

House of Representatives

**Supplementary  
Order Paper**

**Tuesday, 27 November 2012**

**Advanced Technology Institute Bill**

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*Proposed amendments for the consideration  
of the Committee of the whole House*

**Key:**

- **this is inserted text**
- **~~this is deleted text~~**

**Note:** This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
  - **NOT have the status of an as-reported version of the Bill.**
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**Proposed amendments to the  
Advanced Technology Institute Bill**

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**Explanatory note**

This Supplementary Order Paper amends the Advanced Technology Institute Bill (the **Bill**) to—

- change the name of the Advanced Technology Institute (to be established by the Bill) to Callaghan Innovation in commemoration of Sir Paul Callaghan;
- make a drafting change to the definition of IRL in *clause 4* to better reflect *clause 15* of the Bill, which provides that IRL ceases to be a Crown Research Institute on the commencement of the Bill;
- make a drafting change to *clause 11* to better align the provision with section 73(1) of the Crown Entities Act 2004;
- make other minor drafting changes.

**Hon Steven Joyce, in Committee, to propose the amendments shown in the following document.**

*Hon Steven Joyce*

## **Advanced Technology Institute Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the ~~Advanced Technology Institute~~ Callaghan In-  
novation Act 2012.
- 2 Commencement**  
This Act comes into force on **1 February 2013**.

**Part 1  
Preliminary provisions**

- 3 Purpose**  
The purpose of this Act is to—
  - (a) establish ~~the Advanced Technology Institute~~ Callaghan  
Innovation and to provide for its main objective, func-  
tions, and operating principles; and
  - (b) provide for transitional and other matters.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**ATI** means the Advanced Technology Institute established by **section 6**

**board** means the board of ~~ATI~~ Callaghan Innovation

**Callaghan Innovation** means the entity established by **section 6**

**IRL** means Industrial Research Limited; ~~being a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992~~

**MBIE** means the Ministry of Business, Innovation, and Employment

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**NZTE** means New Zealand Trade and Enterprise established under section 7 of the New Zealand Trade and Enterprise Act 2003

**RS&T funding** has the same meaning as in section 4 of the Research, Science, and Technology Act 2010

**RS&T provider** means—

- (a) ATI Callaghan Innovation;
- (b) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992;
- (c) any other research organisation or person (whether in New Zealand or overseas) undertaking any activity, or providing any service, that enables businesses to undertake, or benefit from, science and technology-based innovation and related activities

**shareholding Ministers** has the same meaning as in section 10(1) of the Crown Entities Act 2004

**technology platform** means a facility that pools skills, resources, or equipment in a manner that is intended to enhance

the scientific, technological, or other related capability or performance of the facility's users.

**4A Status of examples**

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

**5 Act binds the Crown**

This Act binds the Crown.

**Part 2**

**~~Advanced Technology Institute~~ Callaghan Innovation**

Subpart 1—Establishment of ~~ATI~~ Callaghan Innovation

*~~ATI~~ Callaghan Innovation established*

**6 ~~Advanced Technology Institute~~ Callaghan Innovation established**

This section establishes the ~~Advanced Technology Institute~~ Callaghan Innovation.

**7 ~~ATI~~ Callaghan Innovation is Crown entity**

- (1) ~~ATI~~ Callaghan Innovation is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to ~~ATI~~ Callaghan Innovation except to the extent that this Act expressly provides otherwise.

**8 ~~ATI's~~ Callaghan Innovation's board**

The Minister must appoint at least 5, but not more than 9, persons as members of the board.

**9 Special advisers**

- (1) The Minister may appoint the chief executive of the Ministry as a special adviser to the board.
- (2) The function of the special adviser is to assist the board to align its strategies and activities with government policy.
- (3) The special adviser may attend any meeting of the board (or any committee of the board) but may not vote.
- (4) The board (or any committee of the board) must give the special adviser sufficient notice of its meetings and copies of all documents and materials to be considered at each meeting.

**10 Stakeholder advisory group**

- (1) The Minister may establish a stakeholder advisory group (an **advisory group**) to provide advice to the board on matters relating to the performance of its functions.
- (2) The board must consider any advice it receives from the advisory group.
- (3) The members of the advisory group must be appointed by the Minister, on terms and conditions that the Minister determines, by written notice to each member.
- (4) When appointing members of the advisory group, the Minister must—
  - (a) consult with the board and have regard to its views; and
  - (b) ensure, as far as practicable, that—
    - (i) the advisory group’s membership is broadly representative of the manufacturing sector, services sector, and RS&T providers; and
    - (ii) the members collectively have sufficient experience and knowledge of the manufacturing sector, of the services sector, and as RS&T providers to give appropriate advice to the board.
- (5) The Minister may, after consulting the board and having regard to its views, give terms of reference on the topics or subject areas on which the advisory group may advise the board.
- (6) The advisory group must comply with any terms of reference given by the Minister.
- (7) The advisory group may determine its own procedure.

**11 Board must not delegate certain powers**

- (1) The board must not delegate ~~its~~ the power of Callaghan Innovation or the board to—
- (a) borrow or lend money:
  - (b) acquire or dispose of real property:
  - (c) acquire or dispose of securities:
  - (d) set up a subsidiary:
  - (e) appoint a chief executive of ~~ATI~~ Callaghan Innovation.
- (2) In other respects, section 73 of the Crown Entities Act 2004 applies to the board.

*ATI's Callaghan Innovation's main objective, functions, and operating principles*

**12 ATI's Callaghan Innovation's main objective**

ATI's Callaghan Innovation's main objective is to support science and technology-based innovation and its commercialisation by businesses, primarily in the manufacturing sector and services sector, in order to improve their growth and competitiveness.

**13 ATI's Callaghan Innovation's functions**

- (1) ATI's Callaghan Innovation's functions are to—
- (a) foster an environment that encourages and supports businesses to improve their growth and competitiveness through science and technology-based innovation and related activities:
  - (b) promote and facilitate networking and collaboration among businesses and between RS&T providers and businesses to assist businesses to undertake, or benefit from, science and technology-based innovation and related activities:
  - (c) facilitate the transfer of knowledge and technology between RS&T providers and businesses:
  - (d) undertake research and development:
  - (e) provide services to businesses that contribute to ATI's Callaghan Innovation's main objective:
  - (f) allocate and administer RS&T funding:



- (g) invest in persons or projects that may assist businesses to undertake, or benefit from, science and technology-based innovation and related activities:
  - (h) perform or exercise any other function or power imposed or conferred on ~~ATI~~ Callaghan Innovation by any other enactment:
  - (i) perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.
- (2) Examples of the ways in which ~~ATI~~ Callaghan Innovation may perform the function specified in **subsection (1)(b)** (which relates to promoting and facilitating networking and collaboration between RS&T providers and businesses) include—
- (a) supporting the development of technology platforms:
  - (b) encouraging the exchange of staff, students, or other individuals between RS&T providers and businesses:
  - (c) assisting businesses to identify and access grants and other assistance programmes that are intended to support science and technology-based innovation and related activities.
- (3) Examples of the ways in which ~~ATI~~ Callaghan Innovation may perform the function specified in **subsection (1)(e)** (which relates to providing services to businesses) include—
- (a) undertaking research and development in collaboration with, or on behalf of, businesses or RS&T providers (or both):
  - (b) assisting businesses to access (within New Zealand or overseas) relevant expertise, intellectual property, equipment, facilities, or anything else that may assist those businesses to undertake, or benefit from, science and technology-based innovation and related activities:
  - (c) providing information to businesses about potential new technologies or scientific discoveries and assisting businesses to use them, develop them, or exploit them commercially:
  - (d) providing training and advice to assist businesses to undertake science and technology-based innovation and related activities (including how to access and manage technology or intellectual property):

- (e) providing product analysis, process testing, calibration and certification, or other related measurement services.

#### **14 Operating principles**

- (1) In meeting its main objective, and performing its functions, ATI Callaghan Innovation must—
  - (a) aim to ensure that any activities it undertakes are for the benefit of New Zealand; and
  - (b) proactively engage and collaborate with businesses, other RS&T providers, and other persons that ATI Callaghan Innovation considers relevant to the performance of its functions; and
  - (c) maintain an awareness of international trends and advances in science and technology; and
  - (d) ensure that any activities it undertakes or services it provides are undertaken or provided in an efficient and cost-effective manner that—
    - (i) has regard to businesses' commercial imperatives and time frames; and
    - (ii) utilises existing capability within or among RS&T providers.
- (2) In addition, in performing the function specified in **section 13(1)(f)** (which relates to allocating and administering RS&T funding), ATI Callaghan Innovation must—
  - (a) act fairly and transparently; and
  - (b) implement systems and procedures to enable it to give effect to the principle set out in **paragraph (a)**; and
  - (c) make information about those systems and procedures available on its Internet site; and
  - (d) include in its annual report under section 150 of the Crown Entities Act 2004 a report on its implementation of those systems and procedures.
- (3) The Auditor-General must, when carrying out a financial report audit of ATI Callaghan Innovation under section 15 of the Public Audit Act 2001, report on ATI's Callaghan Innovation's implementation of the systems and procedures referred to in **subsection (2)**.

Subpart 2—Transition to ATI Callaghan Innovation and other matters

*Transfer of IRL*

**15 IRL to be subsidiary of ATI Callaghan Innovation**

- (1) On the commencement of this Act, IRL—
  - (a) ceases to be a Crown Research Institute and, accordingly, the Crown Research Institutes Act 1992 ceases to apply to IRL; and
  - (b) is deemed to be a subsidiary of ATI Callaghan Innovation.
- (2) On the commencement of this Act, the shareholding Ministers must transfer their shares in IRL to ATI Callaghan Innovation.

*Transfer of employees*

**16 Transfer of MBIE and NZTE employees to ATI Callaghan Innovation**

- (1) The chief executive of MBIE must identify the employees of MBIE and the chief executive of NZTE must identify the employees of NZTE—
  - (a) whose duties are, overall, more closely connected with the functions of ATI Callaghan Innovation; and
  - (b) whose positions will, as a result of the establishment of ATI Callaghan Innovation, cease to exist within MBIE or NZTE (as the case may be).
- (2) An employee who is identified under **subsection (1)** must be offered equivalent employment by ATI Callaghan Innovation.
- (3) The employee is not entitled to receive any payment or other benefit on the ground that the position held by the employee in MBIE or NZTE (as the case may be) has ceased to exist if—
  - (a) the position ceases to exist because the duties of the position are more closely connected with the functions of ATI Callaghan Innovation; and
  - (b) the employee is offered equivalent employment by ATI Callaghan Innovation (whether or not the employee accepts the offer).
- (4) In this section and **section 17**, **equivalent employment** means employment that is—

- (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions that are no less favourable overall than those applying to the employee immediately before the date the offer of employment is made to that employee; and
  - (d) on terms that treat the period of service with the relevant agency (and every other period of service recognised by that agency as continuous service) as if it were continuous service with ATH Callaghan Innovation.
- (5) This section overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.

**17 Transfer of employees of IRL subsidiary to ATH Callaghan Innovation**

An employee of IRL is not entitled to receive any payment or other benefit on the ground that the employee's position in IRL has ceased to exist if—

- (a) the position ceases to exist because the chief executive of ATH Callaghan Innovation has determined that the employee's duties will no longer be carried out by IRL; and
- (b) the employee is—
  - (i) offered equivalent employment by ATH Callaghan Innovation (whether or not the employee accepts the offer); or
  - (ii) offered and accepts other employment in ATH Callaghan Innovation.

**18 Terms and conditions of transferred employees**

- (1) The employment of a transferred employee by ATH Callaghan Innovation does not—
- (a) constitute new employment for the purposes of the KiwiSaver Act 2006; or
  - (b) treat that employee as a new employee for the purposes of the Employment Relations Act 2000.
- (2) In this section, **transferred employee** means a person who is offered, and accepts, employment in ATH Callaghan Innovation under **section 16 or 17**.

**19 Government superannuation fund**

- (1) Any person who, immediately before becoming an employee of ATI Callaghan Innovation, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service as long as the person continues to be an employee of ATI Callaghan Innovation.
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of ATI Callaghan Innovation were Government service.
- (3) **Subsection (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of ATI Callaghan Innovation is the controlling authority.

*Consequential amendments*

**20 Consequential amendments**

Amend the enactments set out in the **Schedule** as set out in that schedule.

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## Schedule

### Consequential amendments

s 20

#### Part 1

#### Amendments to Acts

#### **Crown Entities Act 2004 (2004 No 115)**

In Schedule 1, Part 1, insert in its appropriate alphabetical order and under the headings as shown:

| Name  | Exemption from acquisition of securities, borrowing, guarantee, and derivative rules |       |       |       | Exemption from section 165 (net surplus payable to Crown) |
|---|--|-------|-------|-------|---|
|   | s 161  | s 162 | s 163 | s 164 |   |
| Advanced Technology Institute <u>Callaghan Innovation</u> | ✓  | ✓     | ✓     | ✓     | ✓   |

#### **Ombudsmen Act 1975 (1975 No 9)**

In Schedule 1, Part 2, insert in its appropriate alphabetical order: “Advanced Technology Institute Callaghan Innovation”.

#### Part 2

#### Amendment to regulations

#### **National Standards Regulations 1976 (SR 1976/239)**

In regulation 2, replace the definition of **Industrial Research Limited** with:

“**Industrial Research Limited** means Industrial Research Limited, being a company incorporated under the Companies Act 1993”.