

New Zealand legal obligations and special character compliances required of boards of trustees of catholic integrated schools

THESE REQUIREMENTS ARE STATED IN:

- Part 33 of the Education Act 1989 (previously the Private Schools Conditional Integration Act 1975)
- Individual Integration Agreements for each Catholic School,
- Education Act 1989

1. **The Education Act 1989 (Ed. Act)** imposes Special Character compliances on Boards of Trustees of Catholic schools by virtue of the following sections.
 - 1.1. Section 414: "This Act shall bind the Crown." (The Board of Trustees is a Crown agency.)
 - 1.2. Section 416(1): "An integrated school (has) the right to reflect through its teaching and conduct the education with a special character provided by it."
 - 1.3. Section 416(2): "Integration shall not jeopardise the special character of an integrated school."
 - 1.4. Section 416(3): "The Proprietor of an integrated school shall...
 - (a) Continue to have the responsibility to supervise the maintenance of the education with a special character provided by the school;
 - (b) Continue to have the right to determine from time to time what is necessary to preserve and safeguard the special character of the education provided by the school and described in the integration agreement."
 - 1.5. Section 417 states that an integrated school is subject to the same legislation as other schools in the State system but that these other enactments "shall in all respects be read subject to section 416 (see above) and section 475 of this Act (see below), and to other provisions of this Act that relate to integrated schools."
 - 1.6. Section 419 lists the matters which may be included in an integration agreement. These include a description of the special character; a prescription of religious instruction and observances which are to form part of the school programme; limits on the number of non-preference pupils/students; and "any other matter which bears upon the education with a special character for which the school was originally established".
 - 1.7. Section 429 gives the Proprietor authority to cancel the integration agreement (which would automatically remove all the powers of the Board of Trustees) "if it appears to the Proprietors that the special character of the integrated school has been or is likely to be jeopardised". (See also The Integration Agreement at 2.0 below.)
 - 1.8. Section 428 gives the Minister the power to cancel the integration agreement if it appears to her/him "on reasonable grounds that the Proprietors or controlling authority...are not sufficiently carrying out the functions and obligations accepted by them or it under this Act or the integration agreement". (Section 432 also empowers the Minister to disestablish and close the school for the same reasons as those stated in Section 427.)

- 1.9. Section 440: “The powers of control and management of the controlling authority (Board of Trustees) of an integrated school shall be exercised subject to the provisions of Sections 416 and 417 of this Act; and to give effect to this requirement, the controlling authority of any integrated school that is a primary school or a composite school or a special school shall make provision for adequate consultation between the controlling authority and the Proprietors of that school.” This section clearly points to considerable input by the Proprietor on any and all matters which pertain, or are likely to pertain, to the Special Character.
- 1.10. Section 442 gives preference of enrolment to children whose parents “have a particular or general philosophical or religious connection with an integrated school”. (See also **The Integration Agreement** at 2.0 below.)
- 1.11. Section 443: “By enrolling a pupil at an integrated school the parent shall accept as a condition of enrolment that the pupil is to participate in the general school programme that gives the school its special character.” (But see 1.14 below on Section 445(2).)
- 1.12. Section 444 states that “...the general school programme (prescribed by the Education Act) shall reflect the education with a special character provided by the integrated school, and religious and other examples may be used to reinforce teaching throughout the school day.”
- 1.13. Section 445(1) also provides for the mandatory inclusion in the school programme of those religious observances and religious instruction which form part of the education with a special character, “in accordance with the terms and conditions prescribed in the integration agreement relating to that school.”
- 1.14. Section 445(2) requires integrated schools to “be responsive to the sensitivities of pupils and parents of different religious or philosophical affiliations” and “not require any such pupils to participate in religious observances and religious instruction concerned with particular observances if the parents of that child state at any time that they do not wish that pupil to so participate.”
- 1.15. Section 455: “The school office of an integrated school may be used for the purpose of communication between the Proprietor of the school and the parents of pupils enrolled at the school, and for other purposes related to the benefit of the school and the pupils.”
- 1.16. Section 463(2) states that when a Board of Trustees “delegates to a committee the power to appoint a teacher or to recommend the appointment of a teacher, that committee must contain at least one of the persons appointed to the (Board of Trustees) by the Proprietor.”
- 1.17. Section 464 requires that advertisements for the positions of Principal [464(1)(a)], Director of Religious Studies [464(1)(b)], and a designated number of other teaching positions [464(1)(c)] “shall state that a willingness and ability to take part in religious instruction appropriate to that school shall be a condition of appointment”. (See also **The Integration Agreement** at 2.0 below.) Section 464(1)(b) further states that the Director of Religious Studies “shall be a member of the normal staffing entitlement of the school”.
- 1.18. Section 464(2) states that teachers appointed to section 464 positions (“tagged” positions) must accept the advertised requirement (the “tag”) as a condition of their appointment.
- 1.19. Section 467 is the section which authorises the special “tag” which is applied to the position of Deputy Principal in all Catholic schools. (See also **The Integration Agreement** at

2.0 below.) This section provides for the creation and advertising of “special positions” requiring particular capabilities on the part of the teachers holding them. It also states that acceptance of the advertised requirements is a condition of appointment.

- 1.20. Section 469 requires the Board of Trustees of an integrated primary school to consult with the Proprietor before appointing a teacher to a section 464 or section 467 position. The Board must then appoint only from those applicants who are acceptable to the Proprietor “in terms of the special character of the school or in terms of the advertisement”. (See also The Integration Agreement at 2.0 below.)
- 1.21. Section 470(1) authorises the Board of Trustees to allow “any retired teacher” to undertake “voluntary tasks relating to the beliefs and instructions that are the foundation of the school’s special character.” (See also The Integration Agreement at 2.0 below.)
- 1.22. Section 470(2) authorises the Proprietor to “employ any person, whether as a chaplain or otherwise” for duties relating to the religious instruction that forms part of the special character. The Proprietor is required by section 470(3) & (4) to notify the Board of the names of any person so employed, and that person “shall not be paid by the controlling authority or be in any way a charge on money appropriated by Parliament.”
- 1.23. Section 475 states that Part 33 of the Education Act “shall prevail in respect of integrated schools” wherever this Act deals with the same or similar subject matter as that in the Education Act 1964, the State Sector Act 1988, the School Trustees Act 1989, or other parts of the Education Act 1989, or any regulations made under those Acts or any enactment repealed by those Acts.

2. THE INTEGRATION AGREEMENT is derived from Part 33 of the Education Act (previously the Private Schools Conditional Integration Act), with all the legal force of that Act. It is a unique legal instrument in New Zealand law. As such it imposes Special Character compliances on Boards of Trustees of Catholic schools by virtue of the following. *(Please note that clause numbers may vary from Agreement to Agreement.)*

- 2.1. Clause 2 “The School’s Special Character as is hereunder described, shall incorporate the Education with a Special Character as provided in the School and it is hereby agreed and declared that the school shall at all times be conducted and operated so as to maintain and preserve the School’s Special Character.” The clause goes on to state that the remainder of the Agreement is to be interpreted “so as to maintain and preserve the Special Character of the School.”
- 2.2. Clause 5 “The Special Character of the School is that it is a Roman Catholic School...established by the Roman Catholic (Arch)Bishop of the (Arch)Diocese of...(or established by a particular Religious Order) for the Roman Catholic community of the (Arch)Diocese of...which promotes and supports the School and of which the School is part, to provide and continue to provide Education with a Special Character, that is to say:

The School is a Roman Catholic School in which the whole School community through the general School programme and in its religious instruction and observances, exercises the right to live and teach the values of Jesus Christ. These values are as expressed in the Scriptures and in the practices, worship and doctrine of the Roman Catholic Church, as determined from time to time

by the Roman Catholic (Arch)Bishop of the (Arch)Diocese of..." Note that the definition of Special Character of Māori Boarding Schools contains the additional element of taha Māori.

- 2.3. A number of Integration Agreements have a Schedule (usually the Fifth Schedule) which outlines the special educational ethos or charism of the particular school. This is derived from the charism of the Religious Institute that founded the school or who staffed it on behalf of a Bishop.
- 2.4. Clause 3(b)(i): "At the request of the Proprietor, the Board of Trustees may grant the use of the School premises and chattels to the Proprietor or other person or persons at any time when the School premises and chattels are not required for school purposes and the Board of Trustees shall not arbitrarily withhold its consent. The Board of Trustees may require the Proprietor or other person or persons to pay a reasonable fee to the Board of Trustees as a condition of such use." This is followed by sub-clause (ii) which allows the Board of Trustees, "with the consent of the Proprietor...to grant the use of the School premises and chattels to any person or persons" under the same conditions of consent and payment as those in sub-clause (i).
- 2.5. Clause 6(a) states that the Proprietor "shall continue to have the responsibility to supervise the maintenance and preservation of the Education with a Special Character provided by the School."
- 2.6. Clause 6(b) gives the Proprietor the right to determine from time to time what is necessary to preserve and safeguard the Special Character of the Education provided by the School and described in this Deed of Agreement".
- 2.7. Clause 6(c) reconfirms that the Proprietor has the power, conferred by Section 429(1) of the Education Act (see above), to cancel the Integration Agreement if he/she considers that "the Special Character of the School...has been or is likely to be jeopardised or the Education with Special Character provided by the School...is no longer preserved and safeguarded."
- 2.8. Clause 10(b) prohibits the Board of Trustees from enrolling any pupils/students unless the Proprietor has stated that the parents have established "a particular or general religious connection with the Special Character of the School".
- 2.9. Clause 10(a) prohibits the Board of Trustees from enrolling more than the specified number (percentage) of non-preference pupils/students, and requires the Board to "endeavour to reasonably distribute them through the range of classes offered by the School."
- 2.10. Clause 11 states that "as religious observances and religious instruction form part of the Education with a Special Character provided by the School, religious observances and religious instruction in accordance with the determination made from time to time by the Roman Catholic (Arch)Bishop of the (Arch)diocese of...shall continue to form part of the School programme in accordance with Sections 444 and 445 of the Education Act 1989."
- 2.11. Clause 12 "The Proprietor, together with his servants, agents and licensees, shall...have at all reasonable times access to the school to ensure that the Special Character of the School is being maintained."
- 2.12. Clause 13 "The Proprietor, together with his servants, agents and licensees, shall have at all reasonable times access to the land and buildings of the School constituting the School

premises sufficient to enable him to exercise the powers and carry out the responsibilities vested in him and imposed on him by Part 33 of the Education Act 1989.”

- 2.13. Clauses 14-19 (or thereabouts) reiterate the provisions of Sections 464, 465 and 467 of the Education Act (see above) in respect of the appointment of the Principal, Deputy Principal, D.R.S. and other teachers to “tagged” positions. The wording of the “tag” for the position of Deputy Principal is different for primary and secondary schools, but in both cases it is a requirement that the prescribed wording be included in any advertisement for the position of Deputy Principal – and for that position only.
 - 2.14. Clause 20 reiterates the right of the Proprietor to arrange, with the consent of the Board of Trustees, “for any retired teacher to undertake voluntary tasks to assist the School with the teaching of appropriate Religious observances and Religious instruction...” (See Section 470(1) of the Education Act above.)
 - 2.15. Clause 21 reiterates the provisions of Section 470(2) and (3) of the Education Act (see above) whereby the Proprietor and the Board of Trustees may agree to the former “employing any person as a Chaplain or otherwise” for the purposes stated in those Sections of the Act.
 - 2.16. The Schedules: Most of the Schedules attached to Integration Agreements deal with property matters. One exception is referred to in 2.3 above. The other major exception is the Staffing Schedule (usually the Fourth) which accompanies every primary school Agreement. The latter specifies the number of teachers in the school who must be holding “tagged” positions (other than Principal and Director of Religious Studies), relative to the total staffing entitlement.
- 3. THE EDUCATION ACT 1989** also contains sections outside of Part 33 which apply specifically to integrated schools and which have implications, including compliance requirements, for their Boards of Trustees.
- 3.1. Section 94(1)(e) provides for “not more than 4 trustees appointed by the school’s Proprietor”.
 - 3.2. Section 94A authorises Proprietors to vary the number of their Appointees by reducing it to less than 4 or increasing it to not more than 4. The section provides for a Board to seek the Proprietor’s consent to any reduction. A Proprietor intending to vary the number of Appointees is required to give “written notice to the Board”. The written notice must also specify the time of the change, which can be the date on which trustees go out of office prior to Board elections, or upon the appointment of a commissioner to replace the Board (whichever is earlier), or (if the number is to be reduced) on a date specified. Where there is to be a reduction in the number of Appointees, the notice must “contain the dismissal (with effect on that day) of enough trustees appointed by the Proprietor to give effect to the reduction consented to”.
 - 3.3. Section 99 states “(1) It is desirable, so far as is reasonably practicable” for every Board to reflect the ethnic and socio-economic diversity of the student body; gender equality; the character of the school and the character of the community it serves; and management expertise and experience. Section 99(2) requires those responsible for co-opting or appointing members (including the Proprietor) to have regard to 99(1).

- 3.4. Section 61 (3)(b)(iii) ensures that in the long term strategic planning section of the school charter “any aims or objectives that designate the school’s special characteristics or its special character (within the meaning of this Act)” must be included.
- 3.5. The Board of Trustees is required to consult the Proprietor before preparing or amending a School Charter. The Special Character dimension holds a pre-eminent position in the School Charter.