



# State Sector Amendment Act 2004

Public Act 2004 No 15  
Date of assent 5 April 2004  
Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the State Sector Amendment Act 2004.
- (2) In this Act, the State Sector Act 1988 is called "the principal Act".

## **Part 1**

### **Preliminary provisions**

#### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

#### **3 Purposes**

The purposes of this Act are—

- (a) to enable the State Services Commissioner, in negotiating collective agreements applicable to employees of Boards of Trustees, to exercise, subject to certain exceptions, the powers available to an employer under the Employment Relations Act 2000; and
- (b) to require the unions representing employees of Boards of Trustees to give prior notice of a proposed strike; and
- (c) to require Boards of Trustees to report to the State Services Commissioner on the conduct of strikes that affect the schools of those Boards; and
- (d) to preclude compensation for technical redundancies that arise out of the reorganisations of schools, and to provide that certain provisions governing appointments are not to apply to the appointment of persons affected by such reorganisations; and
- (e) to make related amendments to the principal Act and to the Education Act 1989.

## **Part 2**

### **Amendments concerning employees of Boards of Trustees**

#### *Amendments to principal Act*

#### **4 New sections 74AA to 74AD inserted**

The principal Act is amended by inserting, after section 74, the following sections:

**“74AA Commissioner’s powers when collective agreements are negotiated**

- “(1) During the negotiations for a collective agreement that is to bind any employees of a Board of Trustees, the Commissioner has, for the purpose of those negotiations, all the rights, duties, and powers of an employer under the Employment Relations Act 2000 in respect of those employees.

- “(2) To avoid doubt and without limiting the generality of subsection (1), it is declared that the powers referred to in that subsection include the power to lock out or suspend employees.
- “(3) Despite subsection (1), in the case of employees who are members of a union, the Commissioner may, where there is a strike, exercise the power of suspension by advising the union of the class or classes of employees who are, or are to be, suspended, and, if the union is so advised, the suspension takes effect on the date specified for the purpose in the advice, and the Commissioner need not—
- “(a) separately advise any employee who is included in any such class; or
  - “(b) comply with section 89 of the Employment Relations Act 2000.
- “(4) In any case where the Commissioner has suspended or locked out an employee by virtue of this section, the Commissioner may, at his or her discretion, give either or both of the following directions:
- “(a) that the employee is not to be remunerated in respect of the period of the suspension or lockout;
  - “(b) that any amount paid to the employee in respect of that period be deducted from any remuneration otherwise payable to the employee.
- “(5) Any direction under subsection (4)—
- “(a) may be given to any person responsible for effecting payments or transfers of sums of money required for the remuneration of the employee; and
  - “(b) must be followed by the person.
- “(6) The Commissioner may give any notice that, as a result of a direction under subsection (4)(b), is required to be given to an employee under section 6(3)(b) of the Wages Protection Act 1983.
- “(7) Subsection (1)—
- “(a) overrides section 77E(2); and
  - “(b) is subject to sections 74AC and 74AD.
- “(8) In this section and in sections 74AB to 74AD, **Board of Trustees** means a Board of Trustees constituted under Part IX of the Education Act 1989, and includes any Commissioner appointed under that Act to act in place of the Board of Trustees.

**“74AB Boards of Trustees indemnified by Commissioner**

- “(1) If, in any claim or proceedings, a Board of Trustees becomes liable for costs or damages that arise from the exercise or purported exercise of any of the powers conferred on the Commissioner by section 74AA, the Commissioner must, out of money appropriated for the purpose by Parliament, indemnify the Board for those costs or damages.
- “(2) However, a Board of Trustees may not be indemnified for any costs or damages to the extent that those costs or damages arise out of conduct of the Board that, in the reasonable opinion of the Commissioner,—
- “(a) is not in good faith; or
  - “(b) is engaged in without reasonable care.

**“74AC Strikes in schools to be notified**

- “(1) A strike by employees of any Board of Trustees is not lawful for the purposes of the Employment Relations Act 2000 unless the Commissioner and each Board of Trustees is given notice in written or electronic form of the proposed strike 3 days before the commencement of the proposed strike.
- “(2) The notice required by subsection (1) must state—
- “(a) the nature of the proposed strike, including whether or not the proposed action will be continuous; and
  - “(b) the school or schools that will be affected by the proposed strike; and
  - “(c) the period of the proposed strike, which is to be specified by giving the date on which the proposed strike is to commence and the date on which the proposed strike is to end.
- “(3) The notice must be signed by a representative of the employees’ union.
- “(4) Unless the notice is withdrawn before the commencement of the strike, every employee is, throughout the period stated in the notice, deemed to participate in the strike if—
- “(a) the employee’s duties are normally performed in a school affected by the strike; and
  - “(b) the strike relates to the negotiation of a collective agreement that will bind the employee; and
  - “(c) the employee’s name has not been notified to the Commissioner in a current notice given under section 74AD.

“(5) The provisions of this section are in addition to, and not in derogation of, the provisions of the Employment Relations Act 2000.

**“74AD Employers to notify Commissioner about participation in strikes**

“(1) As soon as reasonably practicable after the commencement of a strike notified under section 74AC, the Board of Trustees of each school to which the notice relates must—

“(a) provide the Commissioner with a list of the names of the employees of the Board who are not participating in the strike notified by the notice; and

“(b) notify each of those employees that he or she has been included in the list.

“(2) A Board of Trustees that has complied, or is to comply, with subsection (1) must, at the written direction of the Commissioner, provide the Commissioner with any information required by the Commissioner about the conduct of the strike to which the notice under section 74AC relates.

“(3) Information under subsection (2) may, without limitation, include, or consist of, information about the number of hours worked by any employee or any class of employee.

“(4) The Commissioner may, at the Commissioner’s discretion, require a Board of Trustees to inform the Commissioner, by a specified date, as to the Board of Trustees’ compliance with the provisions of, or any directions given under, this section.

“(5) If the Commissioner has reasonable grounds for believing that a Board of Trustees has failed to comply with the provisions of, or any directions given under, this section, the Commissioner may report those grounds to the Minister of the Crown who is for the time being responsible for the administration of Part VIIIA of the Education Act 1989.”

**5 New sections 77HA and 77HB inserted**

The principal Act is amended by inserting, after section 77H, the following sections:

**“77HA Restriction of compensation for technical redundancy arising from closure or merger of schools**

“(1) An employee in a school is not entitled to receive any payment or other benefit on the ground that his or her position in

the school (the **previous position**) has ceased to exist because the school is affected by a merger under section 156A of the Education Act 1989 or is closed under section 154 of that Act and, before the date on which the merger or the closure takes effect,—

- “(a) the employee is offered in writing employment in an equivalent position (whether or not the employee accepts the offer) in the continuing school or in the replacement school or in another school directly affected by the merger or the closure; or
  - “(b) the employee is offered in writing, and accepts, employment in any other position in the continuing school or in the replacement school or in another school directly affected by the merger or the closure.
- “(2) Employment in an equivalent position in relation to the employee’s previous position is employment that—
- “(a) is generally similar in role, duties, and status; and
  - “(b) requires similar qualifications, training, skills, and experience, but may have a different title; and
  - “(c) is in the same general locality; and
  - “(d) is on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of employment (including any service-related redundancy conditions and superannuation conditions); and
  - “(e) is on terms that treat the period of service with the school in which the previous position was held (and any other period of service recognised for the purposes of the previous position as continuous service) as if it were continuous service for the purposes of the position offered to the employee.
- “(3) The Minister of Education may determine whether a school is directly affected by a closure or merger, and that determination is binding on all parties.
- “(4) Subsection (1)(b) is subject to any contrary provision in an employment agreement that provides for a payment on the ground that the employee’s position has ceased to exist, but only if that payment is less than the amount that would otherwise be payable in any case to which subsection (1) does not apply.

“(5) A collective employment agreement that binds employees in schools may provide, consistently with subsections (1) and (2), for the manner in which those subsections are to apply to those employees.

**“77HB Appointment of employees following closure or merger of schools**

“(1) Sections 77G and 77H do not apply to an appointment to a position in a school if—

“(a) the appointment is made in connection with the closure of a school under section 154 of the Education Act 1989 or the merger of schools under section 156A of that Act; and

“(b) the position that the person previously held has ceased to exist as a result of the closure or merger.

“(2) Subsection (1) does not apply to the appointment of an employee to the position of principal.”

*Amendment to Education Act 1989*

**6 Amendment to section 65A of Education Act 1989**

Section 65A of the Education Act 1989 is amended by inserting, after subsection (2), the following subsection:

“(2A) If, because of a strike or lockout, a school is not open for instruction on any half-day, the school is, for the purposes of subsection (2), deemed to be open for instruction on that half-day.”

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**Legislative history**

3 December 2003	Introduction (Bill 100–1)
10 December 2003	First reading and referral to Education and Science Committee
19 March 2004	Report from Education and Science Committee (Bill 100–2)
30 March 2004	Second reading, committee of the whole House, third reading
5 April 2004	Royal assent

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This Act is administered in the State Services Commission.

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