

Thomas Cawthron Trust Amendment Bill

Private Bill

Explanatory note

General policy statement

The objects of the Bill are to—

- clearly articulate the objects of the Cawthron Institute Trust Board (the **Trust Board**) and the powers conferred on the Trust Board to advance those objects; and
- provide for the appointment of a member of the Trust Board nominated by Te Taihū iwi; and
- specify the legal liability of the members of the Trust Board; and
- 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.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill commences on the day after the date on which it receives the Royal assent.

Clause 3 identifies the Thomas Cawthron Trust Act 1924 as the principal Act being amended. The principal Act is a private Act.

Clause 4 amends section 2 to use Trust Board instead of Board, in line with similar changes approved by the High Court in 2003.

Clause 5 inserts 2 new sections. *New section 2A* sets out the objects of the Trust Board. *New section 2B* inserts definitions of board of directors, Te Taihū Iwi Bodies, and Te Taihū Iwi Chairs Forum.

Clause 6 amends section 3 by providing for the appointment of a Te Taihū iwi member. The appointment process will be governed by *new section 3(2A)*. The Te Taihū iwi Member will be appointed for 3 years, in the same manner as appointed members of the Trust Board, under *new section 3(3)*.

Clause 7 repeals sections 7, 8, and 10 (administrative matters about meetings and contractual arrangements) on the basis that *new section 12(4)* empowers the Trust Board to do such matters.

Clause 8 amends section 12. *New subsection (4)* empowers the Trust Board to establish its own administrative rules for matters not governed by the principal Act.

Clause 9 inserts *new sections 12A and 12B*. The former provides for the appointment of a board of directors, while the latter sets out the board's responsibilities and powers. Similar provisions were approved by the High Court in 2003 and amended in 2011.

Clause 10 amends section 14 in relation to the balance date and accounts of the Trust Board. *Clause 10(1)* amends the balance date from 31 March to 30 June, in line with changes approved by the High Court in 2011. *Clause 10(2)* repeals the requirement for the publication of the financial statements in the *Gazette* and in a Nelson newspaper, as the financial statements are now available on the Internet site of the Department of Internal Affairs, Charities Services.

Clause 11 replaces section 17, which relates to remuneration of members of the Trust Board and of the board of directors. *New section 17(1)* amends the provision approved by the High Court in 2003, and reinstates the ability for members of the Trust Board to be remunerated. *New section 17(2)* enacts a provision similar to that approved by the High Court in relation to remuneration of the board of directors.

Clause 12 inserts *new section 17A*, which relates to the liability and indemnification of members of the Trust Board. Consistent with the Trusts Act 2019, there is no exclusion of liability or indemnity in relation to dishonesty, wilful misconduct, or gross negligence.

Clause 13 makes consequential amendments relating to the change in terminology from Board to Trust Board.

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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 been amended by—
 - (a) Acts of Parliament; and
 - (b) 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 but 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 appointment of a member 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:

The Parliament of New Zealand therefore enacts as follows:**1 Title**

This Act is the Thomas Cawthron Trust Amendment Act **2022**.

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 (the **principal Act**).

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 the 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 amended (Constitution of the Trust Board)

(1) After section 3(1)(b), insert:

- (c) 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.

(2) After section 3(2), insert:

(2A) Before making an appointment under **subsection (1)(c)**, 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) In section 3(3), after “the appointed members”, insert “and the Te Taihū Iwi member”.

7 Sections 7, 8, and 10 repealed

Repeal sections 7, 8, and 10.

8 Section 12 amended (Additional powers of Board)

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.

9 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) 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.

10 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) Repeal section 14(3).

11 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, including—
- (a) reimbursement for necessary and reasonable out-of-pocket expenses incurred by them in attending meetings of the Trust Board; and
 - (b) reimbursement for discharging their functions under this Act.
- (2) 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.

12 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.

13 Consequential amendments

Amend the principal Act as set out in the **Schedule**.

Schedule
Consequential amendments to principal Act

s 13

Section 3

In the heading to section 3, replace “**Board**” with “**Trust Board**”.

In section 3(1), (2), and (5), replace “Board” with “Trust Board” in each place.

Section 11

In the heading to section 11, replace “**Board**” with “**Trust Board**”.

In section 11, replace “Board” with “Trust Board” in each place.

Section 12

In the heading to section 12, replace “**Board**” with “**Trust Board**”.

In section 12(1), replace “The Board” with “The Trust Board”.

In section 12(1), replace “the Board” with “the Trust Board” in each place.

In section 12(1)(d), replace “said Board” with “Trust Board”.

In section 12(2) and (3), replace “Board” with “Trust Board” in each place.

Section 13

In section 13(1) and (2), replace “Board” with “Trust Board”.

Section 14

In section 14(1) and (2), replace “Board” with “Trust Board”.

Section 15

In the heading to section 15, replace “**Board**” with “**Trust Board**”.

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

Section 16

In section 16(1) and (2), replace “Board” with “Trust Board” in each place.

Section 18

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