

## SCHOOL TRUSTEES BILL

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### EXPLANATORY NOTE

THIS Bill enables the establishment for State primary, secondary, composite, and correspondence schools, and for certain special schools, of the boards of trustees recommended in *Tomorrow's Schools*.

The Bill does not itself give boards of trustees any of the powers recommended in that report. It simply enables them to be established, and gives them (from 1 May 1989) the powers of the school committees, committees of management, and boards of governors of the schools for which they are established. Once they are established, however, it will be possible for other legislation flowing from *Tomorrow's Schools* to give them additional powers. And in the meantime they will be able to gain knowledge of their schools and experience in administration.

*Clause 1* relates to the Bill's Short Title and commencement. *Clauses 19 to 21* of the Bill (which give boards of trustees the powers of existing committees and boards of governors, dissolve those committees and boards, and effect consequential amendments, repeals, and revocations) come into force on 1 May 1989. The rest of the Bill comes into force on assent.

*Clause 2* defines certain terms used in the Bill.

*Clause 3* provides that the Bill binds the Crown.

*Clause 4* requires State primary, secondary, composite, special, and correspondence schools to have boards of trustees. ("Special school" means a school for the time being specified in the *First Schedule* to the Bill.)

It should be noted that integrated schools are all State schools.

*Clause 5* specifies the membership of the boards of primary, secondary, and composite schools (other than special and correspondence schools).

A board will comprise 5 parent trustees elected by parents, the principal, a permanent teacher elected by the school's teaching staff, and up to 4 co-opted trustees. In addition, the board of an integrated school will have up to 2 trustees appointed by its proprietors, and the board of a composite or secondary school will have a trustee who is a secondary student elected by all students in form I or above.

It should be noted that the terms "parent", "permanent teacher", and "teaching staff" are defined in *clause 2 (1)* of the Bill.

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*Clause 6* provides that the constitution of the board of a special or correspondence school is to be determined by the Minister.

*Clause 7* provides that until elections are held, the board of a newly established school will comprise 5 trustees either appointed by the Minister or (at the option of the Minister) elected by parents of prospective students, the principal or principal designate (if any), and up to 4 co-opted trustees.

*Clause 8* provides that until elections are held, the board of a newly integrated school will comprise 5 parent representatives, the principal, 2 trustees appointed by the school's proprietors, and up to 4 co-opted trustees.

*Clause 9* relates to annual meetings, and elections. Boards must hold an annual meeting in May each year. If before 1 April a board fixes a day for its annual meeting, the meeting will be held on that day. If not, the meeting will be held on the last Tuesday in May.

In general, elections of trustees will be held every 2 years; but where (because a school is newly established or newly integrated, or because a commissioner acting in place of a board has fixed a day for the election of members of a board to replace her or him) elections have been held within 6 months of the time when elections would normally be held, no further elections will be held until 2 years later. Elections must be held within a period between 1 April and the day 7 days before the Board's annual meeting.

*Clause 10* relates to the term of office of trustees. Elected, appointed, and co-opted trustees will go out of office after the election of new trustees. So generally trustees will hold office for 2 years. But a co-opted trustee may be co-opted for a shorter period; and where under *clause 9* elections are held over for 2 years, trustees will hold office for a little more than 2 years.

*Clause 11* specifies the persons who cannot be elected, appointed, or co-opted, as trustees. These are persons under 18 (except in the case of the trustee elected by students), mentally disordered persons, undischarged bankrupts, persons convicted of offences punishable by imprisonment who have neither suffered the penalty imposed nor been pardoned, and persons disqualified under section 112 of the Local Elections and Polls Act 1976 (certain aliens).

*Clause 12* provides for the filling of casual vacancies on boards. Generally a casual vacancy will arise when a trustee dies, resigns, is absent without the board's consent from 3 consecutive meetings, or becomes disqualified. But an elected trustee (other than the teacher representative) loses office if he or she receives a salary, fee, or wage from the board; a teacher representative loses office if she or he ceases to be a permanent teacher at the school; a co-opted trustee who becomes a teacher at the school loses office if there is already a co-opted trustee who is a teacher at the school; the proprietors of an integrated school may dismiss any trustee they appoint; and a student trustee loses office if he or she ceases to be a student at the school.

Casual vacancies are to be filled in the same way as the vacating trustee became a trustee (election, appointment, or co-option); and where not enough trustees are elected at an election, the unfilled positions are to be treated as casual vacancies. But where a vacating trustee's term of office has less than 6 months to run, the board may decide not to fill the vacancy until the next scheduled election.

*Clause 13* empowers the Director-General of Education to replace a board with a commissioner if it has too few elected trustees, or if it does not meet frequently enough.

*Clause 14* allows the Minister to dissolve a board for mismanagement, dishonesty, disharmony, incompetence, lack of action, or acting or proposing to act unlawfully. Where the Minister dissolves a board, the Director-General will appoint a commissioner to act in its place.

*Clause 15* relates to the powers, replacement, and remuneration, of commissioners.

*Clause 16* provides that certain administrative provisions specified in the *Second Schedule* to the Bill apply to boards. (See that part of this note relating to that schedule.)

*Clause 17* provides a mechanism for resolving problems arising in the administration of trusts, as a result of the substitution of separate boards of trustees for existing boards of governors of 2 or more schools.

*Clause 18* empowers the making of regulations on certain administrative matters relating to boards. They will cover how elections are held, how returning officers for elections are appointed, the dates of the first elections to be held after the Bill is passed and of the first election of trustees of newly established or integrated schools, and the dates and places of first meetings of boards.

*Clause 19*, which comes into force on 1 May 1989, dissolves existing school committees, committees of management, and boards of governors; vests their rights, assets, liabilities, and debts, in their successor boards of trustees; gives boards of trustees all the powers of the committees and boards they replace; and empowers the Director-General to attempt to mediate in, and if necessary to determine, disputes between boards as to which of them has succeeded to a particular right, asset, liability, or debt.

*Clause 20*, which comes into force on 1 May 1989, consequentially amends the Private Schools Conditional Integration Act 1975.

*Clause 21*, which comes into force on 1 May 1989, effects other consequential amendments, repeals, and revocations, and makes certain savings.

The *First Schedule* specifies 7 schools that will be special schools on the passage of the Bill (and thus have boards of trustees).

The *Second Schedule* contains 9 clauses relating to the administration of boards.

*Clause 1* makes boards bodies corporate.

*Clause 2* exempts boards from taxation (other than GST).

*Clause 3* provides for the names of boards.

*Clause 4* exempts trustees from personal liability for acts done in good faith.

*Clause 5* relates to the affixing of boards' seals.

*Clause 6* protects boards from certain consequences of informalities in their membership.

*Clause 7* provides for boards to appoint chairpersons. No principal, teacher, or student can become chairperson.

*Clause 8* regulates board meetings.

*Clause 9* empowers the Minister to validate minor irregularities in the conduct of elections, and to declare elections invalid where there has been some material irregularity.

The *Third* and *Fourth Schedules* relate to consequential amendments to and revocations of regulations.

*Right Hon. David Lange*

## SCHOOL TRUSTEES

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### A BILL INTITULED

5 **An Act to provide for the establishment of boards of trustees for State primary, secondary, composite, and correspondence schools, and for certain special schools**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the School Trustees Act 1988.

10 (2) Sections 19 to 21 of this Act shall come into force on the 1st day of May 1989.

(3) The rest of this Act shall come into force on the day after the day on which it receives the Royal assent.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

15 “Adult student” means a student who has attained the age of 19 years or earlier married:

- “Board” means a board of trustees established under this Act; and—
- (a) In relation to a school, means the school’s board; and
- (b) In relation to a trustee, means the board of 5 which the trustee is a trustee:
- “Commissioner” means a person for the time being appointed under this Act to act in place of a board; and, in relation to a board, means a commissioner appointed to act in its place: 10
- “Director-General” means the chief executive of the Department of Education:
- “Integrated”, in relation to any school, or any school of a particular class, means for the time being established as an integrated school, or integrated school of that class, under the Private Schools Conditional Integration Act 1975: 15
- “Minister” means the Minister of the Crown for the time being responsible for the administration of this Act:
- “Parent”, in relation to any person, includes the person’s immediate caregiver, and every guardian of the person: 20
- “Permanent teacher”, in relation to a school, means a person who is permanently appointed to a teaching position at the school; but, in relation to an election to be held on any day, does not include a person who for a period that includes the day is on leave without pay, or special leave without pay, from the position: 25
- “Primary school” means a State primary school within the meaning of the Education Act 1964: 30
- “Principal”, in relation to a school or a board, means the school’s principal; and except in section 5(1)(c) of this Act, includes an acting principal:
- “School”,—
- (a) In relation to a board, means the board’s school; 35 and
- (b) In relation to a trustee, means the school of whose board the trustee is a trustee:
- “Special school” means a school for the time being specified in the First Schedule to this Act: 40
- “Teaching position”, in relation to a school, means a position in the employment of the board, a body established under the Education Act 1964, or the Director-General, whose duties are—

(a) Giving instruction or guidance to students at the school; or

(b) Administering, controlling, or giving guidance in respect of, the school's teaching programme; or

5 (c) Undertaking at the school the duties of guidance counsellor, visiting teacher, or speech language therapist;—

but (notwithstanding paragraphs (a) to (c) of this definition)—

10 (d) Does not include the position of language assistant, Kaiarahi Reo, or psychologist; and

(e) Does not include a position whose duties are primarily or solely clerical or ancillary; and

15 (f) Unless the school is a special or correspondence school, does not include a person employed as a public servant under the State Sector Act 1988:

“Teaching staff”, in relation to an election held on any day, means every person who (whether or not the person is then on leave without pay or special leave without pay)—

20 (a) Is then a permanent teacher at the school concerned; or

(b) Has then held one or more teaching positions at the school continuously for at least 6 months; or

25 (c) Then holds a teaching position at the school under a contract of employment for a term certain of at least 6 months:

“Trustee” means a trustee of a board; and, in relation to a board or a school, means a trustee of the board or the school's board.

30 (2) In this Act, unless the context otherwise requires, the following terms have the same meaning as in the Education Act 1964: “composite school”, “correspondence school”, “intermediate school”, and “secondary school”.

35 **3. Act binds the Crown**—This Act binds the Crown.

**4. Schools to have boards of trustees**—(1) Every primary, secondary, composite, correspondence, and special school shall have a board of trustees.

40 (2) Notwithstanding subsection (1) of this section, a school is not required to have a board of trustees while a commissioner holds office to act in place of its board of trustees.

**5. Membership of boards of primary, secondary, and composite schools—**(1) The trustees of the board of a primary, secondary, or composite school, shall be—

- (a) 5 parents of students (other than adult students) enrolled at the school in the year in which the election is held, 5  
elected by—
- (i) Parents of students (other than adult students) enrolled at the school in that year; and
- (ii) In the case of an intermediate school only, 10  
persons who are parents of children enrolled in form II at the school concerned in the year before the year in which the election is held, or of children likely to be enrolled in form I at the school in the year after the year in which the election is held; and 15
- (b) The principal for the time being; and
- (c) Except when the school has only one teaching position, a permanent teacher, elected by the teaching staff (other than the principal); and
- (d) Not more than 4 persons co-opted by the board.
- (2) In addition, the board of an integrated school may have 20  
not more than 2 trustees appointed by its proprietors.
- (3) In addition, the board of a composite or secondary school shall have a trustee who is a student enrolled in form III or above at the school, elected by students enrolled in form I or above at the school. 25

**6. Boards of special and correspondence schools—**

- (1) The composition of the board of a special or correspondence school shall be determined by the Minister by notice in the *Gazette*.
- (2) A notice under **subsection (1)** of this section— 30
- (a) May apply to a specified school or schools, or to schools of a specified class or description:
- (b) Subject to **subsection (3)** of this section, may revoke or amend any other such notice.
- (3) No trustee shall go out of office by reason only of the 35  
amendment or revocation of a notice under **subsection (1)** of this section.

**7. Boards of newly established schools—**(1) Notwithstanding **section 5** of this Act, until a newly established primary, secondary, or composite school is opened and the trustees 40  
described in **paragraphs (a) and (c)** of **subsection (1)** of that section have been elected, its trustees shall be—

- (a) At the option of the Minister, either—

- (i) 5 persons appointed by the Minister; or
- (ii) 5 persons elected by parents of students (other than adult students) likely to be enrolled at the school in the year it opens or the next year; and
- (b) The principal or principal designate (if any); and
- 5 (c) Not more than 4 persons co-opted by the board.
- (2) Any trustee appointed, elected, or co-opted under subsection (1) of this section,—
- (a) Shall go out of office when trustees have been elected for the board under section 5 of this Act; but
- 10 (b) Shall (subject to section 11 of this Act) be eligible to be elected or co-opted as a trustee.

**8. Boards of newly integrated schools**—(1) Notwithstanding section 5 of this Act, until the trustees described in paragraphs (a) and (c) of subsection (1) of that section have been

15 elected for a newly integrated primary, secondary, or composite school, its trustees shall be—

- (a) 5 persons who shall be—
  - (i) Where immediately before its integration the school had a school board or other similar body that
  - 20 included 5 or more persons elected by the parents of current, former, or prospective students, 5 of those persons, appointed by that body; or
  - (ii) Where immediately before its integration the school had a school board or other similar body that
  - 25 did not include persons elected by the parents of current, former, or prospective students, 5 parents of current students, appointed by that body; or
  - (iii) Where immediately before its integration the school had a school board or other similar body that
  - 30 included fewer than 5 persons elected by the parents of current, former, or prospective students, all those persons, and such number of parents of current students, appointed by that body, as is necessary to bring the number of trustees under this paragraph to
  - 35 5; or
  - (iv) Where immediately before its integration the school did not have a school board or other similar body, 5 persons appointed by the school's proprietors; and
  - 40 (b) The principal; and
  - (c) Not more than 2 persons (or, as the case may be, 2 further persons) appointed by the school's proprietors; and
  - (d) Not more than 4 persons co-opted by the board.



(2) Any trustee appointed, elected, or co-opted under **subsection (1)** of this section,—

- (a) Shall go out of office when trustees have been elected for the board under **section 5** of this Act; but
- (b) Shall (subject to **section 11** of this Act) be eligible to be elected or co-opted as a trustee. 5

**9. Annual meetings, and elections of trustees**—(1) Every board shall in every year hold an annual meeting—

- (a) On a day in May determined by the board before the 1st day of April in that year; or 10
- (b) Where before the 1st day of April in that year the board fails or refuses to determine a day for that year's annual meeting, on the last Tuesday in May in that year.

(2) Subject to **subsection (4)** of this section, in every odd-numbered year, a board shall hold one or more elections of trustees. 15

(3) Elections under **subsection (2)** of this section shall be held after the 31st day of March in the year concerned, and not later than 7 days before the day on which the board's annual meeting is required by **subsection (1)** of this section to be held in that year. 20

(4) If—

- (a) The first elections of trustees for the board of a school established or integrated after the commencement of this section; or 25

(b) Elections under **section 15 (5) (b)** of this Act,— are held after the 31st day of October in an even-numbered year and before the 1st day of April in the following year, the board shall not hold any election under **subsection (2)** of this section in that following year. 30

(5) This section is subject to **paragraphs (c) and (d)** of **section 18** of this Act.

**10. Term of office**—(1) Trustees elected at elections held under **section 9** of this Act take office on the day following their election on which the board's annual meeting is required by **subsection (1)** of that section to be held. 35

(2) Trustees elected for a board replacing a commissioner take office when the commissioner goes out of office.

(3) Subject to **subsections (1) and (2)** of this section, elected trustees take office 7 days after their election. 40

(4) No trustee shall be co-opted until the board has a vacancy for a co-opted trustee; and a co-opted trustee shall take office when co-opted.

5 (5) A trustee appointed when the board has a vacancy for a trustee appointed by the body or person concerned takes office on appointment.

(6) Within 6 months before the last Tuesday in May in an odd-numbered year, the person or body by whom or which any trustee then holding office was appointed (or the successor to that person or body) may appoint a trustee to succeed that trustee (or reappoint that trustee); but—

(a) The newly appointed trustee shall not take office until the day on which the annual meeting concerned is required by **section 9 (1)** of this Act to be held; and

15 (b) If on that day the person or body concerned is no longer entitled to appoint a successor to the trustee holding office when the newly appointed trustee was appointed, the newly appointed trustee's appointment shall be deemed to have been void.

20 (7) Subject to **subsection (8)** of this section, all elected, appointed, and co-opted trustees holding office immediately before the day in an odd-numbered year on which the board is required by **section 9 (1)** of this Act to hold its annual meeting shall go out of office on that day.

25 (8) If—

(a) The first elections of trustees for the board of a school established or integrated after the commencement of this section; or

30 (b) Elections under **section 15 (5) (b)** of this Act,—  
are held after the 31st day of October in an even-numbered year and before the 1st day of April in the following year, no trustee shall go out of office under **subsection (7)** of this section in that following year.

(9) A board may, when co-opting a trustee, specify a term of office for the trustee; and in that case—

35 (a) If the term expires before the trustee goes out of office under **subsection (7)** of this section, the trustee shall then go out of office; but

40 (b) Otherwise the trustee shall go out of office under that subsection.

(10) This section is subject to **section 12** of this Act.

**11. Certain persons ineligible to be trustees—**(1) A person who—

(a) Has not attained the age of 18 years; or

- (b) Is mentally disordered (within the meaning of the Mental Health Act 1969); or
- (c) Is a bankrupt—
- (i) Who has not yet obtained an order of discharge; or
  - (ii) Whose order of discharge is suspended for a term not yet expired, or subject to conditions not yet fulfilled; or
- (d) Has been convicted of an offence punishable by imprisonment; and has neither—
- (i) Received a full pardon; nor
  - (ii) Suffered the penalty imposed; or
- (e) Is disqualified for election by section 112 of the Local Elections and Polls Act 1976,—
- may not become an elected, appointed, or co-opted trustee.
- (2) Notwithstanding **subsection (1) (a)** of this section, a student of any age may be elected a trustee by students.
- (3) No person employed by a board shall become an elected trustee of the board except a trustee elected by the school's teaching staff.
- (4) Subject to **subsection (1)** of this section, a board may co-opt as a trustee 1 holder of a teaching position at the school; but while 1 holder of a teaching position at the school is a co-opted trustee, it shall not co-opt another.

**12. Casual vacancies**—(1) If an elected, appointed, or co-opted trustee—

- (a) Dies; or
- (b) Resigns by written notice to the board; or
- (c) Without the prior leave of the board, is absent from 3 consecutive meetings of the board; or
- (d) Becomes a person who (in terms of **section 11 (1)** of this Act) may not become an elected, appointed, or co-opted trustee,—

the office of the trustee then becomes vacant.

(2) If an elected trustee (other than the trustee elected by teaching staff)—

- (i) Receives any salary from the board, or
- (ii) Accepts from or under the board any office or employment to which any salary, fee, or emolument is attached,—

the trustee's office then becomes vacant.

(3) If the trustee elected by teaching staff ceases to be a permanent teacher at the school, the trustee's office then becomes vacant.

(4) If—

(a) A co-opted trustee is appointed to a teaching position at the school; and

5 (b) The holder of another teaching position at the school is then a co-opted trustee,—

the office of the first-mentioned trustee then becomes vacant.

(5) The proprietors of an integrated school may by written notice to the board dismiss any trustee appointed by them.

10 (6) If a trustee elected by students ceases to be enrolled at the school, the trustee's office then becomes vacant.

(7) If—

(a) At any election of trustees fewer persons are elected than there are vacancies to be filled; and

15 (b) The board is not then dissolved,—  
every unfilled vacancy shall be filled as if it had been caused by a resignation that took effect on the day of the election.

20 (8) Subject to **subsection (9)** of this section, every vacancy occurring under this section shall be filled by the election, appointment, or co-option of a trustee (in the same manner as the vacating trustee was elected, appointed, or co-opted) for the residue of the term of the vacating trustee.

25 (9) Where a vacancy occurs under this section less than 6 months before the 31st day of May in an odd-numbered year, the board may (not later than 28 days after the vacancy occurs) determine that it should not be filled until the next scheduled election of trustees.

(10) An election to fill a vacancy occurring under this section shall be held—

30 (a) On a day, within 70 days of its occurrence, fixed by the board within 28 days of its occurrence; or

(b) Where, within 28 days of its occurrence, the board has failed or refused to fix a day within 70 days of its occurrence, on the 10th Tuesday after its occurrence.

35 **13. Commissioner may be appointed if too few trustees elected or board inactive—**If—

(a) The result of any election of trustees of a board is such that the board has fewer than 3 trustees elected by parents; or

40 (b) At any time a board has not held a meeting during the previous 3 months,—

the Director-General may, by notice in the *Gazette*, dissolve the board and appoint a person to act in its place.

**14. Minister may dissolve board for cause, and direct appointment of commissioner—**(1) If satisfied that—

- (a) By reason of mismanagement, dishonesty, disharmony, incompetence, or lack of action (either generally or in relation to any particular matter or matters); or 5
- (b) Because it has taken or intends to take an unlawful action, or has failed or refused or intends to fail or refuse to take an action required by law,—

a board should not continue in existence as then constituted, the Minister may, by notice in the *Gazette*, dissolve the board and direct the Director-General to appoint a person to act in its place. 10

(2) Upon the publication of a notice under **subsection (1)** of this section, the Director-General shall, by notice in the *Gazette*, appoint a person to act in place of the board concerned. 15

**15. Commissioners—**(1) A commissioner shall have and may exercise and perform all the powers, functions, and duties of the board.

(2) Any thing that, if effected by or on behalf of a board, must be effected by the affixing of the board's seal, or by the signature of 2 or more trustees, or both, may be effected by the signature of a commissioner. 20

(3) The Director-General may at any time, by notice in the *Gazette*, terminate the appointment of any commissioner, and appoint another person to act in place of the board. 25

(4) If a commissioner—

- (a) Resigns by written notice to the Director-General; or
- (b) Dies,—

the Director-General may, by notice in the *Gazette*, appoint another person to act in place of the board. 30

(5) A commissioner may, by notice in the *Gazette*, appoint a day or days for the holding of elections of trustees for a new board for the school; and in that case,—

- (a) Elections shall be held on that day or those days; and
- (b) The commissioner shall go out of office on the 7th day after that day. 35

(6) Where—

- (a) A commissioner is appointed after the 31st day of October in any even-numbered year and before the 1st day of April in the following year; and 40

(b) By the 1st day of April in the 3rd year following the year of the commissioner's appointment no day has been appointed under **subsection (5)** of this section for the

- holding of elections of trustees for a new board for the school,—  
 elections shall be held on the last Tuesday in the month of May following that April, and the commissioner shall go out of office  
 5 7 days later.  
 (7) Where—  
 (a) A commissioner is appointed after the 31st day of March in any odd-numbered year and before the 1st day of November in the following year; and  
 10 (b) By the 1st day of April in the year following that November no day has been appointed under subsection (5) of this section for the holding of elections of trustees for a new board for the school,—  
 elections shall be held on the last Tuesday in the month of May  
 15 following that April, and the commissioner shall go out of office 7 days later.  
 (8) There shall be paid to a commissioner, out of the funds of the board, any remuneration the Director-General for the time being determines.

- 20 **16. Other provisions applying to boards**—(1) The provisions set out in the **Second** Schedule to this Act apply to boards.  
 (2) Section 187 of the Education Act 1964 is hereby amended by adding, as **subsection (2)**, the following subsection:  
 25 “(2) Nothing in subsection (1) of this section exempts an Education Board, a Secondary Schools Council, the governing body of a secondary school, teachers college, technical institute, or community college, or an education centre council, from—  
 “(a) The payment of goods and services tax under the Goods  
 30 and Services Tax Act 1985; or  
 “(b) Any obligation imposed by that Act.”

- 17. Property held in trust**—(1) This subsection applies to property that was on the commencement of this section held in trust by a board of governors of 2 or more schools.  
 35 (2) A board of governors that holds in trust any property to which **subsection (1)** of this section applies shall, before the 20th day of March 1989, notify the Public Trustee of the existence and nature of the trust concerned; and the Public Trustee shall notify the Director-General.  
 40 (3) Before the 1st day of May 1989 the Public Trustee shall consult every board of governors that has (before the 20th day of March 1989) under **subsection (2)** of this section notified the Public Trustee of the existence and nature of any trust, as to—

- (a) How the property concerned should vest; and
- (b) The extent (if any) to which the trust should otherwise be modified.

(4) On the 1st day of May 1989 all property to which **subsection (1)** of this section applies shall vest in the Public Trustee. 5

(5) As soon as is practicable after becoming aware that any property has vested under **subsection (4)** of this section, the Public Trustee, after consulting the boards of all the schools formerly under the control of the board of governors 10 concerned as to—

- (a) How the property concerned should vest; and
- (b) The extent (if any) to which the trust concerned should otherwise be modified,—

shall devise and send to the Solicitor-General a scheme to 15 modify the trust.

(6) This subsection applies to property that was on the commencement of this section held in trust for the board of governors of 2 or more schools (otherwise than by the board of 20 governors).

(7) Any person who holds in trust any property to which **subsection (6)** of this section applies shall, before the 20th day of March 1989, notify the Public Trustee of the existence and nature of the trust; and the Public Trustee shall notify the Director-General. 25

(8) Before the 1st day of May 1989 the Public Trustee shall consult all persons who have (before the 20th day of March 1989) under **subsection (7)** of this section notified the Public Trustee of the existence and nature of any trust as to—

- (a) The board or boards for which the property concerned (or any part of it) should be held; and if more than one, how; and
- (b) The extent (if any) to which the trust should otherwise be modified.

(9) As soon as is practicable after becoming aware that 35 **subsection (6)** of this section applies to any property, the Public Trustee, after consultation with the boards of all schools formerly under the control of the board of governors concerned as to—

- (a) Whether all or any of the property concerned should be 40 held for them and if so which of it, which of them, and in what proportions; and
- (b) The extent (if any) to which the trust concerned should otherwise be modified,—

the Public Trustee shall devise and send to the Solicitor-General a scheme to modify the trust.

(10) Where any trust is established by an enactment, instrument, or will, that requires or requests the trustees to  
5 consult, notify, or act only with the approval or concurrence of, a body that is the board of governors of 2 or more schools,—

(a) The trustees may apply to the Public Trustee for  
10 directions as to which boards should act (jointly or severally) in place of the board of governors; and in that case the Public Trustee shall devise and send to the Solicitor-General draft directions to the trustees; and

(b) The trustees shall not take any action for which  
15 consultation, notification, approval, or concurrence, is required or requested except in accordance with—

(i) Directions approved under this section; or  
(ii) Directions given by the Solicitor-General in  
circumstances that appear to constitute an  
emergency; or

(iii) Part III of the Charitable Trusts Act 1957.

(11) Within 90 days (or any longer period the Solicitor-General and Public Trustee in any case, before the expiration  
of that period, agree) of being notified of a scheme or draft  
25 directions under this section, the Solicitor-General may, by written notice to the Public Trustee,—

(a) Approve the scheme or directions (as originally notified by  
the Public Trustee, or with amendments agreed by  
the Public Trustee); or

(b) Suggest amendments to the scheme or directions; or

(c) Direct that the scheme should not proceed, or that the  
30 directions should not be given; and in that case the matter shall be dealt with under Part III of the Charitable Trusts Act 1957.

(12) If within 90 days (or any longer period agreed under  
35 subsection (11) of this section) of being notified of a scheme or draft directions under this section, the Solicitor-General does not under that subsection approve the scheme or directions, or direct that the scheme or directions should not proceed, the Solicitor-General shall be deemed to have approved the scheme  
40 or directions.

(13) If the Solicitor-General approves a scheme under this section, the Public Trustee shall, in accordance with it,—

(a) By notice in the *Gazette*, modify the trust concerned; and  
45 (b) Take all steps necessary to effect any necessary transfers of the property concerned.



(14) If the Solicitor-General approves any draft directions under this section,—

(a) The Public Trustee shall give them to the trustees concerned; and

(b) They shall have effect according to their tenor. 5

(15) Every scheme, draft direction, and suggested and agreed amendment, under this section shall be such that, in the opinion of the Public Trustee or the Solicitor-General (as the case may be),—

(a) Best gives effect to the intentions of the testator, settlor, or other person or body by whom or which the trust concerned was established; and 10

(b) Subject to **paragraph (a)** of this subsection, effects the minimum change necessary to enable the trust concerned to operate satisfactorily in the light of— 15

(i) The dissolution of the former board of governors; and

(ii) The establishment of a board for each school concerned; and

(iii) Any transfers of property effected or to be effected. 20

(16) The reasonable costs of the Public Trustee in acting under this section shall be paid out of money appropriated by Parliament for the purpose.

**18. Regulations**—The Governor-General may, by Order in Council, make regulations prescribing all or any of the following matters: 25

(a) The manner in which elections of trustees are to be held:

(b) The manner in which returning officers are to be appointed for the purpose of the election of trustees: 30

(c) The dates on which there are to be held—

(i) The first elections of trustees to be held after the commencement of this section:

(ii) The first elections of trustees for the boards of schools established after that commencement: 35

(iii) The first elections of trustees for the boards of schools integrated after that commencement:

(d) The dates on which and places at which the first meetings of boards are to be held.

**19. Transitional**—(1) Every school committee, committee of management, and board of governors, of an institution that on the commencement of this section is a primary, secondary, composite, or special school is hereby dissolved. 40

- (2) Subject to **section 17** of this Act,—
- (a) All rights, assets, liabilities and debts that a school committee, committee of management, or board of governors dissolved by **subsection (1)** of this section had immediately before the commencement of this section shall be deemed to have become rights, assets, liabilities, and debts of the school's board; and
- (b) Any property that, immediately before it became an asset of a board under this section, was subject to a trust, shall vest in the board subject to the trust.
- (3) On and after the commencement of this section,—
- (a) The board of a school that immediately before that commencement had a school committee, committee of management, or board of governors shall have and may exercise and perform in respect of the school all the rights, powers, functions, duties, and privileges of that committee or board of governors; and
- (b) Every reference in any—
- (i) Act, regulation, or other enactment; or
- (ii) Contract, agreement, deed, instrument application, lease, licence, notice, award, or other document entered into, made, granted, given, or executed before that commencement,—
- to the school committee, committee of management, or board of governors of a primary, secondary, composite, or special school shall be read as a reference to the school's board.
- (4) Subject to **section 17** of this Act, if any dispute arises as to whether any right, asset, liability, or debt has, under **subsection (2)** of this section, become a right, asset, liability, or debt of one board or another, the dispute shall be referred to the Director-General; and—
- (a) The Director-General shall attempt by mediation to bring the parties to the dispute to an agreement; but
- (b) Where, in the Director-General's opinion, further mediation is unlikely to achieve agreement, the Director-General shall determine the dispute, and the determination shall be final.

**20. Consequential amendments to Private Schools**

40 **Conditional Integration Act 1975**—(1) Section 2 (1) of the Private Schools Conditional Integration Act 1975 is hereby consequentially amended by omitting from paragraph (b) of the definition of the term "controlling authority" the words "a Board of Governors or such other authority as may be required

pursuant to this Act”, and substituting the words “the school’s board of trustees under the School Trustees Act 1988”.

(2) Section 25 (1) of the Private Schools Conditional Integration Act 1975 is hereby consequentially amended by omitting the words “School Committee”, and substituting the words “board of trustees under the School Trustees Act 1988”. 5

(3) The following enactments are hereby consequentially repealed:

- (a) Sections 25 (2), 26 to 28, 83 (5), and 83 (6) of the Private Schools Conditional Integration Act 1975: 10
- (b) Section 7 of the Private Schools Conditional Integration Amendment Act 1977.

**21. Other consequential amendments, repeals, revocations, and savings**—(1) Section 2 (1) of the Education Act 1964 is hereby consequentially amended by repealing the proviso to the definition of the term “Board”, and the definitions of the terms “Committee” or “School Committee”, and “householder”. 15

(2) The First Schedule to the Local Authorities (Members’ Interests) Act 1968 is hereby consequentially amended by repealing the items relating to committees of management of secondary schools and the governing bodies of secondary schools, and by inserting, in its appropriate alphabetical order, the following item: 20

“Boards of trustees of | 1988, No. 000—The School Trustees Act 1988”  
schools

(3) Section 2 (1) of the State Sector Act 1988 is hereby consequentially amended by inserting in paragraph (a) of the definition of the term “education service”, after subparagraph (i), the following subparagraph: 25

“(ia) Any board of trustees under the School Trustees Act 1988; or”. 30

(4) The following enactments are hereby consequentially repealed:

- (a) Sections 39 to 45, 50 to 56, 57A, 58, and 198 of the Education Act 1964:
- (b) Sections 2 to 6 of the Education Amendment Act 1965: 35
- (c) Section 7 of the Education Amendment Act 1967:
- (d) Sections 6 to 8 of the Education Amendment Act 1968:
- (e) Sections 3 to 6, and 8 of the Education Amendment Act 1971:
- (f) Section 3 of the Education Amendment Act 1972: 40

- (g) Sections 4 (2), 6, and 7 of the Education Amendment Act (No. 2) 1974:
  - (h) Section 3 of the Education Amendment Act 1975:
  - 5 (i) Section 3 of the Education Amendment Act (No. 2) 1975:
  - (j) Section 7 (4) of the Education Amendment Act 1976:
  - (k) Section 3 (1) of the Education Amendment Act (No. 2) 1982:
  - (l) Section 6 of the Education Amendment Act 1983:
  - 10 (m) Sections 4 and 5 of the Education Amendment Act (No. 2) 1987.
  - (5) The regulations specified in the **Third** Schedule to this Act are hereby consequentially amended in the manner indicated in that Schedule.
  - (6) Any regulations amended by this section may be further 15 amended, or revoked, as if the amendments effected by this section had been effected by Order in Council.
  - (7) The regulations specified in the **Fourth** Schedule to this Act are hereby consequentially revoked.
  - (8) The revocation by **subsection (7)** of this section of the 20 Ashburton Combined School Regulations 1965 does not affect the combination by regulation 3 of those regulations of the schools known as Ashburton High School and Hakatare College to form a combined school.
  - (9) The revocation by **subsection (7)** of this section of regulation 25 3 of the Wellington Secondary Schools Regulations 1966 does not affect the continued existence of the Wellington Secondary Schools Council.
  - (10) The revocation by **subsection (7)** of this section of regulation 3 of the Nelson Secondary Schools Regulations 1976 30 does not affect the continued existence of the Nelson Secondary Schools Council.
  - (11) The revocation by **subsection (7)** of this section of regulation 4 of the Christchurch Secondary Schools Regulations 35 Christchurch Secondary Schools Council.
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## SCHEDULES

### Section 2 (1)

#### FIRST SCHEDULE

##### SPECIAL SCHOOLS

Glenburn Centre School, Auckland  
 Hogben School, Christchurch  
 Kelston School for the Deaf, Auckland  
 McKenzie Residential School, Christchurch  
 Salisbury School, Nelson  
 Van Asche College, Christchurch  
 Waimokoia School, Auckland

### Section 16

#### SECOND SCHEDULE

##### OTHER PROVISIONS APPLYING TO BOARDS

#### 1. Boards to be bodies corporate—A board—

- (a) Is a body corporate with perpetual succession and a common seal; and
- (b) May hold real and personal property for the purposes of this Act or the Education Act 1964; and
- (c) May sue and be sued, and otherwise do and suffer everything bodies corporate may do and suffer.

**2. Boards exempt from taxation—**(1) Every board is hereby deemed to be the agent of the Crown in respect of its property and the exercise of its functions, and is entitled accordingly to all the privileges the Crown enjoys in respect of exemption from taxation and the payment of fees or charges, and from other obligations.

(2) Nothing in subclause (1) of this clause exempts a board from—

- (a) The payment of goods and services tax under the Goods and Services Tax Act 1985; or
- (b) Any obligation imposed by that Act.

**3. Names of boards—**The name of a board is “The [*Name of school*] Board of Trustees”.

**4. Trustees not personally liable—**No trustee is personally liable for—

- (a) Any act done or omitted by the board; or
- (b) Any loss to the board arising out of any act done or omitted by the trustee,—

if the act or omission was (so far as the trustee’s involvement is concerned) in good faith in pursuance or intended pursuance of the functions of the board.

**5. Affixing of board’s seal—**(1) A board’s common seal shall not be affixed to a document except pursuant to a resolution of the board.

(2) The affixing of a board’s common seal to a document shall be countersigned by at least 2 trustees.

**6. Actions of boards not to be questioned for informality in membership—**The powers of a board are not affected by—

- (a) Any vacancy in its membership; or

SECOND SCHEDULE—*continued*OTHER PROVISIONS APPLYING TO BOARDS—*continued*

- (b) The discovery of any error or defect in the election or appointment of any trustee; or
- (c) The fact that any elected, appointed, or co-opted trustee acted as a trustee while a person who may not (in terms of section 11 (1) of this Act) become an elected, appointed, or co-opted trustee; or
- (d) The fact that a person continued acting as a trustee after the person's office as a trustee became vacant and (in the case of a person whose election as a trustee has been declared invalid under clause 9 of this schedule or by a Court), before the person's election was declared invalid.

**7. Chairpersons**—(1) At any time the office becomes vacant, every board shall appoint a trustee (not being a trustee who is the principal of, the holder of a teaching position at, or a student enrolled at, the school) to be chairperson of the board.

(2) The office of chairperson of a board becomes vacant—

- (a) At its annual meeting; and
- (b) When the chairperson—
  - (i) Ceases to be a trustee; or
  - (ii) Becomes the holder of a teaching position at the school; or
  - (iii) Becomes a student enrolled at the school.

**8. Meetings**—(1) The first meeting of a board shall be held at a time and place prescribed (whether as to the particular board or as to boards of a particular class or description) by regulations under this Act.

(2) Every board shall hold a meeting not later than 3 months after its previous meeting, at a time and place determined at the previous meeting.

(3) Where a board does not at any meeting determine a time and place for its next meeting, the time and place of its next meeting shall be determined—

- (a) By the chairperson; or
- (b) Where the board has no chairperson, and a trustee who presided at the board's previous meeting is still a trustee, by the trustee; and
- (c) Where the board has no chairperson, and either—
  - (i) The former chairperson presided at the board's last meeting; or
  - (ii) The trustee who presided at the board's last meeting is no longer a trustee,—
 by the principal.

(4) Where a casual vacancy occurs, the chairperson or, where there is no chairperson, the principal shall fix a time (being within 28 days of the occurrence of the vacancy) and place for a meeting of the board to deal with the vacancy.

(5) No business shall be transacted at any meeting of a board unless more than half the trustees then holding office are present.

(6) At a meeting of a board,—

- (a) The chairperson shall preside if present; and
- (b) Otherwise, a trustee (not being a trustee who is the principal of, the holder of a teaching position at, or a student enrolled at, the school) appointed by the board at the meeting shall preside.

SECOND SCHEDULE—*continued*OTHER PROVISIONS APPLYING TO BOARDS—*continued*

(7) Every question before a board shall be decided by a majority of the votes cast on it by trustees present.

(8) At a meeting of a board, the person presiding has a deliberative vote on every question and, on any question where votes for and against are equal, also has a casting vote.

(9) The principal shall be excluded from a meeting of a board while it is discussing, considering, or deciding anything relating to, or deciding, any matter—

- (a) Relating to the course of action to be taken following the hearing of a complaint against the principal; or
- (b) In which the principal has a pecuniary interest.

(10) Except as provided in this Act, every board shall determine its own procedures.

**9. Validation and invalidation of elections—(1) Where—**

(a) Anything required to be done in connection with an election under this Act—

- (i) Has been done after the time it is required to be done; or
- (ii) Has not been done at all; or
- (iii) Has been done irregularly; and

(b) The Minister thinks the lateness, omission, or irregularity could not materially have affected the result of the election,—

the Minister may, by notice in the *Gazette*, validate the lateness, omission, or irregularity.

(2) Where anything required to be done in connection with an election under this Act cannot be done at or by the time at or by which it is required to be done, the Minister may, at any time, by notice in the *Gazette*, extend the time for doing it.

(3) Where there has occurred in connection with an election under this Act—

- (a) Any lateness, omission, or irregularity capable of being validated under this clause that the Minister thinks it improper or undesirable to validate; or
- (b) Any other irregularity that the Minister thinks could materially have affected the result of the election,—

the Minister may at any time within 28 days of the election, by notice in the *Gazette*, declare the election invalid and require a new election to be held on a day specified in the notice.

(4) Every notice under this clause shall have effect according to its tenor.

Section 21 (5)

THIRD SCHEDULE

CONSEQUENTIAL AMENDMENTS TO REGULATIONS

Regulations amended	Amendments
<p>The School Committees Administration Regulations 1965 (Reprinted S.R. 1979/87)</p>	<p>By revoking regulation 1 (3).                      By revoking the definitions in regulation 2 (1) of the terms "Committee" or "School Committee", and "elector", and substituting the following definition:                      " 'Committee' or 'School Committee' means a board of trustees under the School Trustees Act 1988."                      By revoking Parts II to IV and the heading "PART V—SCHOOL FUND".</p>
<p>The Secondary School Boards Administration and Employment Regulations 1965 (S.R. 1965/177)</p>	<p>By revoking the definition in regulation 2 of the term "parent", Parts II and III, and the First Schedule.</p>
<p>The Gisborne High Schools Board Administration Regulations 1967 (S.R. 1967/122)</p>	<p>By omitting from regulation 2 the words "; and all schools for the time being under the control of the Board shall be deemed to be one school for the purposes of those regulations".                      By revoking regulation 3.</p>
<p>The Education (Committees of Management) Regulations 1981 (S.R. 1981/3)</p>	<p>By revoking the definitions in regulation 2 of the terms "committee" and "election year", and substituting the following definition:                      " 'Committee' means a board of trustees under the School Trustees Act 1988:"</p>
<p>The Education (Area Schools) Regulations 1986 (S.R. 1986/139)</p>	<p>By revoking Parts I, III, and V.                      By revoking regulation 39.</p>



FOURTH SCHEDULE  
CONSEQUENTIAL REVOCATIONS

Title	Statutory Regulations Serial Number
The Napier High School Board of Governors Regulations 1962	1962/52
The Ashburton Combined School Regulations 1965	1965/1
The Wellington Secondary Schools Regulations 1966	1966/62
The School Committees Administration Regulations 1965, Amendment No. 1	1967/60
The School Committees Administration Regulations 1965, Amendment No. 2	1969/97
The School Committees Administration Regulations 1965, Amendment No. 3	1973/173
The Secondary School Boards Administration and Employment Regulations 1965, Amendment No. 4	1975/251
The Secondary School Boards Administration and Employment Regulations 1965, Amendment No. 5	1976/286
The Nelson Secondary Schools Regulations 1976	1976/303
The School Committees Administration Regulations 1965, Amendment No. 4	1976/310
The Nelson Secondary Schools Regulations 1976	1976/303
The Christchurch Secondary Schools Regulations 1976	1976/324
The Secondary School Boards Administration and Employment Regulations 1965, Amendment No. 7	1978/120
The Secondary School Boards Administration and Employment Regulations 1965, Amendment No. 8	1978/186
The Wellington Secondary Schools Regulations 1966, Amendment No. 1	1978/242
The School Committees Administration Regulations 1965, Amendment No. 5	1979/63
The Education (Committees of Management) Regulations 1981, Amendment No. 1	1981/150
The School Committees Administration Regulations 1965, Amendment No. 6	1981/270
The Nelson Secondary Schools Regulations 1976, Amendment No. 2	1982/78
The School Committees Administration Regulations 1965, Amendment No. 7	1982/79
The Secondary School Boards Administration and Employment Regulations 1965, Amendment No. 10	1983/68

FOURTH SCHEDULE—*continued*  
CONSEQUENTIAL REVOCATIONS—*continued*

Title	Statutory Regulations Serial Number
The Education (Committees of Management) Regulations 1981, Amendment No. 2	1984/100
The Christchurch Secondary Schools Regulations 1976, Amendment No. 1	1985/7