



Thomas Cawthron Trust Amendment Act 2023

Private Act 2023 No 2
Date of assent 5 July 2023
Commencement see section 2

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Preamble

- (1) The Cawthron Institute Trust Board was established by the Thomas Cawthron Trust Act 1924 (the **principal Act**) in furtherance of the charitable trust established by the will of Thomas Cawthron, and the judgment of the Supreme Court in 1919:
- (2) The principal Act has since been amended on several occasions by Acts of Parliament. In addition, the effect of the principal Act has on 2 occasions been modified by orders of the High Court (made on 10 February 2003 and 26 October 2011, pursuant to the Charitable Trusts Act 1957):
- (3) The Trust Board conducts significant scientific research and associated activities in the Cawthron Institute under the governance of a board of directors established under the High Court order dated 10 February 2003:
- (4) The members of the Trust Board are not remunerated and have no limitation of their personal liabilities in relation to the activities of the Cawthron Institute and the Trust Board:
- (5) Amending legislation is the preferred method to—
 - (a) clearly articulate the objects of the Trust Board and the powers conferred on the Trust Board to advance those objects; and
 - (b) provide for the appointment of a member of the Trust Board nominated by Te Taihū iwi; and
 - (c) specify the legal liability of the members of the Trust Board; and
 - (d) update and modernise the governance arrangements of the Trust Board, and consolidate and revise other aspects of the governance and administration of the Trust Board:
- (6) Amending legislation is also the preferred method to clarify and update the effect of section 17 of the principal Act:
- (7) The Trust Board considers that legislation is desirable in order to enable the appointment of a member of the Trust Board nominated by Te Taihū iwi so that the member is a statutory trustee of equal status to those appointed under section 3(1)(a) of the principal Act:

- (8) The Trust Board considers that it is desirable that the amendments made to its trust instrument by orders of the High Court are enacted as a codification:
- (9) The Trust Board considers that the making of other amendments is desirable to be achieved by way of a single enactment rather than by way of enactment followed by High Court proceedings:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Thomas Cawthron Trust Amendment Act 2023.

2 Commencement

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

3 Principal Act

This Act amends the Thomas Cawthron Trust Act 1924.

4 Section 2 amended (Incorporation of Cawthron Institute Trust Board)

In section 2, replace “**Board**” with “**Trust Board**”.

5 New sections 2A and 2B inserted

After section 2, insert:

2A Objects of Trust Board

The objects of the Trust Board are charitable and are the advancement of science to benefit Te Taihū and Aotearoa New Zealand, with a focus on natural resources.

2B Interpretation

In this Act, unless the context otherwise requires,—

board of directors means the board of directors appointed by the Trust Board under section 12A

Te Taihū Iwi Bodies means the Rangitāne o Wairau Settlement Trust, the Te Rūnanga o Ngāti Kuia Trust, the Ngāti Apa ki te Rā Tō Trust, Te Rūnanga o Toa Rangatira Incorporated, Te Pātaka a Ngāti Kōata, the Ngāti Rārua Settlement Trust, the Ngāti Tama ki Te Waipounamu Trust, and the Te Ātiawa o Te Waka-a-Māui Trust

Te Taihū Iwi Chairs Forum—

- (a) means the unincorporated body that represents the Te Taihū Iwi Bodies; and
- (b) includes any successor entity to the Te Taihū Iwi Chairs Forum, whether incorporated or unincorporated.

6 Section 3 replaced (Constitution of Board)

Replace section 3 with:

3 Constitution of Trust Board

- (1) The Trust Board consists of—
 - (a) the persons holding for the time being the respective offices of the following:
 - (i) Mayor of Nelson City;
 - (ii) Mayor of Tasman District;
 - (iii) Member of Parliament for the Electoral District of Nelson;
 - (iv) Anglican Bishop of Nelson; and
 - (b) 1 member appointed as the Te Taihū iwi member by the Te Taihū Iwi Chairs Forum, acting on behalf of the Te Taihū Iwi Bodies; and
 - (c) up to 6 members appointed by the members holding office under paragraphs (a) and (b), at least 3 of whom must be appointed for their scientific knowledge and experience.
- (2) Before making an appointment under subsection (1)(b), the Te Taihū Iwi Chairs Forum must—
 - (a) discuss with the Trust Board the appropriate skill mix for the Trust Board; and
 - (b) consult representatives of Te Taihū iwi.
- (3) Before making an appointment under subsection (1)(c), the members holding office under subsection (1)(a) and (b) must—
 - (a) consult, and have regard to the views of, the other members of the Trust Board; and
 - (b) satisfy themselves that any regulations made by the Trust Board (under section 12(1)(a)) in relation to the appointment of members (and not inconsistent with this section) have been complied with.

3A Term of office of appointed members

- (1) Except as otherwise provided in this section, each appointed member holds office for a period of 3 years from the date of that member's appointment but may from time to time be reappointed.
- (2) Each appointed member, unless that member vacates office otherwise than by passage of time, continues to hold office until that member's successor comes into office.
- (3) The office of any appointed member becomes vacant if the member—
 - (a) dies; or
 - (b) resigns office by written notice to the Trust Board; or

- (c) is declared bankrupt; or
 - (d) is convicted of any offence punishable by a term of imprisonment of 2 years or more; or
 - (e) becomes subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or becomes a special patient as defined in section 2(1) of that Act; or
 - (f) becomes a person subject to an order under the Protection of Personal and Property Rights Act 1988.
- (4) The Te Tauihu Iwi Chairs Forum must make the first appointment under section 3(1)(b) no later than 1 April 2024.
- (5) In this section, an **appointed member** is a member of the Trust Board appointed under section 3(1)(b) or (c).

7 Sections 7 and 8 repealed

Repeal sections 7 and 8.

8 Section 9 amended (Validity of acts of Board not to be impaired by vacancies or defective appointments)

- (1) In the heading to section 9, replace “**Board**” with “**Trust Board**”.
- (2) In section 9, replace “Board” with “Trust Board” in each place.

9 Section 10 repealed (Contracts of Board)

Repeal section 10.

10 Section 11 amended (Board may accept and administer other bequests, etc)

- (1) In the heading to section 11, replace “**Board**” with “**Trust Board**”.
- (2) In section 11, replace “Board” with “Trust Board” in each place.

11 Section 12 amended (Additional powers of Board)

- (1) In the heading to section 12, replace “**Board**” with “**Trust Board**”.
- (2) In section 12(1)(j)(iv), replace “Board’s money” with “Trust Board’s money”.
- (3) In section 12(1), (2), and (3), replace “Board” with “Trust Board” in each place.
- (4) After section 12(3), insert:
- (4) The Trust Board may establish its own administrative rules for the conduct of its meetings, the responsibilities and powers of the board of directors, and other matters not governed by this Act.

12 New sections 12A and 12B inserted

After section 12, insert:

12A Appointment of board of directors

- (1) The Trust Board may appoint a board of directors in accordance with—
 - (a) the terms of reference of the board of directors; and
 - (b) the requirements of this section.
- (2) The board of directors must consist of up to 7 persons—
 - (a) who are appointed by the Trust Board; and
 - (b) who, in the opinion of the Trust Board, have commercial experience and expertise relevant to the activities of the trust.
- (3) No member of the Trust Board may be appointed to the board of directors or hold office as a director.
- (4) Each appointment to the board of directors is for a term of up to 3 years.
- (5) Despite subsection (4), the Trust Board may do any 1 or more of the following:
 - (a) appoint a director to fill a casual vacancy;
 - (b) reappoint a director for 1 or more further terms;
 - (c) remove a director from office.
- (6) If a director is removed from office under subsection (5), that person has no claim against the trust or the Trust Board in respect of that removal other than in respect of fees or reimbursement of expenses then due to that person.

12B Responsibilities and powers of board of directors

- (1) The board of directors may exercise any of the powers of the Trust Board described in section 12(1)(e) to (j) and (2), as determined by the Trust Board.
- (2) The board of directors must—
 - (a) appoint a chief executive officer of the Cawthron Institute (the **CEO**); and
 - (b) determine the CEO's functions and terms and conditions of employment.
- (3) The CEO must not be a member of the Trust Board or board of directors.
- (4) The CEO must report to the board of directors in accordance with such procedures as the board of directors may determine.
- (5) The board of directors must report to the Trust Board at least once every 6 months on all financial and operational aspects of the trust.
- (6) The Trust Board is responsible for the due compliance and performance by the board of directors of the powers delegated to the board of directors.

13 Section 13 repealed (Provision for Capital Conservation Account)

Repeal section 13.

14 Section 14 amended (Annual balance sheet and accounts)

- (1) In section 14(1), replace “31 March” with “30 June (or any other date agreed to by the Trust Board)”.
- (2) In section 14(1) and (2), replace “Board” with “Trust Board”.
- (3) Repeal section 14(3).

15 Section 15 amended (Property of trustees vested in Board)

- (1) In the heading to section 15, replace “Board” with “Trust Board”.
- (2) In section 15(1) and (2), replace “Board” with “Trust Board”.

16 Section 16 amended (Registration of title)

- (1) In section 16(1) and (2), replace “Board” with “Trust Board” in each place.
- (2) In section 16(2), replace “Land Transfer Act 1915” with “Land Transfer Act 2017”.

17 Section 17 replaced (Remuneration of Board)

Replace section 17 with:

17 Remuneration of members of Trust Board and board of directors

- (1) The members of the Trust Board may be paid remuneration for their services (in an amount to be determined by the Trust Board), including—
 - (a) reimbursement for necessary and reasonable out-of-pocket expenses incurred by them in attending meetings of the Trust Board; and
 - (b) compensation for discharging their functions under this Act.
- (2) However, a member of the Trust Board referred to in section 3(1)(a)(i) to (iii) is not entitled to remuneration for their services, other than reimbursement of the type referred to in subsection (1)(a).
- (3) The members of the board of directors must be paid—
 - (a) compensation for their services, in an amount determined by the Trust Board; and
 - (b) reimbursement for necessary and reasonable out-of-pocket expenses incurred by them for the purposes of discharging their obligations under this Act.

18 New section 17A inserted (Liability and indemnification of members of Trust Board)

After section 17, insert:

17A Liability and indemnification of members of Trust Board

- (1) No member of the Trust Board acting under this Act is liable for the consequence of any act or omission, or for any loss, unless the consequence or loss is

attributable to a breach of trust arising from that member's dishonesty, wilful misconduct, or gross negligence.

- (2) Each member of the Trust Board acting under this Act must be fully indemnified by and out of the trust fund (whether from capital or income) for any loss or liability that they incur in the carrying out or omission of any function, duty, power, or discretion of the Trust Board and in respect of any outlay or expenses incurred by them in the management and administration of the Trust Board, unless the loss or liability is attributable to a breach of trust arising from that member's dishonesty, wilful misconduct, or gross negligence.

19 Section 18 amended (Application of Charitable Trusts Act 1957)

In section 18, replace "Board" with "Trust Board" in each place.

Legislative history

8 November 2022	Introduction (Bill 149–1)
7 December 2022	First reading and referral to Economic Development, Science and Innovation Committee
14 June 2023	Reported from Economic Development, Science and Innovation Committee (Bill 149–2)
28 June 2023	Second reading, committee of the whole House, third reading
5 July 2023	Royal assent