

## Aide-Memoire: Advice on operation of Te Pūkenga council

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<b>To:</b>	Hon Penny Simmonds, Minister for Tertiary Education and Skills
<b>From:</b>	Tim Fowler, Chief Executive, Tertiary Education Commission
<b>Date:</b>	6 December 2023
<b>Reference:</b>	AM-23-00917

### Purpose

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1. This paper provides you with advice on the operation of Te Pūkenga's council if some or all of the council members resign.

### Background

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#### **You have notified Murray Strong that you intend to remove him from the council...**

2. On 5 December 2023, you wrote to the Chairperson, Murray Strong, notifying him of your proposal to remove him as a member of Te Pūkenga's council under section 37 of the Crown Entities Act 2004 (B-23-00914 refers). You have requested that Mr Strong make any submissions on your proposal by 12 December 2023, before you make a final decision.
3. We understand Mr Strong has communicated to you that he intends to resign from his position on the council by the end of this week. Subject to his resignation, the deputy Chairperson (Sue McCormack) will act as the Chairperson until a new Chairperson is appointed. If you wish to appoint a different Chairperson, whether it be a new appointment or from the existing council, you will need to go through the regular appointment process which includes going to the Cabinet Appointments and Honours Committee (or potentially direct to Cabinet). We seek your advice on how you wish to proceed on this issue.

#### **...and there is a risk of resignations from other council members**

4. The Education and Training Act 2020 states that Te Pūkenga's governing council must comprise eight to 12 members. As Minister, you have the power to appoint five to nine of those members. Te Pūkenga's council must include three members who are elected representatives of staff, learners, and Māori.
5. The council currently has 11 members (one potential vacancy), and if Mr Strong resigns, the council would reduce to 10 members. For a variety of reasons, there is a possibility that other council members may resign from their position on the council in the near term.
6. This paper provides advice on the operation of Te Pūkenga's council if there are fewer than eight members (as required by legislation) or if all council members resign.

## Operation of Te Pūkenga's council

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### The council can continue to operate with fewer than eight members...

7. If a number of council members resign such that the council has fewer than eight members, it can continue to operate. Section 320(3)(d) of the Education and Training Act 2020 provides that an act or proceeding of Te Pūkenga's council is not invalid because of "*a vacancy in the membership of the council*". Section 77 of the Crown Entities Act 2004 (which applies to Te Pūkenga) also provides that "*the powers and functions of a statutory entity are not affected by any vacancy in the membership of its board.*"
8. As such, if there are multiple resignations, the remaining members will continue to undertake council business. You may then make appointments to the council in due course to return the council to between eight and 12 members as required by legislation.
9. If the elected representatives of staff, learners, and Māori resign, then the council must follow its agreed process for electing one member from each of its staff, student, and Māori advisory committees.

### ...as long as a majority of members are present...

10. If several members resigned, the remaining members would need to make decisions according to the procedure in clause 16 of Schedule 11 of the Education and Training Act 2020 to make decisions, which states that "*No business may be transacted at a meeting unless a majority of the members then holding office are present*".
11. The Chairperson or deputy Chairperson must preside at meetings. If neither the Chairperson nor the deputy Chairperson is present, the members present must appoint a member to preside, and every question must be decided by a majority of the votes cast by the members present.

### ...although under such a scenario, there is a risk that the council may not have the appropriate skills to govern effectively...

12. Although the council could continue to operate with fewer than eight members, it may result in the council not having the appropriate skills and experience to effectively govern Te Pūkenga. This would be a risk given the significant oversight that will be needed over the coming period as the Government considers its options with regards to disestablishing Te Pūkenga. While new appointments would ideally address any skills and experience gaps, in the interim, the council could seek to engage advisors who would attend meetings and provide any expertise necessary. These advisors would hold no voting rights.

13. 9(2)(g)(i)

### ...while Te Pūkenga would continue to operate with no council if all members resigned

14. In the unlikely event that all members of the council resigned, Te Pūkenga would continue without a council, and senior management would need to rely on existing delegations (which would remain valid). Any matters that require council approval would need to wait until a new council was appointed.
15. Given the provisions described above in paragraph 6 (which provide that the council's actions are valid if there are vacancies), if all members resigned, you could appoint as few as one person as a council member in the interim. This person would then preside at all meetings and make decisions as the council on their own. However, at this stage, you may wish to consider interventions available to you under the Education and Training Act 2020.

## Next steps

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16. If Mr Strong does resign later this week, Sue McCormack will act as Chairperson until you appoint a new Chairperson. We will provide assistance to you to support media commitments as required.
17. As previously indicated, we would like to discuss potential appointments to Te Pūkenga's council with you soon given current and upcoming vacancies.



**Tim Fowler**

Chief Executive

Tertiary Education Commission

06/12/2023



**Hon Penny Simmonds**

Minister for Tertiary Education and Skills

9/12/2023