



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

**Ministry of Education
Consultation Documents**

on the

**Review of the Legislative Settings:
University and Wānanga Governance**

**P O Box 6645
Wellington
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Executive Summary

- 1.1. The stakeholder model brings much strength to university and wānanga governance councils. The CTU opposes the proposals to remove stakeholder representation.
- 1.2. The role on the council of a member representing the representing the central organisation of workers (the CTU) ensures support for the role and function of unions in representing the organised voice of workers.
- 1.3. The CTU supports the roles union members play on university and wānanga councils.
- 1.4. The CTU supports the strengthening of governance requirements to be more closely aligned to the role and purpose of wānanga and that crucial stakeholder groups such as iwi are represented on wānanga councils. However, this should not happen at the expense of staff and student representation.
- 1.5. The current wananga council membership requirements provide the ability to ensure that the skills, knowledge and experience can be provided through representative positions and Ministerial appointments.
- 1.6. The components of good governance must be a critical part of this discussion and are missing from the consultation documents.
- 1.7. A corporate governance model is an inappropriate governance model for tertiary institutions – both universities and wānanga. Governance for tertiary institutions is very different to that of corporate and business governance.
- 1.8. The stakeholder model does not mean the prioritisation of representation over skills. A stakeholder model is not incompatible with a skills-based composition on councils.
- 1.9. If there are concerns about conflict of interests with stakeholder positions on councils then this can be managed by greater clarity in job descriptions, roles, policies, training and better understanding about conflicts of interest.
- 1.10. Universities and wānanga are similar in many respects to DHBs, School Boards of Trustees and other public institutions: their relationship with local communities is

critical and governance arrangements that reflect this relationship enhance the perception of the institutions.

- 1.11. The proposed changes give no recognition of the need to ensure diversity, and judging by Ministerial appointment trends would be certain to reduce the diversity on councils.
- 1.12. The proposals, would lead to councils being unrepresentative of the communities and the stakeholders that they serve because of smaller councils and the greater weight of Ministerial appointees.
- 1.13. Smaller councils with a greater weight of Ministerial appointees will lead to limited and more constrained thinking and a narrower focus if there is a concentration of appointees on councils from financial and business backgrounds.

2. Introduction

- 2.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) with a membership of 332,000 workers.
- 2.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 2.3. The CTU welcomes the opportunity to contribute to a discussion on governance functions and arrangements in universities and wānanga. The CTU has a critical interest in governance of universities and wānanga and the issues and proposals in the consultation documents to review the legislative settings for university and wānanga governance.
- 2.4. The CTU has access to direct representation on university councils and wānanga through the provisions of s 171 of the Education Act 1898 that provide for union, employer, student and staff representation.
- 2.5. The position on university councils and wānanga that provides for a council member to be representing the central organisation of workers (the CTU) is filled through organised processes of representation by unions and/or the CTU. The CTU values the role that its members provide on university and wānanga councils and provides support for members for this role.
- 2.6. The role on the council of a member representing the CTU ensures support for the role and function of unions in representing the organised voice of workers. Strong relationships between labour market and tertiary organisations must include formal recognition of the importance of the role of unions. Unions play a critical role in formulating and organising collectively to represent and advocate for the needs for workers and their education and training.
- 2.7. The proposals in the consultation documents to remove those positions have major implications for the CTU, Te Runanga and CTU affiliated unions. The proposals have significant ramifications for the future direction of higher education In New Zealand if the Government were to proceed in this direction.

- 2.8. The CTU supports the submissions and positions of our affiliates who oppose the proposal to remove stakeholder representation.
- 2.9. The proposals in the documents are a challenge not only to values supported by the CTU of democratic participation and diversity representation, but also to fundamental higher education and university principles of protecting academic freedom, institutional autonomy and the critic and conscience role played by universities.
- 2.10. We are very concerned that this is a process with a predetermined outcome and the consultation process and document has been constructed to advance these proposals rather than to commence a genuine and open discussion about university and wānanga governance.
- 2.11. For those reasons we want to discuss with the Ministry of Education officials and the Minister of Tertiary Education our concerns about the implications of these proposals. We encourage the Ministry of Education to follow the consultation processes with meetings following the close of submissions and review the analysis and views that come from the consultation process.
- 2.12. Unions and the CTU have a strong interest in ensuring that governance boards can create the conditions that support improvement and the success of universities and wānanga.
- 2.13. If universities and wānanga are to meet the educational and workforce challenges facing them, then strong governance structures must be place in tertiary education institutions. The models of governance must be appropriate and fit for purpose for the institutions being governed. Therefore, this process must be about the components of good governance, and how best to meet good governance principles and obligations.
- 2.14. This submission is a response to both the consultation document on the review of wānanga governance and university governance.

3. Wānanga Governance

- 3.1. The consultation document on wānanga governance outlines the objectives of wānanga well. We support the strengthening of governance requirements to be more closely aligned to the role and purpose of wānanga.

- 3.2. Wānanga perform a unique function in the tertiary education sector. The CTU supports changes to ensure that crucial stakeholders such as iwi are represented on wānanga councils. But we do not accept that this should happen at the expense of staff and student representation.
- 3.3. The CTU also supports changing the broad objectives of wānanga governance to include reference to āhuetanga and tikanga Māori. However, as the Tertiary Education Union (TEU) submission on the review of wānanga governance states the current settings do not prevent wānanga from appointing people on to councils to work in accordance with these practices.
- 3.4. The consultation document on wānanga governance advances the same proposals as for universities: that reducing the representative composition of council will improve the abilities of the wānanga to meet future challenges. But there is no evidence provided that the current models are an impediment to responding to changing environments and current challenges.
- 3.5. While the document states that, "*individual councils would not be prevented from appointing ... staff, students and other stakeholders*", our experience and the trend from other tertiary education appointments provides evidence that this does not occur.
- 3.6. The current wānanga council membership requirements provide the ability to ensure that the skills, knowledge and experience can be provided through representative positions and Ministerial appointments.
- 3.7. We are concerned that the underpinning driver in these proposals is a move to strengthen the business and commercial focus of wānanga which is also reflected in the draft Tertiary Education Strategy currently out for consultation.

4. University Governance

- 4.1. The document reviewing legislative setting for university governance outlines the functions of a university's governing body, "*to ensure the highest standards of educational excellence, ensure the university operates in a financially responsible manner and prepare the university's investment plan and ensure the university is managed in accordance with it*" (pg 5).

- 4.2. There is no discussion in the document of the components and function of good governance and yet this is the crucial issue.
- 4.3. The United Nations (UN) defines the characteristics of good governance as participation, upholding the rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability and strategic vision.¹
- 4.4. The governance of tertiary institutions has particular characteristics. In a review of governance of tertiary education institutions in 2002, Meredith Edwards identified that the heart of good governance in tertiary education is about relationships and described governance as, “*encompassing not only processes and structures, but also relationships and the intersections between them.*”²
- 4.5. A review of Australian university governance in the tertiary education described it as encompassing internal and external relationships and the intersections between them and also made the association between values and relationships:
- “Governance is concerned with the determination of values inside tertiary universities, their systems of decision–making and resource allocation, their mission and purposes, the patterns of authority and hierarchy, and the relationship of universities as institutions to the different academics worlds within and the worlds of government, business and community without. It embraces leadership, management and strategy.”*³
- 4.6. In the context of the financial management of a university, governance in universities is about stewardship: the responsibility to protect the public purse and advance the public interest.
- 4.7. There is no reference in the discussion document on the role of Te Tiriti o Waitangi and the rights and responsibilities that this confers. S 181 of the Education Act 1989 outlines the duties of councils in relation to Te Tiriti o Waitangi.
- 4.8. These wider functions of governance are a vital missing part of background and the consultation document. An exploration of these issues would make for a better and deeper discussion.

¹ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

² Meredith Edwards (2002) *Review of New Zealand Tertiary Education Institution Governance*, Ministry of Education 2003

³ Marginson, S., Considine, M. (2000) *The Enterprise University: Power, Governance and Reinvention in Australia*, Cambridge, Cambridge University Press.

5. Governance Models

- 5.1. Were the proposals in the documents to be implemented this would change the model of governance largely to a corporate model of governance for both university and wānanga councils. A corporate governance model is an inappropriate governance model for tertiary institutions – both universities and wānanga. Governance for tertiary institutions is very different to that of corporate and business governance. Students are not customers in the same sense as businesses and corporations' customers.
- 5.2. If the basis of the change is to make universities more corporate-like and move to a business governance model then there is a clear lack of understanding about the role of councils as defined in the Education Act 1989 which sets out the function of councils:
- *It is the duty of the council of an institution, in the performance of its functions and the exercise of its powers,—*
 - *(a) to strive to ensure that the institution attains the highest standards of excellence in education, training, and research:*
 - *(b) to acknowledge the principles of the [Treaty of Waitangi](#):*
 - *(c) to 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 with particular emphasis on those groups in those communities that are under-represented among the students of the institution:*
 - *(d) to ensure that the institution does not discriminate unfairly against any person:*
 - *(e) to ensure that the institution operates in a financially responsible manner that ensures the efficient use of resources and maintains the institution's long-term viability:*
 - *(f) to ensure that proper standards of integrity, conduct, and concern for—*
 - *(i) the public interest; and*
 - *(ii) the well-being of students attending the institution—*
are maintained.
- 5.3. This process clearly establishes the fundamental difference between universities or other learning institutions to those of the purposes of corporations and businesses.
- 5.4. The proposals to change the governance structure and follow a corporate model of governance would change the functions and strategic direction of universities and wānanga and detrimentally impact on broader educational objectives and purposes.

- 5.5. Though there may be lessons that universities can apply from corporate governance, universities and wānanga are fundamentally different from corporations. This is well captured in the this quote from the 2002 New Zealand Tertiary Education Institution Governance:

“Universities are not private institutions producing predominantly private goods. Regardless of the share of financing provided by Government at any one time, universities are constituted by legislation and produce a wide range of public and private goods, deriving their core functions in teaching and research. As such the universities are part of the national infrastructure and a major public responsibility”⁴.

6. Rationale for change not justified

- 6.1. The need to make changes to the governance arrangements in universities or wānanga is not established in the document or in any supporting evidence. The point is made in the document on university governance that New Zealand universities are performing well. There is no case put forward for why change is required.
- 6.2. The only justification that is provided is the challenges that universities face: *“the emergence of on line courses, responding to areas of high occupational demands such as technology and engineering, making strategic investments to enhance attractiveness to students and attracting international students at a time of competition”* (pg 5).
- 6.3. But these are hardly compelling reasons. All of these challenges are recognised and they have been so for some time. They are not so great as to justify a complete upheaval of governance arrangements.
- 6.4. The document on university governance asserts that universities cannot meet the challenges because the current governance settings *“are based on a representation model which prioritises stakeholder over the governance skills and abilities of council members”* (pg 5). The document doesn't provide any justification for this statement or evidence. The consultation document on wānanga governance makes the same point.

⁴ Ibid

- 6.5. The statement is incorrect on two counts. The stakeholder model does not mean the prioritisation of representation over skills. And neither is this current practice. The CTU takes the membership of councils very seriously and nominees are selected on the basis of their skills, experience and abilities as well as their ability to represent their stakeholder group. There is a failure to appreciate that councils do currently combine successfully the needs for skills and experience balance with stakeholder representation.
- 6.6. A stakeholder model is not incompatible with a skills-based approach on councils. We note that a 2012 Ministry of Education Report prepared for the Minister of Tertiary Education identified that internationally even those universities taking a skills-based approach to governance maintain stakeholder representation on their governing bodies.⁵
- 6.7. If the concern is about conflict of interests with stakeholder representation then this needs to be managed by greater clarity about job description, roles, policies, training and understanding about management of conflicts of interest. Councils are capable of ensuring this occurs.
- 6.8. It is our view that there is more transparency in the stakeholder model and less likelihood of conflicts of interest. Ministerial nominees are more likely to represent other business interests given that so many of them come from company director and corporate backgrounds.
- 6.9. If there is room or a need for improvement in some areas of governance (as there are in all governance boards) then the response is about more training and better policies in relation to governance responsibilities. Training in governance roles, responsibilities and multiple accountabilities is an on-going necessity.
- 6.10. Universities and wānanga in many respects are like DHBs, Boards of Trustees and other public institutions – their relationship with the community is important and governance arrangements can reflect this relationship and its importance.
- 6.11. There are many other public bodies that have to manage being a representative of a group and also stewardship responsibilities. School Boards of Trustees, District Health Boards and local councils commonly manage these respective and multiple roles.

⁵ Tertiary Education Report: An International Comparison of University Governance Models (Feb 2012) released under the Official Information Act to Megan Woods MP.

- 6.12. The job descriptions for local government councils provide an example of how counterbalancing representative responsibilities and stewardship can be managed. The job description developed by the Remuneration Authority for local council members states that *“representing and acting as an advocate is in the interests of their community”*.⁶ The job description specifies the needs of specific interest groups to be balanced against the wider needs of the wider community.
- 6.13. There is much to commend the model of stakeholder representation for governance boards to reflect the wider responsibilities and accountabilities that universities and wānanga have. It is revealing that the documents fail to identify the positives of stakeholder representation, well-articulated in this quote from Boston:⁷

“Little attention is given by critics to the potential advantages of stakeholder representation in enhancing the commitment of staff and students to their particular TEI, providing Councils with a wider range of opinions, information and expertise, making TEIs more responsive to the needs and interests of the communities they serve and enhancing the transparency of decision-making and thereby improving public accountability”

- 6.14. The review documents suggest that the stakeholder model of governance is in conflict with the function of governance. This is not the case. The stakeholder model may be at odds with a corporate model of governance but it is well aligned to the governance of universities and wānanga.

7. The Stakeholder Representation Model

- 7.1. The CTU strongly opposes removing the stakeholder representation model from universities and wānanga. Stakeholder representation ensures an important role in ensuring responsiveness and accountability to both internal and external communities and to bodies associated with universities and wānanga.
- 7.2. The current model ensures a strong relationship with the relevant constituencies with whom the universities and wānanga have a major relationship.
- 7.3. The different representatives on council come from different constituencies. There is a difference between the staff position and the CTU position on the council. Student positions on councils are a means of bringing the student voice to the

⁶ <http://remauthority.govt.nz/documents/local-authority-elected-member-remuneration-setting-2013.pdf>

⁷ Boston, J., (1996) “The Ownership, Governance and Accountability of Tertiary Institutions in New Zealand, in *New Zealand Annual Review of Education*.

councils and the CTU strongly supports the retention of student positions on councils.

- 7.4. Under the stakeholder model of representation, universities and wānanga are accountable to a broad range of stakeholders rather than just to shareholders or to government. The removal of stakeholder representation will remove responsiveness of universities and wānanga to the communities they serve.
- 7.5. The current model ensures that student and staff are represented on councils and sees it as desirable that councils should reflect the social, economic, ethnic and gender representation of their institutions.
- 7.6. The removal of stakeholders from university and wānanga councils will change the working relationships that councils have with critical stakeholders and remove the strengths that these relationships bring to the councils.
- 7.7. The proposed changes give no recognition of the need to ensure diversity and judging on trends would be certain to remove the diversity on councils. The evidence shows that the need to reflect diversity on councils does not occur through the Ministerial appointment processes.
- 7.8. Analysis by the New Zealand Union of Students Association (NZUSA) of Ministerial appointees to councils show that of all the appointments made by the current Minister only 16 percent of appointees have been women and only one Māori appointment has been made. There has been a heavy leaning towards people with legal and financial skills being appointed to councils from the Ministerial appointment processes. Of Government appointees to current university councils two thirds of the appointees have been CEOs, company directors or accountants and 20 percent are commercial lawyers.
- 7.9. Moving universities and wānanga to a corporate governance model through smaller councils and removing stakeholder positions will significantly change the balance of appointed and community positions and the nature of university and wānanga councils.
- 7.10. Universities are public institutions and are important components of local communities. Universities and wānanga have tradition of strong associations with the local communities where they are located.

- 7.11. The consultation document posits the view that councils would be stronger if governance skills are explicitly prioritised and uses this to justify the removal of stakeholder representation. The document on university governance states that councils with stakeholder representation council have unclear accountabilities. But the statement is made without any backup or evidence leading to this claim.
- 7.12. Proposals to introduce a requirement that the Minister and councils would be required to appoint people, *“who have the skills and experience that make them capable of governing universities”* suggests that this is not happening now. Again, without any evidence to substantiate it.
- 7.13. A significant risk is that smaller councils with a greater weight of Ministerial appointees will lead to narrower and more constrained thinking and a narrower focus if there is a concentration of appointees on council with financial backgrounds as is the trend.
- 7.14. We are concerned that these proposals will reduce the independent thinking, and depth of thinking and ideas because of smaller and more limited composition of councils.
- 7.15. Another issue at stake here is about the unique role that universities play in filling the critic and conscience role in society. Undertaking the critic and conscience of society is not a just role that relates to publishing articles or other university related outcomes. It must also be reflected throughout the university and at the governance level.
- 7.1. The Education Act s 162 (4) (a) sets out clearly the functions of universities which show the clear distinction between the functions of universities and corporate businesses and their objectives. The Act states the following functions:
- (i) They are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence:*
- (ii) Their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge:*
- (iii) They meet international standards of research and teaching:*
- (iv) They are a repository of knowledge and expertise:*

(v) They accept a role as critic and conscience of society.

- 7.2. The proposals, if introduced, will lead councils becoming unrepresentative of the communities and the stakeholders that they serve because of smaller council size and the greater weight of Ministerial appointees.
- 7.3. Given the challenges affecting universities and wānanga then arrangements and structures that reduce the breadth of experience, knowledge basis and people on university councils will result in these institutions being less able to deal to the challenges and more limited in their responses.

8. The CTU response to the consultation questions

- 8.1. **What do you consider are the advantages/disadvantages of this proposal to decrease the size of councils?**
- 8.2. To ensure that the university and wānanga councils are broadly representative of the communities they represent means that they must be adequate in size. Size is a consideration this should not be the most important consideration. More important is ensuring the ability to be representative of the community and for the skill sets needed.
- 8.3. We are concerned that the wish to see reduced size in councils is motivated by a wish to pursue a corporate governance model and also to prevent deeper debate, independent scrutiny, longer-term strategic analysis and different viewpoints.
- 8.4. Universities are different from businesses and students are not customers in the sense that customers are in the corporate model.
- 8.5. A council of eight members will be dominated by the Ministerial appointments and the Ministerial appointees will hold the balance of power.
- 8.6. Meredith Edwards reported on a study in 2002 of Australia that found little direct link between board composition and company performance and suggested that board size, except at the extreme end has little correlation with performance⁸. We note that overseas universities do not necessarily have small Boards – e.g. Stanford University currently has a Board of Trustees of 33 people.

⁸ Meredith Edwards(2002) *Review of New Zealand Tertiary Education Institution Governance* , Ministry of Education 2003 page 13.

- 8.7. The major risk in reduced council size is the very real risk of reduced diversity on councils and distance and alienation from critical stakeholders.
- 8.8. Universities are complex institutions and must retain relationships with many groups. Stakeholder representation brings much richness to the governance processes from its ability to bring in different views and ideas.
- 8.9. **What do you consider are the advantages/disadvantages of the proposal to make council membership requirements more flexible?**
- 8.10. It is unclear what is meant by this, what this increased flexibility would bring and how reduced council size would make councils more flexible.
- 8.11. We are more concerned about reducing diversity of composition and independence of thinking. A more limited composition of council members will reduce diversity and brings the risk of a “group think” with reduced dialogue and debate.
- 8.12. Domination on councils of Ministerial appointees may also result in non-Ministerial members out voted and these members being less willing and able to challenge the Ministerial appointees’ decisions and views.
- 8.13. **What do you consider are the disadvantages / advantage of this proposal to require the Minister and councils to appoint council members capable of governing institutions?**
- 8.14. This question is undermining to the highly effective councils that are operating in most university and wānanga now and the many capable and committed people on these councils. There may be some areas where improvements in governance could be made but that is the case for many governance boards.
- 8.15. The governance needs of universities and wānanga are different to those of corporations. The stockholder mode ensures members on the board who understand the needs of universities and wānanga. Governance training is a learnt skill that council members are highly capable of acquiring.
- 8.16. The many strengths of the stakeholder model for universities and wānanga are ignored in the discussion documents.

8.17. What do you consider are the advantages/disadvantages of this proposal to clarify the duties and accountabilities of individual council members?

8.18. Council must have members on their governance structures that are competent and capable of the governance functions required. Good governance is achieved from a range of measures including competent and knowledgeable leadership, training and support.

8.19. It is essential to ensure that the duties and accountabilities of individual members are articulated. S 181 of the Education Act 1989 sets out the responsibilities and identifies the function of councils.

9. Conclusion

9.1. The CTU opposes the removal of stakeholder representation on councils on the basis of reducing democratic participation.

9.2. The current council requirements provide a means of ensuring that the necessary the skills, knowledge and experience and “voices” are on the governance council.

9.3. The proposal in the discussion document would strengthen Ministerial power and external control of wānanga and university councils.