).
45. Crown control must be limited to managing risks to educational and financial performance. It should not curb *the independence and freedom to make academic, operational and management decisions consistent with the nature of services provided, the efficient use of resources, and the national interest, and the demands of accountability* (Section 160, Education Act 1989). We are particularly concerned that new provisions (Sections 222A to 222D) apply to polytechnics only, thereby implying the risk profile for polytechnics, as a class, is fundamentally different from the profile for other classes of TEI (i.e. universities and wananga). We have seen no evidence to support a specific focus on polytechnics as a category, rather than treating all TEIs similarly on their merits.
46. The Bill’s proposals do not include an objective or transparent basis for applying new intervention provisions targeted at education performance. This means there is a significant

danger that different and arbitrary standards for determining risk, and therefore thresholds for intervention, will be applied to polytechnics, relative to those applying to other TEIs.

47. The Bill's provisions could allow Crown interventions (e.g. the imposition of a Crown Manager) to undermine academic freedom. The danger could be reduced by limiting such impositions to managerial and administrative actions, and excluding academic actions.

Institutional autonomy and academic freedom strengthen the performance and value of polytechnics

48. Institutional autonomy and academic freedom are vital for enabling a polytechnic to design and deliver courses and programmes that align with the needs of its learners and communities. At the same time, this autonomy and freedom enable innovation within individual polytechnics and across the sector as a whole, as polytechnics respond to changing needs and opportunities over time.

RATIONALISATION TO STRENGTHEN GOVERNANCE AND VIABILITY MUST NOT COMPROMISE CRITICAL LINKS WITH COMMUNITIES

49. We recommend amending the Bill so that:

- Councils may include no more than two members who are also members of another Council;
- No Council member may serve on more than two Councils; and
- The purpose of any voluntary combination of Councils is limited to governance capability and processes.

50. These recommendations are intended to limit the extent to which multi-Council appointments and voluntary combinations over-ride the critical focus on the needs of the community served by each polytechnic. It also retains the diversity of governance needed to protect the viability, integrity and performance of the sector as a whole.

51. We recognise the potential merit of appointing competent people to the Councils of more than one polytechnic, in order to ensure the skills and experience of such people can be applied as broadly as possible. Such multi-Council appointments could also provide the impetus for identifying and developing operational linkages between polytechnics that lead to quality improvements and/or cost-efficiencies.

52. These benefits from multi-Council appointments however need to be balanced against risks of losing valuable linkages and limiting the diversity of governance skills and experience.

Multi-Council appointments could adversely limit the number of people involved in polytechnic governance

53. The Bill's proposals make it technically possible for the Minister to appoint one group of four people to all polytechnic Councils. While we recognise this is an extreme and unlikely outcome, we nonetheless believe the legislation should be specified in a way where such an outcome is simply not possible.

54. We recognise that reduced diversity may be an inevitable consequence of using a limited pool of appropriate skilled and experienced people as widely as possible. However, this loss of diversity also creates a risk that poor performance by one or more people with multi-Council appointments will adversely affect the performance, integrity and viability of more than one polytechnic and potentially the sector as a whole.

Multi-Council appointments could weaken the governance focus on community interests for each polytechnic

55. We further submit that the extent of multi-Council appointments should be limited to a level where the specific interests of the community served by each polytechnic cannot be blindly

over-ridden by the pursuit of generic interests. We recognise that Section 222AG requires all members to act in the interests of the polytechnic as a whole, but doubt that this provision on its own can ensure the specific interests of a polytechnic will not become subservient to a generic interests represented by multi-Council members.

Voluntary combinations should not undermine education outcomes for the communities served by respective polytechnics

56. The processes outlined (Sections 222AJ to 222AL) are focused mainly on the constitution of Councils. It may therefore be inferred that the main intent of this part of the Bill is to achieve efficiencies in Council constitution (and hence governance activity). Indeed, Section 222AL specifies that the combination of any two or more polytechnic councils does not affect the individual status, identity or character of the polytechnics concerned.
57. While the Bill outlines the process that must be followed before a Minister may combine the Councils of two or more polytechnics, it does not define the outcome sought through such voluntary combination. To confirm that the intent of this part of the Bill is indeed limited to the constitution (and hence governance activity) of Councils, it would be constructive to state this explicitly in the Bill.
58. As currently drafted, the Bill's proposals for voluntary combination could indeed lead to *de facto* mergers of institutions:
 - The Duties of Councils (Section 181, Education Act 1989) mean that a combined Council must operate each institution efficiently and to attain the highest standards of education at each institution. Hence the combined Council must avoid duplication of expenses and must consolidate courses where this would lead to financial benefits or improved education standards overall. This will inevitably undermine the individual status and identity of each institution.
 - The combined Council will lose members who were originally part of the individual Councils, and will gain members to represent the combined entity. This will further undermine the individual status and identity of each polytechnic. Accordingly, the ability for a polytechnic to exit the combined Council arrangement will decrease over time, as equal representatives from each polytechnic will not be retained.
59. If the Bill's proposals for voluntary combination are indeed intended to allow mergers, the process for combining Councils needs to be improved to match the process for merging institutions (as defined by Part 14, Education Act 1989).
60. We are concerned that voluntary requests to merge Councils and/or academic boards (Sections 222AJ and 222AP) could be controlled by Ministerial appointees to the Council, without support from the communities served by each of the polytechnics concerned. We therefore believe such requests should require a super majority (e.g. 75%) of Council, rather than the simple majority proposed.

ENHANCED INTERVENTIONS SHOULD COMPLEMENT (RATHER THAN CONFLICT WITH) GOOD GOVERNANCE

61. We recommend amending the Bill so that:
- The interventions framework is graduated, starting with information and support for Councils to respond to emerging risks, before expressing a loss of confidence in a Council through the imposition of a Crown manager; and
 - Credible criteria for interventions are transparently defined and applied.
62. These recommendations are consistent with the public policy objectives of improving governance capability and effectiveness and allowing the Crown to more effectively respond to risks.
63. A new section should be inserted before Section 222A, requiring the Tertiary Education Commission to work collaboratively with Councils, by alerting them to emerging risks, providing advice and support to help Councils decide what needs to be done to address such risks, and to strengthen Council capability for managing and mitigating such risks.
64. Section 222D should then be amended, to require these pre-intervention mechanisms to be used before any formal interventions are undertaken, and to clarify that the existing intervention mechanisms and those proposed in the Bill should be used only after objective and transparent criteria relating to each mechanism have been met. This will ensure that the intervention proposed is commensurate with the risk faced by an individual polytechnic.
65. Clause 14 of the Bill should be amended to require risk criteria for intervention on the basis of education performance of students to be determined and then published (in the *Gazette*), following consultation with polytechnic Councils. This would ensure objectivity and transparency commensurate with provisions currently applying to risk assessment of TEIs (Section 195A, Education Act 1989).

The proposed interventions address Government perspectives only, and do not address perspectives identified by other stakeholders

66. This Bill proposes a strengthened set of interventions so the Crown can respond earlier and more actively to risks posed by polytechnics with educational and financial performance issues. Such interventions should complement, rather than conflict with, good governance.
67. The 2007 review of the review of the operation of the TEIs at risk legislation (cited earlier in this submission) outlined Government and stakeholder perspectives. The enhanced intervention provisions in this Bill address the Government perspectives only, giving the Crown greater ability to:
- Intervene at an earlier stage;
 - Intervene for educational reasons;

- Intervene to respond to risks relating to governance and management; and
 - Appoint a commissioner in a timely manner.
68. The Bill does not however address perspectives identified in the 2007 review by other stakeholders, including the need for:
- Government taking a more collaborative approach to interventions;
 - Greater awareness of the disruption that interventions represent to institutions;
 - Clearer understandings about the interventions framework across the tertiary education sector; and
 - Greater consultation with institutions on assessing risk.

The Crown should support Councils as they respond to educational and financial performance issues

69. The intervention framework should include a new mechanism focused on ensuring the Crown provides effective and timely advice and other support to institutions. The effectiveness of Councils will normally be enhanced where they receive early advice about emerging educational and performance issues. The Crown's extensive monitoring of educational and financial performance across the tertiary education sector places it in a privileged position to identify such performance issues. This in turn should place on the Crown an obligation to ensure Councils are informed in a timely way of educational and performance issues, so Councils can respond appropriately within their governance accountability.
70. The intervention framework should specify a collaborative approach, with a core focus on the Crown supporting institutions to respond to identified risks (rather than simply imposing an external intervention on the institution). The application of statutory interventions can be very disruptive to the institutions affected and indeed can add to the risks where, for example, prospective students may be discouraged by adverse publicity and/or additional expenses incurred by the appointment of specialist help or a Crown manager.
71. This collaborative approach should enable Councils to strengthen their governance capability and effectiveness over time, and minimise disincentives for capable people to service on Councils. This will be particularly important in an increasingly constrained funding environment, as Councils face new and greater challenges for ensuring long-term viability and providing high-quality and relevant vocational education and training.

Statutory interventions imply a loss of confidence in the Council

72. Good governance includes timely management and mitigation of risks, such as those posed by educational and financial performance issues. The Crown can legitimately expect Councils to address such issues in order to manage and mitigate risks posed, and monitor the Council's performance accordingly.

73. Where the Crown requires an institution to seek specialist help or imposes a Crown manager, it is essentially over-riding the normal governance authority and accountability of the Council. Such interventions therefore imply a loss of confidence in the Council (including its Ministerial appointees). By imposing such interventions, the Crown has essentially taken over control of the institution and becomes fully accountable for the future educational and financial performance. This is clearly a major step, and so should be taken only where the Crown is certain the Council (including the Ministerial appointees) is unable to respond appropriately to risks in a less disruptive way.

The approach to interventions should therefore be graduated

74. A graduated approach to interventions should give the Crown more scope to support Councils to respond to risks posed by educational and financial performance issues, before needing to resort to sanctions that imply a loss of confidence in the Council. This graduated approach should progress through the following key steps:

- Information – ensuring the Council is alerted to emerging risks posed by educational and financial performance issues.
- Advice and support – taking a collaborative approach in helping the Council identify what needs to be done to address risks posed by educational and financial performance issues (which could include recommendations to take on specialist help and develop performance improvement plans);
- Council capability – ensuring the Council has people with the skills and experience needed to address risks posed by educational and financial performance issues (including training and development for Council members and/or replacing Ministerial appointees with people with more appropriate skills and experience); and
- Removal – e.g. appointing a Crown manager to take over some or all of the functions of the Council.

75. The success of such a graduated approach will be critically dependent on timely decisions about moving from one step to the next. This in turn will depend on the Crown maintaining a risk assessment profile for each institution, alerting Councils of emerging risks in time to respond before more drastic action is necessary, and providing regular assessments and feedback regarding the effectiveness of their responses.

The integrity of interventions will depend on credible, transparent criteria

76. The framework for risk assessment (Sections 222A to 222D) proposed in this Bill goes beyond the “operation and long-term viability of institutions” (as defined in Section 195A to 195F of the Education Act 1989), to include the “education performance of the students at a polytechnic”. Clearly defined performance standards will be necessary, to ensure the thresholds for intervention are transparent and that they are applied objectively and consistently.

77. However, the Bill does not require transparent definition (e.g. by gazetting) of criteria for assessing the level of risk. We recommend that the Crown should be subject to the same obligations in respect of any new areas of risk assessment as apply currently for assessing risks for all TEIs. Specifically, this means that:
- The Secretary of Education must, after consulting with polytechnic councils, determine criteria for assessing the level of risk to the education performance of students at the polytechnic;
 - Publish these criteria in the *Gazette*; and
 - Criteria determined must be reviewed at least once in every 2 years following the date of their publication in the *Gazette*.
78. While comprehensive and appropriate measures for educational performance in the polytechnic sector are still being developed, there is a risk that the assessment of risk could refer excessively and/or inappropriately to financial performance. It would therefore be prudent to exercise a cautious approach to the application of any new intervention powers until such measures are better developed.

Placing investment, monitoring and intervention responsibilities in one Crown agency is risky

79. There are some risks associated with the Bill's proposals to place authority for identifying the need for, and then implementing interventions with the TEC. There is no doubt that the TEC will have extensive monitoring information available. But the TEC's funding/investment role in an increasingly constrained funding environment means it may seriously conflicted when it comes to assessing risks associated with such funding/investment decisions.
80. In a constrained funding environment, the TEC's investment decisions in respect of any institution are likely to significantly affect the performance and viability of that institution. The effectiveness of governance will therefore increasingly reflect the way institutions respond to such effects (rather than the short-term performance results). The agency implicitly setting such performance challenges for a Council will lack the independence to objectively assess the effectiveness of the Council's response.
81. Good practice would normally involve separating government roles in funding and performance monitoring of Crown institutions. The Bill should therefore specify a crown agent independent of its investment agent to be assigned responsibility for assessing risk and determining the level and nature of intervention needed.

ANNEX ONE

FURTHER INFORMATION ON NZ ITP

NZ ITP is the trading name of Skills for NZ Ltd

NZ ITP is the trading name of Skills for NZ Ltd, a company established to provide advocacy services for 14 institutes of technology and polytechnics (ITPs). These ITPs are:

Aoraki Polytechnic, Bay of Plenty Polytechnic, Eastern Institute of Technology, Nelson Marlborough Institute of Technology, NorthTec, Southern Institute of Technology, Tai Poutini Polytechnic, Tairāwhiti Polytechnic, Telford Rural Polytechnic, The Open Polytechnic of New Zealand, Universal College of Learning, Waiariki Institute of Technology, Western Institute of Technology at Taranaki, Whitireia Community Polytechnic.

The company structure involves institutions as shareholders and a Board of 5 Directors with overall authority for managing the operations of the company. This structure provides clear authority for operations and accountability to shareholders.

NZ ITP has a Board of five directors – James Buwalda (Independent Chair), Pim Borren (CEO, Waiariki Institute of Technology), Paul McElroy (CEO, Universal College of Learning), Dennis Sharman (Chair, Whitireia Community Polytechnic) and Penny Simmonds (CEO, Southern Institute of Technology).

NZ ITP does not represent all ITPs

NZ ITP provides advocacy services to 14 of New Zealand's 20 ITPs. As such it is the largest peak body carrying out advocacy for the ITP sector.

In June 2009, the 20 ITPs split into two groups for advocacy purposes. The group of 14 represented by NZ ITP have continued to work collectively on a range of issues related to the quality, value-for-money and relevance of vocational education and training across New Zealand. This group has chosen to work through a formal structure, including a constitution and annual subscriptions. The other 6 have decided to work as a virtual group, with no subscriptions or constitution, focusing on projects related to common interests of large ITPs.

All 20 ITPs continue to work together on quality assurance

All 20 ITPs continue to work collaboratively on quality assurance.