

## Risk Assessment Criteria for Tertiary Education Institutions

### Background

Section 195A of the Education Act 1989 (“Act”) requires the Secretary for Education to determine and publish in the *New Zealand Gazette* criteria for assessing the level of risk to the operation and long-term viability of tertiary education institutions, and the level of risk to the educational performance of students enrolled at institutes of technology and polytechnics.

This notice sets out the criteria for risk assessment, following a review under section 195A(3) of the Education Act 1989. There are no changes to the existing criteria, which will continue to apply on an interim basis, pending the outcome of a further review in 2019. That review will reconsider the criteria alongside the changes as part of the reform of vocational education.

The risk assessment criteria set out in this notice will be considered by the Chief Executive of the Tertiary Education Commission (TEC) and the Minister of Education (“Minister”) when they consider whether an institution is at risk in a way that might warrant intervention in accordance with Parts 15 and 15A of the Act.

Whether the Chief Executive of the TEC or the Minister decides to initiate an intervention will depend on their assessment of the nature and level of the risk or risks, and the thresholds for the various types of intervention set out in the Act. Other relevant considerations may also be taken into account. For example, the Chief Executive of the TEC or the Minister will assess the appropriateness of the steps already taken by the council of the institution before deciding whether or how to intervene.

Different levels of intervention under the Act have different risk thresholds. These risk thresholds are described by statements in the Act relating to whether:

- an institution “may be at risk” (sections 195B (provision of information), 222A (specialist help), 222B (performance improvement plans));
- the “operation or long-term viability of an institution is at risk” (section 195C (Crown observer));
- “there is a serious risk to the operation or long-term viability of the institution” (sections 195D (Crown commissioner), and 222C (Crown manager)); and
- “The educational performance of students at a polytechnic may be or is at risk” (this only relates to polytechnics) (sections 222A (specialist help), 222B (performance improvement plans), and 222C (Crown manager)).

The risk assessment criteria apply to three areas. These are:

- organisational;
- financial; and
- educational.

Two of the risk assessment criteria cross-reference the Financial Monitoring Framework (FMF) operated by the TEC from 1 January 2010.<sup>1</sup>

To the extent that the FMF is incorporated by reference in this notice, it should be taken to be the FMF in the form published by the TEC on its website on the date of publication of this notice in the *New Zealand Gazette*. Any revision to the FMF will not be automatically included in this notice, and a replacement notice will need to be published in the *New Zealand Gazette* to give effect to any changes to TEC’s FMF.

Nothing in this notice limits or affects the duties of a tertiary education institution council under section 181 of the Act, or any other duties or obligations of an institution or council under any other enactment.

Words and phrases used in this notice bear the same meaning as under the Act.

### Criteria for Assessing the Level of Risk

#### *Organisational*

1. The council has not fulfilled, and continues not to fulfil, its statutory functions and duties under the Education Act 1989.
2. The council has failed, and continues to fail, to ensure the institution maintains adequate systems and processes for effective planning, and for the effective management of the financial and educational performance and infrastructure of the institution.

## NEW ZEALAND GAZETTE

3. The council has failed, and continues to fail, to meet a material obligation under the Education Act 1989, Crown Entities Act 2004 or Public Finance Act 1989.

### *Financial*

4. The institution is, or is at risk of being, unable to pay its debts as they become due in the normal course of business.
5. The institution has breached any of the conditions set by the Secretary for Education in a borrowing consent under section 192(7) of the Education Act 1989, and the breach has not been remedied.
6. The institution is in default under any loan or other facility agreement with a bank or other commercial lender, or the Crown, and the default has not been remedied.
7. The institution has an overall rating of "Moderate Risk" or "High Risk" in the most recent financial performance assessment carried out under the FMF operated by the TEC from 1 January 2010. The overall financial performance assessment under the FMF covers the dimensions of the shorter-term financial viability and longer-term sustainability of an institution.
8. The institution has a rating of "Moderate Risk" or "High Risk" under the financial viability criteria in its most recent financial performance assessment carried out under the FMF operated by the TEC from 1 January 2010. The financial viability criteria under the FMF focus on the shorter-term financial performance of the institution.

### *Educational*

9. The polytechnic has failed to meet the educational performance commitments in the investment plan agreed by the TEC.
10. The external evaluation and review of the polytechnic carried out under the auspices of the New Zealand Qualifications Authority has resulted in an assessment of educational performance that is "not yet confident" or "not confident".

Dated at Wellington this 19th day of December 2018.

CLARE DOUGLAS, Deputy Secretary for Education.

*Note:* This notice replaces the one published in the [New Zealand Gazette, 22 January 2015, Issue No. 6, Notice No. 2015-go355](#).

### **Key to Annotation**

1. For further information on the FMF see <http://www.tec.govt.nz/funding/funding-and-performance/monitoring-tertiary-education-sector/financial/>.