

Reprint
as at 7 August 2020



Education (School Risk Management Scheme) Regulations 2003 (SR 2003/39)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 3rd day of March 2003

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to sections 78D and 78F of the Education Act 1989, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Education.

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Regulations

1 Title

These regulations are the Education (School Risk Management Scheme) Regulations 2003.

Preliminary provisions

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Education and Training Act 2020

administrator means the person for the time being appointed by the Crown (acting by and through the Minister) to administer claims made under a scheme

claim means a claim for indemnity under the scheme

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

participating school Board has the same meaning as participating board in section 10(1) of the Act

property means tangible personal property, including money

scheme means a school risk management scheme as defined in section 10(1) of the Act

Secretary means the chief executive of the Ministry.

Regulation 3 **Act**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 3 **Minister**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 3 **Ministry**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 3 **participating school Board**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 3 **scheme**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Form in which indemnity under scheme must be given

4 Form of legal instrument by which scheme established

- (1) A scheme may be established by a deed entered into by the Crown (acting by and through the Minister), expressed to be between the Crown and every participating school board.
- (2) The deed must be signed on behalf of the Crown by the Minister, in the presence of 1 or more witnesses, but need not also be signed on behalf of any participating school board.
- (3) Subclause (2) applies to every further deed under regulation 5.
- (4) Nothing in this regulation or in regulation 5 prevents the Crown (acting by and through the Minister) from entering into 1 or more contracts or other forms of legal instrument with another person or persons for the purpose of ensuring that the Crown may give an indemnity—
 - (a) that is referred to in the deed establishing the scheme (or in a variation or replacement of that deed); and
 - (b) that is required to be given under the scheme.
- (5) The Minister may delegate any of his or her functions under these regulations to the Secretary.
- (6) Any delegation must be done in the manner provided for in clause 5 of Schedule 6 of the Public Service Act 2020.

Regulation 4(6): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

5 Variation, replacement, or termination of instrument

- (1) The Crown (acting by and through the Minister) may, at any time, by entering into a further deed,—
 - (a) vary the deed establishing the scheme (and every variation or replacement of it) by extending the period in respect of which the Crown undertakes to indemnify participating school boards under the scheme; or
 - (b) vary any other provision or provisions of the deed establishing the scheme (and every variation or replacement of it), after giving at least 1 month's written notice to every participating school board affected by the variation; or
 - (c) replace the deed establishing the scheme (and every variation or replacement of it) with a new deed containing 1 or more variations referred to in paragraph (a) or paragraph (b), after giving any notice required under those paragraphs.
- (2) Every indemnity given under a variation or replacement of the deed establishing the scheme—
 - (a) must be for the purpose referred to in regulation 6(1); and
 - (b) must contain terms and conditions of the kind referred to in regulation 6(2).
- (3) The Crown (acting by and through the Minister) may also terminate the deed establishing the scheme (or a variation or replacement of it) by a further deed, but only if—
 - (a) the Minister, on giving reasonable notice to all participating school boards, exercises his or her power, under section 576(4) of the Act, to discontinue the scheme and direct the Secretary to wind it up; and
 - (b) the termination occurs at the same time as that discontinuation of the scheme.
- (4) For the purposes of subclause (3)(a) and of section 576(4) of the Act, 2 months' written notice is reasonable notice.
- (5) Written notice under this regulation must be given to each participating school board.

Regulation 5(3)(a): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 5(4): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

*Scope or purposes and terms and conditions of indemnity under scheme***6 Authorised purpose and terms and conditions of indemnity under scheme**

- (1) The scheme must be for the purpose stated in section 576(1)(a) of the Act, that is, for the purpose of indemnifying participating school boards against acciden-

tal loss of, or damage to, property of the board that occurs during the period for which the scheme has effect.

- (2) For the purposes of section 576(2) of the Act, an indemnity under the scheme contains terms and conditions authorised by these regulations if the indemnity contains terms and conditions set out in the Schedule.

- (3) *[Revoked]*

Regulation 6(1): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 6(2): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 6(3): revoked, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Procedure for lodging claims and their determination

7 Lodging of claims by participating school board

- (1) To lodge a claim in respect of any accidental loss or damage that is or may be required to be indemnified under the scheme, a participating school board must comply with this regulation.
- (2) The Board must submit full particulars of the claim to the administrator—
- (a) promptly (and no later than 30 days) after the board becomes aware of the accidental loss or damage; and
 - (b) in writing in a form acceptable to the administrator.
- (3) The board must also provide the administrator, at the board's expense, with any proof or information reasonably required by the administrator in order to administer the claim.
- (4) An example of proof or information of that kind is a copy of a register of assets (or similar record) maintained by the board.

Kinds of costs the Crown may deduct from money payable under scheme to participating school board

8 Kinds of costs that are deductible

The Crown may deduct costs from money payable under the scheme to a participating school Board if the costs are of the following kinds:

- (a) costs that minimise risk;
- (b) administration costs for the purposes of discouraging small or repeated claims.

Manner in which participating school boards may withdraw from and rejoin scheme

9 How boards withdraw from and rejoin scheme

- (1) A participating school board may, with the Minister's approval, withdraw from the scheme, and so cease for the time being to be a participant in it.
- (2) The withdrawal of the board under subclause (1) takes effect on the earlier of the following dates:
 - (a) if the board enters into a contract of insurance that will indemnify the board in the same (or in mostly the same) circumstances, and to the same (or to mostly the same) extent, as the scheme, the date of commencement of that contract; or
 - (b) the day that is 30 days after the board receives notification of the Minister's approval of that board's withdrawal from the scheme.
- (3) A school board that formerly was a participating school board but that withdrew from the scheme may with the Minister's approval rejoin the scheme, and so become again for the time being a participant in it.
- (4) The rejoining of the board under subclause (3) takes effect on the later of the following dates:
 - (a) if the board has previously entered into a contract of insurance that indemnifies the board in the same (or in mostly the same) circumstances, and to the same (or to mostly the same) extent, as will the scheme, the expiry date of that contract; or
 - (b) the day that the Minister approves that board rejoining the scheme.
- (5) For the purposes of this regulation (and without limiting any other manner of notification), a school board must be treated as having received notification 2 days after the date on which it was posted by the Minister, unless the contrary is proved.

Schedule

Authorised terms and conditions for risk management scheme for school contents

r 6(2)

1 Interpretation

- 1.1 In this Deed, unless the context otherwise requires,—

administrator means the person for the time being appointed by the Crown to administer claims under the scheme

buildings includes all buildings and other temporary or permanent structures (whether or not owned by, or the responsibility of, the Crown), including, but not limited to,—

- (i) the fixtures, fittings, pipes, and cables pertaining to any of them, both above and below ground level:
- (ii) signs and lettering:
- (iii) tanks, poles, power lines, and their supports:
- (iv) all lighting and wiring:
- (v) carpets, linoleum, and other floor coverings while fixed to any floor:
- (vi) walls, gates, and fences:
- (vii) burglar alarms and other security systems, and fire detectors and extinguishers (whether or not attached to a building or other structure)

claim means a claim for indemnity under this Deed

costs means the reasonable costs specified in clause 16

damage includes destruction

deductible means the amount or amounts referred to in clause 15

GST means goods and services tax

land includes, but is not limited to, all outdoor sporting facilities, playing fields, sports courts, and permanent swimming pools

money means current coins, bank and currency notes, cheques, postal notes, travellers cheques, money orders, current postage stamps, franking machine credits, tickets, vouchers, unrealised credit card vouchers, and other negotiable instruments

participating school Board has the same meaning as **participating board** in section 10(1) of the Education and Training Act 2020

property has the meaning set out in clause 3

scheme means the indemnity arrangement established by this Deed

school means the school administered by the relevant school Board

school trustee means a member of a participating school Board; and includes a Commissioner

self-ignition means the actual burning out of any part or parts of electrical machines, installation, or apparatus caused by the electric current

state school has the meaning given to it by the Education and Training Act 2020

tangible property includes—

- (i) money that is in transit, or at any place while the holder is in the course of school activities with the money, or that is at any of a participating school Board's premises during business or school hours, or in a locked

- safe or strong room outside business or school hours, or in a residence of a participating school Board's duly authorised representative; but does not include any other money:
- (ii) documents, manuscripts, magnetic media, computer systems records, business books, microfilm, technical drawings:
 - (iii) other records, but only to the extent of their value as materials:
 - (iv) commercial computer software packages; but does not include any other computer software.
- 1.2 In this Deed, **indemnity** means a benefit provided to a participating school Board by the Crown under clause 14 and **indemnify** has a corresponding meaning.
- 1.3 In this Deed, unless the context otherwise requires,—
- 1.3.1 words importing any one gender include the other 2:
 - 1.3.2 words importing the singular include the plural and vice versa:
 - 1.3.3 headings must be ignored and must not affect the construction of this Deed:
 - 1.3.4 reference to clauses are references to clauses of this Deed and references to parties and schedules are references to parties and schedules of this Deed:
 - 1.3.5 a **person** includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, or agency of a state, in each case whether or not having a separate legal personality:
 - 1.3.6 expressions referring to **writing** shall be construed as including references to words printed, typewritten, painted, engraved, lithographed, or otherwise visibly represented, copied, or reproduced:
 - 1.3.7 references to any statute or regulation (or any provision of any of them) must be read as if the words “or any statutory modification or re-enactment of it or in substitution for it” were added to the reference.

Schedule clause 1.1 **Commissioner**: revoked, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Schedule clause 1.1 **participating school Board**: replaced, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Schedule clause 1.1 **state school**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Part 1

Crown's liability

2 Crown's undertaking under this Deed

Subject to the terms and conditions of this Deed, if, during the period from and including [date] until and including [date], accidental loss or damage occurs to

any property of a participating school Board, the Crown will indemnify the participating school Board in the manner and to the extent set out in this Deed.

3 Meaning of property

3.1 Subject to clauses 3.2 and 3.3, in this Deed, **property** means, in relation to a participating school Board, all tangible property—

3.1.1 that is beneficially owned by—

- (a) the participating school Board; or
- (b) a staff social club, parent teacher association, or similar entity whose activities are principally for the benefit of the school; or
- (c) any community organisation, charitable trust, or similar entity and that is in or under the possession, custody, use, or control of a school trustee, or an employee of the participating school Board, or a student of the school with the consent of a school trustee or the principal, in those capacities; or
- (d) trustees on trust for the benefit of the participating school Board; or
- (e) any person (including, but not limited to, lessors and hirers), to the extent that, first, the tangible property is in or under the possession, custody, use, or control of the participating school Board under a deed, contract, or other legal obligation entered into or undertaken by the participating school Board and, secondly, the participating school Board is legally liable for accidental loss of, or damage to, that tangible property; and

3.1.2 that is situated—

- (a) at the school; or
- (b) elsewhere in New Zealand (including while in transit within New Zealand) while it is being used or repaired, or is in transit for the purpose of being used or repaired, for the benefit of the school.

3.2 Any indemnity in respect of property referred to in paragraphs (b) to (e) of clause 3.1.1 is the property of, and any payment must be made to, the participating school Board, but must be held by the participating school Board for the benefit of the owner of that property.

3.3 In this Deed, **property** does not include any of the following:

3.3.1 any tangible property that is the subject of a contract of insurance for accidental loss or damage, except as provided in clause 9:

3.3.2 jewellery, precious stones, furs, precious metals, and bullion, other than as part of any equipment or ceremonial chains of office:

- 3.3.3 motor vehicles and aircraft of any kind, and accessories contained in them or on them (except mowers, tractors, and mobile equipment of any description used exclusively in or around a school):
- 3.3.4 standing timber and growing crops:
- 3.3.5 livestock:
- 3.3.6 land and buildings:
- 3.3.7 any tangible property that is at a school for the purposes of display or demonstration.

4 Exclusions

- 4.1 The Crown is not liable under this Deed or otherwise to indemnify a participating school Board for any accidental loss of, or damage to, property directly or indirectly arising out of, caused by, or resulting from—
 - 4.1.1 war, invasion, act of foreign enemy, warlike operations (whether or not war is declared), civil war, mutiny, rebellion, revolution, insurrection, or military or usurped power, except that this clause does not apply to loss or damage caused by acts of terrorism or sabotage providing the acts are not committed in time of war by any agent acting in connection with any operation of armed forces of a government or sovereign power:
 - 4.1.2 confiscation, requisition, or destruction of, or damage to, property by order of the Government or a local authority unless the order is given for the purpose of averting or limiting loss or damage in respect of which indemnity is provided under this Deed:
 - 4.1.3 nuclear weapons material:
 - 4.1.4 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (and, for the purpose of this clause, **combustion** includes any self-sustaining process of nuclear fission):
 - 4.1.5 exposure to weather conditions unless reasonable precautions have been taken to protect the property from those conditions:
 - 4.1.6 subject to clause 4.2, fumes, dust, smoke, or smuts:
 - 4.1.7 subject to clause 4.2, normal working, normal maintenance, wear and tear, erosion, corrosion, or slowly developing deformation or distortion:
 - 4.1.8 subject to clause 4.2, action of micro-organisms or insects:
 - 4.1.9 subject to clause 4.2, the nature of the property (including shrinkage, evaporation, loss of weight, or change in flavour or colour or texture or finish) or exposure to light:
 - 4.1.10 subject to clause 4.2, pollution or contamination:
 - 4.1.11 mechanical, electrical, electronic, or other internal breakdown of machinery, plant, or equipment (and, for the purposes of this clause, **machi-**

nery, plant, or equipment does not include electronic data processing hardware or software; and **internal breakdown** means a failure due solely to internal stress or fault, the failure not being caused by an event external to the affected machinery, plant, or equipment).

- 4.2 Clauses 4.1.6 to 4.1.10 do not apply to any loss or damage directly resulting from an event in respect of which indemnity is provided under this Deed.

5 Consequential losses and additional costs of working

The Crown is not liable under this Deed to indemnify a participating school Board for consequential losses. In this Deed, **consequential losses** includes, but is not limited to, the following:

- 5.1 the cost of removal of persons and property to and from, and the rent or any payment in relation to, any temporary or other premises:
- 5.2 any expenses incurred in removing, installing, and hiring furniture, fixtures, fittings, and equipment required to render the premises suitable for occupation by the school:
- 5.3 costs in respect of additional employees or transportation of employees:
- 5.4 costs incurred in recreating, reassembling, or reconstituting any information contained in, or data stored on, any teaching materials, deeds, documents, plans, drawings, specifications, valuations, card indexes, or books of account, computer system records, or any documents or records of a similar nature:
- 5.5 additional expenditure incurred for the purpose of avoiding or diminishing a reduction in rental or hire income and for resuming and for maintaining normal educational operations:
- 5.6 subject to clause 9, any losses arising from accidental loss or damage to any electricity station or substation or power lines, gas works or natural gas works, or water works or treatment plants that is the tangible property of any supplier from whom the participating school Board obtains electric current, gas, natural gas, water, or any supplies or services of whatever nature within New Zealand.

6 Faulty materials, workmanship, or design

- 6.1 The Crown is not liable under this Deed to indemnify a participating school Board for any of the following:
- 6.1.1 the cost of repairing or replacing faulty materials:
 - 6.1.2 the cost of putting right faulty workmanship:
 - 6.1.3 the cost of putting right work performed to a faulty or defective design plan or design specification:
 - 6.1.4 the cost of putting right faulty or defective work if the fault or defect results from error or omission in design plan or design specifications.

6.2 This clause does not apply to any accidental loss or damage to property occurring as a result of the faulty or defective materials, workmanship, or work.

7 Money

7.1 The Crown is not liable under this Deed to indemnify a participating school Board for any accidental loss of, or damage to, money if—

7.1.1 the loss or damage is due to errors in receiving or paying out money; or

7.1.2 at the time of the loss or damage, the money was entrusted to any person other than a professional money carrier, the participating school Board, or any of the owner's employees or authorised agents; or

7.1.3 the loss or damage is due to clerical or accounting errors.

7.2 The Crown's liability under this Deed in respect to any 1 loss of, or damage to, money must not exceed—

7.2.1 \$15,000 (which is to be reduced by the amount of any applicable deductible) if the money could not be immediately banked during any school fair or other educational activity because banking facilities were unavailable; or

7.2.2 \$5,000 (which is to be reduced by the amount of any applicable deductible) in any other case.

8 Refrigerated property

8.1 The Crown's liability under this Deed to indemnify a participating school Board for any accidental loss of, or damage to, refrigerated property is limited to the following circumstances:

8.1.1 loss of, or damage to, property while stored in refrigerated cabinets, chambers, coolstores, or refrigerated open display units by deterioration, putrefaction, or contamination due to, and caused solely by,—

(a) a rise or fall in temperature following an accidental breakdown, defect, or stoppage of the refrigerating plant from any cause:

(b) contamination by liquid or gas refrigerant resulting directly from escape of the refrigerant:

(c) failure of fuses and overload devices:

(d) failure or disconnection of the public electricity supply (except where 24 hours' prior notice of the disconnection has been given by the appropriate supplier):

8.1.2 loss of, or damage to, any refrigerated cabinet, chamber, coolstore, or refrigerated open display unit consequent on an event for which indemnity is provided in terms of clause 8.1.1. That refrigerated cabinet, chamber, coolstore, or refrigerated open display unit is to be deemed to have suffered **damage** if, subsequent to an event in clause 8.1.1, that property cannot be used for the storage of refrigerated goods.

- 8.2 The Crown's liability under this Deed in respect of any 1 loss of, or damage to, refrigerated property must not exceed \$5,000 (which must be reduced by the amount of any applicable deductible).

9 Earthquake

In this Deed, **accidental loss or damage** includes loss of, or damage to, any property directly resulting from earthquake, earthquake-related fire, earthquake-related tidal wave, volcanic eruption, or hydrothermal activity.

10 Subsidence

- 10.1 In this Deed, **accidental loss or damage** includes loss of, or damage to, any property directly resulting from subsidence of land; but does not include collapse consequent upon the normal settling, shrinkage, or expansion of any building or its foundations.
- 10.2 The Crown's liability under this Deed in respect of all loss and damage caused by any 1 event of subsidence of land must not exceed \$100,000 (which is to be reduced by the amount of any applicable deductible).

11 Self-ignition

- 11.1 In this Deed, **accidental loss or damage** includes self-ignition; but does not include self-ignition of any of the following:
- 11.1.1 radio, television, audio, computer, and other electronic equipment of every description:
 - 11.1.2 vacuum tubes and thermionic valves:
 - 11.1.3 flexible or trailing leads from the point of permanent electric supply to any apparatus:
 - 11.1.4 lighting or heating elements, fuses, or protective devices:
 - 11.1.5 switchboards and electrical reticulation:
 - 11.1.6 any electrical motor or starter that individually exceeds 3.75 Kw (5 hp).
- 11.2 The Crown's liability under this Deed in respect of all loss and damage to any part or parts of electrical machines, installations, or apparatus caused by any 1 event of self-ignition must not exceed \$20,000 (which is to be reduced by the amount of any applicable deductible).

12 Works of art, etc

The Crown's liability to compensate a participating school Board for any 1 event of accidental loss or damage to curiosities, memorabilia, or artworks is limited to \$5,000 for any 1 item.

Part 2

Claims and amount of compensation

13 Claims

On a participating school Board or the principal of the school becoming aware of any loss or damage indemnified or likely to be indemnified by the Crown under this Deed, the participating school Board or principal must—

- 13.1 take prompt steps to minimise the loss or damage:
- 13.2 take reasonable steps to protect the property from further loss or damage:
- 13.3 immediately notify the administrator:
- 13.4 if a criminal act is suspected, inform the police:
- 13.5 immediately (and in any event not more than 30 days after becoming so aware) submit full particulars of the claim in writing to the administrator in a form acceptable to the administrator:
- 13.6 at the participating school Board's expense, provide the administrator with any reasonably required proof and information in respect of the claim, including, but not limited to, any register of assets or similar record maintained by the participating school Board.

14 Indemnification by repair or replacement

- 14.1 Subject to clause 14.2, the Crown must indemnify the participating school Board in respect of accidentally lost or damaged property by—
 - 14.1.1 payment of the cost of restoration of the property to a condition substantially the same as, but not better or more extensive than, its condition at the time of the damage; or
 - 14.1.2 if restoration under clause 14.1.1 is not practicable, replacement of the property with property of equivalent age and condition and that performs an equivalent function to the property; or
 - 14.1.3 if replacement under either clauses 14.1.1 or 14.1.2 is not practicable, replacement of the property with new property that, in all material respects, is the same as, and not better than, the property; or
 - 14.1.4 if restoration or replacement under any of clauses 14.1.1 to 14.1.3 is not practicable, payment of the cost of replacement of the property in accordance with clause 14.1.2 or its indemnity value.
- 14.2 Notwithstanding clause 14.1, in every case the Crown may, at its option, indemnify the participating school Board by—
 - 14.2.1 payment of the market value of the property at the time immediately before its loss or damage if that property is, in the Crown's view, obsolete or superfluous to the requirements of the participating school Board; or

14.2.2 replacement of the property with property performing an equivalent function if, in the Crown's view, the property is unusually expensive, having regard to the cost of the property performing an equivalent function, or to the resources of participating school Boards generally.

15 Deductible

15.1 There will be deducted from the amount of indemnity otherwise payable to a participating school Board by the Crown under this Deed (net of salvage and other recoveries) in respect of any 1 claim the total of the following amounts (but not in any event to be less than \$500 or more than \$1,500):

15.1.1 the sum of \$500; and

15.1.2 the total of \$250 for each additional claim by the participating school Board after the first such claim, less \$250 for each consecutive claim-free period, the first of which commences immediately after the date of the event in respect of which the last claim was made by the participating school Board (and, for the purposes of this clause, **claim** means a claim for indemnity under this Deed or under a deed in similar terms to this Deed entered into by the Crown on or after 29 May 1991; and **claim-free period** means a full period of 12 months during which no event occurs in respect of which a claim is made by the participating school Board).

15.2 The Crown may, from time to time, and by written notice to the participating school Board concerned, increase or decrease any or all of the amounts specified in clause 15.1 or the method of its calculation, in respect of any or all participating school Boards.

15.3 All claims arising from any 1 cause during any period of 72 consecutive hours must be treated as 1 claim for the purpose of applying the deductible.

16 Participating school Board costs

The Crown agrees to indemnify each participating school Board in respect of the following costs and expenses incurred by the participating school Board in relation to accidental loss or damage giving rise to indemnity by the Crown under this Deed:

16.1 in relation to disposal of debris and return of property, all reasonable costs actually incurred in the necessary disposal of debris (being formerly part of the property), and the recovery, removal, storage, and return of property, whether damaged or undamaged, following loss of, or damage to, any of the property:

16.2 in relation to protection, all reasonable costs and expenses incurred by the participating school Board in protecting (or any bona fide attempt to protect) property, on the occurrence of any event causing loss of, or damage to, that or other property, from loss or damage by any cause occurring in the proximity of the property (and, for the purposes of this

clause, **expenses** includes the cost of reimbursing, repairing, or replacing any loss of, or damage to, property, or use or refilling of any plant or equipment (whether or not being property of the participating school Board), incurred or suffered in an attempt to protect the property):

- 16.3 in relation to unharmed property, all reasonable costs actually incurred in the demolition, damaging, removal, and subsequent reinstatement of otherwise unharmed property necessary to enable reinstatement of any property following its damage (and, in this clause, **costs** includes the costs of additional work necessary to comply with any Act, regulations, or bylaws, expenses reasonably incurred to avoid or diminish damage to the property by storage or by other means, and expenses reasonably incurred by the participating school Board in the removal of damaged and undamaged property following loss of, or damage to, the property):
- 16.4 in relation to temporary repairs, all reasonable costs incurred for temporary repairs and other measures necessary to secure the property or to make it safe or suitable for continued use following its damage.

17 Other costs

The Crown has no liability for any costs and expenses of the participating school Board other than those referred to in clause 16, and in particular is not liable for—

- 17.1 costs and expenses (including legal fees and costs) incurred by the participating school Board for the preparation, presentation, negotiation, certification, and justification of claims in respect of which a payment is made by, or claimed from, the Crown under this Deed, including salaries, wages, overheads, and other expenses relating to the participating school Board's employees:
- 17.2 costs of express freight and overtime labour incurred for the purpose of expediting the restoration or replacement of any property:
- 17.3 any professional fees, including engineering, surveying, and clerk of works fees, salaries, and other costs and expenses incurred in relation to property.

18 Salvage

- 18.1 Subject to clauses 18.2 and 18.3, if any property is lost or damaged, the Crown may, by its employees or agents,—
- 18.1.1 enter any building where the loss or damage has occurred, and take and keep possession of the damaged property:
- 18.1.2 deal with the salvage in any reasonable manner.
- 18.2 The participating school Board is not entitled to abandon any property to the Crown.

18.3 The Crown is not entitled to otherwise dispose of salvaged branded goods without the prior consent of the participating school Board. In the event of the participating school Board declining to give consent, the participating school Board will retain possession of the salvaged goods and their reasonable salvage value will be deducted from the amount of any claim that would otherwise be payable. If it is practical to remove brands, labels, or other marks that indemnify the goods as supplied by the participating school Board, and the Crown agrees to that removal, the salvage value of the goods must be determined after that removal at the Crown's expense.

19 Subrogation

The participating school Board must, at the expense of the Crown, do and concur in doing and permit to be done all acts and things that may be necessary or reasonably required by the Crown for the purpose of enforcement of any rights or remedies, or of obtaining relief or indemnity from parties (other than the participating school Board or any other person who is the owner or authorised custodian of any property in respect of claims arising out of damage to, or loss of, or loss of use of, that property) to which the Crown is or would become entitled or subrogated upon the paying for, or making good, any loss or damage under this Deed, whether those acts and things are or become necessary or required before or after the indemnification of the participating school Board by the Crown.

20 Progress payments

In the event of the Crown's liability under this Deed for any accidental loss of, or damage to, any property being admitted by the Crown, the participating school Board is entitled to obtain the amount for which the Crown is liable by reasonable progress payments so long as, if required by the Crown, an interim statement of loss or damage is supplied to the administrator by the participating school Board and the administrator approves this statement.

**Part 3
Miscellaneous**

21 Benefit of Deed

For the purposes of section 12 of the Contract and Commercial Law Act 2017, the benefit of this Deed is enforceable only at the suit of participating school Boards.

Schedule clause 21: amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

22 Termination or amendment of Deed by Crown

The Crown may, at any time or times, by deed entered into by the Crown, do any or all of the following:

- 22.1 extend the term referred to in clause 2:
- 22.2 amend any other provision of this Deed in respect of all or any participating school Boards after giving at least 1 month's written notice to every participating school Board affected:
- 22.3 terminate this Deed after giving at least 2 months' written notice to every participating school Board.

23 Security systems and fire extinguishers

If a participating school Board has installed burglar alarms or other security systems, or fire detectors or extinguishers, in its premises, the participating school Board must ensure that these are maintained in good working order at all times.

24 Release of liability

A release is allowed without prejudice to the Crown's liability under this Deed from liability arising from the loss of, or damage to, property from any cause if a participating school Board is required by contractual agreement to release—

- 24.1 the Crown, the Government, any Government corporation, any quasi-Government organisation, any local authority, any oil company, any lift maintenance engineer, any approved fire protection, any installation or service company, any warehouse or storage operator, or any signatories to a lease or mortgage; or
- 24.2 any other party if that agreement is declared to, and agreed by, the administrator from time to time.

25 Fraud

If any claim is in any respect fraudulent or if any false declaration is made or used in support of a claim or if any fraudulent means or devices are used by a participating school Board or anyone acting on behalf of a participating school Board to obtain any benefit under this Deed in respect of a claim, the claim is forfeited except that, if the participating school Board comprises more than 1 school trustee, the benefit of this Deed continues to accrue to any school trustee making a bona fide claim under this Deed.

26 GST

If a participating school Board is liable for goods and services tax on any payment made to the participating school Board under this Deed, the Crown will include the amount of goods and services tax in the payment as if it were part of the loss or damage for which indemnity is payable.

27 Invalidity in appointment of Board

The Crown agrees to indemnify a participating school Board in the manner provided in this Deed regardless of any error or defect or invalidity in the elec-

tion or appointment or co-opting of, or assumption of responsibility by, a school trustee or Commissioner.

28 Breach of warranty or condition

The obligations of the Crown under this Deed are not invalidated by breach of any provision of this Deed if the breach occurs without any of the participating school Board, the principal of the school, and the chairperson of the participating school Board having knowledge of the breach, so long as the administrator is advised of the circumstances immediately after they become known to any of the participating school Board, the principal of the school, and the chairperson of the participating school Board.

29 Observance of terms and conditions

The due observance and fulfilment of the provisions of this Deed by the participating school Board in so far as they relate to anything to be done or complied with by the participating school Board, and the truth of statements made in writing, are conditions precedent to any obligation of the Crown to provide any indemnity under this Deed, provided that, for the purpose of this clause, the benefit of this Deed to the participating school Board must not be avoided by reason of failure to ensure due observance and fulfilment, or untrue statement, on the part of 1 or more individual school trustees.

IN WITNESS WHEREOF

this Deed has been entered into by the Crown.

SIGNED by)
Minister of the Crown on)
behalf of Her Majesty)
the Queen in Right of New)
Zealand in the presence of:)

Marie Shroff,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Education (School Risk Management Scheme) Regulations 2003 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Contract and Commercial Law Act 2017 (2017 No 5): section 347