

## Cabinet Paper material

### Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Education (School Trustee Elections) Regulations 2000: Targeted Consultation on Proposed Changes
Date considered	4 March 2020

#### These documents have been proactively released:

**Cabinet paper: Education (School Trustee Elections) Regulations 2000: Targeted Consultation on Proposed Changes**

4 March 2020

Ministry of Education

**Appendix 1: Draft consultation document: Proposed changes to the Education (School Trustee Elections) Regulations 2000**

4 March 2020

Ministry of Education

**Cabinet Minute: SWC-20-MIN-0008**

4 March 2020

Cabinet office

**CAB-20-MIN-0074 Report of the Cabinet Social Wellbeing Committee Minute**

4 March 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

Chair, Cabinet Social Wellbeing Committee

## **Education (School Trustee Elections) Regulations 2000 – targeted consultation on proposed changes**

### **Proposal**

- 1 This paper seeks approval for targeted consultation on proposed changes to the Education (School Trustee Elections) Regulations 2000 (the Regulations). The proposals are set out in the attached discussion document.

### **Executive Summary**

- 2 The current legislative framework for electing school boards of trustees is outdated, prescriptive and needs revising. The Ministry of Education has started a two-phased review of the framework.
- 3 Phase one focuses on amending the Regulations, primarily to ensure that the mid-term elections in December 2020 are not hampered by timeframes that can no longer be met due to the reduction in postal services. Approximately 300 schools participate in the mid-term elections.
- 4 Phase two, which will be completed by the next triennial elections in 2022, will consist of a more fundamental review of the electoral system for boards of trustees.
- 5 As part of phase one of the review, this paper seeks approval for a targeted consultation on proposed changes to the Regulations. These proposals are intended to:
  - 5.1 extend the timeframes at certain points in the election timetables;
  - 5.2 remove references to the use of the postal system when calling for nominations and issuing voting papers;
  - 5.3 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 school community and wider local community; and
  - 5.4 remove 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.
- 6 I expect to report the feedback from this consultation to the Cabinet Social Wellbeing Committee in May, and will seek policy decisions, and approval to issue drafting instructions, at that time.

- 7 Targeted consultation on the proposals is planned to take place over the last three weeks of March and first week of April.

## **Background**

- 8 The current legislative framework for school boards of trustee elections, which consists of Part 9 of the Education Act 1989 (the Act) and the Education (School Trustee Elections) Regulations 2000 (the Regulations), 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.
- 9 The Ministry 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.
- 10 Phase one includes three amendments being progressed through the Education and Training Bill that were agreed to by Cabinet as part of the Education and Training Bill – Third Tranche of Policy Approvals (CAB-19-MIN-0503). These are:
- 10.1 in situations where a board election has been declared invalid, enabling the Minister to direct the Secretary for Education to appoint a commissioner to govern a school until a new board is in place;
  - 10.2 removing the requirement that the notification of a casual board vacancy being filled without an election be made through a notice in a newspaper. Boards must instead notify their school community and any other affected parties in the wider local community of the intention to fill the vacancy through selection; and
  - 10.3 removing an unnecessary provision which enables the Governor-General to make regulations prescribing the manner in which returning officers are to be appointed. The Governor-General is already able to do this as part of his or her ability to prescribe the manner in which elections are to be held.
- 11 As part of phase one of the review, I am also proposing to make some immediate changes to the Regulations. These changes, which are described below, are intended to better facilitate the December 2020 mid-term elections by addressing the over-reliance on postal services, aligning notice requirements with the Education and Training Bill, and fixing an unfair ground for invalidation of voting papers.

## **Comment**

### ***Phase one: targeted consultation on proposed changes to the Regulations***

- 12 I intend for the Ministry to undertake a targeted consultation on the proposed changes to the Regulations. As the mid-term elections for boards of trustees, in which approximately 300 schools will participate, are scheduled to take place in December 2020, I propose that the Ministry carry out a targeted consultation over the last three weeks of March and first week of April.

- 13 The targeted consultation will be based on the attached discussion document and will be with key stakeholders, including the New Zealand School Trustees Association (NZSTA), Secondary Principals Association of New Zealand, New Zealand Principals' Federation, the principals' councils of the Post Primary Teachers' Association and the New Zealand Educational Institute and the School Business Managers' Association, and Te Runanga Nui o ngā Kura Kaupapa Māori.
- 14 The consultation document seeks feedback on proposals to:
  - 14.1 extend the timeframes at certain points in the election timetable;
  - 14.2 remove references to the use of the postal system when calling for nominations and issuing voting papers;
  - 14.3 replace the requirement 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 wider local community;
  - 14.4 remove 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.
- 15 In addition, stakeholders will be provided with the opportunity to express whether there are any other immediate changes to the Regulations that they consider should be made in time for the mid-term elections.
- 16 The Ministry will work with NZSTA to access its school board network to receive feedback from boards on the proposed changes.

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

- 17 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:
  - 17.1 exploring other delivery methods such as online, email or other digital voting, and as part of this, determine what level of security and integrity stakeholders consider appropriate for board of trustee elections; and
  - 17.2 exploring alternative options to the current election system (for example hui-based or AGM-style election systems) and other ways in which culturally responsive and inclusive practices can be enabled.
- 18 We intend to undertake broad public consultation as part of phase two.

***Proposed changes to the Regulations***

**Addressing postal timeframe issues**

- 19 The Regulations require schools to use either a short or a long election timetable to run their elections. The majority of schools use the short election timetable. Some schools request to use the long election timetable to

accommodate their unique circumstances. For instance, some schools need to 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.

- 20 There has been a significant reduction in postal services over the last few years. This has meant that the current election timeframes specified in the Regulations are too short. In turn, this has led to election notices either not reaching voters on time or has not allowed sufficient time for voters to be able to return their papers.
- 21 To address this issue, I propose to use the discussion document to consult on extending the timeframes at certain points in the short and long election timetables. I propose to consult on:
  - 21.1 extending the gap between the call for nominations and close of nominations for both election timetables to 21 days<sup>1</sup>;
  - 21.2 extending the gap between the issuing of voting papers and the close of poll for the short election timetable from 14 days to 28 days; and
  - 21.3 changing the close of polls from 12 pm to 4 pm on election day for both election timetables.
- 22 Currently the Regulations provide that 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 and shows that it was posted before noon on election day. I propose to consult on removing the date stamping requirement because it is no longer possible to prove that an envelope was posted before noon on election day as date stamping is no longer routinely carried out by New Zealand Post. Voting papers would continue to be accepted up to five days after the close of polls.

#### Reducing prescription and increasing flexibility

##### *Requirements to post election related papers*

- 23 At present, returning officers must call for nominations by posting or personally delivering a notice to each person named on the relevant roll. 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. If an election is to be held, the returning officer must issue voting papers by posting or personally delivering them to every person whose name appears on the roll for the election.
- 24 Due to the ongoing reduction in postal services, posting may no longer be the best way of issuing election related papers. Therefore, I propose to consult on the removal of references to using the postal system and replace them with the requirement to “issue” election related papers to each person

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<sup>1</sup> 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 gap for the short election timetable is 14 days and the gap for the long election timetable is 10 days. Extending the gap for both timetables to 21 days addresses this discrepancy and the issues related to the reduction in postal services.

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.

- 25 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*

- 26 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.
- 27 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.
- 28 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.
- 29 I therefore propose to consult on replacing the current requirements for returning officers to publish election-related notices in local newspapers, described above, 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 wider local community. I consider that this will increase flexibility for schools and enable them to determine what the best method of notifying their school community is.
- 30 Nothing in this new requirement will prevent notification through a local newspaper. I am aware this will be important for some communities, including Pacific communities, who may still prefer to access information through non-digital means. This proposed change will require schools to know their communities and make an assessment about which means of communication are most appropriate to use to notify their communities.
- 31 This proposal is consistent with the amendment being progressed through the Education and Training Bill that replaces the requirement to give notice of a casual board vacancy (being filled without an election) through a newspaper, with the requirement for boards to communicate their intention to fill a casual board vacancy by selection to their school community and any other affected parties in the wider local community.

#### Removing one of the grounds for the invalidation of voting papers

- 32 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.

- 33 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.
- 34 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 to consult on its removal.

### **Consultation**

- 35 The Treasury, the Office for Disability Issues, the Ministry for Women, Te Puni Kōkiri, 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.
- 36 The Ministry for Pacific Peoples commented that some Pacific communities still rely on newspapers. The concern is that the proposal to replace the requirement for returning officers to publish election-related notices in local newspapers may enable schools to use a method of communication that will not meet the needs of some Pacific communities. In response to this, I have clarified that the proposal is for returning officers to be required to notify the school community and any other affected parties in a manner that best meets the needs of the school community and the wider local community.

### **Financial implications**

- 37 There are no financial implications.

### **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.

### **Legislative Implications**

- 39 Feedback on these proposals will inform revised proposals that I expect to submit to Cabinet later this year when I will be seeking approval to issue drafting instructions.

## **Regulatory Impact Analysis**

- 40 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper 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.

## **Gender Implications**

- 41 There are no gender implications in relation to these proposals.

## **Disability Perspective**

- 42 There are no disability implications in relation to these proposals.

## **Proactive Release**

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

## **Publicity**

- 44 The Ministry will contact key stakeholders directly to seek their input as part of the targeted consultation. Stakeholders will have four weeks to provide feedback. The Ministry also intends to work with NZSTA to access its school board network to receive feedback from boards on the proposed changes.

## **Recommendations**

- 45 The Minister of Education recommends that the Committee:
- 1 **note** that the proposed changes to the Education (School Trustee Elections) Regulations 2000 are intended to better facilitate the mid-term December 2020 elections by:
    - 1.1 extending the timeframes at certain points in the election timetables;
    - 1.2 removing references to the use of the postal system when calling for nominations and issuing voting papers;
    - 1.3 replacing the requirement 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 wider local community; and
    - 1.4 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

- 2 **agree** to the Minister of Education releasing the following discussion document subject to any minor editorial, formatting and layout changes required:
  - 2.1 Draft consultation document: Proposed changes to the Education (School Trustee Elections) Regulations 2000 (attached at Appendix 1)
- 3 **note** that the targeted consultation with key stakeholders will take place in the last three weeks of March and first week of April 2020
- 4 **note** that the Minister of Education intends to seek final policy approvals for these proposals (and approval to issue drafting instruction) from the Cabinet Social Wellbeing Committee in April 2020
- 5 **note** that a more fundamental review of the electoral system for boards of trustees is intended to be completed in time for the next triennial elections in 2022.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education



## **We are seeking your input into proposed changes to the Education (School Trustee Elections) Regulations 2000**

### **Background**

The Education (School Trustee Elections) Regulations 2000 (the Regulations) were enacted almost two decades ago. To ensure that the mid-term elections in December this year are not hampered by timeframes that can no longer be met due to the reduction in postal services, and to improve the workability of the Regulations in general, we would like your feedback on the proposed changes outlined below.

We intend to undertake a more fundamental review of the electoral system for boards of trustees in time for the next triennial elections in 2022 and will seek your feedback on any proposed changes closer to the time.

### **What are the issues and how do we propose to address them?**

*The timeframes prescribed in the Regulations are no longer workable due to a reduction in postal services*

We have heard that due to a reduction in postal services, papers that are currently required to be posted, such as notices calling for nominations and voting papers, have at times either not reached voters on time, or voters have not had sufficient

To address this issue we propose to:

- a. extend the gap between the call for nominations and close of nominations for both election timetables to 21 days;
- b. extend the gap between the issuing of voting papers and the close of poll for the short election timetable from 14 days to 28 days;
- c. change the close of polls from 12 pm to 4 pm on election day for both election timetables; and
- d. remove the requirement that envelopes containing voting papers must be date stamped in order to be accepted if received after the close of polls. Currently the Regulations provide that 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 and shows that it was posted before noon on election day. As date stamping is no longer routinely carried out, we propose to remove this requirement as it is no longer possible to prove that an envelope was posted before noon on election day. Voting papers would continue to be accepted up to five days after the close of polls.

#### *Requirements to post election related papers*

At present, returning officers are required to call for nominations by posting or personally delivering a notice to each person named on the roll and, in the case of schools using the short election timetable, publishing a notice in a newspaper circulating in the area of the school. The returning officer must also issue voting papers by posting or personally delivering them.

We propose to remove the references to using the postal system and replace them with the requirement to “issue” election related papers to each person named on the election rolls, therefore enabling schools to use their preferred methods of communication to issue papers to relevant parties in their communities.

#### *Newspapers are no longer the best means of notifying the school community*

Currently, 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. 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.

Traditionally, newspapers were considered to be the best means of publicly notifying the community, however this may no longer be the best way of reaching the school community and other affected parties.

We propose replacing the requirement for newspapers to be used to publish election-related notices, in the instances described above, with the requirement for the returning officer 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. This is intended to increase flexibility for schools and require them to determine what the best methods of notifying their communities are.

*One of the grounds for the invalidation of voting papers is unfair*

The Regulations provide that a vote is invalid if the voting paper was not contained in the envelope included with the voting papers.

This leads to the invalidation of numerous votes as some parents that reside in the same household, often return their voting papers in one envelope, instead of the individual envelopes that were included with their voting papers. We propose removing this ground for invalidation. While this level of security may be necessary for other types of elections, such as local body elections, we do not consider this to be the case in the context of board of trustees' elections.

## **How to have your say**

We are seeking your views on the proposed changes and if you think that there are any other changes that should be made immediately to improve the workability of the Regulations in time for the mid-term elections in December this year.

You can email a submission to [consultation@education.govt.nz](mailto:consultation@education.govt.nz), or write to:

Education Consultation

Ministry of Education  
PO Box 1666  
Wellington 6140  
New Zealand

Submissions close on 3 April and will inform advice to the Minister on final policy proposals that would be submitted to Cabinet and, if approved, would be reflected in the wording of the regulations on election of trustees to school boards.

### **Personal information and confidentiality**

Submissions and documents associated with the consultation process meet the definition of official information, and are therefore subject to the Official Information Act 1982.

### **Further information**

If you have any questions about making a submission, or would like more information, please email [consultation@education.govt.nz](mailto:consultation@education.govt.nz).



# 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: Targeted Consultation on Proposed Changes

Portfolio                      Education

On 4 March 2020, the Cabinet Social Wellbeing Committee:

- 1        **noted** that the changes to the Education (School Trustee Elections) Regulations 2000 are intended to better facilitate the mid-term December 2020 elections by:
  - 1.1        extending the timeframes at certain points in the election timetables;
  - 1.2        removing references to the use of the postal system when calling for nominations and issuing voting papers;
  - 1.3        replacing the requirement 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 wider local community; and
  - 1.4        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;
- 2        **agreed** to the Minister of Education releasing the discussion document *Proposed changes to the Education (School Trustee Elections) Regulations 2000*, attached as Appendix 1 to the submission under SWC-20-SUB-0008, subject to any minor editorial, formatting and layout changes required;
- 3        **noted** that targeted consultation with key stakeholders will take place in the last three weeks of March and first week of April 2020;
- 4        **noted** that the Minister of Education intends to seek final policy approvals for these proposals (and approval to issue drafting instruction) from the Cabinet Social Wellbeing Committee in April 2020;
- 5        **noted** that a more fundamental review of the electoral system for boards of trustees is intended to be completed in time for the next triennial elections in 2022.

Vivien Meek  
Committee Secretary

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**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 Stuart Nash  
Hon Jenny Salesa  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon Aupito William Sio  
Hon Poto Williams  
Hon Julie Anne Genter

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SWC  
Office of the SWC Chair

**Hard-copy distribution:**

Minister of Education



# 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 6 March 2020**

On 9 March 2020, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 6 March 2020:

SWC-20-MIN-0008

**Education (School Trustee Elections)  
Regulations 2000: Targeted Consultation on  
Proposed Changes**  
Portfolio: Education

CONFIRMED

Michael Webster  
Secretary of the Cabinet

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Cabinet Social Wellbeing Committee