



[IN-CONFIDENCE]

Inquiry into use of external security consultants - review of Tertiary Education Institutions

Date: 5 October 2018

Report No: SSC2018/968

Contact: Catherine Williams, Deputy Commissioner, Integrity, Ethics & Standards

Telephone: 9(2)(a) privacy

	Action Sought	Deadline
Hon Chris Hipkins Minister of Education	For approval	
Hon Dr Megan Woods Acting Minister of State Services	For information	

Enclosure: Yes – Two letters to TEC and to TEIs

Executive Summary

- 1 Despite being part of the wider State sector, Tertiary Education Institutions (TEIs) do not fall within the scope of the State Services Commissioner's powers of inquiry under the State Sector Act, and are the remaining element of the State sector whose conduct is not subject to a review of use of external security consultants.
- 2 This report sets out the background to the State Services Commission (SSC) inquiry, and outlines the options for strongly encouraging TEIs to review any services they have engaged.

Minister's Office Comments

Comments:	
Date returned to SSC:	

Recommended Action

We recommend that you:

- a **endorse** option one – to send a letter as Minister of Education to the TEI councils to assure themselves that any use of external security consultants has been done in a manner consistent with the public expectations of the State sector

Agree / Disagree

- b **agree**, if you endorse option one, to sign and send the attached letters to the Tertiary Education Commission and Tertiary Education Institution councils

Agree / Disagree

- c **agree** that the SSC release this briefing once it has been considered by you, and following release of the final inquiry report, to be published on the State Services Commission website

Agree / Disagree

Hon Chris Hipkins
Minister of Education



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SSC Report: Inquiry into use of external security consultants - review of Tertiary Education Institutions

Purpose of Report

- 3 This report sets out the background to the State Services Commission (SSC) inquiry into use of external security consultants, and outlines the options for strongly encouraging tertiary education institutions (TEIs) to review any services they have engaged.

Background

- 4 SSC commenced an inquiry on 16 March 2018 into the circumstances, reasons and outcome of Southern Response Earthquake Services Limited's engagement of external security consultants, including Thompson and Clark Investigations Ltd (TCIL). The inquiry terms of reference were amended soon after to also include the Ministry of Business, Innovation and Employment's relationship with TCIL.
- 5 The inquiry identified additional information relating to other Government agencies. As a result, the scope of the inquiry was widened to cover all State sector agencies. This was considered a necessary assurance that the use of external security resources are being procured, managed and applied in a manner that is consistent with the expectations of the State services, to maintain public trust and confidence in the activities of the State sector.
- 6 The Minister for Research, Science and Innovation has requested the Commissioner to include Crown Research Institutes within the scope of the inquiry, for which there is a lawful basis to do so. NZ Police have announced they will conduct their own internal inquiry, as operational and constabulary independence precludes the SSC inquiry from having jurisdiction.
- 7 Despite being part of the wider State sector, TEIs do not fall within the scope of the State Services Commissioner's powers of inquiry under the State Sector Act, and are the remaining element of the State sector whose conduct is not subject to a review.
- 8 It is considered to be in the public interest for TEIs to join the rest of the State sector in providing assurance that external security providers are being engaged, and used, in a manner that is lawful and appropriate.

Options to includes TEIs

Option 1 – Ministerial letter

- 9 The Minister of Education is responsible for appointing a portion of the members to the council of a TEI. The council is then responsible for the management and operation of the institution. The Minister may remove a member of the council, on the council's recommendation. For at risk institutions, the Minister has powers to appoint a Crown observer, dissolve the council, appoint a commissioner and advisory council.
- 10 The Education Act does not give the Minister powers to conduct inquiries into the operation of the TEI, preserving academic freedom and autonomy. While there is no power for the Minister to direct councils to undertake a review of the TEIs use of external

security providers, it is open to the Minister to suggest, including to suggest strongly, this for the councils to consider.

- 11 It is considered that an appropriately drafted letter from the Minister to the councils, outlining the public interest benefits of reviewing their use of security services, is the most effective method available to the Commissioner in attempting to secure assurance across the whole State sector.
- 12 If one or more of the TEIs do not chose to adopt the Minister's sensible suggestion it will be for them to explain why they alone in the State sector should not be accountable to the public regarding the use of external security consultants.

Option 2 – Office of the Auditor General

- 13 The Auditor General has a broad discretionary mandate to inquire into TEIs, pursuant to section 18 of the Public Audit Act, into any matter concerning the use of resources by a public entity. This inquiry function is applied in a manner that is consistent with the question of what is appropriate from a public audit perspective. The scope of the SSC inquiry necessarily extends beyond engagement, or acquisition of services, and is reviewing the actual application of external security providers. This goes further than the Auditor General's jurisdiction, and would not be empowered commence an inquiry of a similar scope.
- 14 It is considered that a partial inquiry by the Auditor General would not provide sufficient assurance to the public.

Option 3 – Ombudsman

- 15 The Ombudsman has jurisdiction to investigate the activities of TEIs. An investigation may be commenced based on a complaint, though the Ombudsman may decline to investigate where the complainant has insufficient personal interest in the matter complained of.
- 16 The Ombudsman may undertake an investigation on their own motion. Such an investigation is usually prompted in circumstances where there are serious or systemic issues, and the Ombudsman considers their intervention has the potential to result in wider administrative improvement.
- 17 For an investigation to achieve findings for wider administrative improvement, it is conceivable that the Ombudsman would need to consider the activities across the whole of the State sector, rather than the TEIs in isolation. The majority of this effort has already been completed by the SSC inquiry team, pending their final work with the Crown Research Institutes. Any wider improvements that are required across the State services will be addressed by reference of the conduct to the appropriate authority, direction of the Commissioner, or by the pending SSC guidance on information gathering and investigation.
- 18 It is considered that referring the TEIs to the Ombudsman for potential investigation does not provide any assurance an investigation will occur. In the event one did, it might result in duplicated effort and could result in differing views about when use of external security consultants is inappropriate. Reference to the Ombudsman may also result in significant delay in achieving meaningful outcomes across the wider State sector.

Option 4 – Tertiary Education Commission

- 19 The key functions of the Tertiary Education Commission (TEC) are to give effect to tertiary education strategy, implement funding mechanisms, connect and inform the provision of effective education. The TEC also monitors the performance of TEIs, and provides guidance to government about tertiary education.
- 20 The monitoring function of the TEC is confined to reviewing performance in relation to funding and education outcomes, and does not extend to initiating an inquiry for TEIs that would address the scope covered by the SSC inquiry.

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Nigel Gould
Chair
Tertiary Education Commission
[Address]

Dear

Engagement of external security providers

I write regarding the engagement of external security providers.

The State Services Commission (SSC) commenced an inquiry on 16 March 2018 into the circumstances, reasons and outcome of Southern Response Earthquake Services Limited's engagement of external security consultants, including Thompson and Clark Investigations Ltd (TCIL). The inquiry terms of reference were subsequently widened to cover all State sector agencies.

Unlawful or inappropriate intrusions into the activities of the public by providers that are engaged by agencies are serious allegations. Public assurance that external security resources are being used in a manner that is consistent with the expectations of the State services is required, to maintain public trust and confidence in the activities of the State sector.

Tertiary education institutes (TEIs) do not fall within the scope of the State Services Commissioner's powers of inquiry. This reflects the importance of avoiding any interference with academic freedom and autonomy. It is my view, however, that it is in the public interest that TEIs, as part of the wider State sector, are able to provide an assurance to me that the use of external security providers (if any) is both lawful and appropriate.

I have expressed my view in correspondence to all TEIs, and sought their assurance that their use of external security providers (if any) is consistent with public expectations of the State sector. I have also asked the TEIs to respond if they have not used any external security consultants. I have asked for their responses be provided to you, within the next month, to be passed on to me.

Your cooperation in providing any assistance requested by the TEIs in this matter and collating and forwarding responses to me would be appreciated. The SSC is in a position to provide you with any guidance you consider necessary.

Yours sincerely,

Chris Hipkins
Minister of Education

CC: Tim Fowler, Chief Executive TEC
Universities of New Zealand

TEI Council Chair
[Address]

Dear

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Unlawful or inappropriate intrusions into the activities of the public by providers that are engaged by agencies are serious allegations. Public assurance that external security resources are being used in a manner that is consistent with the expectations of the State services is required, to maintain public trust and confidence in the activities of the State sector.

Tertiary education institutes do not fall within the scope of the State Services Commissioner's powers of inquiry and I acknowledge the importance of avoiding any perceived or actual interference with academic freedom and autonomy. These are concepts that underpin a free and democratic society. However, it is my view that it is in the public interest that tertiary education institutions, as part of the wider State sector, are able to provide an assurance to me that the use of external security providers (if any) is both lawful and appropriate.

I do not have authority to issue a direction to you in relation to the operation of your institution, but I am able to counsel and advise.

I seek your assurance, through the Tertiary Education Commission (TEC), that if your institute has engaged, and used, any external security providers, it has done so in a manner that is consistent with public expectations of the State sector. If you have not used any external security consultants, please provide that advice to TEC.

TEC will provide you with advice and assistance, should you require this, for any review you consider necessary to achieve the assurance I am seeking. Gillian Dudgeon, Deputy Chief Executive, Delivery is the contact at TEC. TEC will liaise with SSC to ensure any review is consistent with the approach taken across the broader State sector.

Ultimately, to review any aspect concerning the operation of your institution is a matter for you and your council to consider and determine. I would, however, appreciate it if your Council's assurance on these important matters were provided to TEC within a month from the date of this letter.

Yours sincerely,

Chris Hipkins
Minister of Education