

# TEIs: The legal framework.

**To operate as a Council, each member must be aware of:** the law that affects them as a member, the Council's legislative functions, duties and powers, how the Council must operate, and the statutory context in which the Council operates.

An institution is a Crown entity that consists of its governing body, the chief executive, the teaching staff, the graduates and students, and such other people as the governing body may determine.

## 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...

- **Appointment:** A member is appointed in accordance with section 171 of the Education Act 1989 (or sections 222AA-222AD in the case of an ITP), and the TEI's constitution.
- **Term:** Generally 4 years, student members 1 year (section 173 of the Education Act) although:
  - you can resign as a Council member by giving a written notice to the CEO of the TEI (section 174(1) of the Education Act);
  - you can be dismissed by the Council in certain circumstances (section 174(3) of the Education Act); and
  - you can be removed by the Minister for just cause if you are a member of an ITP Council (section 222AJ of the Education Act).
- **Conflicts of Interest:** You have an interest in a matter that relates to your conditions of service as a TEI staff member, or any other direct or indirect pecuniary interest that relates to you. You must disclose the conflict of interest as soon as possible after the relevant facts come to your knowledge, and record the disclosure in the minutes. You must not be present during the deliberations of the matter, or take part in decisions relating to the matter, unless the Council determines otherwise (section 175 of the Education Act).
- **Duties:** If you are a member of an ITP Council, you have individual duties that are owed to the Minister and the Council (section 222AI of the Education Act).
- **Liability:** You are not liable for acts done or omitted, in good faith, and in the pursuance or intended pursuance of the functions of the TEI or Council (section 183 of the Education Act).
- **Disqualification:** You cannot be a Council member if the total payments made by or on behalf of the Council for all contracts made by it in which you are concerned or interested exceed \$25,000 in any financial year (Local Authorities (Members' Interests) Act 1968).

## FUNCTIONS, DUTIES AND POWERS OF A COUNCIL

The Council's functions, powers, and duties.

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

- **Functions:** The functions of a Council, as set out in section 180 of the Education Act include:
  - appointing a chief executive in accordance with Part 7B of the State Sector Act 1988, and monitoring and evaluating his or her performance;
  - preparing and submitting a proposed plan (if seeking funding that requires a plan); and
  - undertaking planning relating to the TEI's long-term strategic direction.The Council must also establish an academic board to advise the Council on academic matters, and exercise the powers that it has been delegated (section 182 of the Education Act).
- **Duties:** A Council's duties are set out in section 181 of the Education Act. Those duties include, for example, ensuring the TEI operates in a financially responsible manner that ensures the efficient use of resources and maintains the TEI's long-term liability.
- **Powers:** A Council has the power that is reasonably necessary to enable it to perform its functions efficiently and effectively. The powers specified in section 193 of the Education Act can only be exercised by the Council (unless delegated).
- **Delegation:** A Council may delegate any of its functions and powers under the Education Act to the Chief Executive of the TEI, or to a committee. The Chief Executive or the committee may delegate powers to staff members with prior written approval from the Council, or at least 2 members of the committee (section 222 Education Act).
- **Statutes:** A Council may make statutes for: good government and discipline; penalties; elections of staff members of Council; enrolment, courses and awards; and superannuation and benefits (section 194 of the Education Act).
- **Failure:** If a Council fails to fulfil its duties and functions, the TEI may be considered to be an institution at risk. The Chief Executive of the TEC and the Minister can intervene in certain circumstances (sections 195B-195D, and in relation to ITPs, also sections 222A-222C of the Education Act).

## OPERATIONS OF A COUNCIL

How a Council must operate.

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

- **Convening meetings:** Section 178 of the Education Act sets out how a Council must convene each meeting. For example, the chairperson sets the place and time for the meetings, and the Council cannot transact any business unless a majority of members are present. Each Council can determine its own procedure for matters not covered in the Education 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. 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 220 of the Education Act.
- **Managing financial resources:** The Public Finance Act 1989 provides for the management of financial resources, and specifies accountability requirements. Each TEI must invest in the same manner as Treasury. A TEI also must comply with the instructions issued by the Minister of Finance (section 81 of the Public Finance Act 1989) and comply with a request for information received from the Secretary to the Treasury.

## PUBLIC SECTOR LAW

Other legislation that applies to 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 access to official information.
- **Protected Disclosures Act 2000:** Each TEI must have a protected disclosures policy. A whistle-blower must follow the policy unless the whistle-blower considers that the head of the TEI is involved in the serious wrongdoing.
- **Privacy Act 1993:** A Council must comply with the 12 privacy principles in section 6 of the Act. A person can complain to the Privacy Commissioner if he or she believes that a Council 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.