# Governance Review of Te Pūkenga – New Zealand Institute of Skills and Technology

## Executive Summary

1. The bringing together of Institutes of Technology and Polytechnics (ITPs) and Industry Training Organisations (ITOs) to create a single vocational and higher education organisation that places learners at the centre while upholding Te Tiriti o Waitangi is one of the single most significant changes in education in New Zealand in the last 30 years. Executing this important transformation requires the skilled and engaged guidance of Te Pūkenga Council. To this end, the Chair asked the reviewers to examine existing governance arrangements and practices with a view to assessing their conformity with good practice, fitness for purpose, and operational effectiveness.

2. We found a Council of dedicated Councillors, under the experienced guidance of the Chair and Deputy Chair, who are faced with a complex task and the significant workload needed for a start-up enterprise. They have already made significant progress in setting up Te Pukenga. Governance arrangements are generally meeting the requirements of good governance, but the reviewers have recommended some areas for improvement.

## Introduction

3. In its Transitional Statement of Intent 2021 – 2024 (dated 4 February 2021), Te Pūkenga committed to having external reviews of its governance arrangements to ensure that they were high-performing. This objective of the review, was to ensure that the effectiveness of Te Pūkenga governance arrangements is optimised.

4. There have been two external reviews:

    a) In August and September 2021, the first phase of reviews was undertaken by the Institute of Directors providing external governance review reports on Te Pūkenga subsidiary Institute of Technology and Polytechnic (**ITP**) boards and their Chairs along with Te Pūkenga Council and Chair; and

    b) On 16 December 2021, for the second phase of the reviews, Dame Karen Sewell and Belinda Clark (the reviewers) were appointed to conduct an external governance review of Te Pūkenga. The scope of the review, as set out in the terms of reference (see **Appendix 1**), included providing a report on the governance framework as to:

        i) Operational effectiveness and areas for improvement;

        ii) Alignment with good practice for governance; and

        iii) Fitness for purpose.

5. Note the following governance bodies are out of scope for this Governance Review:

    a) The Board of Directors of each Subsidiary ITP; and

    b) The Board of Directors of Te Pūkenga Work Based Learning Limited (WBL).

## Approach

6. The reviewers were provided with background information on the foundation of Te Pūkenga including the Charter, the Minister's Letter of Expectations, the Transitional Statement of Intent 2021 – 2024 and Te Pūkenga Governance Framework.

7. The reviewers held interviews with a range of stakeholders (see **Appendix 2**).

8. At the time the reviewers were carrying out interviews for this report (February - March 2022), a Strategic Advisory Group (**SAG**) was formed to undertake a Strategic Review of Te Pūkenga. The purpose of the Strategic Review was to advise Te Pūkenga Chair and the Tertiary Education Commission (**TEC**) on key strategic risks in relation to the delivery of Te Pūkenga Transformation Programme with the goal of improving programme success and outlining practical measures that the programme should consider to address those strategic level risks. Belinda Clark, one of the reviewers from this external governance review, was also a member of the SAG.

9. A number of recommendations of the SAG were made in the final Report dated 25 February 2022, including the establishment of a small sub-committee of Council, augmented with independent expertise, to provide focus and oversight of the execution of the transformation programme (known as the Transformation Committee). The Strategic Review and Transformation Committee are referred to in this report but are outside the scope of this Governance Review.

## Current State

10. On 1 April 2020, Te Pūkenga was established as a tertiary education institution (**TEI**) under the Education Act 1989 (now repealed) and a Crown entity under the Crown Entities Act 2004.

11. The creation of Te Pūkenga was a key part of the Reform of Vocational Education (**RoVE**) in New Zealand.[1] Until now, New Zealand's ITPs and Transitional Industry Training Organisations (**TITOs**) have been separate entities. Te Pūkenga brings together these organisations to create a national network of on-the-job, on campus and online learning opportunities that gives learners more choice and flexibility in what, where, and how they learn throughout New Zealand.

12. The Education and Training Act 2020 (the Act) sets out the functions of Te Pūkenga,[2] establishment of regional divisions for the purposes of appointing staff or learner committees[3] as well as administrative regions,[4] and membership of the Council[5] and advisory committees[6] amongst other matters.

### Creation of group structure

13. Each Subsidiary ITP has a Board of Directors whose role is to manage the Subsidiary ITP in accordance with its Company Constitution. On 31 December 2022 (or later by Order in Council or earlier by resolution of Council), each of the Subsidiary ITPs will dissolve and their assets and liabilities will be assumed by Te Pūkenga.

14. Te Pūkenga Council have agreed that any vacancies arising on a Board of Directors of a Subsidiary ITP up to 31 December 2022 will not be filled as long as the minimum number of directors (4) are in place and the Boards are still able to discharge their duties.

15. On 20 April 2021, Te Pūkenga established a further Te Pūkenga Subsidiary, WBL (Work Based Learning). This was incorporated as the entity through which Te Pūkenga will receive those TITOs wishing to transfer their work-based learning activity over to Te Pūkenga. To do this, WBL has entered

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[1] Summary of Change Decisions – Reform of Vocational Education.
[2] Section 315 Education and Training Act 2020
[3] Section 319 Education and Training Act 2020
[4] Section 317 Education and Training Act 2020
[5] Section 320 - 321 Education and Training Act 2020
[6] Section 326 Education and Training Act 2020

into, and will continue to enter into, transfer agreements with TITOs in order to acquire the relevant TITOs' "arranging training activities" and associated assets, liabilities and employees. The purpose of this is to shift the role of supporting workplace learning from TITOs to WBL and ultimately to Te Pūkenga.

16. The Ministerial approval for Te Pūkenga to incorporate WBL specifically requires that WBL complies with all relevant parts of the Act and ceases at the appropriate time when integration occurs as part of the operating model implementation.

**Te Pūkenga Council**

17. The Act sets out the membership of the Council, which must have at least 8 but not more than 12 members including a member of, and elected by, (a) the staff committee, (b) the learner committee, and (c) the Māori advisory committee.[7] The rest of the Council members are appointed by the Minister of Education.[8] The Council currently has 12 members.

18. When appointing members, the Minister must ensure that the Council reflects the ethnic, gender, and socio-economic diversity, and the diversity of abilities of New Zealand's population and the fact that New Zealand is made up of a number of regions.[9]

19. When appointing members to the Council, the Minister must appoint people who have relevant knowledge, skills, and experience in relation to governance, cultural competency, and who reflect the diversity of New Zealand's population.[10]

20. The Council has six sub-committees (known within Te Pūkenga as governance committees), and three advisory committees as detailed below.

21. The Council Secretary provides secretariat support to the Council and five sub-committees. The Council, advisory committees and sub-committees receives secretariat advice from the Director of Legal and Risk. A new Kaikōkiri Director of Governance has recently been appointed who will provide strategic advice to the Chair of the Council, and co-Chairs of the advisory and sub-committees. This Director will ensure that all levels of leadership are aware of governance agendas and directions to ensure coordination, cohesion and meeting statutory obligations.

**Council Sub-Committees**

22. Pursuant to the Crown Entities Act 2004, the Council may delegate any of the functions or powers of Te Pūkenga or the Council, either generally or specifically to a committee by resolution and written notice (other than functions or powers specified in legislation as not being capable of delegation).[11]

23. The Council currently has six sub-committees. Five are constituted by the Council itself, namely:

a) Capital Asset Management and Infrastructure Committee (CAMIC) established on 2 June 2020. It assists the Council in fulfilling its strategic, financial and compliance responsibilities through oversight of the capital assets and infrastructure of Te Pūkenga and its subsidiaries.

b) Health, Safety and Wellbeing established on 6 October 2020. the objective of this Committee is to assist the Council to provide leadership and policy in discharging its health, safety and wellbeing

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[7] Section 320(1)(a) - (b) Education and Training Act 2020
[8] Section 320(1)(d) Education and Training Act 2020
[9] Section 321(1)(a) – (b) Education and Training Act 2020
[10] Section 321(2)(a) Education and Training Act 2020
[11] Section 73 Crown Entities Act 2004

management, governance responsibilities including guiding the strategic direction, culture, and expectations in relation to good health, safety and wellbeing practice including Te Whare Tapa Whā[12]

c) Remuneration and Appointments established 18 August 2020. The objective of this Committee is to oversee the effective management of (1) the appointment and remuneration of the Chief Executive of Te Pūkenga (CE), (2) some aspects of the appointment of the CE's direct reports (Tier 2 Employees), and (3) the appointment, removal and replacement of directors of Te Pūkenga wholly owned subsidiaries and fees for those directors.

d) Risk and Audit established 10 October 2020. The objective of this Committee is to assist the Council in fulfilling its financial and compliance responsibilities through oversight of the internal control environment, the risk management framework, the internal and external audit functions, the annual report and financial statements, the legislative and organisational compliance framework, and group audit, risk, and compliance issues.

e) Transformation – this sub-committee was established during the Governance Review on the recommendation of the SAG. The objective of this Committee is to focus on the mechanical aspects of the transformation programme, facilitate the Council delivering the Horizon One transformation, and increase pace and strengthen the Council's ability to ensure effective governance oversight of management's ability to deliver on the transformation programme and the Minimum Viable Product for 1 January 2023.

24. In addition, as required by statute there is a sixth sub-committee, Te Poari Akoranga. This sub-committee provides the Council with strategic academic direction and leadership, and a national infrastructure to ensure quality, compliance and consistency of teaching and learning.[13] Te Poari Akoranga strives to reflect the principles of ōritetanga (tertiary success for everyone), innovation, harmonisation and collaboration across Te Pūkenga academic network. Unlike the other five sub-committees, there are no Council members on Te Poari Akoranga which is equivalent in scope to a university academic board.

**Advisory Committees**

25. Pursuant to the Act, the Council is informed by three advisory committees – the Learner Advisory Committee, the Staff Advisory Committee (known as Kaimahi Advisory Committee), and the Māori Advisory Committee (known as Komiti Māori).[14] The purpose of these Advisory Committees is to ensure active participation and representation of each group at a governance level.

26. The Council is required to consult each Committee about significant matters relating to strategic direction when those matters are relevant to the Committee's represented group (s325(3)(a) – (b), and consider any advice given by the Committee.[15] The review discusses representative versus governance later in this report.

27. Interim versions of the three Advisory Committees were established in August 2021 to ensure the represented groups were able to participate in the development of Te Pūkenga operating model while the organisation structure is designed. The interim Committees will function until the end of the 2022, with the intention that permanent Committees will operate in 2023.

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[12] Developed by Sir Mason Durie 1984
[13] Section 324(2)(a) Education and Training Act 2020
[14] Section 325 Education and Training Act 2020
[15] Section 325(3)(a) – (b)

a) The Interim Learner Advisory Committee (ILAC) – represents the learner voice with a particular focus on the inclusion of Māori, Pasifika, Disabled, LGBTQI+, International and Work-based learners.

b) The Interim Kaimahi Advisory Committee – operates to help Council understand teaching and general staff perspective across all regions of the subsidiary network.

c) Te Komiti Māori (Interim Māori Advisory Committee) –The terms of reference for Komiti Māori are based on the Minister's letter of expectations and state that the group represents Māori learners, Māori communities, Māori employers, whanau, hapū, and iwi. It also determined the Interim Komiti Māori will provide direction and guidance on Council's obligations to Māori in relation to the growth of authentic partnerships with Tangata Whenua, strategic direction, emerging issues, legal requirements, effective engagement, awareness and understanding. It will also provide advice to the Council on the ability and quality of governance and leadership decisions to transform the status quo and deliver equity for Māori[16].

28. There is currently one secretariat and an advisory secretariat who support the ILAC and the Interim Kaimahi Advisory Committee and one advisory secretariat who supports Komiti Māori.

## Co-Governance

29. Te Pūkenga Charter (contained in Schedule 13 of the Act) states that Te Pūkenga must operate in a way that allows it to reflect Māori-Crown Partnerships in order to ensure that its governance, management, and operations give effect to Te Tiriti o Waitangi.[17]

30. The Letter of Expectation to Te Pūkenga states the Minister's expectation that it will demonstrate genuine commitment to Te Tiriti o Waitangi and the principles that underpin the relationship between Government and Māori.[18]

31. The reviewers met with the Komiti Māori as a group, including the member elected to Council. The reviewers also met with a representative from Mātauranga Iwi Leaders Group (MILG) and the Chair of Te Taumata Aronui. These stakeholders put forward a firm view that co-governance is an issue for Māori.

32. Te Komiti Māori said:

a) that co-governance was the minimum that was required to give effect to Te Tiriti o Waitangi. Co-governance was a common theme in discussions with MILG also.

b) Komiti Māori does not consider that it currently has a true partnership with the Council.

c) Komiti Māori does not consider that it is appropriate to categorise Māori alongside under-served groups such as Pasifika learners or disabled learners. The Komiti consider Māori to be the Treaty partner which is a separate and distinct status.

d) they represent MILG.

33. As set out in the Charter, Te Komiti Māori would like to see Te Pukenga giving effect to Te Tiriti across all levels of governance, management, and operations.

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[16] Komiti Māori Terms of Reference
[17] Section 4(d)(i), Schedule 13 Education and Training Act 2020
[18] Minister of Education, Hon Chris Hipkins, New Zealand Institute of Skills and Technology, Letter of Expectations

34. Nor does Te Komiti Māori see itself as comparable to the other two Advisory Committees (learners and staff). They expressed disappointment that Komiti Māori members are not on sub-committees using their knowledge and experience on, for example, CAMIC and Risk and Audit.

35. Some concerns stem from the length of time it took to establish this committee, and that the Act prevents both the co-Chairs from being on the Council. The Komiti was also critical of the Te Tiriti and equity training held for Council.

36. Given the uneven performance for Māori of the compulsory school sector, these reforms take on a significant importance for Māori learners and their whanau, iwi and hapu. According to te Matauranga Iwi Leaders Group, Iwi Leaders think that Te Pūkenga is a new way of working and provides a new way to be involved. Implementing this new way of working will require sharing power.

## Areas for Improvement

37. Te Pūkenga Council is operating in difficult circumstances with no roadmap to follow. It is doing well in creating paths and processes to achieve the aims of the legislation. Standing up a new organisation under legislation that is both enabling and prescriptive is complex. While acknowledging the size and complexity of this task, the reviewers identified factors that could enhance the governance function.

### Operational Effectiveness

38. As a guide, the TEC Governance Guide[19] states that an efficient and effective council, particularly of a TEI like Te Pūkenga, has a focus on core governance roles, has fully involved council members, a developed and useable work plan, and Council policies that are regularly updated. The reviewers looked at Te Pūkenga Council in terms of these characteristics.

### *Focus on strategic issues*

39. The requirement for Te Pūkenga to both establish itself and then the dissolve its Crown Entity subsidiaries (ITPs) has made it difficult for Te Pūkenga Council to focus on strategic issues. The myriad of operational and administrative issues associated with all of these processes has worked against the possibility of the Council spending most of its time on strategic issues. Once the subsidiary ITPs have been dissolved, much of the operational decision making of the Council will be reduced. This will facilitate a greater emphasis on strategic issues. In its monitoring report for Te Pūkenga Quarter Two of 2021, the TEC noted the need for Council to continue to ensure it has enough bandwidth to consider more strategic issues, particularly given the wide range of activities undertaken across the network and the transformation programme.

40. As well as increasing a proportion of its time that Council spends on strategic issues, Council also needs to have sufficient focus and depth allocated to strategic issues. Prior to the establishment of the Transformation Sub-Committee as recommended by the SAG, insufficient strategic attention was being paid to the successful implementation of the reforms. This defect has now been remedied by the establishment of the Transformation Sub-Committee.

41. Te Pūkenga management also identified strategic focus as an issue when reviewing its support for sub-committees and advisory committees when this external governance review was beginning. Management noted:

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[19] Tertiary Education Commission, Governance Guide – For council members of tertiary education institutions, June 2021.

a) the need for more strategic reporting from management to governance, as Te Pūkenga matured; and

   b) that there were several interim advisory committees and sub-committees that could offer support and advice to Council.

42. The reviewers agree with these two points. The Council should delegate specific responsibilities to be considered by the relevant sub-committee. This would allow Council to spend more time focusing on its core strategic governance role including having oversight and providing direction on the transformation programme.

## *Workload*

43. The current workload is unsustainable. The 12 members of Council between them attend 576 meetings per year – Council, Advisory Committees, Sub-Committees and Subsidiary Boards – a very high number. The range being the highest attendee at 81 and the member with the fewest at 24 meetings per year.

44. This high workload detracts from Council members being able to perform their role. Some Councillors reported feeling overwhelmed by the workload and that they found it difficult to keep up. This meant they are unable to contribute as effectively as they would like.

45. It appears there is an uneven workload across the Council-created sub-committees, with the Risk and Audit Committee doing a lot of the heavy lifting. While the Health, Safety and Wellbeing Committee and Remuneration and Appointment Committee review papers of significance, they have potential to do more. The Council might usefully investigate whether committee workloads and individual Councillor workloads could be more evenly spread.

46. There should be another sub-committee, Finance. The objective of the Finance Committee would be to consider all financial matters. It is good practice to have a separation between audit and risk and finance since Audit and Risk act by providing checks and balances for financial matters. The reviewers acknowledge that this has not been raised by Te Pūkenga auditors.

47. It would also be good practice to have external members on the Risk and Audit Committee and possibly also the Finance sub-committee.

## *Workplan and Council policies*

48. The Council has developed a workplan and is also steadily adopting a suite of policies that guide its practice. In these respects, the Council is conforming to good practice. The reviewers note, however, that the utility of the workplan is somewhat diminished by its large size and scope.

## *Other issues*

*Amount of Council time spent behind closed doors*

49. The Council spends approximately 80 per cent of its meeting time in committee. Spending this much time in closed sessions is not good governance practice. However, Te Pūkenga is subject to Local Government Official Information and Meetings Act 1987 and given its current transition state, the Council believes it is not currently feasible to spend more time in discussion in the public domain.

50. The reviewers would expect that as a Crown Entity the Council would spend a much larger part of each Council meeting in an open forum. As the transition and change matters are progressively resolved, it is expected that the Council will be able to achieve this.

*High demand on Council should be recognised*

51. The Council is offering to meet with management and staff on particular matters outside of Council and sub-committee meetings in order to provide direction. The review commends this as it will assist

the oversight of execution for the transformation. However, the reviewers caution Council members about blurring the separate responsibilities of governance and management. Effective governance is about accountability, direction setting and holding management to account, not implementation. Ultimately the accountability lies with the Council; if management does not fulfil its role then Council would be obliged to take action.

*Management support for Council*

52. Management could better support Council particularly by improving the quality of information to Council.

Quantity and quality of information

53. The reviewers were concerned that for some meetings, the Council is provided with over 700 pages of information. This was reduced to approximately 250 pages for its most recent meetings, however even that is substantial. This is exacerbated by the fact that papers for Council meetings are often not available until 2-3 business days before the meeting to which they relate.

54. The quality of information could also be improved to better facilitate the Council's decision making.

55. The review recommends that there is training held for DCEs and writers of papers to Council that focuses on:

   a) plain English writing; and

   b) clear presentation of options – costs and benefits and trade-offs – with good supporting arguments and evidence.

56. Alternatively management could engage the services of an organisation like NZIER to peer review presentation of papers for Council.

57. The fulfilment of basic hygiene requirements around size and timeliness would go a long way to make Council papers more digestible for Councillors. For example, the Council could require a 10-page limit on papers. In addition, information needs to be timely so that it allows for sufficient input from the Council (if information is not timely, then the Council is effectively approving decisions retrospectively).

Dedicated strategic support

58. It is good to see that Te Pūkenga management identified that there was a gap in strategic support and advice for the Council and its committees (both sub-committees and advisory). The reviewers were advised that management were waiting for the organisation design and structure to be determined. However, to ensure that Council is well supported during the transition phase, the Council decided to bring forward the appointment of the Kaikōkiri Director of Governance. The reviewers commend this initiative.

59. The Kaikōkiri role will be important to provide accurate, timely and strategic advice to all relevant stakeholders including Council and management. The reviewers see this role as also ensuring that the Council and committees (both sub-committees and advisory) receive [a] appropriate training in role and background (induction processes have been lacking or inconsistent) [b] training staff and management, and [c] the right information to make the right decisions at the right time.

## Alignment With Good Practice

### Frequency of engagement

60. The reviewers understand Council has recently moved from monthly meetings to meetings every six weeks with separate time dedicated to workshops (an extra half a day). This equates to 8 meetings

and 8 workshops each year. The rationale for the change was to enable Council to focus in-depth on key issues and separate out strategic issues from business as usual issues (with the workshops dedicated to strategic issues). This was an admirable attempt to find a more workable way to deal with the Council workload and long agendas. However, other solutions might be more appropriate and better aligned with good practice.

61. Good practice would see the Council meeting at least 10 times with 3 – 4 additional workshops a year. Council could also schedule strategic days where they monitor and amend their strategic goals and priorities based on the organisation's performance.

62. The workshops would be an appropriate time for dialogue and engagement with stakeholders, like other entities in the RoVE ecosystem including Workforce Development Councils (**WDCs**) and Regional Skills Leadership Groups (**RSLGs**).

63. At present the volume of work faced by management is such that it could not suitably service Council if the four weekly meeting cycle was retained. However, once the dissolution of the ITPs has been completed, the reviewers recommend Council revisit this issue.

## Fitness For Purpose

### Optimal skill mix for the Council

64. Te Pūkenga is different from other TEIs in that it is an "instrument of the Crown" similar to state services.[20] Like all TEIs, Te Pūkenga is part of the wider state sector.[21] However, as Te Pūkenga shares some of the expectations of state services (in particular, qualities of statutory crown entities),[22] it can be thought of as existing slightly closer to the state services than other TEIs on the public sector map.[23]

65. The Government's expectations of Te Pūkenga as a limited statutory entity[24] create some key differences between Te Pūkenga and other TEIs relating to:

    a) Relationship with the Minister;

    b) Governance structure (as prescribed by the Act);

    c) The accountability documents Te Pūkenga is required to produce (i.e. Statement of Intent, Statement of Performance Expectations); and

    d) The relevant objectives of the Act and the Minister's Letter of Expectation which in many ways sets the strategic objectives of Te Pūkenga, focusing Council on management's work plan to achieve the objectives stated.

66. It is thus desirable, if not imperative, that Council members have awareness and experience of governance of a Crown Entity and the requirements of public sector accountabilities[25]. The Council needs to have sufficient experience and knowledge amongst its membership about machinery of

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[20] Section 2 State Sector Act 1988
[21] State Services Commission, A Guide to New Zealand's State Sector Agencies, July 2020
[22] Section 339 Education and Training Act 2020
[23] Public Service Commission, What is the 'public sector'?, April 2018
[24] Section 339 Education and Training Act 2020
[25] The reviewers understand that Te Pūkenga has received advice from Public Service Commission that the entity is unusual as it is a crown entity and a TEI but is its own category of TEI.

government and the obligations of an autonomous crown entity. This can be assisted by robust induction processes and ongoing professional development on good governance in the public sector.

**Significant transformation requires governance experience in the whole Council**

67.  The significant transformation programme that Te Pūkenga is tasked with designing and implementing should not be underestimated. Reimagining and building a vocational, applied and on-the-job learning system with learners at the centre requires substantial change.

68.  Accordingly, the Council needs substantial governance experience and understanding of transformation. The Council needs to provide clear strategic direction to management and staff and be very clear about its priorities. The Council needs to both support management and hold management to account.

69.  While the Act identifies skills and experience necessary for the Council (paras 18 – 19 refer), greater presence of two particular skill groups is required – state sector experience, and governance experience of a large organisation in transformation and/or in enterprise mode. The latter may not be a key skill in the future when Te Pūkenga is up and running, but is certainly important until Horizon Two. The reviewers recognise that it is TEC, not Te Pūkenga, that advises the Minister on appointments to the Council.

70.  The reviewers note the Strategic Review recommendations, specifically regarding the creation of a sub-committee to provide focus and oversight. This sub-committee will support and strengthen Council to oversee and ensure delivery of Te Pūkenga transformation programme, including the delivery of the agreed minimum viable product to Horizon One by 1 January 2023. This will ensure Te Pūkenga is best positioned to function under the new operating model across the country.

**Role of Advisory Committees**

71.  It is difficult for representative members to have the required governance leadership including transformation and public sector experience and knowledge in addition to the deep knowledge of the needs and experiences of the groups they represent. Effective governance means that the perspective and concerns of all key stakeholders are factored into decision-making just as it should be with effective management. Whether this is best addressed by representatives being on Council as advocates is another question.

72.  While the Act is clear that the Advisory Committee members are not advocates and that all 12 Council members are expected to govern for the whole, it also talks about the learners' committee "representing" the learner voice. In reality, it is difficult for people elected to advisory committee positions to resist the pressures from those that they represent who understandably see themselves as their constituents.

73.  From a strict governance perspective, the Council should not need a learner committee as the Council members should be aware of the legitimate and relevant interests of all stakeholders including learners. It would be more appropriate to have learner input at management and staff level when developing, designing and implementing as opposed to governance level.

74.  There should be ongoing relationships with learners and staff through management, rather than having them at the governance table where they tend to function as advocates not governors.

75.  There have to be other ways that interest groups feed into Council, but generally it should come through the Executive. For example, setting up regular planned meetings with stakeholders such as learners would be an effective way of managing these relationships at a management level with a couple of meetings annually with Council. It would be a challenge to design an effective process for this given there are around 240,000 learners. However equally it is unrealistic for a representative of such a large and disparate group to affectively represent all of them.

76. It is a similar scenario with employers or regional partners. It is not necessary to have an employer representative on Council as employer and work-based perspectives should be embedded in the organisation's understanding of its operating environment. The same argument applies to 'separate interest' groups. It is appropriate for management to have direct relationships with key stakeholders but there does not need to be representation at governance levels.

**Size**

77. The Act requires the Council to have at least 8 members but no more than 12, including 3 advisory committee members.[26] There are currently 12 members on Council. For the Council to be fit for purpose, it should be small and nimble. This would facilitate in-depth discussion on key issues.

78. The majority of parties interviewed considered 8 to be the optimum size of Council with a possible maximum of 12. Best practice would also suggest an effective governance body should be between 8 to 10 members[27]. However one or two people interviewed considered 50 to 60 or even 80 members appropriate. This is partly a reflection of different views as to whether Council is or should be seen as a representative body or as a governance body. A governance body is usually smaller, and its members are required to govern in the interests of <u>all</u> stakeholders as part of its obligation to govern for the good of the entity itself. That means, opportunities for representative members are limited as it makes it difficult to have an effective Council when some members are operating to a different mandate from other members. A well-functioning governance body should be able to ensure the views and concerns of key stakeholder groups are well communicated to the Council. To reduce the size, there would have to be effective ways to incorporate stakeholder concerns. However, there are a number of ways in which this can be done, and indeed some are already being used by Te Pūkenga. Mechanisms include:

    a) dedicated agenda items at Council meetings, perhaps on a rostered and planned basis, so that the concerns of all key groups are put before the Council at regular intervals;

    b) dedicated workshops or sessions devoted to particular stakeholder groups on a regular basis scheduled into the Council's work programme and supported by a scheduled review process to assess progress against agreed outcomes;

    c) a requirement that all or some management reports to Council include a statement of the impacts of the proposal or practice being discussed on particular stakeholder groups (akin to Regulatory Impact Statement); and

    d) regular surveys of learners, staff, employers to be fed into Council deliberations.

79. The size of the Council when combined with the size of agendas and the meeting schedule mitigates against the Council being able to effectively respond to the high volume of material provided to it by management.

**Regions and the Council**

80. The Charter for Te Pūkenga refers to meeting the needs of regions throughout New Zealand and states that Te Pūkenga must operate in a manner that ensures its regional representatives are empowered to make decisions about delivery and operations that are informed by local relationships and that these decisions meet the needs of their communities.[28]

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[26] Section 320(1) Education and Training Act 2020
[27] IOD recommends 6-8 for medium to large sized enterprise
[28] Section 3(b), Schedule 13 Education and Training Act 2020

81. Management is currently considering five regions based roughly on RSLG groupings, which is helpful from a RoVE perspective given that the proposed operating model's Ako Networks align with WDCs. This will make vocational education seamless across RoVE.

82. The reviewers consider three regions could also work as this would align with the Ministry of Education and Te Mahau (previously referred to as an Education Service Agency). Te Mahau is where ākonga are served and supported by the sector and the Ministry of Education.[29] There are 3 geographical Te Mahau which have been established for administrative purposes and could change over time.[30]

83. Three regions also aligns with Public Sector Commissioners and makes sense across the public sector.

## Recommendations

84. The reviewers acknowledge that Te Pūkenga Council and Executive Leadership Team have already made significant progress in setting up Te Pūkenga. The task is complex, the timeframe tight and the work made more challenging because of the impact of COVID. Despite this, the Council and staff have continued to work with determination and commitment to ensure that they will be ready for implementation on 1 June, 2023.

85. Governance of a Crown Entity is always demanding and the Council, in meeting the expectations of its Minister and remaining aware of the hopes and wide-ranging views of its stakeholders, has had to develop its strategy, oversee the organisational planning, and communicate its vision and goals to the community.

86. The recommendations are based on the sound progress already made and are focused on changes and developments designed to support the existing governance.

87. Recommendations 1.1, 3.1, 3.2 and 3.3 would require legislative change and will need to be considered by the Minister of Education.

**One - Size and composition of the Council**

1.1 The reviewers recommend that consideration be given to the Council being reduced to nine members: seven appointed by the Minister and the two co-chairs of Te Komiti Māori.

1.2 The members of the Council should between them cover a range of experience and skill in the areas of Te Tiriti; Te Ao Māori; governance; education; the transformation and implementation of change in large organisations; Crown entity experience and/or public sector and machinery of government experience.

1.3 In addition to Te Poari Akoranga, the Council should have five sub-committees with clear terms of reference and specific accountability:

    a) Finance;

    b) Risk and Audit, which should be separate from the Finance Committee;

    c) Wellbeing, including Staff and learner health, safety and wellbeing; Industrial Relations and Employment; and Remuneration and Appointments;

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[29] Ministry of Education, Establishing Te Mahau within Te Tāhuhu o te Mātauranga – Summary Document, June 2021.
[30] As above.

      d)   Transformation and Implementation; and

      e)   Capital Asset Management and Infrastructure.

## Two - Region and Stakeholder relationships

2.1  The Council should consider operating with three geographical regions. This number should be aligned with the regions of Te Kawa Mataaho (Public Service Commission) and Te Tahuhu o te Matauranga (Ministry of Education).

2.2  The Council should have a formal programme for regular meetings with representatives of all key stakeholder groups. This would include the existing advisory committees e.g. the staff committee and the learners committee and other stakeholder groups such as the Unions.

2.3  These relationships should be managed by the Executive and the Council. The Executive, should consider appointing a deputy chief executive to manage and strengthen these critical relationships.

## Three - Co-governance

3.1  Te Pūkenga Council and Te Komiti Māori should set up a committee representing Iwi Leaders Group, Te Pūkenga Council, and Te Komiti Māori to develop a framework for Co-governance of Te Pūkenga.

3.2  The committee should develop terms of reference agreed to by Te Pūkenga Council and Iwi Leaders Group for this work.

3.3  The Framework for Co-governance should be completed and sent to the Minister for consideration by 1 June 2023.

## Four - Council process

4.1  The full Council should meet at least 10 times each year. Sub-committees should meet regularly as required and report back to the Council.

4.2  The Chief Executive should provide a written report to the Council at each meeting.

4.3  The Council should aim to increase the amount the meeting time in open session and develop clear guidelines to apply to time spent in committee.

Belinda Clark                                                      Karen Sewell

# External Governance Review

## Terms of Reference (November 2021)

## Context

1.1. Te Pūkenga is a Crown Entity established under the Education Act 1989 and continued by the Education and Training Act 2020[1].

1.2. A summary of the legislative governance requirements applicable to Te Pūkenga is included at Appendix 1 to these terms of reference with some key reference documents listed at section 7.

## Scope

1.3. Te Pūkenga must ensure that it acts in a manner consistent with its objectives, functions, current statement of intent, and current statement of performance expectations[2]. In its Transitional Statement of Intent 2021 – 2024 (dated 4 February 2021), Te Pūkenga has committed to having an external review carried out of the effectiveness of Council. The objective is to ensure the effectiveness of Te Pūkenga governance arrangements is optimised (**Governance Review**).

1.4. These terms of reference relate to the conduct of the Governance Review which will involve:

a) A review of Te Pūkenga governance framework (as described at section 3 below);

b) Agreement of a workplan with the Chair of the Council.

c) A report on the governance framework as to:

    i. operational effectiveness (with it being accepted that the Section 325 Advisory Committees (as defined below) have only been recently established);

    ii. alignment with good practice for governance;

    iii. fitness for purpose; and

    iv. areas for improvement (having regard to the statutory framework that applies); and

d) Identification of any governance risks[3]

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[1] Section 314 Education and Training Act 2020

[2] Section 49 Crown Entities Act 2004

[3] Concern was raised as to whether the Council members could be reappointed. Advice has been received to confirm this is possible. This is enclosed as a reference document to these terms.

## Te Pūkenga Governance

1.5. Te Pūkenga is in a transition phase as it moves from a Crown Entity with seventeen subsidiaries (each with their own Boards of Directors) to a national entity. A summary of where Te Pūkenga is in this governance journey is included at Appendix 2.

1.6. Te Pūkenga Council is currently comprised of 12 members:

   a)   9 members appointed by the Minister;

   b)   3 members from the Council's **Section 325 Advisory Committees** (these being the committees established under section 325 of the Education and Training Act 2020)[4] with one appointee from each.

1.7. Council is also required under Section 324 of the Education and Training Act 2020 to establish an academic board to advise it on specific matters. Council has established Te Poari Akoranga to discharge this function.

1.8. In addition to the above, the Council has established (from its number) the following committees:

| Committee | Objective |
|---|---|
| Risk and Audit Committee | To assist the Council in fulfilling its financial and compliance responsibilities) |
| Appointment and Remuneration Committee | Oversee the effective management of: <br> 1. the appointment and remuneration of the Chief Executive (CE) <br> 2. some aspects of the appointment of the CE's direct reports (Tier 2 Employees), and <br> 3. the appointment, removal and replacement of directors of wholly owned subsidiaries (and fees for those directors. |
| Health, Safety and Wellbeing Committee | To provide governance, leadership, and wellbeing and safety management through: <br> 1. Wellbeing and Safety strategies and policies <br> 2. Monitoring the implementation, effectiveness and consistency of health and safety systems for Te Pukenga and the network. <br> 3. Monitoring and providing guidance to legislative and organisational compliance. |
| Capital Asset Management and Infrastructure Committee | To assist the Council in fulfilling its strategic, financial and compliance responsibilities |

| | through oversight of the capital assets and infrastructure |
|---|---|

## Out of Scope

The following governance bodies are out of scope for this Governance Review:

a) The Board of Directors of each ITP subsidiary; and

b) The Board of Directors of Te Pūkenga Work Based Learning Board.

## Deliverables

1.9. The results of the review will be summarised in a draft report and communicated to the Chair of the Council for comment.

1.10. Practical measures to address areas for improvement will be discussed and agreed with the Council.

1.11. A final report with the agreed areas will then be issued.

## Timing

1.12. A work plan for the Governance Review will be agreed with the Chair of the Council together with proposed timings.

1.13. The high-level timings are to:

a) carry out all relevant interviews identified in the workplan by February 2022.

b) Draft Report:        TBC

c) Final Report:        TBC

## Reference Documents

The following documents provide further reference to inform the review:

- Appendix 1 – Legislative Governance Framework Overview
- Bell Gully advice dated 15 November 2021 in relation to reappointment of Council members
- Transitional Statement of Intent 2021-24
- Education and Training Act 2020 - Schedule 13 Te Pūkenga—New Zealand Institute of Skills and Technology's charter
- Minister's Letter of Expectations
- Te Pūkenga Council Roadmap - Key Legislative Consents, Notices and Controls

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[4] The Advisory Committees established during the transition phase are interim. The composition of the permanent committees will form part of the implementation of the operating model. The interim committees will be consulted on, and provide guidance, on what should be included in the terms of reference for each of their respective committees from 1 January 2023.

# Appendix 2 – List of people interviewed

Alison Broad, Chair, Southern Institute of Technology Institute Limited

Cathy Cooney, Chair, Toi Ohomai Institute Limited

Dr Wayne Ngata, Chair, Te Taumata Aronui

Dr Grant Klinkum, CEO, New Zealand Qualifications Authority (NZQA)

Hana O'Regan, Mātauraka Iwi Leaders Group

Heath Sawyer, Member, Te Pūkenga Council; Co-Chair Interim Kaimahi Advisory Committee

Iona Holsted, Secretary of Education, Ministry of Education

John Brockies, Member, Te Pūkenga Council; Chair, Work Based Learning Limited

Kathy Grant, Member, Te Pūkenga Council; Chair, Capital Asset Management and Infrastructure Committee

Kim Ngārimu, Deputy Chair, Te Pūkenga Council

Kōmiti Māori - Bentham Ohia – Ngāi Te Rangi, Ngāti Pūkenga, Ngāti Ranginui, Ngāti Te Roro o te Rangi, Te Āti Awa, Ngāti Rārua, Ngai Tahu; Dr Teorongonui Josie Keelan – Ngāti Porou, Ngāti Awa, Tūhoe; Glenda Taituha – Waikato, Maniapoto; Te Pūoho Katene – Ngāti Toa, Ngāti Tama, Ngāti Whatua; Jasmine Te Hira – Te Rarawa, Ngāpuhi; Dr Ramari Raureti (Staff Committee Representative) – Te Arawa, Te Whakatōhea

Linda Aumua, Member of EEQ and Te Poari Akoranga; former Member of NZQA

Marina Matthews, Chief Advisor, Te Pūkenga

Maryann Geddes. Member, Te Pūkenga; Chair, Appointment and Remuneration Committee

Murray Strong, Chair, Te Pūkenga Council

Peggy Fairburn-Dunlop, Member, Te Pūkenga Council

Peter Winder, Member, Te Pūkenga Council; Chair, Risk and Audit Commitee

Rebecca Keoghan, Chair, Tai Poutini Polytechnic

Ripeka Evans, Chair, NorthTec; Deputy Chair, Toi Ohomai Institute

Sam Huggard, Member, Te Pūkenga; Chair, Health, Safety and Wellbeing Committee

Sandra Grey, National Secretary, Tertiary Education Union

Stephen Town, Chief Executive, Te Pūkenga

Tania Hodges, Member, Te Pūkenga Council

Hon Steve Maharey, Former Chair, UCOL; Former Associate Minister of Education (Tertiary Education)

Therese Arseneau, Chair, Ara Institute

Tim Fowler, Chief Executive, Tertiary Education Commission (TEC)

Will Workman, Independent Consultant