

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Education (School Trustee Elections) Regulations 2000: Policy Approvals
Date considered 2 June 2020

These documents have been proactively released:

Cabinet paper: Education (School Trustee Elections) Regulations 2000: Policy Approvals
2 June 2020
Ministry of Education

Minute: SWC-20-MIN-0051
2 June 2020
Cabinet office

CAB-20-MIN-0247 Report of the Cabinet SWC Minute
2 June 2020
Cabinet office

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Cabinet Social Wellbeing Committee

Education (School Trustee Elections) Regulations 2000 – policy approvals

Proposal

- 1 This paper seeks policy approvals for changes to the Education (School Trustee Elections) Regulations 2000 (the Regulations) and approval to issue related drafting instructions.

Relationship to government priorities

- 2 This is a routine operational adjustment that requires Cabinet approval.

Executive Summary

- 3 The current legislative framework for electing school boards of trustees is outdated, prescriptive and needs revising.
- 4 On 4 March 2020, the Cabinet Social Wellbeing Committee (SWC) agreed to targeted consultation on the proposed changes to the Regulations [SWC-20-MIN-0008]. That consultation has informed the development of the following proposals for which I am seeking Cabinet approval:
 - 4.1 extend the timeframes at certain points in the election timetables;
 - 4.2 remove references to the use of the postal system when calling for nominations and issuing voting papers;
 - 4.3 replace the requirement for returning officers to publish election related notices in a local newspaper with the requirement to notify the school community and any other affected parties in the wider local community in a manner that best meets the needs of the community; and
 - 4.4 remove the requirement that, to be valid, voting papers must be returned in the envelope included with the voting paper. This avoids the invalidation of votes that have been returned in one envelope by parents or caregivers residing in the same household.
- 5 These proposals are intended to make the Regulations more workable in time for the mid-term elections in December this year. A more fundamental review of the electoral system for boards of trustees is planned to be completed by the next triennial elections in 2022.

Background

- 6 The current legislative framework for school boards of trustee elections is outdated, prescriptive and needs revising. There are references to outdated processes and forms of communication, and detailed timeframes that rely on a more frequent postal delivery service than currently exists.
- 7 The Ministry of Education has started a two-phased review of the framework. The review aims to ensure that the framework is fit for purpose and flexible enough to account for future changes, particularly in technology and communication.

Phase one: proposed changes to the Regulations

- 8 On 4 March 2020, SWC agreed to targeted consultation on the following proposed changes to the Regulations [SWC-20-MIN-0008]:
 - 8.1 extending the timeframes at certain points in the election timetables;
 - 8.2 removing references to the use of the postal system when calling for nominations and issuing voting papers;
 - 8.3 replacing the requirement for returning officers to publish election related notices in a local newspaper with the requirement to notify the school community and any other affected parties in the wider local community in a manner that best meets the needs of the school community and wider local community; and
 - 8.4 removing one of the grounds for the invalidation of voting papers that has the effect of invalidating voting papers that are not returned in a specific envelope.
- 9 Targeted consultation with education sector stakeholders took place from 11 March to 3 April 2020. Feedback was received from the Secondary Principals' Association of New Zealand (SPANZ) and the Regional Chairs of the New Zealand School Trustees Association (NZSTA Regional Chairs). NZEI Te Riu Roa noted that the direction of the proposed changes seemed sensible.

Phase two: longer term review of the electoral system for boards of trustees

- 10 Phase two of the review of the school board elections system, which is intended to be completed in time for the next triennial board elections in 2022, will consist of a more fundamental review, including:
 - 10.1 exploring other delivery methods such as online, email or other digital voting, and as part of this, determining what level of security and integrity stakeholders consider appropriate for board of trustee elections; and
 - 10.2 exploring alternative options to the current election system (for example hui-based or Annual General Meeting-style election systems) and in

particular, ways in which to give effect to our obligations under Te Tiriti o Waitangi by enabling culturally responsive and inclusive practices.

Analysis

Addressing postal timeframe issues

- 11 All groups that provided feedback supported the proposal to extend the timeframes at certain points in the short and long election timetables. These changes are discussed below.
- 12 The Regulations require schools to use either a short or long election timetable to run their elections. Schools must use the short election timetable unless they have applied (and been granted permission to) use the long timetable. Some schools request to use the long election timetable to accommodate their unique circumstances. For instance, some schools translate all their election material into New Zealand Sign Language, or may have voters located throughout New Zealand, requiring them to use the long election timetable.
- 13 There has been a significant reduction in the frequency of postal deliveries over the last few years. Due to this reduction, the current election timeframes specified in the Regulations have become too short. This has led to voters either not receiving election notices on time or not having sufficient time to return their papers.
- 14 To address this issue I propose that the Regulations are amended by:
 - 14.1 extending the nomination period (i.e. the gap between the call for nominations and the close of nominations for both election timetables) to at least 21 days¹;
 - 14.2 extending the voting period for the short election timetable (i.e. the gap between the issuing of voting papers and the close of poll) from a minimum of nine days to a minimum of 28 days; and
 - 14.3 changing the close of polls from 12 pm to 4 pm on election day for both election timetables. This better aligns with after school pick up times, making it easier for parents to drop off their voting papers while picking up their children from school.
- 15 Currently the Regulations provide that postal voting papers can be accepted up to five days after the close of polls, for both election timetables, if the envelope containing the voting paper was date stamped or postmarked and shows that it was posted before noon on election day. I propose that the date stamping requirement be removed because it is no longer possible to prove that an envelope was posted before noon on election day, as date stamping is no

¹ Currently there is a discrepancy between the short and long timetables in relation to the gap between the call for nominations and the close of nominations. The minimum gap for the short election timetable is 14 days and the minimum gap for the long election timetable is 10 days. Extending the gap for both timetables to at least 21 days addresses this discrepancy and the issues related to the reduction in the frequency of postal deliveries.

longer routinely carried out by New Zealand Post. Voting papers that are posted will continue to be accepted up to five days after the close of polls.

Reducing prescription and increasing flexibility

Requirements to post election related papers

- 16 All groups that provided feedback supported replacing the references to using the postal system with the requirement to “issue” election related papers.
- 17 At present, returning officers must call for nominations by posting or personally delivering a notice to each person named on the relevant roll.² If an election is to be held, returning officers must issue voting papers by posting or personally delivering them to every person whose name appears on the roll for the election.
- 18 Due to the ongoing reduction in the frequency of postal deliveries, posting may no longer be the best way of issuing election related papers. Therefore, I propose that the references in the Regulations to using the postal system are replaced with the requirement to “issue” election related papers to each person named on the election rolls. This will enable schools to use their preferred methods of communication, such as electronic methods, to issue papers to relevant parties in their communities.
- 19 When declaring the result of an election, schools using the long election timetable are required to send a notice to all electors on the roll. To ensure consistency of language throughout the Regulations, I propose to require schools using the long election timetable to issue, rather than send, a notice.

Current requirements to give notice through newspapers

- 20 When calling for nominations for the election of parent representatives, all schools that are not correspondence schools are required to publish a notice in a newspaper circulating in the area of the school.
- 21 Schools using the short election timetable are also required to give notice of the names of the elected candidates, the number of valid votes cast for each candidate and the number of invalid votes received, by publishing a notice in one or more newspapers circulating in the area of the school.
- 22 Traditionally, newspapers were considered to be the best means of publicly notifying the community, however, this has become an outdated practice that no longer reflects modern communication preferences. Newspapers may no longer be the best way of reaching the school community and other affected parties.
- 23 I therefore propose that the Regulations be amended to replace the current requirements for returning officers to publish election-related notices in local newspapers with the requirement for returning officers to notify the school

² Additionally, in the case of schools using the short election timetable, returning officers must publish a notice in a newspaper circulating in the area of the school.

community and any other affected parties in the wider local community in a manner that best meets the needs of the community.

- 24 SPANZ supported this proposal and commented that it aligns with twenty-first century practices and reduces unnecessary costs for schools associated with paid advertising in local papers. SPANZ also commented that publication in newspapers is costly and largely ineffective in today's world.
- 25 The NZSTA Regional Chairs disagreed with the removal of the requirement for returning officers to publish election-related notices in local newspapers. They felt that publishing notices in newspapers provides certainty around the process they need to follow.
- 26 However, I am of the view that nothing in this new requirement will prevent schools using their local newspaper where they still feel this is the best means of communicating with their community. The proposed change will require schools to know their communities and assess which means of notification will best meet the needs of their communities.
- 27 Where their community relies on communication through newspapers, schools can continue to publish election notices in newspapers. However, where their community does not regularly read their local newspapers, schools will no longer be required to publish ineffective and expensive notices in a newspaper.

Removing one of the grounds for the invalidation of voting papers

- 28 The Regulations provide that a vote is invalid if the voting paper was not contained in the envelope included with the voting paper. This regulation was intended to contribute to the integrity and secrecy of casting votes, and to provide assurance that the voting paper was not tampered with.
- 29 Over the years, this regulation has led to the invalidation of numerous votes as some parents that reside in the same household have returned their voting papers in one envelope, instead of the individual envelopes that were included with their voting papers or have otherwise returned their ballot in an 'incorrect' envelope.
- 30 While this invalidation ground may be necessary for other types of elections, such as local body elections, I do not consider this to be the case in the context of board of trustees' elections. I therefore propose that it is removed from the Regulations.

Financial Implications

- 31 There are no financial implications.

Legislative Implications

- 32 These proposals amend the Education (School Trustee Elections) Regulations 2000. It is intended that the amended Regulations will be approved by the Executive Council in August this year. This will give schools sufficient time to

familiarise themselves with the changes before commencing the election process.

- 33 The Education Act 1989 requires that student representative elections be carried out in September each year. As the proposed extensions to the election timetables are likely to come into force in August, schools would have needed to begin their student election processes in June or July (depending on which election timetable is being used) in order to hold elections in September under the extended timetables. For clarity, I propose that the student elections for 2020 be carried out under the current timetables specified in the Regulations. Schools will be able to use the extended timetables for conducting their student representative elections from 2021 onwards.

Impact Analysis

Regulatory Impact Statement

- 34 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper relating to school trustee elections are exempt from the regulatory impact analysis requirements on the grounds that they would have no or only minor impacts on businesses, individuals or not-for-profit entities.

Climate Implications of Policy Assessment

- 35 There are no climate implications.

Population Implications

- 36 The proposed amendments to the Regulations are intended to make it easier for parents to participate in the school board elections process. Firstly, parents will have longer to consider and respond to election related notices and papers. Secondly, the votes of parents who reside in the same household and who return their voting papers in the same envelope, will no longer be invalidated.
- 37 I am aware that some Pacific communities still rely on newspapers. However, I consider that the proposed notification change requires schools to understand the needs of their communities and notify them in a manner that best meets their needs. For some schools this may mean continuing to notify through local newspapers, if that best meets the needs of their school community and wider local community.

Human Rights

- 38 All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of these proposals with the New Zealand Bill of Rights Act will only be possible when the Regulations have been drafted.

Consultation

- 39 The Treasury, the Office for Disability Issues, the Ministry for Women, Te Puni Kōkiri (TPK), the Ministry for Pacific Peoples, the Department of Internal Affairs, the Ministry of Justice, the State Services Commission and the Department of the Prime Minister and Cabinet were consulted.
- 40 TPK noted that the paper made no reference to Te Tiriti o Waitangi and suggested that paragraph 10.2 could be positioned as part of how the Ministry of Education intends to meet its obligations under Te Tiriti. I agree with this suggestion and paragraph 10.2 has been amended to reflect TPK's comment.

Communications

- 41 The Ministry of Education and NZSTA will communicate the changes to the election requirements in the advice and guidance they provide to the sector.

Proactive Release

- 42 I intend to proactively release this Cabinet paper once Cabinet decisions have been made.

Recommendations

- 43 The Minister of Education recommends that the Committee:
- 1 **note** that on 4 March 2020, the Cabinet Social Wellbeing Committee agreed to the release of the discussion document 'Proposed changes to the Education (School Trustee Elections) Regulations 2000' for targeted consultation [SWC-20-MIN-0008]
 - 2 **agree** to amend the Education (School Trustee Elections) Regulations 2000 by:
 - 2.1 extending the nomination period (i.e. the gap between the call for nominations and the close of nominations for both election timetables) to at least 21 days
 - 2.2 extending the voting period for the short election timetable (i.e. the gap between the issuing of voting papers and the close of poll) from a minimum of 9 days to a minimum of 28 days
 - 2.3 changing the close of polls from 12 pm to 4 pm on election day for both election timetables
 - 2.4 making consequential changes to other dates in the timetables as a result of the extensions above
 - 2.5 removing the ground for invalidation which provides that a voting paper received after noon on election day is invalid, unless the voting paper was posted and the date stamp on the envelope shows that it was posted before noon on election day

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- 2.6 continuing to allow postal votes to be accepted up to 5 days after election day but removing the requirement that these have to be post-marked before noon on election day
- 2.7 replacing or removing the references to 'posting' or 'sending' election related notices or papers with the requirement to issue them
- 2.8 replacing the current requirements for returning officers to publish election-related notices in local newspapers with the requirement for returning officers to notify the school community and any other affected parties in the wider local community in a manner that best meets the needs of the school community and the wider local community
- 2.9 removing the ground for invalidation which provides that a vote is invalid if the voting paper was not contained in the envelope included with the voting papers
- 2.10 specifying that the current election timetables provided for in Schedules 1 and 2 of the Education (School Trustee Elections) Regulations 2000 continue to apply to student representative elections in 2020
- 2.11 specifying that any election process that commences before the above changes come into force be carried out under the current provisions of the Education (School Trustee Elections) Regulations 2000
- 3 **invite** the Minister of Education to issue drafting instructions to give effect to the policy decisions in these recommendations
- 4 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper
- 5 **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express these in legislation.

Authorised for lodgement
Hon Chris Hopkins
Minister of Education



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Education (School Trustee Elections) Regulations 2000: Policy Approvals

Portfolio **Education**

On 27 May 2020, the Cabinet Social Wellbeing Committee (SWC):

- 1 **noted** that on 4 March 2020, SWC agreed to the release of the discussion document *Proposed changes to the Education (School Trustee Elections) Regulations 2000* for targeted consultation [SWC-20-MIN-0008];
- 2 **agreed** to amend the Education (School Trustee Elections) Regulations 2000 by:
 - 2.1 extending the nomination period (i.e. the gap between the call for nominations and the close of nominations for both election timetables) to at least 21 days;
 - 2.2 extending the voting period for the short election timetable (i.e. the gap between the issuing of voting papers and the close of poll) from a minimum of 9 days to a minimum of 28 days;
 - 2.3 changing the close of polls from 12 pm to 4 pm on election day for both election timetables;
 - 2.4 making consequential changes to other dates in the timetables as a result of the extensions above;
 - 2.5 removing the ground for invalidation which provides that a voting paper received after noon on election day is invalid, unless the voting paper was posted and the date stamp on the envelope shows that it was posted before noon on election day;
 - 2.6 continuing to allow postal votes to be accepted up to 5 days after election day but removing the requirement that these have to be post-marked before noon on election day;
 - 2.7 replacing or removing the references to 'posting' or 'sending' election related notices or papers with the requirement to issue them;
 - 2.8 replacing the current requirements for returning officers to publish election-related notices in local newspapers with the requirement for returning officers to notify the school community and any other affected parties in the wider local community in a manner that best meets the needs of the school community and the wider local community;

- 2.9 removing the ground for invalidation which provides that a vote is invalid if the voting paper was not contained in the envelope included with the voting papers;
- 2.10 specifying that the current election timetables provided for in Schedules 1 and 2 of the Education (School Trustee Elections) Regulations 2000 continue to apply to student representative elections in 2020;
- 2.11 specifying that any election process that commences before the above changes come into force be carried out under the current provisions of the Education (School Trustee Elections) Regulations 2000;
- 3 **invited** the Minister of Education to issue drafting instructions to give effect to the policy decisions in the paragraphs above;
- 4 **authorised** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in the paper under the paper under SWC-20-SUB-0051;
- 5 **noted** that the paragraphs above with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express these in legislation.

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Dr David Clark
Hon Tracey Martin
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Hon Julie Anne Genter
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet



Cabinet

Minute of Decision

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Redactions made as content out of scope of Minister's portfolio responsibilities

Report of the Cabinet Social Wellbeing Committee: Period Ended 29 May 2020

On 2 June 2020, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 29 May 2020:

SWC-20-MIN-0054	Education and Training Bill: Policy Approvals for Supplementary Order Papers Portfolio: Education	Separate minute: CAB-20-MIN-0253
SWC-20-MIN-0051	Education (School Trustee Elections) Regulations 2000: Policy Approvals Portfolio: Education	CONFIRMED

Michael Webster
Secretary of the Cabinet

Proactively Released by the Minister of Education