

# **Water Services Entities Bill**

Government Bill

As reported from the Finance and Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Water Services Entities Bill and recommends by majority that it be passed. We recommend all amendments by majority.

### **Introduction**

This bill is the first of three bills aimed at reforming New Zealand's water infrastructure and services.

Drinking water, wastewater, and stormwater services are currently provided by 67 territorial authorities. The bill would establish 4 publicly owned water services entities (WSEs) to provide safe, reliable, and efficient water infrastructure and services in place of territorial authorities. It sets out the entities' ownership, governance, and accountability arrangements, and provides for transitional arrangements during an establishment period.

### **Acknowledgment of submitters**

The committee received 88,383 written submissions and decided to invite oral submissions with a focus on hearing from:

- territorial authorities
- mana whenua
- rural water entities
- water sector stakeholders
- employment representative groups
- environmental representative groups

- financial representative groups
- submitters who have made specific recommendations for improving the bill.

We also heard from submitters who were representative examples of those making form submissions.

We received submissions about matters such as strengthening local voice, transparency, governance, and accountability in water services entity arrangements. Many of our proposed amendments relate to these matters.

We wish to acknowledge the effort of all submitters, who gave considered insight on the bill. Among them, we particularly acknowledge the expertise of local authorities, and their commitment to delivering water services in New Zealand.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

### **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

### **Commencement**

Clause 2 specifies when the bill's provisions would come into force. The intent is that the entities would be established at the same time as the bill's governance and accountability provisions came into effect.

Clause 2(1) sets out the provisions in the bill that would come into force on Royal assent. These provisions relate to the transitional arrangements in the bill and would establish the water services entities to allow them to begin preparatory arrangements.

Under clause 2(2), the majority of the provisions would come into force on 1 July 2024 (the date that water services entities would begin to deliver services in place of councils), or an earlier date set by Order in Council. Clause 1 of Schedule 1 also states that an entity's "establishment date" would be 1 July 2024, or an earlier date set by Order in Council. We note, however, that these Order in Council dates could be different. To prevent a mismatch, we recommend amending Schedule 1, clause 1, to ensure that a date set by Order in Council under clause 2(2) would also apply to Schedule 1, clause 1.

### **Purpose**

The bill's purpose is set out in clause 3. We recommend amending the clause. Our proposed changes would not alter the bill's purpose, but would more fully describe the bill's purpose and how the bill aims to achieve it. We believe this would help with accessibility and interpretation of the bill.

### Definitions used in the bill

Clause 6 of the bill is the interpretation clause. It contains definitions of key terms used throughout the bill. To avoid doubt, we propose inserting or amending the definitions of:

- “stormwater network” to align with the definition in the Water Services Act 2021 and to include green stormwater infrastructure and overland flow paths
- “wastewater network” to align with the definition in the Water Services Act
- “water services infrastructure” to include a water supply network, a wastewater network, and a stormwater network
- “water supply” to include water supplied for agricultural or horticultural purposes.

### *Te Mana o te Wai*

Te Mana o te Wai is a concept included in the National Policy Statement for Freshwater Management 2020.<sup>1</sup> It refers to the fundamental importance of water, and recognises that protecting the health of freshwater protects the health and well-being of the wider environment.

Under clause 4 of the bill, WSEs would be required to give effect to Te Mana o te Wai when performing their functions. The bill would also enable mana whenua<sup>2</sup> to make a “Te Mana o te Wai statement” that expresses their view on how a water services entity should give effect to Te Mana o te Wai (clause 140).

In the bill as introduced, Te Mana o te Wai and Te Mana o te Wai statements would only apply to freshwater bodies. However, water services also discharge into coastal water, and may affect geothermal water. We believe it would be appropriate to expand the bill’s application of Te Mana o te Wai to these other water bodies. This would be consistent with te ao Māori (the Māori world view), which does not distinguish between applying the concept to freshwater or coastal water. We also consider that Te Mana o te Wai statements should apply to all water bodies, and WSEs should give effect to these statements.

To this effect, we recommend inserting clause 4(4) to state that Te Mana o te Wai applies to freshwater, coastal water, and geothermal water.

We also recommend amending clause 140(1) to ensure that a Te Mana o te Wai statement could be given to a WSE by mana whenua whose interests in the entity’s service area are recognised in a Treaty settlement Act.

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<sup>1</sup> The National Policy Statement can be found on the Ministry for the Environment website.

<sup>2</sup> “Mana whenua” means the iwi or hapū in an identified area who hold and exercise authority, or other customary rights or interests, in accordance with tikanga.

## Establishment of water services entities

### *Objectives*

Clause 11 sets out the objectives of WSEs. We consider that the bill should be clear that the entities' role would be to support planning processes as “plan-takers”, rather than “plan-makers” (that is, territorial authorities would retain control over planning, and WSEs would give effect to their plans). To address this, we recommend amending clause 11(c) so that the objectives of WSEs include supporting and enabling planning processes, growth, and housing and urban development.

We recommend adding a further objective as clause 11(ba), stating that an objective of WSEs is to protect and promote the environment. We also consider that, alongside the objective of mitigating the effects of climate change, entities should also focus on climate change adaptation. We recommend amending clause 11(f) to this effect.

### Operating principles

Clause 13 covers the operating principles that guide and inform how the entities would deliver their objectives and functions. We propose two additional operating principles, discussed below.

#### *Local procurement, employment, and joint arrangements*

Some submitters told us that WSEs should carry out procurement in a socially responsible manner, using local contractors and employees to deliver services. We agree that a balance should be struck so that entities engage in local contracting and employment arrangements where necessary, but can also deliver services efficiently through arrangements they choose. We propose inserting a new operating principle in clause 13, relating to local procurement, employment, and joint arrangements. We recommend inserting clause 13(ba) to require that WSEs:

- have regard to the areas where services are delivered to consumers and communities
- ensure that there is capability in, and an understanding of, the local cultural or environmental factors.

#### *Stormwater management*

We believe that entities should also consider the wider stormwater system—including catchments—in an integrated manner. For example, when managing their stormwater networks, entities should consider catchments in the natural environment (urban streams and overland flow paths), and recreational areas or other “green stormwater infrastructure” on land owned by others such as transport corridor managers and territorial authorities. Therefore, we recommend inserting clause 13(bb), requiring entities to take a “whole-of-catchment” approach to delivering water services and identifying and managing risks and hazards relating to these services.

Submitters raised concerns about entities being transferred parts of green stormwater infrastructure that do not relate to water services. They told us that, if those assets

were transferred to them, it could mean that entities would be required to deliver functions other than water services. We note that this bill would not transfer any assets to entities. We expect asset transfer provisions to be included in a future bill and discussed at that time. This bill only requires an allocation schedule to be prepared (a stocktake of water services, assets, liabilities, and other matters—see Schedule 1, clause 5).

### **Clarifying funding and information**

Clause 14 details what groups WSEs are required to provide funding and information to. We note that the provision is repeated in clause 114 and therefore recommend deleting clause 14.

### **Independence of WSEs**

Clause 15 makes clear that WSEs are independent of their board members, employees, regional representative groups, the Crown, and territorial authority owners. Some submitters suggested that regional advisory panels (RAPS) should also be included in the list. We consider this appropriate, and recommend inserting regional advisory panels in clause 15(1)(b).

### **Changes to governance arrangements for WSEs**

Although we do not recommend major changes to the proposed structure of WSEs, we suggest several amendments to the bill's governance and accountability provisions, which we discuss below. Some members believe this is a significant change to improve representation on the regional representative group, along with several other amendments that have been made to provide greater local voice and decision-making to the bill's governance structure, along with accountability provisions.

Each WSE would be a body corporate, and be empowered by a unique constitution that the entity would be able to amend itself (with approval by the Minister). WSEs would have a 2-tier governance structure comprising a regional representative group (RRG) and an independent, corporate governance board.

The RRG would be made up of equal numbers of territorial authority representatives and mana whenua from within the entity's service area. Primarily, it is responsible for:

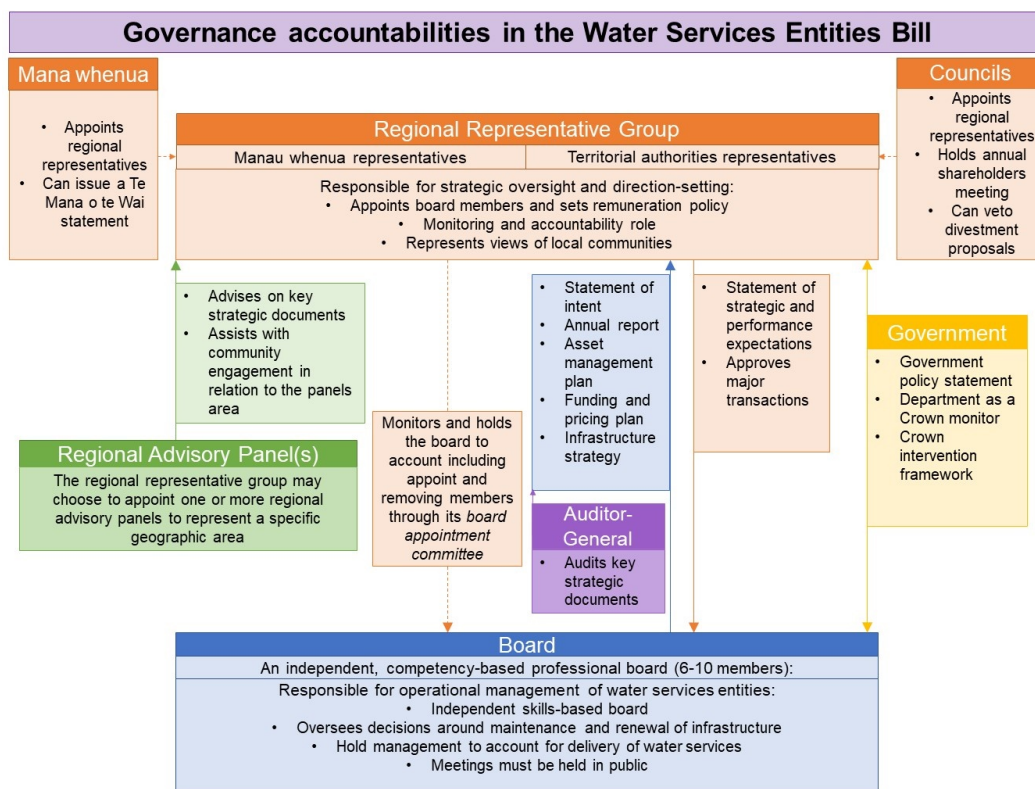
- forming a board appointment committee to appoint board members and set their remuneration policy (clauses 38 to 40)
- issuing a statement of strategic and performance expectations that sets out the RRG's objectives and priorities for the entity, and guides the board's decisions (clauses 135 to 138)
- reviewing the board's performance in giving effect to the statement of strategic and performance expectations (clause 139).

The board would be made up of between 6 and 10 people, with a collective responsibility to govern the water services entity. Board members would be accountable to the RRG when performing their duties. Among other things, the board must:

- ensure that the WSE operates consistently with its objectives, functions, operating principles, and current statement of intent (clause 73)
- appoint a chief executive to manage the WSE’s operations (clause 119)
- publish a statement of intent, an asset management plan covering a 10-year period, a funding and pricing plan covering a 10-year period, and an infrastructure strategy covering a 30-year period (clauses 143 to 155)
- prepare and adopt an annual report setting out the entity’s actual performance and audited financial statements (clause 156).

A water services entity could also choose to establish regional advisory panels to provide advice to the regional representative group. The panels would comprise equal numbers of territorial authority representatives and mana whenua, based on a geographic area in the entity’s service area (clauses 45 to 46).

We discuss below our proposed amendments to the governance accountability structure of water services entities. The structure—incorporating our proposed amendments—is demonstrated by the diagram below.



### *Regional governance group given powers to increase local representation*

We believe that an RRG should be able to increase its membership to benefit water services users with greater local voice and decision-making. The bill as introduced would require the regional representative group to be made up of no fewer than 12, and no more than 14, regional representatives (clause 27). Many submitters (particu-

larly local councils) recommended that this number should be higher. They suggested that having a greater number of territorial authorities represented on the regional representative group would enable better local voice in decision-making.

We agree. We acknowledge that amending this cap may not align with the recommendations of the Working Group on Representation, Governance and Accountability of new Water Services Entities. We also received advice that the bill should retain some upper cap on membership numbers (for example, by amending the membership cap to be no greater than twice the number of territorial authorities in the area).

To effect this change, we recommend amending clauses 27, 91, and 206. Our changes would require the number of representatives on the RRG to be specified in each entity's constitution. This number could then be amended (like other parts of the constitution) using the process set out in clause 95. Clause 95 requires any amendments to the constitution to be agreed by a 75% majority vote of the RRG. Additionally, we recommend inserting clause 91(ba) to state that all constitutions must contain procedures to enable or support effective decision-making by the RRG. We believe these safeguards would ensure that RRGs remained functional, and numbers on the group remained reasonable.

We note that the initial constitutions (set under regulations recommended by the Minister) must cap the membership at 12 or 14.

#### *Conflicts of interest that must be disclosed*

Clause 34 sets out the requirements a person must meet before they could be appointed to the RRG. One requirement is to disclose any interests that they have, or are likely to have, in matters relating to the WSE. To clarify what interests must be disclosed, we recommend that clause 100 ("When person is interested") should apply to clause 34.

We recommend similar amendments in clauses 52 and 64, which relate to appointing people to regional advisory panels or an entity's board.

#### *Collective competencies of the board and the board appointment committee*

Under clause 38 of the bill, RRGs must form board appointment committees to appoint board members. Clause 38(2) states that committees must have collective knowledge, experience, and expertise in relation to several key competencies. In the bill as introduced, these match the list of collective competencies that the board must have under clause 57(2). We recommend adding the following competencies to both of these lists, to improve the governance of WSEs:

- network infrastructure industries (for example, water services network infrastructure industries)
- public health
- the environment
- perspectives of consumers and communities
- perspectives of local government.

*Publishing the board's appointment and remuneration policy*

The board appointment committee must prepare a board appointment and remuneration policy (clause 40). For good practice and transparency, we recommend adding requirements for the appointment and remuneration policy to be:

- reviewed at least once every 3 years
- sent to the board, from the regional representative group, as soon as practicable
- made publicly available by the board.

*Extending the role of regional advisory panels*

Clause 46 defines the role of regional advisory panels. Several submitters told us that it would be beneficial to extend the role of these panels to provide prospective advice on how RRGs should perform and exercise their duties, functions, and powers. This would provide more effective support to the regional representative groups. We recommend amending clause 46(1) to this effect. We also recommend inserting clause 46(2) to include a non-exhaustive list of specific matters that a RAP might provide advice on (such as having input on the statement of strategic and performance expectations, or the asset management plan).

*Collective duty of regional advisory panels*

Clause 47 would impose a collective duty requirement on regional advisory panels. Given the panels' advisory nature, and the diverse range of local interests likely to be represented on the panels, we consider that operating on a basis of collective duty could prove impractical and could constrain diverse viewpoints. We therefore recommend removing the collective duty of regional advisory panels. We propose replacing it with a requirement that, when performing or exercising their duties, functions, and powers, RAPs must take into account:

- that RAPs should, whenever reasonably practicable, perform or exercise them wholly or mostly for the benefit of all consumers and communities in an entity's service area (clause 47(a))
- the diversity of consumers and communities and their interests (clause 47(b))
- the interests of present and future consumers and communities (clause 47(c)).

*Requiring the board to hold public meetings*

Clauses 44 and 55 state that Part 7 of the Local Government Official Information and Meetings Act 1987 (LGOIMA) would apply to meetings of the regional representative groups and regional advisory panels. Unless an exception applies, under the LGOIMA all RRG and RAP meetings must be open to the public, and agendas and meeting documents must be published in advance. On the other hand, clause 60 as introduced only requires the board to hold at least 2 public meetings each year. To improve transparency, we recommend adding clause 60(6), ensuring that Part 7 of the LGOIMA applies to the board.



*Incorporating representation into constitutions*

Clause 91 contains a list of matters that must be included in an entity's constitution. We recommend some additions.

Clause 91(a) would require the constitution to detail how territorial authority representatives are appointed to an RRG. Several submitters expressed concern that the 6 to 7 territorial authority representatives on the RRG would be chosen from larger territorial authorities, and that the perspectives of smaller territorial authorities might not be represented. To address this, we recommend that WSE constitutions must include procedures for ensuring that appointed representatives achieve equitable and reasonable representation of metropolitan, provincial, and rural authorities.

We also think it would be beneficial to require constitutions to contain:

- procedures for how a WSE will fund reasonable costs of training for members, or capacity building, for an RRG or RAP (new clause 91(j)(via))
- a provision for an annual shareholders' meeting (new clause 91(na)).

*Amending or replacing a constitution*

Clause 95 sets out the process for amending or replacing the constitution of a water services entity. Although we believe that specific procedures to do so may need to evolve over time (which the constitution enables), we consider that additional transparency in this process would be beneficial. We recommend inserting a requirement that, for any amendment presented to the Minister for approval, the public must be notified 20 business days before the amendment is approved or rejected. We recommend that notification should be on an Internet site maintained by or on behalf of the entity, in a readily accessible format. We recommend officials work closely with the entities to develop the constitution and provide them with guidance and support in an open and public manner.

*Ensuring information is provided to territorial authorities and mana whenua*

Under clause 114(2), WSEs would be required to provide information to their RRG or RAP where necessary to help that group or panel perform its functions under the bill. We note that this does not extend to territorial authority owners or mana whenua. We consider that inserting this extension would better enable territorial authorities and mana whenua to perform or exercise their duties, functions, and powers under the bill. We recommend amending clause 114(2) to this effect.

**Operation of water services entities****Maintaining independence, ownership, and control of water services entities**

Clause 115 states that WSEs are independent from, and cannot be directed by, the Minister, territorial authorities, or the RRG. For clarity, we recommend inserting clause 115(4) to ensure that this provision does not limit a territorial authority's regulatory duties, functions, or powers under other legislation (for example, if a local

council issued a direction notice for a consent breach under the Resource Management Act 1991).

Clause 116 imposes an obligation on WSEs to maintain water services. To this end, clause 116(2) states that, unless permitted by this clause, a WSE must not:

- use water services assets as security
- divest its ownership or other interest in any water services
- lose control of, sell, or otherwise dispose of significant infrastructure necessary for providing water services.

In our view, this clause differentiates between “assets” and “services” in a way that could be interpreted to allow entities to retain an interest in an asset, but divest a water service. This was not the intention. We recommend amending the clause to ensure that assets and services are not differentiated and that the clause makes appropriate reference to water services infrastructure.

### **Contracting out and joint arrangements for water services**

Replicating the existing arrangements under section 136 of the Local Government Act 2002, clause 117(1) would allow WSEs to enter into contracts relating to the operation of water services for a term of up to 35 years. Some submitters suggested that a more cautious approach to contractual arrangements would be appropriate. We agree, and recommend amending clause 117(1) so that the term limit would be 15 years. We propose the same amendment to the term limit in clause 118(1), relating to joint arrangements (replicating section 137 of the Local Government Act). Our suggested amendments reflect the previous term limits in the Local Government Act, before they were extended in 2010.

Before an entity entered into a joint arrangement, clause 118(2) would require it to consult, in line with procedures in Part 6 of the Local Government Act. We consider this inconsistent with the engagement provisions set out in clause 202 of the bill. Clause 202 is designed to allow more flexible and iterative engagement processes with consumers and communities, equivalent to the arrangements in the Urban Development Act 2020 and the Kāinga Ora—Homes and Communities Act 2019.

In accordance with clause 202, we recommend replacing clause 118(2) with a requirement for the board of a WSE to engage with:

- the relevant territorial authority owners
- consumers, communities, and mana whenua in the entity’s service area
- any other interested persons the board considers appropriate.

### **Ensuring water services entities are good employers**

Clause 120 is intended to reflect the good-employer obligations of local governments as existing employers, along with public sector expectations about being a good employer. We note that some of the good-employer duties that apply under the Public Service Act 2020 are not reflected in the bill. We consider it appropriate for these

duties to apply. Reflecting the Public Service Act, we propose inserting into clause 120(2) that entities should recognise the importance of:

- achieving pay equity between female and male employees
- decisions about remuneration being free from bias, including, but not limited to, gender bias.

### **Amending the address for service and location of head office**

As introduced, clause 128 states that an entity's address for service would be where its head office is located, in New Zealand. We consider this too general and uncertain. We recommend amending the clause to require that the location of each entity's head office must be located within the entity's service area.

### **Financial and accountability matters**

Part 4 of the bill covers financial and accountability matters. It provides for bespoke arrangements that would reflect the unique nature of the water services entities. Some submitters expressed uncertainty about how the provisions in Part 4 are intended to work together, and how they relate to others in the bill. To address this, we recommend inserting a general outline and guide as Subpart 1AA, at the beginning of Part 4.

We also note concern among some submitters about the need for WSEs to disclose any significant forecasting assumptions and risks underlying financial statements. We recommend addressing this by including clause 142A to require forecasting assumptions and risks to be identified. Clause 142A would be similar to requirements in clause 17 of Schedule 10 of the Local Government Act, which requires significant forecasting assumptions to be identified in local authority long-term plans. It would also ensure alignment with common requirements in international financial reporting standards.

### **Expanding the content of the Government policy statement**

Under clauses 129 and 130, the Government may produce a policy statement detailing its overall direction and priorities for water services as well as informing and guiding agencies involved in water services. Given other changes we are recommending in the bill, we think it would be beneficial to have the statement also relate to planning processes and growth, and local procurement, employment, and joint water services entity arrangements. We recommend amending clause 130 to this effect.

### **Improving statements of strategic and performance expectations**

Subpart 2 of Part 4 of the bill requires the regional representative group to issue a statement of strategic and performance expectations. As introduced, clause 135(4) specifies that the statement must relate to at least 3 financial years. To align with our recommendation for the statement of intent (discussed below), we consider that the 3-year time span should be extended, and recommend replacing it with a 10-year period.

In line with our recommended amendments to clause 46, we also propose a requirement for the RRGs to seek advice from any regional advisory panel on their statement of strategic and performance expectations. They should also seek advice when commenting on an asset management plan, a funding and pricing plan, or an infrastructure strategy. To this effect, we recommend inserting clauses 46(2)(a)–(d) and 135(5), and also clauses 9(2), 15(2), and 21(2) of Schedule 3.

### **Statement of intent prepared by the board**

The board of a water services entity would be required to give a statement of intent to the regional representative group, under clause 144. To improve accountability and transparency, we believe the statement should be independently audited. Therefore, we recommend inserting clause 144(4) to require that the statement contain a report from the Auditor-General. This should cover:

- whether the statement gives effect to the purpose in clause 143
- whether the statement provides a reasonable basis for long-term integrated planning and accountability
- the reasonableness of the information and assumptions underlying the forecasts provided in the statement.

### *Preparing for future challenges and risks*

It will be important for entities to be aware of and responsive to future challenges and risks. We consider that the statement of intent is the appropriate tool for public accountability in this respect. Aligning with our amendment in clause 135(4), we propose amending clause 144(3) to require the statement of intent to relate to at least the following 10 financial years. We also recommend inserting clause 144(6) to require that the first 3 financial years be covered in detail, with an outline of each subsequent year covered by the plan (such as specified in clauses 145(2)(e), and 145(3)(a) and (c)).

We also consider that the statement should describe significant long-term issues, risks, and challenges that an entity might face over a 30-year period. We recommend inserting clause 144(5) to this effect. This would also be consistent with the infrastructure strategy required by clause 153.

### *Supplying territorial authorities with the statement of intent*

Given that the territorial authorities would own the entities, we believe the boards should provide them with the statement of intent directly. We recommend amending clause 146 to add this requirement alongside the requirement to publish the statement.

### **Asset management plan and funding and pricing plan**

Under clauses 147–152, the board of a water services entity would need to produce and provide to the RRG both an asset management plan and a funding and pricing plan at least once every 3 years.

The requirements for the content of an entity's funding and pricing plan are set out in clause 151. We recommend that a reference to operating expenditure be added to clause 151(2)(a)(ii). That is, a financial strategy must include "the expected capital expenditure and operating expenditure on network infrastructure that is required to maintain existing levels of service currently provided by the entity".

The chief executive of a water services entity must prepare and publish a report on how the entity considered, and incorporated, consumer and community input into the asset management plan (clause 149(b)). We believe it would be beneficial to specifically require engagement and input on the plan from territorial authority owners. This requirement would align with clause 8 of Schedule 3 and would prevent inconsistency. We therefore recommend amending clause 149(b) to this effect, with the same amendment to:

- clause 152(b), in relation to the funding and pricing plan
- clause 155(b), in relation to the infrastructure strategy (discussed below).

### **Improving the infrastructure strategy**

An entity's board would need to provide an infrastructure strategy to the regional representative group at least once every 3 years. These would be similar to infrastructure strategies prepared by territorial authorities under the Local Government Act. We propose several amendments to clauses 153 and 154 relating to infrastructure strategies, including:

- setting out their purpose (new clause 153(1A))
- replicating several provisions from section 101B of the Local Government Act, regarding specific information that they must include (new clause 154(2A) and (2B))
- requiring that they include an audit statement from the Auditor-General (new clause 154(3A))
- requiring them to identify and explain any significant connections to, or interdependencies with, infrastructure strategies prepared by territorial authorities (new clause 154(4)).

We also propose that the infrastructure strategy be delayed for 3 years through the bill's transitional arrangements. We recommend inserting clause 10A in Schedule 1, requiring a water services entity to provide its first infrastructure strategy within 3 years after the establishment date (despite the requirements in clauses 153–155).

### **Strengthening accountability through the annual report**

Clauses 156 to 164 would require water services entities to provide annual reports to their regional representative group for each financial year. We recommend several amendments to these clauses to strengthen accountability, and improve accessibility and engagement with the annual report. The amendments would require WSEs to:

- publish annual reports no later than 4 months after each financial year, which aligns with Crown entities' obligations (clause 156(1)(a))

- consider taking extra steps to ensure that the report is appropriately available to interested people (clause 156(3))
- include an assessment of whether the entity is complying with its operating principles (clause 157(2))
- present information about the entity's progress in a manner that is clear to consumers and communities (clause 157(3))
- have the annual report audited by the Auditor-General within 4 months after the end of a financial year (clause 161(2)).

### **Implementing a control for major transactions**

We believe it is important to incorporate a provision that would serve as a control over major transactions.<sup>3</sup> We recommend inserting new clause 164A to provide that entities must not enter into any major transaction unless it is approved by, or is contingent on approval by, a special resolution of the entity's RRG (using a 75% majority). The clause would protect those with interests in the entity's activities, ensuring that significant transactions are appropriate and in the best interest of the WSE.

To serve as a deterrent against inappropriate behaviour by board members, we recommend amending clause 77. Our amendment would make it an offence if a board member committed a significant breach of the duty to act in good faith, or pursued their own interests at the expense of the entity's interests. We further recommend providing that, if a person is convicted of an offence against clause 77(2), they would be liable for up to 5 years imprisonment or a fine of up to \$200,000.

We note that companies in New Zealand are subject to controls similar to our proposals above. Therefore, including these requirements would make WSEs subject to both an equivalent protection for major transactions, and an equivalent expectation for maintaining appropriate behaviour from board members.

### **Managing foreign exchange risk**

Requirements relating to WSEs' bank accounts are set out in clause 165. As introduced, the Minister of Finance's approval is needed for foreign currencies deposited into bank accounts at registered banks or registered building societies. One submitter told us that this is unnecessary, given that maintaining foreign currency bank accounts is a legitimate tool for managing foreign exchange risk.

We agree with the submitter. We also consider that the restriction on opening bank accounts, and the requirement for the Minister's permission, would be contrary to the expectation that WSEs would need to raise capital in foreign markets. We recommend amending clause 165 to remove requirements relating to the opening of a bank account in clause 165(1)(d), as well as removing clause 165(2), (3), and (5).

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<sup>3</sup> A "major transaction" in the bill means any transaction that is worth over 50 percent of the value of the entity's assets (clause 164A).

## Monitoring

### Improving the monitor

We propose several amendments to Part 5 of the bill, which sets out monitoring for the bill's purposes.

Clause 169 as introduced would allow (not require) the Minister to appoint a department as a monitor. Primarily, the monitor would have oversight of the water services system from a whole-of-government perspective. In our view, this appointment should be a requirement. Accordingly, we recommend replacing the word “may” with “must” in clause 169.

Under clause 170, the monitor could request information from water services entities to help it carry out its role. In our view, the monitor's information-gathering powers should not be limited to just the water services entities themselves. We recommend amending clause 170 so it applies to any other relevant person, as well as water services entities.

Under clause 171(1)(a), a request for information may be denied if it is necessary to protect the privacy of a person, regardless of whether they are “a natural person or a deceased person”. We note that the Privacy Act 2020 generally only applies to information about natural people who are alive. We propose deleting “whether or not a natural person or deceased person” from clause 171(1)(a), instead ensuring that it mentions a living natural person.

### Clarifying the Minister's power to intervene

Clauses 174–194 provide powers for the Minister to intervene in an entity's operations (for example, by appointing a Crown review team or Crown observer) in certain circumstances.

Clause 174(a)–(d) defines what a “problem” is for the purposes of these grounds for intervention, such as an entity's significant or persistent failure to perform 1 or more of its functions. Clause 174(e) states that a problem also includes a “potential problem”. In our view, the bill should clarify that a “potential problem” is limited to the matters covered in clause 174(a)–(d).

As introduced, an entity or its regional representative group could write to the Minister and ask them to intervene. Given that territorial authorities own the entities, we believe that territorial authorities should also be authorised to write to the Minister to request that they intervene. We recommend amendments to clauses 175, 177, and 179 to this effect.

We also propose further amendments to clauses 175, 177, and 179, as well as clause 188, to make it clear that the references to a water services entity would also apply to its regional representative group.

## Miscellaneous provisions

### Expanding who is considered for the interim review

Clause 195 would require the Minister to commission a review of the governance and accountability arrangements provided for under the bill. The review period would begin on the fifth anniversary of the establishment date and end on the sixth anniversary. Clause 195(3)(c) sets out what interactions between a water services entity and other groups the review should consider. We recommend inserting a reference to the entity's consumer forums (established under clause 203), and inserting "consumers" throughout the list, where communities are concerned.

### Strengthening the bill's engagement provisions

Clause 202 sets out engagement requirements relating to:

- preparing a WSE's response to Te Mana o te Wai statements
- developing a model constitution
- preparing asset management plans, funding and pricing plans, and infrastructure strategies.

We propose extending the provision's requirements to apply to engagement by a water services entity "or the Minister".

To improve public transparency and involvement, we believe that engagement requirements should also apply when preparing or reviewing the entity's statement of intent and the Government policy statement. We recommend amending clause 202 to this effect.

Engagement requirements relating to consumers are set out in clauses 203 to 205. This includes requirements for a WSE chief executive to establish at least one consumer forum (clause 203), and to prepare an annual consumer engagement stocktake document (clause 204).

We recommend several amendments to clause 204 to improve public accountability. Our amendments would:

- require the consumer engagement stocktake to include a statement from the Auditor-General about whether the document gives effect to its purpose, and whether the entity has given effect to the engagement principles in clause 205
- incorporate new requirements about the timeframe the stocktake covers
- require the WSE chief executive to prepare the annual stocktake at least 3 months before the end of a financial year.

When performing its functions under clauses 147, 155, and 204, a WSE must be guided and informed by the principles of engagement, set out in clause 205. In line with other changes we propose throughout the bill, we recommend amending clause 205 so that it also cross-refers to the statement of intent (clause 143), as well as to the asset management plan (clause 147), the funding and pricing plan (clause 150), and



the infrastructure strategy (clause 153). We also recommend adding references to communities, alongside consumers, throughout clause 205(a)–(e).

We recommend amending clause 206(2) to clarify that, when carrying out engagement, the Minister must follow the engagement requirements set out in clause 202.

To further strengthen the bill's engagement requirements, we propose amending clause 145, relating to the content of the statement of intent. We recommend that the statement must contain an explanation of how it relates to engagement requirements, and how it will respond to or reflect the results of engagement. We also propose that the statement link findings from consumer engagement stocktakes to the proposals in the statement of intent.

### **Amending other Acts**

Part 6, Subpart 5 sets out amendments that the bill would make to other Acts. We recommend making a series of further amendments to some of these Acts to improve the bill's workability. Most notably, we propose amending:

- sections 6(1) and 7(a) of the Crown Organisations (Criminal Liability) Act 2002 to ensure that the provisions apply to the Water Services Act (clauses 206C and 206D)
- the Goods and Services Tax Act 1985 to insert new section 78I, ensuring that a support package payment made by a water services entity under new clause 26A of Schedule 1 of the bill is charged with GST at the rate of 0%
- sections 25(4), 101(B)(4), and Schedule 1AA of the Local Government Act 2002 to ensure that WSEs are considered during any local government reorganisation, and to allow the water services bylaw reviews to be deferred (Schedule 5)
- Schedules 1 and 2 of the Local Government Official Information and Meetings Act 1987 so that water services entities—including their regional representative groups, regional advisory panels, and boards—are included in the Act (clauses 215A and 216)
- Schedule 1 of the Ombudsmen Act 1975 so that the Office of the Ombudsman's functions and powers would apply to a water services entity (clause 218)
- sections 4 and 5 of Taumata Arowai—the Water Services Regulator Act 2020 (clauses 224 and 225, which relate to the effect and interpretation of Te Mana o te Wai)
- sections 14 and 201 of the Water Services Act 2021 (which relate to the meaning, effect, and application of Te Mana o te Wai and set a levy to cover Taumata Arowai's costs), clarifying the application of Te Mana o te Wai and requiring that the Minister consult water services entities and territorial authority owners before making a recommendation about the levy (clauses 227 and 228(2A))

- section 201(5) of the Water Services Act, changing the requirement for Tautamata Arowai to pay levies into a Crown Bank Account, instead making the payment into that account optional (clause 228(2)).

## Schedule 1

### **Transitional, savings, and related provisions**

Schedule 1 of the bill contains transitional provisions to cover the establishment period (from when entities are established until they commence operations). We recommend various amendments to it.

#### *Strengthening accountability arrangements*

We consider it beneficial to strengthen the accountability framework for the entities during the establishment period. We recommend inserting clause 8B in Schedule 1, giving the Commerce Commission the ability to scrutinise the entities' asset management plans and funding and pricing plans during the establishment period, and enabling the Commission to publicly comment on them where appropriate.

#### *Council-controlled organisations and council-controlled trading organisations*

We were interested in how council-controlled organisations (CCOs) and council-controlled trading organisations (CCTOs) would be treated during the transfer process from councils to water services entities. CCOs and CCTOs, in addition to councils, would be required to identify their assets and liabilities, and their employees' roles, that relate wholly or in part to the provision of water services. These would be included in the allocation schedule, developed by the establishment chief executive, under Schedule 1, clause 5.

We recommend inserting clause 5(6)–(7) so that the allocation schedule must list the shares that local government organisations hold in mixed-shareholder CCOs, but must not specify assets, liabilities, or other matters that belong to mixed-shareholder CCOs. Further, we propose that clause 5(6) override clause 5(1)–(5). This is because clause 5(6) is inconsistent with these clauses and needs to override them to be effective.

#### *Amending definitions in Schedule 1*

In the interpretation clause in Schedule 1, some submitters were uncertain what the definition of "assets" covers. We recommend amending the definitions of "assets", "liabilities", and "other matters" to include property, as well as easements, encumbrances, access licences, and leases.

We also propose inserting into clause 1 of Schedule 1 the meaning of "other property" and "mixed-shareholder CCO", as well as aligning the meaning of "council-controlled organisation" with that in section 6 of the Local Government Act.

#### *Appointing an establishment chief executive*

We note uncertainty amongst some submitters regarding the procedure for appointment of establishment chief executives in clause 4 of Schedule 1. We recommend

amending the provision so that the establishment chief executives could be appointed before the establishment period, and to allow for their employment to automatically transfer from the Department of Internal Affairs (the department) to the relevant entity once the establishment board is in place. This would make clear that the department would be the establishment chief executives' employer until the board is formed. After the fact, the establishment chief executives would become employees of the water services entities, reporting to their respective boards.

### **Transitional arrangements relating to reporting obligations**

#### *Strengthening the status of the establishment plan*

As introduced in clause 7 of Schedule 1, the chief executive of the department may prepare and approve an establishment plan for a WSE. The plan would set out guidance and processes for identifying the functions, staff, and assets that would transfer to the WSE. We consider it an important and necessary document for all WSEs to have before the establishment date. It would enable them to have transparent expectations to report against during their first year of being fully operational.

To make even clearer the importance of the establishment plan and its effect, we recommend several amendments to the provision. They include requiring that the plan should:

- be compulsory
- include performance expectations for the period it covers
- be consistent with the initial asset management plan and funding and pricing plans (described in clause 8)
- be published as soon as practicable.

#### *Clarifying the process for developing initial asset management plans, and funding and pricing plans*

Schedule 1, clause 8 sets out the requirements for asset management plans, and funding and pricing plans, during the establishment period. Developing these plans would involve an extensive amount of work for WSEs. We recommend making the process for developing the plans clearer by amending clause 8 and inserting clauses 8A and 8B. Our proposals would set out more detailed requirements for preparing the plans. Most notably, our amendments would:

- require the department to create for each entity an initial asset management plan, and funding and pricing plan, covering at least 10 consecutive financial years
- set out what the initial plans must contain
- provide each WSE's establishment board and respective local government organisations an opportunity to review and give feedback on the draft plans
- have the preparation of each plan be subject to the Commerce Commission's functions and powers during the establishment period.

*Creating accountability arrangements for the establishment period*

We note that some accountability challenges arise regarding the period before the establishment date. To address this, we are recommending amendments that would create accountability arrangements for this period. Our intention is to ensure that the various steps in the establishment process would work in an integrated manner. We propose amending the title of Schedule 1, clause 10 to “Accountability arrangements for establishment period”. In the clause, we propose inserting a requirement for entities to produce annual reports during this period that would:

- include sufficient details to enable interested parties to understand the financial and non-financial performance of the entity, including financial statements
- report on the WSE’s performance against the establishment plan
- be prepared in line with generally accepted accounting practice
- be audited by the Office of the Auditor-General
- be published on the WSE’s website no later than 4 months after the financial year’s end.

*Local government organisations’ co-operation during the transition period*

Water services must continue operating at all times. For this reason, the bill contains provisions aimed at preventing disruptions to services during the transition period. Clause 11 of Schedule 1 recognises that, to enable a seamless transition, local authorities will need to co-operate with the department and the WSEs during the establishment period. We recommend several amendments to help this process run smoothly.

Under clause 11(2)(b), the chief executive of the department, or the WSE, could reasonably request information from local government organisations. When complying with a request, clause 11(3)(c) would require a local government organisation to disclose current pricing information or indicative water charges on invoices during the establishment period. We believe this could be problematic for councils who do not have separate line items for water services in their rates billing system. We therefore recommend amending the clause, removing the requirement to comply with requests to specifically disclose invoices. Instead, local government organisations would need to disclose to the public the information requested by the WSE or the department, in a manner and format requested. We also recommend inserting clause 11(3)(d) to enable assurance processes for checking the completeness, integrity, and reliability of the information provided.

It would also be important for territorial authorities to share some information about consumers with the entities during the transition process. We recommend amending clause 11(4) to clarify that councils can share relevant resident and ratepayer information and consumer records.

We also propose inserting clause 11(2)(ab). This would require local government organisations to co-operate to enable employees to remain in their current location, where it is reasonable to do so.

*WSEs' obligation to co-operate with local authorities*

During the establishment period, WSEs would have to co-operate with the department to undertake the water services reform (Schedule 1, clause 12). One submitter suggested that WSEs should also co-operate with territorial authority owners, helping to facilitate the transition and reducing disruption to territorial authorities. We agree that co-operation should be reciprocal, and recommend amending Schedule 1, clause 12 to this effect.

**Transitional provisions relating to employment***Review of employment positions during the establishment period*

In Schedule 1, clause 15 sets out how the chief executive of the department must review employment positions during the establishment period. Submitters told us that this provision would not work. For certainty, we propose amending the clause.

Clause 15(1)(a) as introduced would require that, during the establishment period, the chief executive of the department must review the positions of people employed by existing employers. We recommend amending the clause so that this must be done in consultation with the people affected.

We propose amending clause 15(1)(b) to require the chief executive to determine during the establishment period, in relation to each employee, whether the employee has a senior management role, and whether the purpose, duties, and responsibilities of their role primarily relate to functions that will transfer to a WSE.

We also recommend inserting clause 15(1A). This would require the chief executive, when making a determination under clause 15(1)(b), to consider:

- whether more than half of the employee's time is spent undertaking duties and responsibilities that primarily relate to, or primarily support, water services functions
- whether an employee's role would be substantially changed by removing duties and responsibilities that do not relate to water services.

*Offering employees a position in an entity*

Schedule 1, clause 16 sets out the obligation for a water services entity's chief executive to offer employees a position with the entity. The clause is intended to ensure that employees who transfer under the provision are not disadvantaged by the terms and conditions of their employment. It is particularly important given that these employees will not be eligible for redundancy.

Some submitters were concerned that the clause would give rise to disagreement as to what is or is not captured in the core conditions of the terms and conditions of employment. To avoid doubt, we recommend amending clause 16 so that:

- the duty to offer a position follows a determination that the purpose, duties, and responsibilities of the employee's role primarily relate to, or support, the delivery of water services

- where an employee is covered by an individual employment agreement, they could stay on their existing agreement terms, or accept a new agreement offered by a water services entity
- the terms and conditions of the position offered would be in substantially the same general location, within a reasonable commuting distance
- relevant factors must be considered after consultation with affected staff, including matters such as commuting times, public transport availability, and the staff member's usual travel arrangements
- compensation would be provided to employees who accepted a position at a new location, equivalent to section 105 in the Local Government (Auckland Transitional Provisions) Act 2010.

#### *Addressing redundancy concerns*

Under clause 18 of Schedule 1, some employees would not be entitled to receive any compensation if:

- the position held by the employee with their existing employer no longer exists
- the employee ceases to be an employee of their existing employer
- the employee's employer no longer exists.

Submitters expressed concern about the lack of redundancy provisions in the bill, and suggested ways to remedy this. Although we acknowledge concerns, we believe redundancy provisions could create uncertainty and legal risks during the water services entities' transition process and early operational period. We consider that the concerns are better addressed through engagement with existing employers, staff, and unions, in line with the Government's workforce principles and the Staff Transition Guidelines that the Department of Internal Affairs has published.<sup>4</sup>

However, we do agree that, for staff who are permanently employed in their current local government organisation and who transfer to a fixed-term role within a water services entity, their redundancy entitlement should be preserved. We recommend inserting clause 18A to achieve this by providing similar terms to section 106(1)–(4) of the Local Government (Auckland Transitional Provisions) Act.

#### *Applying existing collective agreements on and from establishment date*

Under Schedule 1, clause 20, any employees who are subject to collective bargaining agreements and transfer to a water services entity would continue to benefit from that collective agreement. The agreement would essentially continue in effect as if it were between the union and the WSE.

Some submitters noted that this could cause problems in terms of section 58 of the Employment Relations Act 2000. In short, that section prohibits employees from

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<sup>4</sup> These guidelines can be found on the department's Three Waters Reform website

leaving a union (where that union has a collective bargaining agreement in place) and joining another union's collective bargaining agreement within 60 working days. It would apply if a new or separate union were to negotiate a new collective agreement with WSEs, but existing collective agreements already applied to that work. Any employees who left the existing union (and the agreement that was "carried over" to the WSE) would have to wait 60 days before being able to join the new agreement. That was not the bill's intent in carrying the existing agreements over.

We therefore recommend amending Schedule 1, clause 20 so that section 58 of the Employment Relations Act would not apply to any employees who transferred to a WSE under clause 20(2).

#### *Oversight powers and consistency with the Local Government Act*

The purpose of Schedule 1, clause 21 is to give the department the oversight powers needed to work with local government organisations, so it can manage reform risks during the establishment period.

For consistency with the Local Government Act, we recommend amending clause 21(b) to remove the reference to "long-term council community plan", replacing it with "long-term plan". We also propose that "long-term plan" and "annual plan" be defined in line with section 5(1) of the Local Government Act.

## **Schedule 3**

### **Preparing planning documents**

We propose amendments to Schedule 3 to improve the quality of planning documents. We consider that clause 6 should better align with clause 2 in Schedule 3. We therefore propose amending clause 6 of the Schedule so that approval from the regional representative group would be required for a board to modify strategic elements of the statement of intent.

Second, we consider that the draft asset management plan, required under Part 2 of Schedule 3, should be accompanied by a statement of asset data quality and confidence ratings. We recommend inserting clause 8(2A) to this effect.

## **Schedule 4**

### **Authorisation of advertising**

The Local Electoral (Advertising) Amendment Act 2022 was passed after the Water Services Entities Bill was introduced to the House. As a result, the bill is inconsistent with the new Act's requirements regarding publishing a home address for the authorisation of advertising. We recommend amending clause 13 of Schedule 4 to align with the Act.

### **National Party differing view**

The National Party members oppose the select committee recommending the passage of the Water Services Entities Bill.

## Process

The Water Services Entities Bill was referred to the committee on 9 June, with a prescribed report back date of 11 November, giving the committee limited time to consider the bill. We believe the committee needed more time to properly evaluate this bill for several reasons:

- The bill is lengthy and technical, establishing four large entities with a range of new powers and functions.
- This reform agenda is exceptionally controversial, reflected in the high number of submissions received in opposition.
- The impacts of this bill affect different regions in New Zealand differently, so gathering a wide variety of views from across the country was also extremely important.

Due to the short time for consideration, the time taken to hear public submissions was also short. The committee received some 88,383 submissions but only heard 227 oral submissions. The volume of submissions ranks this bill among the highest for submissions in the history of the New Zealand Parliament. In other bills with similarly high interest, special efforts have been made to ensure as many submitters could be heard as possible. For example, the End of Life Choice Act heard 1,350 oral submissions from 39,159 written submissions. Considering this bill, the committee travelled the country for five days, which was inadequate given the extremely high number of submissions from across the country, particularly from areas outside the urban centres where the committee spent most of its time. As a result of very few submissions being heard, the National Party member's position is that the committee did not properly engage with the public on this critically important and highly controversial legislation.

Due to the short window of opportunity for submissions, many organisations set up submission processes to streamline the submissions for concerned individuals, including, in some cases, providing a template to work with for their submission. These submissions were considered "form submissions" by the committee, despite many individuals spending a great deal of time working on their submissions and the objections of National Party members. Most of the individuals who had their submissions considered "form submissions" by the committee were also declined the opportunity to present to the committee in person. Of the over 16,000 submissions administered by the National Party, over 1,600 requested an in-person submission, and the committee offered less than a dozen this opportunity.

National considers this process inadequate given the complexity and controversy of this bill and does not believe the public got the appropriate chance to have their voices heard.

## Public opposition

Despite the processes which did not adequately provide for public feedback, most submissions the committee did hear in person were opposed to this bill at a funda-



mental level. This opposition was most notable in the submissions by councils, many of whom expressed their profound opposition to the bill. It is clear to National that the public and key stakeholders do not support these reforms.

Submitters also raised issues with the process for reform to date, including referencing the advertising for these reforms and the Government's initial signalling that these reforms would be "opt-in" for councils, rather than take a legislated "all-in" approach. The clear message from the public was that this process failed to bring them along with it. The National members agree that this reform process has been deeply flawed and agree with the public opposition.

### **Ownership of water assets**

Many of those opposed referred to the lack of ownership rights for territorial authorities provided for in this bill. As detailed in clause 166, territorial authorities possess none of the usual rights and responsibilities associated with ownership of their assets. This lack of ownership is particularly concerning as communities have paid for assets over generations and prefer their ownership to be vested in democratically accountable authorities. They oppose the change to this under this bill, which will see all the usual rights and responsibilities of ownership transferred to four mega-entities that are not directly democratically accountable. They consider this a significant loss for their communities.

This bill does not provide a sufficient argument for the removal of the ownership of water assets from territorial authorities, except for the insistence that they will be run better under a mega-entity model, which we do not believe to be the case. There is an evident tension between this bill and the commentary surrounding it from the Government, which insists councils continue to own their assets, and the views of most councils, who argue they do not. The wording of the bill makes it clear in the view of the National Party members that councils will no longer truly own their assets. Local government ownership of water assets must be the bottom line of any reform agenda.

### **Asset transfer**

The specifics of the asset transfer are to be contained in further legislation. This presented issues for submitters and the National members of the committee.

Many submitters raised concerns about which assets would be transferred to the entities established by the bill. The Government still needs to provide information on the scope of subsequent legislation or when the public can expect to see it. This lack of clarity meant individuals made submissions to the committee without the ability to know what assets would be transferred. This is particularly problematic for dual-use assets within stormwater infrastructure managed by councils, including green stormwater assets and overland flow paths. Short of resolving this issue around the scope of the asset transfer, this bill, as amended by the committee, explicitly amends the definition of stormwater assets to include overland flow paths and green stormwater assets. This change opens the door to significant transfers of assets that most would not immediately associate with three waters infrastructure.

When considering giving feedback on establishing the water services entities, the public should have an accurate and thorough definition of what assets will be vested in them; they do not have this, and it is not apparent when they will. Under the status quo, these assets are owned by councils. All assets, including dual-use assets, should remain within democratically accountable and locally managed structures.

### **Governance structure**

The proposed governance structure of the water services entities as they stand is of serious concern to the National Party members for several reasons.

Compared to the status quo and other reform alternatives, where councils control their assets and are directly accountable to their communities, the proposed water services entities have a complicated bureaucracy that keeps communities from decision-making. In entities B, C, and D, 22 district councils will share 7 seats on the representative boards. The simple maths of this is that communities that currently have representation in managing their assets risk losing that representation. The bill, at best, can offer them seats on regional advisory boards, which sit alongside the main representative body. The bill has received a minor change in this area to open to the possibility of more seats on a representative board by constitutional amendment. This change is insufficient as even in a slightly expanded board, some councils will still miss out on representation; this also is not automatic, and upon establishment, the arrangement of seats at the representation boards is as it was when this bill was first introduced.

The National Party members of the committee believe that, regardless of the minor and technical changes to the representation structure, the mega-entities constructed in this bill could never be truly representative of local concerns for smaller communities due to their size and scope. This process and other engagement processes that have taken place during this reform have been hamstrung in this regard by the inclusion of four entities as a bottom line for the Government, closing the door to any changes that could meaningfully impact the lack of representation for communities.

The bill also contains co-governance at every level of representation. Both representative boards and regional advisory groups have equal seats for mana whenua and territorial authorities. The National Party members believe that the co-governance of public services like water does not improve service delivery and cannot be justified otherwise. National recognises the role of mana whenua as a group alongside others with views on water quality and with some interests in specific cultural assets as previously expressed in the treaty settlement process. Still, there has never been a clear justification from the Government for the inclusion of co-governance of public services, which represents a significant departure from existing policy. The National Party members strongly oppose this co-governance representation arrangement. This was a divisive issue for submitters, and many had grave concerns about the impact of this governance structure on democracy.

The committee also heard from iwi and hapū concerned that they would lose their relationships with their local councils in the mega-entity model. Some said this model

would lock smaller iwi and hapū out due to the lack of seats at the table in the representative structures.

Co-governance was another bottom line of the Government's reforms that has hamstrung proper consideration of how to meaningfully engage mana whenua and create a representative structure that would serve communities. Instead, the bill's representation arrangements remain unworkable.

### **Te Mana o te Wai statements**

The bill contains extensive provisions for mana whenua to submit Te Mana o te Wai statements on culturally relevant waters that water services entities must respond to and give effect to. This allows those groups to impact water services entities' actions and policies significantly. Mana whenua are one group alongside others with a relevant voice and feel that restricting Te Mana o te Wai statements exclusively to mana whenua shuts out other voices. We would like to see these provisions expanded to include other relevant groups so all voices on water quality can be heard.

### **Consideration of alternatives**

During this process, alternative models were never truly considered, with the shape of the reforms being constrained to a four mega-entity model. This restriction has been continuously portrayed as a reflection of the lack of workable alternatives. During this committee process, the 31 partner councils of Communities 4 Local Democracy (C4LD) presented a fully costed alternative model. The C4LD model had an analysis showing it could match the capital expenditure of the mega-entity model without increasing water bills or changing council debt caps. Castalia advisors provided this analysis contained in their submission.

During the final days of the committee processes, several mayors also presented a policy proposal that the committee did not consider despite a motion from the National Party to extend the committee process to allow for proper consideration of their alternative model.

There are issues in water infrastructure management, which is the primary issue this bill attempts to solve, given the existence of Taumata Arowai as a water quality regulator, which has already been established. These issues primarily revolve around financing and funding. We remain unconvinced that a mega-entity model solves funding and financing issues. The alternative models, as presented, would solve these issues far better than a mega-entity model.

It was clear to National members that the specifics of reform had been decided before the committee process began, and key actions, including the recruitment of top executives of the proposed water entities, had already started before the committee considered a single submission. This made it clear to us that the scope of any change would be limited to minor and technical changes and that the committee could not resolve the fundamental issues with the bill as it stands.

The shape of this bill and the bottom lines of the Government, which restricted it to four co-governed mega-entities, meant that consideration of alternative models was

not possible during the committee process. These bottom lines were incredibly disappointing to National members given the clear and preferable models presented, which ensure issues around water services delivery, such as financing and regulation, could be solved with assets remaining in council ownership.

### **Conclusion**

Despite the numerous issues raised by National members and the public, the bill received few changes, none of which will address the problems with its structure. In addition, the shape of this legislation is fundamentally broken and could not be fixed even if it received extensive amendment by the committee.

The existence of preferable alternative models and the overwhelming public opposition means that the National members cannot support the select committee recommending the passage of the Water Services Entities Bill.

### **Green Party of Aotearoa New Zealand differing view**

The Green Party has promoted changes to the Water Services Entities Bill as introduced and acknowledges the changes recommended by the Finance and Expenditure Committee in response to public submissions and our concerns.

The Green Party supports efforts to improve water management through economies of scale and through a governance role for iwi. We have concerns that the size and small number of water services entities (WSEs), and some of the detail of the bill's proposals, creates risks for future governance of the WSEs, and that lack of support from parts of local government will undermine the durability of the reforms. Some fundamental issues of concern to the Greens remain, including about the structure, governance, and funding of the WSEs, disposition of assets, and the transfer of stormwater management.

### **Governance**

#### *Council oversight*

The Green Party seeks a WSE model which provides councils with an equivalent level of control to a council-controlled organisation (CCO) model. In particular, we want to see councils retaining real ownership of water assets and infrastructure, with WSEs required to give effect to the relevant parts of councils' long-term plans and growth strategies and align with their strategic plans. The Greens acknowledge the inclusion of a limited shareholding model (one share per 50,000 people) to support Government's commitment to continued public ownership of water services assets and infrastructure. This has limitations, however, because none of the usual rights of ownership and control attach to these council shareholdings. The regional representative group (RRG) has a limited ability to influence the WSE through the complex web of governance arrangements proposed with the WSE board, RRG, and regional advisory panels.

We seek further changes to give councils more direct oversight, and ensure alignment with regional spatial strategies under the proposed Spatial Planning Act. As part of

ensuring that councils can work with WSEs to respond to their own community needs, the statement of strategic and performance expectations (SSPE) should be able to have stronger or more ambitious strategy or performance expectations than the Government Policy Statement. This could apply if local communities and the RRG decided this was needed in response to mana whenua or other local aspirations.

### *Funding*

The major drivers for the reform appear to be balance sheet separation and entity scale. While we acknowledge the intended outcome of greater investment in water infrastructure through borrowing, we are concerned that treating balance sheet separation as a bottom line is not in the public interest long-term. The corporatisation process suggests three waters assets and infrastructure are removed from council ownership. We recognise that increased council control of the WSEs may have implications for balance sheet separation. Other options deserve more serious consideration, such as a Crown guarantee for WSE borrowing to enable the WSEs to access increased funding, while allowing a greater degree of direct council control.

### *Co-governance*

We strongly support effective co-governance for management of water, recognising that this is a taonga and that iwi and hapū have been calling for stronger rights in water management for a long time. We support a management approach that embraces te ao Māori concepts of Te Mana o te Wai, and that leads to entities that deliver genuine partnership with local iwi and hapū.

### *Privatisation*

Early proposals to entrench public ownership through a 75% majority are now described by the Department of Internal Affairs as inappropriate for legislation unrelated to constitutional matters. The Green Party disagrees that entrenchment should only be used for constitutional matters, and considers entrenchment with a 60% majority (given the lack of support from National for a 75% majority) would be appropriate as a check on future privatisation of water infrastructure.

### *Financial management and major transactions*

The Green Party supports the concept of a threshold (new clause 164A) to identify major transactions involving the acquisition or disposition of assets of the entity which trigger the need for a special resolution where a successful vote needs to be supported by 75% of those RRG representatives voting. The threshold for disposal, or an agreement to dispose of the entity assets, and for taking on additional obligations, however, is set too high to provide certainty that assets will be retained in public ownership. It should be reduced from half the value of the entity's assets before disposition/before the transaction to 10% of the value of the entity's assets.

## **Stormwater**

Stormwater management should remain with territorial authorities and unitary councils because of its close connection with urban development, land and natural hazard planning and management, and roading.

As the Stormwater Technical Reference Group noted, stormwater systems are more complex than drinking water or wastewater systems, with most having a dedicated reticulated stormwater network and above-ground, secondary, and overland flow paths. Stormwater infrastructure and assets are diverse and can include pipes, swales, detention basins, ponds, wetlands, and urban (modified and unmodified) streams and rivers. The arrangements for managing them vary and are strongly linked to outcomes for water quality, flood protection, resilience, recreational opportunity, amenity, and transport outcomes. There are mixed views across local government and strong opposition from metropolitan councils such as Auckland and Christchurch City to making WSEs responsible for stormwater because of these strong connections to placemaking and urban planning. This issue will be exacerbated as severe rainfall events increase due to the effects of climate change.

The proposed changes to urban and spatial planning processes and decision-making structures through the Resource Management Act 1991 reform are an opportunity to ensure that stormwater is managed appropriately using green infrastructure and water sensitive design wherever possible. These functions will continue to sit with councils. There is a risk that in putting stormwater with the WSEs, there will be a preference for piped management of stormwater that can be directly controlled by WSEs, despite alternatives such as swales, retention basins, and wetlands providing better resilience and co-benefits for communities.

There is scant evidence of benefits from transferring stormwater management to the WSE and no accurate estimate of the costs. The extensive time and resources needed to unbundle stormwater accountabilities, assets, and outcomes and to organise easements over council landholdings would be better devoted to establishing and ensuring WSEs succeed with their two waters responsibilities. It would also help ensure that councils retain some staff with water expertise to assist with relevant advice to RRG members for their governance role.

Allowing the WSE to focus on drinking water and wastewater as Watercare has done increases the likelihood of their successful establishment. It reduces the hollowing-out of councils from the loss of all staff with three waters expertise. It recognises the essential role of sound urban development and subdivision planning in providing for overland flow paths and reserve areas for stormwater retention.

## **Entity boundaries and number of entities**

The Green Party believes that, in reforming water services, economies of scale must be balanced with maintaining meaningful catchment boundaries, as well as local knowledge, community connection, and responsiveness. These themes came through strongly in public submissions.

The Green Party believes that better outcomes would be achieved if the number of entities reflected local communities of interest, geography, and catchments, and built on existing regional groupings. We believe the bill should establish water services entities at the minimum level of regional amalgamation, with some adjacent regions required to combine for effective economies of scale. New water entity boundaries should be aligned with regional and unitary council boundaries. The legislation should also provide straightforward pathways for further amalgamation if desired by the relevant areas on an opt-in basis. Following the regional boundaries reflects current local government boundaries and management areas under the RMA.

Depending on the level of opt-in to supra-regional amalgamation, this could result in around seven entities. It would achieve economies of scale while allowing more local input into the entity size and boundaries (for example, enabling the Wellington region to join with Manawatu-Wanganui which better reflects catchments and communities of interest than current Entity C). Under this model, there would be three or four entities in the North Island and two or three in the South Island.

By way of example, the current proposed boundaries of Entity C do not follow any government agency, local government, resource management boundaries and create administrative complexity because they impose another set of regions on Aotearoa. There are no strong communities of interest between Hawke's Bay and Marlborough or Golden Bay that justify their inclusion in one entity which crosses Cook Strait. The Nelson, Tasman, and Marlborough Councils and the Te Tau Ihu iwi all support the Te Tau Ihu—the Top of the South being part of Entity D as one South Island entity, rather than being part of Entity C.

Congruence with the takiwā boundaries of Ngāi Tahu appears to be the major influence on the boundaries of Entity D, which in turn influences the boundaries of Entity C. However, alignment with takiwā boundaries could also be achieved by having two or three entities in Te Wai Pounamu—the South Island.

Having more entities and closer alignment with CCO requirements would also mean that Watercare could continue to provide water services in Auckland. The reforms could provide statutory backing for iwi representation, and incentives for Watercare to expand to provide water services to Northland. Watercare demonstrates both the benefits of economies of scale in water provision, and the viability of direct council control as an operating model.<sup>5</sup> Allowing Watercare to continue would retain the benefits to Aucklanders that are currently being provided by Watercare while ensuring that disestablishment costs and complexities are largely avoided. Northland would then be able to access the economies of scale already available through Watercare.

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<sup>5</sup> Watercare is already achieving economies of scale and substantial investment in water services. Auckland Council invested \$224 million in 2021 to ensure water resilience in a changing climate, it has established a targeted rate to raise more than \$700 million to tackle wastewater overflows which affect harbour water quality and it plans to invest \$11 billion in water services over the 2021-2031 period. Water supplies are metered, drinking water is of high quality, and Aucklanders have the lowest per capita water usage in Aotearoa.

### **Rural water supplies**

A range of submitters asked for certainty around the future of rural water supplies. The Department of Internal Affairs has indicated that council-owned, mixed-use rural supplies which provide drinking water and also water for stock, irrigation, agricultural, and horticultural purposes will be able to be transferred from councils to water users where drinking water is not the primary purpose of the supply. This is based on the work of the Rural Supplies Technical Working Group which recommended that water users “can seek direct ownership and operational control of council-owned, mixed-use rural supplies” which primarily supply water for agricultural and horticultural purposes.

This is opposed as it involves potential privatisation of significant water takes, providing windfall asset gains to agribusiness, irrigators, and private landholders. It also prevents future use of these services as public drinking water infrastructure. The volume of water taken from aquifers and rivers by mixed-use rural supplies and provided for stock, irrigation, and horticultural purposes is generally likely to be much greater than the volume of water provided for drinking water; so many of these schemes risk being privatised.

Reform of water services is a chance to improve the management of rural water and ensure fair commercial pricing, rather than to enable a windfall transfer of assets. Allowing the schemes to be privatised does not recognise the public value of water, and the need to reduce some scheme takes and return water to over-allocated rivers and aquifers in regions such as Canterbury.

Mechanisms to transfer assets and infrastructure to the entities are likely to be in a subsequent bill. The Green Party believe more work is needed before then to safeguard the public interest in water, identify the impacts of current allocation regimes for rural water supplies, and the costs and benefits of councils continuing to manage these schemes. This work should include engagement with regional councils and the public.

### **ACT Party differing view**

ACT engaged constructively through the initial process established by the Government, because there are real problems with three waters infrastructure which need to be solved.

The cost of provisioning three waters infrastructure under current funding and financing models is a barrier to land development and has increased the cost of a section far beyond increase in the cost of construction.

This has led to a decrease in housing affordability compared to incomes, and a lack of land provisioned for urban development.

In addition, there has been consistent under-investment in existing underground pipe networks and wastewater infrastructure over many decades.



The current system is not up to scratch, but the Government's three waters reforms are not the answer. Communities and councils have roundly rejected the Government's three waters reform agenda proposed in this bill.

The bill says nothing about how infrastructure will be paid for, who pays, and how much.

There are real problems with drinking water quality in some communities, failing wastewater networks, and sewage overflows into rivers and onto beaches. None of these problems are solved by trying to force co-government structures onto a future three waters delivery model.

The focus must be on ensuring New Zealanders have access to safe drinking water and high quality infrastructure for storm and wastewater.

ACT opposes this bill, and should we be a part of a future Government, we will seek to repeal it.

### **Problems with the bill**

#### *Centralisation*

We are unconvinced the Government's centralised model will result in better outcomes for our communities.

Simply shifting water assets from one government body to another is a recipe for more red tape and less local input, not an enduring solution to upgrade water infrastructure in New Zealand.

ACT agrees with submitters who proposed a more practical approach to allow three waters asset owners to establish regional groups based on catchments and geography, links between networks, and communities of interest.

Centralisation was cited as a requirement to level up water quality between regions, towns, and cities.

However, this is rendered unnecessary by having already established a water quality regulator, Taumata Arowai (under the Water Services Act 2021), to provide monitoring, oversight, and enforcement of drinking water quality across regional and local entities.

This mandate will be extended to wastewater and stormwater from 2025, which means that councils that have failing infrastructure have just over two years to meet consent requirements and fix pollution before they will be subject to enforcement action.

That should be sufficient threat to drive investment in three waters assets.

#### *Co-governance and Māori rights and interests*

ACT does not believe that the complex and divisive co-governance model for the proposed regional representative groups is necessary, and in fact makes the reform objectives much more difficult to achieve.

The Minister for Local Government, Hon Nanaia Mahuta, who is responsible for this bill, is unable to justify why it is necessary for mana whenua to get more of a say than other parts of the community when it comes to the four new water services entities.

Clause 141 of the Water Services Entities Bill allows iwi and hapū to submit “Te Mana o te Wai” statements that must be considered in any decision-making by the four water services entities, but other communities who have an interest in freshwater are unable to have the same input.

The Minister said that “Te Mana o te Wai” statements can benefit other communities such as farmers, but she has failed to explain why only mana whenua are allowed a say and other communities directly affected are unable to do so.

There is no rationale for continuing to have co-government at the centre of water reforms. Hon Nanaia Mahuta herself has admitted that “Māori have not expressed rights and interests in three waters assets over and above those as ratepayers within their respective communities of interest” in reply to a written question.

#### *Funding and finance*

Funding and financing the three waters infrastructure deficit, which is estimated at \$120 and \$180 billion, is often cited by the Government as a justification for standing up four water services entities.

ACT agrees with submitters who proposed that infrastructure should be paid for using a much wider range of tools than are usually employed by local government and which are allowed for under this bill.

These could include raising revenue bonds to fund large-scale network upgrades which enable urban intensification, or new fixed assets such as water and wastewater treatment plants. Revenue bonds would be repaid from revenues collected through metered water charges or other volumetric charging systems.

Both long-term programmes and high-value projects should be delivered using private sector and institutional capital where possible to supplement or replace funding provided by local and central government borrowing.

Funding, financing, and delivery frameworks should be as flexible as possible to allow for infrastructure at the size, scale, location, user base, and a time frame for investment and payback period related to the asset life cycle.

#### *Balance sheet separation*

The Government has cited balance sheet separation for the four proposed entities as a key outcome for the reforms, which means that debt raised by the entities will not be registered against Government or council books.

However, the Standard and Poor’s report provided by the Department of Internal Affairs to the committee states that should the proposed entities achieve balance sheet separation they will be highly leveraged and have a high-risk rating.

Standard and Poor's states that unless the entities have Government backing, their rating will be B+, equivalent to investment-grade debt. Councils currently have an A+ rating through the Local Government Funding Agency (LGFA).

So the case made for balance sheet separation as a means to raise debt at similar cost to the Crown is not supported by evidence, and is in fact undermined by the Standard and Poor's report.

ACT would instead invite councils to form regional alliances for the purpose of managing their assets. This would enable councils to raise debt against these assets and future revenues from water charges using existing LGFA pathways, and additional funds from private and institutional investors.

However, if balance sheet separation is a prerequisite to raise debt for infrastructure projects, then the Infrastructure Funding and Financing Act 2020 allows for special purpose vehicles to be established which will maintain balance sheet separation.

### **ACT's alternative three waters plan**

The alternative models proposed by Communities 4 Local Democracy, and more recently by the Auckland and Christchurch mayors, have widespread support from communities and councils.

ACT's Water Infrastructure Plan would:

- provide for councils to enter voluntary "shared services" agreements, gaining the benefits of scale, while retaining local ownership and control
- establish long-term 30-year central government–local government partnership agreements to plan water infrastructure upgrades tailored to specific regions
- establish public–private partnerships to attract investment from financial entities such as KiwiSaver funds, ACC, iwi investment funds, etc
- expand the exemption from domestic supply for a single dwelling to also include all small water suppliers supplying fewer than 30 endpoint users.

We can improve the current system, but we do not need to do so through state-mandated centralisation and allowing some people to have more influence than others based on their ethnicity.

ACT's plan will better balance community control of water assets alongside a plan for levelling up the necessary infrastructure to ensure safety and efficient water allocation.

## Appendix

### Committee process

The Water Services Entities Bill was referred to the committee on 9 June 2022. We invited the Minister of Local Government, Hon Nanaia Mahuta, to provide an initial briefing on the bill. She did so on 27 July 2022.

We called for submissions on the bill with a closing date of 22 July 2022. We received and considered 88,383 submissions from interested groups and individuals. We heard oral evidence from 227 submitters via videoconference and at hearings in Auckland, Hamilton, Havelock North, Wellington, Nelson, Christchurch, and Dunedin.

We received advice on the bill from Te Tari Taiwhenua—Department of Internal Affairs. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 2, 96, 129, 133, 134, 169, and 206, as well as clauses 1 and 7 of Schedule 1.

### Committee membership

Barbara Edmonds (Chairperson)

Andrew Bayly

Glen Bennett

Shanan Halbert

Ingrid Leary

Anna Lorck

Damien Smith

Chlöe Swarbrick

Simon Watts

Helen White

Nicola Willis

Simon Court and Hon Eugenie Sage also participated in our consideration.

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Nanaia Mahuta*

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Government Bill

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<u>228</u>	<u>Section 201 amended (Levy)</u>	<u>119</u>
	<b>Schedule 1</b>	121
	<b>Transitional, savings, and related provisions</b>	
	<b>Schedule 2</b>	145
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	<b>Schedule 3</b>	148
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	<u><b>Amendments to Local Government Act 2002</b></u>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Water Services Entities Act **2022**.

**2 Commencement**

- (1) The following provisions come into force on the day after the date of Royal assent: 5
- (a) **sections 3, 4, 5(a), (b), (c), and (f), and 6 to 9A** (preliminary provisions):
  - (b) **subparts 1 to 3, 6, and 8 of Part 2** (which relate to the establishment of water services entities and the roles of the Minister, Crown monitor, and board): 10
  - (c) **sections 119 and 120** (which relate to the employment of the chief executive and other employees):
  - (d) **sections 147 to 152** (which relate to requirement to prepare and adopt an asset management plan and a funding and pricing plan): 15
  - (e) **section 206** (which contains regulation-making powers), and **section 202** so far as it relates to regulations made under **section 206(1)(a)**:
  - (ea) **section 209A** (which ensures that a support package payment made by a water services entity is charged with GST at the rate of 0%): 20

- (f) **section 214** (which ~~authorises local authorities, during a transition period, to defer reviews of water services bylaws~~ amends the Local Government Act 2002 in respect of matters related to water services):
- (fa) **sections 224 and 225** (which amend the Taumata Arowai—the Water Services Regulator Act 2020 in respect of te Mana o te Wai): 5
- (fb) **sections 227 and 228** (which amend the Water Services Act 2021 in respect of—
- (i) te Mana o te Wai; and
- (ii) consultation on, and accounting for and banking of, cost-recovery levies): 10
- (g) **Schedule 1** (which contains transitional, savings, and related provisions).
- (2) The rest of this Act comes into force—
- (a) on a date set by the Governor-General by Order in Council; or
- (b) to the extent not brought into force earlier, on **1 July 2024**. 15
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

## Part 1 Preliminary provisions

- 3 Purpose** 20
- ~~The purpose of this Act is to—~~
- (a) ~~establish 4 water services entities to provide water services in New Zealand; and~~
- (b) ~~provide for their objectives, functions, service delivery areas, and governance arrangements.~~ 25
- (1) The purpose of this Act is to enable long-term, sustainable improvements in the safety, quality, resilience, accessibility, affordability, efficiency, and performance of—
- (a) water services; and
- (b) water services infrastructure. 30
- (2) This Act seeks to achieve that purpose by—
- (a) establishing 4 water services entities to provide water services in New Zealand;
- (b) providing for their service delivery areas and for their governance, reporting, and accountability arrangements; 35
- (c) providing for their objectives, operating principles, and duties, functions, and powers (*see* **sections 11 to 13**):

- (d) requiring them to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai (see **section 4**):
- (e) providing for monitoring and oversight arrangements:
- (f) ensuring water services infrastructure is retained in public ownership:
- (g) ensuring water services infrastructure is not operated for the purpose of generating profit for shareholders. 5

#### 4 Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai

##### Duties to give effect

- (1) All persons performing or exercising duties, functions, or powers under this Act— 10
  - (a) must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
  - (b) must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers.

##### Interaction with other provisions on te Tiriti/the Treaty 15

- (2) **Subsection (1)(a)** is not limited by **subsection (1)(b)** or **section 5**.
- (3) This section is subject to **section 9** (Treaty settlement obligations prevail).

##### Application of Te Mana o te Wai

- (4) Te Mana o te Wai applies, for the purposes of this Act, not only to all fresh-water, but also to all coastal water, and to all geothermal water (as those 3 terms are defined in section 2(1) of the Resource Management Act 1991). 20

#### 5 Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, this Act provides,—

- (a) in **section 4(1)(a)**, that all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi: 25
- (b) in **section 4(1)(b)**, that all persons performing or exercising duties, functions, or powers under this Act must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers: 30
- (c) in **section 13**, that the operating principles of a water services entity include—
  - (i) partnering and engaging early and meaningfully with Māori; and
  - (ii) giving effect to Treaty settlement obligations to the extent that the obligations apply to the performance or exercise of the duties-and, functions, or powers of the entity: 35

- (d) in **section 27**, that there must be mana whenua representation on each entity's regional representative group:
- (e) in **sections 38 and 57**, that the board appointment committee of each regional representative group and the board of each entity must include members who, collectively, have knowledge and expertise in relation to— 5
- (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (ii) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori:
- (f) in **section 74**, that the board of each water services entity must— 10
- (i) ensure that the water services entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, it has the capacity and capability to—
- (A) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and 15
- (B) engage with, and understand perspectives of, mana whenua; and
- (ii) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi: 20
- (g) in **section 141**, that the board of each water services entity must respond to Te Mana o te Wai statements for water services issued to the entity by mana whenua.
- 6 Interpretation** 25
- In this Act, unless the context otherwise requires,—
- board** means members of the board of a water services entity who number not less than the required quorum acting together as a board
- board appointment committee** means a committee of a regional representative group appointed under **section 38** 30
- board member**—
- (a) means a member of the board appointed under **section 57**; but
- (b) for the purposes of **sections 122 to 126**, has the meaning set out in **section 121**
- chairperson**,— 35
- (a) of a regional representative group, means—
- (i) its chairperson (*see* **section 41**); or
- (ii) if **section 42(2)(c)** applies, both of its co-chairpersons:

(b) of a regional advisory panel, means—

- (i) its chairperson (*see* **section 53**); or
- (ii) if **section 54(2)(c)** applies, both of its co-chairpersons

**claimant group**, in relation to the definitions of **Treaty settlement Act** and **Treaty settlement deed**, means a group of Māori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975 5

**Commission—**

(a) means the Commerce Commission established by section 8 of the Commerce Act 1986; but 10

(b) in **Schedule 4**, means the Local Government Commission continued under section 28 of the Local Government Act 2002 (*see* **clause 1 of Schedule 4**)

**committee** means,—

- (a) in relation to a regional advisory panel, a committee or subcommittee appointed under the constitution; and 15
- (b) in relation to a regional representative group, a committee or subcommittee appointed under the constitution (including the board appointment committee); and
- (c) in relation to a board, a committee or subcommittee appointed under the constitution 20

**constitution** means, in relation to a water services entity,—

- (a) the entity's first constitution as provided for in **section 94**; or
- (b) if the regional representative group has amended the entity's first constitution or adopted a new constitution under **section 95 or 96**, the constitution as adopted or amended under that section 25

**department** means the department for the time being responsible for the administration of this Act

**deputy chairperson**,—

- (a) of a regional representative group, means— 30
  - (i) its deputy chairperson (*see* **section 41**); or
  - (ii) if **section 42(2)(c)** applies, both of its deputy co-chairpersons:
- (b) of a regional advisory panel, means—
  - (i) its deputy chairperson (*see* **section 53**); or
  - (ii) if **section 54(2)(d)** applies, both of its deputy co-chairpersons 35

**drinking water** has the meaning set out in section 6 of the Water Services Act 2021

**employee**, in relation to a water services entity,—

- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under **section 119**; and
- (b) for the purposes of **sections 122 to 126**, has the meaning set out in **section 121**

5

**financial year** means the 12 months ending on the close of 30 June ~~2022~~

**funding and pricing plan** means the funding and pricing plan prepared by the board under **section 150**

**generally accepted accounting practice** has the meaning set out in section 8 of the Financial Reporting Act 2013

10

**green stormwater infrastructure**—

- (a) means a natural or semi-natural area, feature, or process that mimics natural areas, features, or processes that are planned or managed to provide stormwater services; and
- (b) includes an engineered system that is an area, feature, or process that complies with **paragraph (a)**

15

**Government policy statement** means a Government policy statement on water services issued by the Minister under **section 129**

**local authority** has the meaning set out in section 5 of the Local Government Act 2002

20

**mana whenua**, for an identified area, means the iwi or hapū holding and exercising, in accordance with tikanga, authority or other customary rights or interests in that area

**mana whenua panel member** means a mana whenua panel member appointed to a regional advisory panel (*see* **section 51**)

25

**mana whenua representative** means a mana whenua representative appointed to a regional representative group under **section 33**

**Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

30

**ministerial appointee** means a person appointed under **subpart 2 of Part 5** as a member of a Crown review team, as a Crown observer, or as a Crown manager

**ministerial body** means a Crown review team, a Crown observer, or a Crown manager appointed under **subpart 2 of Part 5**

35

**monitor** means the department appointed under **section 169**

**natural person act** has the meaning set out in **section 25**

**overland flow path** means any flow path taken by stormwater on the surface of land

**regional advisory panel** means, in relation to a water services entity, a regional advisory panel established by the constitution

**regional advisory panel member** means—

- (a) a territorial authority panel member; or
- (b) a mana whenua panel member

5

**regional representative** means a territorial authority representative or mana whenua representative

**regional representative group** means, in relation to a water services entity, the regional representative group established for the entity under **section 27**

**regulations** means regulations made under **section 206**

10

**service area** means, in relation to a water services entity, the area identified in **Schedule 2** as the service area of the entity

**stormwater network**—

(a) means the infrastructure owned or operated by, or processes used by, a water services entity to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and

15

(b) includes—

(i) an overland flow path (as defined in this section);

(ii) green stormwater infrastructure (as defined in this section)

**Te Mana o te Wai** has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and see also sections 4, 5, and 13)

20

**Te Mana o te Wai statement for water services** means a statement provided by mana whenua to a water services entity under **section 140**

25

**territorial authority** has the meaning set out in section 5 of the Local Government Act 2002

**territorial authority owners** means, in relation to a water services entity, the territorial authorities listed in the part of **Schedule 2** that relates to the entity

**territorial authority panel member** means a territorial authority panel member appointed to a regional advisory panel (*see* **section 50**)

30

**territorial authority representative** means a territorial authority representative appointed to a regional representative group under **section 32**

**Treaty of Waitangi claim** means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether that claim was submitted or not to the Waitangi Tribunal

35

**Treaty settlement Act** means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and

- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act
- Treaty settlement deed** means a deed or other agreement— 5
- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown and by representatives of a claimant group; and
- (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement
- Treaty settlement obligations** means obligations under any of the following: 10
- (a) Treaty settlement Acts:
- (b) Treaty settlement deeds
- wastewater network** means the infrastructure owned or operated by, or processes used by, a water services entity to collect, store, transmit through reticulation, treat, or discharge wastewater 15
- water services** means services relating to water supply, wastewater, and storm-water
- water services entity or entity** means a water services entity established under **section 10**
- water services infrastructure**— 20
- (a) means infrastructure owned or operated by a water services entity for the purposes of the delivery of water services; and
- (b) includes—
- (i) a water supply network;
- (ii) a wastewater network; 25
- (iii) a stormwater network; and
- (c) for the purposes of **section 116** and **Schedule 4**, includes existing or proposed assets used or proposed to be used by the water services entity to provide water services
- water supply** includes— 30
- (a) drinking water supply as defined in section 9 of the Water Services Act 2021; and
- (b) firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017; and
- (c) water supplied for agricultural or horticultural purposes 35



**water supply network—**

- (a) means the infrastructure owned or operated by, or processes used by, a water services entity to abstract, store, treat, transmit, or transport water as part of a water supply; and
- (b) includes— 5
- (i) the point of supply;
  - (ii) any end-point treatment device;
  - (iii) any backflow prevention device.

**7 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10

**8 Act binds the Crown**

This Act binds the Crown.

**9 Treaty settlement obligations prevail**

If a provision of this Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails. 15

**9A Rights or interests in water preserved***Purpose***(1) The purpose of this section is to achieve both of the following outcomes:**

- (a) any rights or interests in water are preserved, consistent with assurances— 20
- (i) given by the Crown to the Supreme Court in 2012; and
  - (ii) recorded in *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145]:
- (b) this Act, and duties, functions, and powers under this Act, operate effectively. 25

*Act does not create, transfer, extinguish, or limit rights or interests***(2) No legislation in or made under this Act—**

- (a) creates or transfers any proprietary right or interest in water;
- (b) extinguishes or limits any customary right or interest (for example, one founded on, or arising from, aboriginal title or customary law) any iwi or hapū may have in water. 30

Nothing in section affects duties, functions, and powers under Act

- (3) Nothing in this section affects, or affects the lawfulness or validity of the performance or exercise by any person of, any duty, function, or power under this Act.

Compare: 2010 No 24 s 90(1)(a); 2014 No 74 s 15(5)(a); 2017 No 7 s 46(1), (2)(b)

5

## Part 2

### Water services entities

#### Subpart 1—Establishment of water services entities

#### 10 Water services entities established

- (1) This section establishes the water services entities named in **Parts 1 to 4 of Schedule 2**. 10
- (2) This section does not limit section 25(4) of the Local Government Act 2002.

#### 11 Objectives of water services entities

The objectives of each water services entity are to—

- (a) ~~deliver water services and related infrastructure own and operate water services infrastructure, and deliver water services,~~ in an efficient and financially sustainable manner: 15
- (b) protect and promote public health ~~and the environment~~:
- (ba) protect and promote the environment:
- (c) support and enable planning processes, growth, and housing and urban development: 20
- (d) operate in accordance with best commercial and business practices:
- (e) act in the best interests of present and future consumers and communities:
- (f) deliver water services in a sustainable and resilient manner that seeks to ~~mitigate the effects of climate change and natural hazards.~~ 25
- (i) mitigate the effects of climate change and natural hazards; and
- (ii) support and enable climate change adaptation.

Compare: 2020 No 52 s 8

#### 12 Functions of water services entities

30

The functions of each water services entity are—

- (a) to provide safe, reliable, and efficient water services in its area; and
- (b) any functions that are incidental and related to, or consequential on, its functions set out in **paragraph (a)**.

**13 Operating principles**

The operating principles of a water services entity for the purposes of **section 73** are—

- (a) developing and sharing capability and technical expertise with other water services entities and throughout the water services sector; and 5
- (b) being innovative in the design and delivery of water services and water services infrastructure; and
- (ba) in their employment, and in their procurement (including by way of contractual arrangements, joint arrangements, or joint water services entity arrangements),— 10
  - (i) having regard to the areas where services are delivered to consumers and communities; and
  - (ii) ensuring there is capability in, and an understanding of the local cultural or environmental factors in, those areas; and
- (bb) taking a whole-of-catchment approach to the delivery of water services, and to the identification and management of risks and hazards relating to water services; and 15
- (c) being open and transparent, including in relation to—
  - (i) the calculation and setting of prices; and
  - (ii) determining levels of service delivery to consumers and communities ~~and consumers~~; and 20
  - (iii) reporting on the performance of the water services entity; and
- (d) partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can—
  - (i) give effect to Te Mana o te Wai; and 25
  - (ii) understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and
- (e) giving effect to Treaty settlement obligations to the extent that the obligations apply to the performance or exercise of the duties, ~~and functions,~~ or powers of the entity; and 30
- (f) partnering and engaging early and meaningfully with territorial authorities and their communities; and
- (g) co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

**14 ~~Duties to provide funding and information~~** 35

~~A water services entity must provide—~~

- ~~(a) funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority~~

~~owners and to mana whenua, for remuneration, expenses, or costs, in accordance with **section 114(1)**; and~~

~~(b) information to its regional representative group, or a regional advisory panel for that group, in accordance with **section 114(2)**.~~

- 15 Status of water services entities** 5
- Body corporate and separate legal entity*
- (1) A water services entity—
- (a) is a body corporate; and
- (b) is accordingly a legal entity separate from the entity’s board members, the entity’s employees, the Crown, the entity’s regional representative group and any regional advisory panel for that group, and the entity’s territorial authority owners; and 10
- (c) continues in existence until it is dissolved by an Act.
- Co-owned in shares by territorial authority owners*
- (2) A water services entity is co-owned— 15
- (a) by the territorial authorities in its service area; and
- (b) in shares allocated and reallocated under **section 16**.
- (3) Shares allocated or reallocated to, and held by, a territorial authority owner cannot, for any reason, be sold, or otherwise transferred (*see also **section 166***). 20
- (4) **Subsection (3)** overrides any legislation to the contrary.
- Not company, council organisation, council-controlled organisation, etc*
- (5) Despite **subsections (1) to (4)**, a water services entity is not—
- (a) a company as defined in section 2(1) of the Companies Act 1993; or
- (b) a council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or 25
- (c) a local government organisation as defined in section 124 of the Local Government Act 2002.
- Compare: 2004 No 115 s 15
- 16 Shares in water services entities** 30
- (1) Shares in a water services entity are, on each relevant date, allocated or reallocated to each territorial authority owner based on the population of its district or part district.
- (2) The allocation or reallocation is as follows:
- (a) if that population is not more than 50,000 people, 1 share: 35
- (b) if that population is more than 50,000 people,—
- (i) 1 share for every 50,000 people in that district or part district; and

- (ii) 1 share for a group of fewer than 50,000 people, additional to those 1 or more multiples of 50,000 people, in that district or part district.
- (3) In this section,—
- population**, of a district or part district of a territorial authority owner, means that population as determined by the most recent available census of population and dwellings carried out by Statistics New Zealand under the ~~Statistics Act 1975~~ Data and Statistics Act 2022 5
- relevant date**, for an allocation or a reallocation to the territorial authority owners of shares in a water services entity, means a date that is— 10
- (a) the establishment date (as defined in **clause 1(4) of Schedule 1**); or
- (b) the date immediately after a 5-year period that started on—
- (i) the establishment date (as so defined); or
- (ii) a fifth anniversary of the establishment date (as so defined); or
- (c) a date on which a territorial authority owner, or its district, is created, adjusted, altered, or abolished in or under the Local Government Act 2002 in a way that affects 1 or both of the following: 15
- (i) territorial authority owners named in **Parts 1 to 4 of Schedule 2**;
- (ii) their districts or part districts specified in those Parts; or 20
- (d) a date on which a divestment proposal (as defined in **clause 1 of Schedule 4**) that affects the water services entities named in **Parts 1 to 4 of Schedule 2**, or their service areas, or both, takes effect.
- (4) The monitor must notify every allocation or reallocation, as soon as practicable, to the Minister, the water services entity, and every territorial authority owner. 25
- (5) The monitor must also make every allocation or reallocation publicly available, as soon as practicable, by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible.
- 17 Core things water services entities can do** 30
- A water services entity may do anything that is authorised by this Act.
- Compare: 2004 No 115 s 16
- 18 Other things water services entities can do**
- (1) A water services entity may do anything that a natural person of full age and capacity may do. 35
- (2) **Subsection (1)** applies except as provided in this Act or another Act or rule of law.
- Compare: 2004 No 115 s 17

**19 Acts must be for purpose of functions**

A water services entity may do an act under **section 17 or 18** only for the purpose of performing its functions.

Compare: 2004 No 115 s 18

Subpart 2—Validity of acts 5

**20 Acts in breach of statute are invalid**

(1) An act of a water services entity is invalid, unless **section 21** applies, if it is—

- (a) an act that is contrary to, or outside the authority of, ~~this an~~ Act; or
- (b) an act that is done otherwise than for the purpose of performing the entity's functions. 10

(2) **Subsection (1)** does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Compare: 2004 No 115 s 19

**21 Some natural person acts protected**

(1) **Section 20**, or any rule of law to similar effect, does not prevent a person dealing with a water services entity from enforcing a transaction that is a natural person act unless the person dealing with the entity had, or ought reasonably to have had, knowledge— 15

- (a) of an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or 20
- (b) that the act is done otherwise than for the purpose of performing the entity's functions.

(2) A person who relies on **subsection (1)** has the onus of proving that they did not have, and ought not reasonably to have had, the knowledge referred to in that subsection. 25

(3) A water services entity must report, in its annual report, each transaction that the entity has performed in the year to which the report relates that was invalid under **section 20** but enforced in reliance on this section.

(4) This section does not affect any person's other remedies (for example, remedies in contract) under the general law. 30

Compare: 2004 No 115 s 20

**22 Limits on protection of natural person acts**

**Section 21** does not limit—

- (a) **section 84** (which provides for orders to require or restrain acts); or
- (b) the board of a water services entity bringing an action against a board member who voted for or otherwise authorised the act for breach of their individual duties as a board member; or 35

- (c) a board member who voted for or otherwise authorised the act being removed from office for breach of the individual duties of board members or the collective duties of the board; or
- (d) an application, in accordance with the law, for judicial review; or
- (e) **section 109** (which allows a water services entity to avoid certain acts done in breach of conflict of interest rules). 5

Compare: 2004 No 115 s 21

### 23 Acts that are not in best interests of water services entity

It is irrelevant to the validity of an act that the act is not, or would not be, in the best interests of a water services entity. 10

Compare: 2004 No 115 s 22

### 24 Dealings between water services entities and other persons

- (1) A water services entity may not assert against a person dealing with the entity that—
  - (a) a person held out by the water services entity to be a board member, an employee, or an agent of the entity (as the case may be)— 15
    - (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
    - (ii) does not have the authority to exercise a power which, given the nature of the entity, a person appointed to that capacity customarily has authority to exercise; or 20
    - (iii) does not have the authority to exercise a power that the entity holds them out as having; or
  - (b) a document issued on behalf of the water services entity by a board member, an employee, or an agent of the entity with actual or usual authority to issue the document is not valid or genuine. 25
- (2) However, a water services entity may assert any of those matters if the person dealing with the entity had, or ought reasonably to have had, knowledge of the matter.
- (3) Nothing in this section affects a person's right to apply, in accordance with the law, for judicial review. 30

Compare: 2004 No 115 s 23

### 25 Interpretation for sections 15 to 24

In **sections 15 to 24**, unless the context otherwise requires,—  
**act** includes a transfer of property, rights, or interests to or by a water services entity 35  
**do** includes—

- (a) to do an act; and

- (b) to have a capacity; and
  - (c) to have or exercise a power, right, or privilege
- natural person act—**
- (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act); and 5
  - (b) includes entry into a contract for, or relating to,—
    - (i) acquisition of financial products or borrowing:
    - (ii) the purchase, leasing, or sale of, or other dealings with, property:
    - (iii) the employment, or engagement of the services, of a person 10
- person dealing—**
- (a) means the other party to the transaction, if the act of the water services entity is a transaction; and
  - (b) includes a person who has acquired property, rights, or interests from a water services entity. 15

Compare: 2004 No 115 s 24

### Subpart 3—Minister’s role

#### 26 Minister’s role

- The role of the Minister is to oversee and manage the Crown’s interests in, and relationship with, the water services entities, and— 20
- (a) to issue a Government policy statement on water services under **section 129**:
  - (b) to appoint a Crown review team to perform functions under **section 175** in relation to a water services entity in the circumstances described in that section: 25
  - (c) to appoint a Crown observer to perform functions under **section 177** in relation to a water services entity in the circumstances described in that section:
  - (d) to appoint a Crown manager to perform functions under **section 179** in relation to a water services entity in the circumstances described in that section: 30
  - (e) to perform or exercise any other duties, functions, or powers the Minister has, in respect of the entities, under legislation.



## Subpart 4—Regional representative groups

### *Establishment, role, and decision making of regional representative group*

- 27 Establishment and membership of regional representative group** 5
- (1) This section establishes a regional representative group for each water services entity. 5
- ~~(2) Each regional representative group consists of no fewer than 12, and no more than 14, regional representatives (see **section 91(a)(i)** and the constitution).~~
- (2) Each regional representative group consists of a number of regional representatives that is provided for in the constitution (see **section 91(a)(i)**) and is— 10
- (a) 12 regional representatives; or
- (b) any greater number of regional representatives.
- (3) Each entity's regional representative group must include an equal number of—
- (a) territorial authority representatives; and
- (b) mana whenua representatives.
- 28 Role of regional representative group** 15
- The role of a water services entity's regional representative group is—
- (a) appointing and removing the entity's board members under this Part; and
- (b) participating in the process of setting the entity's strategic direction and performance expectations under **subpart 4 of Part 4**; and
- (c) reviewing the performance of the entity under **section 139**; and 20
- (d) approving the appointment and remuneration policy prepared by its board appointment committee under **section 40**; and
- (e) performing or exercising any other duties, functions, or powers it has under legislation.
- 29 Collective duty of regional representative group** 25
- The regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation—
- (a) wholly or mostly for the benefit of all consumers and communities in the entity's service area; and
- (b) taking into account the diversity of the consumers and communities, and the diversity of the consumers' and communities' interests, in that area; and 30
- (c) taking into account the interests of future as well as current consumers and communities in that area. 35

- 30 Decision making by regional representative group**
- Decisions made by a regional representative group of a water services entity must be made—
- (a) by consensus if consensus can be reached by regional representatives taking all reasonably practicable steps to reach consensus in accordance with a procedure, and within a time frame, specified in the constitution; and
  - (b) in any other case, by 75% of the regional representatives present and voting.
- 31 Group may regulate its own procedure if none specified**
- A regional representative group of a water services entity may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter.
- Appointment of regional representatives*
- 32 Method of appointing territorial authority representatives to regional representative group**
- (1) The territorial authority owners of a water services entity must appoint territorial authority representatives to the regional representative group of the water services entity in accordance with **section 27(2) and (3)** and the constitution.
  - (2) The territorial authority owners must appoint only persons who are—
    - (a) elected members or chief executives of a territorial authority owner of the water services entity; or
    - (b) senior managers of a territorial authority owner that, in the collective opinion of the territorial authority owners, have the appropriate knowledge, skills, and experience to assist the regional representative group in performing its role (*see section 28*).
- 33 Method of appointing mana whenua representatives to regional representative group**
- Mana whenua whose rohe or takiwā is within the service area of a water services entity must appoint mana whenua representatives to the regional representative group of the water services entity in accordance with **section 27(2) and (3)** and the constitution.
- 34 Requirements before appointment as regional representative**
- (1) Before a person is appointed as a regional representative, the person must—
    - (a) consent in writing to the appointment; and
    - (b) certify that they are not disqualified from being a regional representative (*see section 97*); and

- (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity (if the person is, or is to be, interested, as defined in **section 100**, in those matters).
- (2) A disclosure under **subsection (1)(c)** must be made,— 5
- (a) in the case of a proposed appointment as a territorial authority representative, to the entity’s territorial authority owners:
- (b) in the case of a proposed appointment as a mana whenua representative, to the mana whenua whose rohe or takiwā is within the entity’s service area. 10
- (3) As soon as practicable after becoming aware of a failure to comply with **subsection (1)(c)**, the regional representative group must notify the monitor. 15

Compare: 2004 No 115 s 31

### 35 Validity of regional representatives’ acts

The acts of a person as a regional representative, chairperson, or deputy chairperson of the regional representative group are valid even though— 15

- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a regional representative; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended. 20

Compare: 2004 No 115 s 34

### 36 Validity of appointments

- (1) The appointment of a person as a regional representative, chairperson, or deputy chairperson of a regional representative group is not invalid only because a defect existed in the appointment of the person. 25
- (2) This section does not apply to a defect in the qualifications for appointment of a regional representative, chairperson, or deputy chairperson (if any).

Compare: 2004 No 115 s 35(1), (2)(a)

### 37 Resignation of regional representatives

- (1) A territorial authority representative may resign from office by written notice to the entity’s territorial authority owners signed by the territorial authority representative. 30
- (2) A mana whenua representative may resign from office by written notice to the mana whenua whose rohe or takiwā is within the entity’s service area signed by the mana whenua representative. 35
- (3) A resignation under **subsection (1) or (2)** is effective—
- (a) on receipt of the notice by the territorial owners or mana whenua (as applicable); or

(b) at any later time specified in the notice.

Compare: 2004 No 115 s 44

*Board appointment committee*

- 38 Regional representative group must appoint board appointment committee** 5
- (1) Each regional representative group must appoint a board appointment committee.
- (2) The regional representative group must appoint members to the board appointment committee who, collectively, have knowledge of, and experience and expertise in relation to,— 10
- (a) performance monitoring and governance; and
- (b) network infrastructure industries (for example, water services network infrastructure industries); and
- (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (ca) public health; and 15
- (cb) the environment; and
- (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and
- (e) perspectives of consumers and communities; and
- (f) perspectives of local government. 20
- (3) The regional representative group must not appoint a person as a member of the board appointment committee unless,—
- (a) before appointment, the person discloses to the regional representative group the details of any interest the person may have if they were a member of that committee; and 25
- (b) the person is a regional representative.
- 39 Functions of board appointment committee**
- The functions of the board appointment committee are—
- (a) to appoint and remove members of the board of a water services entity; and 30
- (b) to prepare and maintain an appointment and remuneration policy for the board; and
- (c) to perform or exercise any of the regional representative group’s functions and powers that are delegated to the committee in relation to appointing and removing board members. 35

- 40 Board appointment committee must prepare board appointment and remuneration policy**
- (1) The board appointment committee must prepare and maintain an appointment and remuneration policy that provides for—
- (a) the collective or individual experience, qualifications, skills, or expertise required of members of the water services entity’s board in addition to those required by **section 63(2)**; and 5
- (b) a remuneration and expenses framework for members of the entity’s board.
- (2) The regional representative group must— 10
- (a) review the policy prepared by the board appointment committee; and
- (b) if satisfied with the policy, approve it.
- (3) The regional representative group must, at least once every 3 years, review the policy, and approve any amendments to it the group considers necessary or desirable. 15
- (4) The regional representative group must copy to the board of the water services entity every policy, or amended policy, as soon as practicable after it is approved under this section.
- (5) The board of the water services entity must make every policy, or amended policy, publicly available as soon as practicable after it is approved under this section by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 20

*Chairperson and deputy chairperson*

- 41 Appointment of chairperson and deputy chairperson**
- (1) Each regional representative group must elect or appoint, in accordance with the constitution (*see section 91(a)(x)*),— 25
- (a) 1 of its regional representatives as chairperson of the group; and
- (b) 1 of its regional representatives as deputy chairperson of the group.
- (2) However, this section does not apply if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, in accordance with **section 42.** 30
- 42 Co-chairpersons and deputy co-chairpersons**
- (1) The constitution may provide that a regional representative group must elect or appoint, in accordance with the constitution (*see section 91(a)(x)*),—
- (a) 2 of its regional representatives as co-chairpersons of the group; and 35
- (b) 2 of its regional representatives as deputy co-chairpersons of the group.

- (2) If the constitution provides for, and requires, a regional representative group to elect or appoint co-chairpersons and deputy co-chairpersons of the group,—
- (a) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group’s territorial authority representatives; and
  - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group’s mana whenua representatives; and 5
  - (c) references in legislation, other than this section, to the group’s chairperson are taken to be references to both of its co-chairpersons; and
  - (d) references in legislation, other than this section, to the group’s deputy chairperson are taken to be references to both of its deputy co-chairpersons. 10

### *Disputes*

#### **43 Disputes between regional representatives**

- (1) This section applies if a dispute arises between regional representatives on a matter that they are required under this Act to work together on, jointly develop, or agree. 15
- (2) The regional representatives—
  - (a) may by agreement undertake a binding process of dispute resolution; but
  - (b) if they do not reach agreement on a binding process, must undertake a non-binding process of dispute resolution. 20
- (3) Whether the regional representatives choose a binding process or a non-binding process, each regional representative must—
  - (a) jointly appoint an arbitrator or a mediator; and
  - (b) meet that regional representative’s own costs of the process (so they are not met by the represented territorial authority or mana whenua). 25
- (4) If the dispute remains unresolved after a non-binding process has been undertaken, the regional representatives may individually or jointly seek the assistance of the Minister.
- (5) The Minister, with a view to assisting the regional representatives to resolve the dispute, may— 30
  - (a) appoint, and meet the costs of, a Crown facilitator:
  - (b) direct the regional representatives to use a particular alternative dispute resolution process for that purpose.

Compare: 1991 No 69 s 58S

*Official information*

- 44 Application of Local Government Official Information and Meetings Act 1987 to regional representative group**
- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the regional representative group of a water services entity. 5
- (2) This section does not limit—
- (a) **section 55** (which relates to the application of Part 7 of that Act to a regional advisory panel for the group); or
- (aa) **section 60(6)** (which relates to the application of Part 7 of that Act to the entity’s board); or 10
- (b) **section 61** (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

## Subpart 5—Regional advisory panels

*Establishment, role, and decision making of regional advisory panels*

- 45 Establishment and membership of regional advisory panels** 15
- (1) The constitution of a water services entity may establish 1 or more regional advisory panels.
- (2) Each regional advisory panel must include an equal number of—
- (a) territorial authority panel members; and
- (b) mana whenua panel members. 20
- 46 Role of regional advisory panel**
- (1) The role of a regional advisory panel is to provide advice to a regional representative group about that group’s performance or exercise of, or about how the panel considers that group should perform or exercise, its duties, functions, or powers (*see* **section 28**) in respect of, or otherwise affecting, a particular geographic area— 25
- (a) in the service area of the water services entity; and
- (b) for which the panel is responsible under the constitution (*see* **section 91(f)(ii)**).
- (2) For example, a regional advisory panel’s role includes providing advice by way of input under— 30
- (a) **section 135(5)** (statement of strategic and performance expectations);
- (b) **clause 9(2) of Schedule 3** (asset management plan);
- (c) **clause 15(2) of Schedule 3** (funding and pricing plan);
- (d) **clause 21(2) of Schedule 3** (infrastructure strategy). 35

**47 Collective duty of regional advisory panel**

~~A regional advisory panel for a regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation—~~

- ~~(a) wholly or mostly for the benefit of all communities in the entity's service area; and 5~~
- ~~(b) taking into account the diversity of the communities, and the diversity of the communities' interests, in that area; and~~
- ~~(c) taking into account the interests of future as well as current communities in that area. 10~~

A regional advisory panel for a regional representative group of a water services entity must, in performing or exercising its duties, functions, and powers under legislation, take into account—

- (a) that the panel should, whenever reasonably practicable, perform or exercise them wholly or mostly for the benefit of all consumers and communities in the entity's service area; and 15
- (b) the diversity of the consumers and communities, and the diversity of the consumers' and communities' interests, in that area; and
- (c) the interests of present and future consumers and communities in that area. 20

Compare: 2002 No 84 s 14

**48 Decision making by regional advisory panel**

Decisions made by a regional advisory panel for a regional representative group of a water services entity must be made—

- (a) by consensus if consensus can be reached by regional advisory panel members taking all reasonably practicable steps to reach consensus in accordance with a procedure, and within a time frame, specified in the constitution; and 25
- (b) in any other case, by 75% of the regional advisory panel members present and voting. 30

**49 Panel may regulate its own procedure if none specified**

A regional advisory panel for a regional representative group of a water services entity may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter.



*Appointment of regional advisory panel members*

- 50 Method of appointing territorial authority panel members** 5
- The territorial authority owners of a water services entity may appoint territorial authority panel members to a regional advisory panel in accordance with **section 45(2)** and the constitution.
- 51 Method of appointing mana whenua panel members**
- Mana whenua whose rohe or takiwā is within the service area of a water services entity may appoint mana whenua representatives to a regional advisory panel in accordance with **section 45(2)** and the constitution.
- 52 Requirements before appointment as regional advisory panel member** 10
- (1) Before a person is appointed as a regional advisory panel member, the person must—
- (a) consent in writing to the appointment; and
  - (b) certify that they are not disqualified from being a regional representative (*see* **section 97**); and 15
  - (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity (if the person is, or is to be, interested, as defined in **section 100**, in those matters). 20
- (2) A disclosure under **subsection (1)(c)** must be made,— 20
- (a) in the case of a proposed appointment as a territorial authority panel member, to the entity’s territorial authority owners;
  - (b) in the case of a proposed appointment as a mana whenua panel member, to the mana whenua whose rohe or takiwā is within the entity’s service area. 25
- (3) As soon as practicable after becoming aware of a failure to comply with **subsection (1)(c)**, the regional advisory panel must notify the monitor.
- Compare: 2004 No 115 s 31

*Chairperson and deputy chairperson*

- 53 Appointment of chairperson and deputy chairperson** 30
- (1) Each regional advisory panel must elect or appoint, in accordance with the constitution (*see* **section 91(f)(x)**),—
- (a) 1 of its regional advisory panel members as chairperson of the panel; and
  - (b) 1 of its regional advisory panel members as deputy chairperson of the panel. 35

- (2) However, this section does not apply if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons, in accordance with **section 54**.

#### **54 Co-chairpersons and deputy co-chairpersons**

- (1) The constitution may provide that a regional advisory panel must elect or appoint, in accordance with the constitution (*see section 91(f)(x)*),— 5
- (a) 2 of its regional advisory panel members as co-chairpersons of the panel; and
  - (b) 2 of its regional advisory panel members as deputy co-chairpersons of the panel. 10
- (2) If the constitution provides for, and requires, a regional advisory panel to elect or appoint co-chairpersons and deputy co-chairpersons of the panel,—
- (a) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel’s territorial authority panel members; and
  - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel’s mana whenua panel members; and 15
  - (c) references in legislation, other than this section, to the panel’s chairperson are taken to be references to both of its co-chairpersons; and
  - (d) references in legislation, other than this section, to the panel’s deputy chairperson are taken to be references to both of its deputy co-chairpersons. 20

#### *Official information*

#### **55 Application of Local Government Official Information and Meetings Act 1987 to regional ~~representative~~ advisory panel**

- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to a regional advisory panel for the regional representative group of a water services entity. 25
- (2) This section does not limit—
- (a) **section 44** (which relates to the application of Part 7 of that Act to the regional ~~representative~~ representative group); or 30
  - (aa) **section 60(6)** (which relates to the application of Part 7 of that Act to the entity’s board); or
  - (b) **section 61** (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

## Subpart 6—Boards of water services entities

*Role, membership, and accountability***56 Board's role**

- (1) The board is the governing body of a water services entity, with the authority, in the entity's name, to exercise the powers and perform the functions of the entity. 5
- (2) All decisions relating to the operation of a water services entity must be made by, or under the authority of, the board in accordance with this Act.
- Compare: 2004 No 115 s 25

**57 Membership of board**

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- (1) The board of a water services entity consists of no fewer than 6, and no more than 10, members.
- (2) The board appointment committee must appoint board members who, collectively, have knowledge of, and experience and expertise in relation to,—
- (a) performance monitoring and governance; and 15
- (b) network infrastructure industries (for example, water services network infrastructure industries); and
- (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (ca) public health; and
- (cb) the environment; and 20
- (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and
- (e) perspectives of consumers and communities; and
- (f) perspectives of local government.

**58 Chairperson and deputy chairperson**

25

The board of a water services entity must have a chairperson and a deputy chairperson appointed by the regional representative group, or by its board appointment committee, in accordance with the constitution.

**59 Accountability of board members to regional representative group**

- (1) Board members must comply with— 30
- (a) the board's collective duties (*see sections 73 and 74*); and
- (b) their individual duties as board members (*see sections 75 to 79*).
- (2) Board members of an entity are accountable to the entity's regional representative group for performing their duties as board members.
- Compare: 2004 No 115 s 26 35

*Obligation to hold specified meetings in public***60 Board must hold 2 public meetings each financial year**

- (1) The board of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **public board meetings**). 5
- (2) At least 1 of the public board meetings must be held after 1 July each year for the purpose of considering the entity's performance under its statement of intent in the previous financial year.
- (3) The board must—
- (a) give public notice of the details of the public meeting at least 1 month before the meeting; and 10
  - (b) allocate a reasonable amount of time for members of the public attending a public board meeting to address the board in relation to the subject matter of the meeting.
- (4) To the extent consistent with the requirements of this section, a public board meeting is subject to the rules and requirements that normally apply to the meetings of the board. 15
- (5) This section prevails in the event of any conflict between this section and the rules and requirements that normally apply to meetings of the board.
- (6) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the board. 20

*Official information***61 Application of Local Government Official Information and Meetings Act 1987 to water services entity**

- (1) Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a water services entity ~~as if the entity were a local authority.~~ 25
- (2) This section does not limit—
- (a) **section 44** (which relates to the application of Part 7 of that Act to the entity's regional representative group); or
  - (b) **section 55** (which relates to the application of Part 7 of that Act to a regional advisory panel for that regional representative group); or 30
  - (c) **section 60(6)** (which relates to the application of Part 7 of that Act to the entity's board).

*Appointment, removal, and conditions of board members***62 Method of appointing board members** 35

- (1) Board members are appointed by a board appointment committee.

- (2) The appointment must be made by written notice to the board member (with a copy to the water services entity).
- (3) The notice must—
- (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the board member receives the notice; and 5
  - (b) state the term of the appointment.

Compare: 2004 No 115 s 28(2)

### **63 Criteria for appointments by board appointment committee**

- (1) A board appointment committee must appoint board members under **section 62** in accordance with the criteria for board members and the process for appointment under this Act (including the appointment and remuneration policy (if any) approved by the regional representative group under **section 40**). 10
- (2) The board appointment committee may only appoint a person who, in the committee's opinion, has the appropriate knowledge, skills, and experience to assist the water services entity to achieve its objectives and perform its functions. 15
- (3) In making an appointment, the board appointment committee must take into account the desirability of promoting diversity in the membership of the board.

Compare: 2004 No 115 s 29

### **64 Requirements before appointment as board member**

- (1) Before a person is appointed as a board member of a water services entity, the person must— 20
  - (a) consent in writing to the appointment; and
  - (b) certify that they are not disqualified from being a board member (*see section 97*); and
  - (c) disclose to the chairperson of the entity's regional representative group the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the entity (if the person is, or is to be, interested, as defined in section 100, in those matters). 25
- (2) The board of a water services entity must notify the chairperson of the entity's regional representative group of a failure to comply with **subsection (1)(c)** as soon as practicable after becoming aware of the failure. 30

Compare: 2004 No 115 s 31

### **65 Term of office of board members**

- (1) A board member holds office for 5 years or any shorter period stated in the notice of appointment. 35
- (2) A board member may be reappointed.

- (3) A board member continues in office despite the expiry of their term of office until—
- (a) the board member is reappointed; or
  - (b) the board member’s successor is appointed; or
  - (c) the board appointment committee informs the board member by written notice (with a copy to the water services entity) that the board member is not to be reappointed and no successor is to be appointed at that time. 5
- (4) This section is subject to **section 72**.  
Compare: 2004 No 115 s 32
- 66 Validity of board members’ acts** 10
- The acts of a person as a member, chairperson, or deputy chairperson of the board are valid even if—
- (a) a defect existed in the appointment of the person; or
  - (b) the person is or was disqualified from being a board member; or
  - (c) the occasion for the person acting, or for their appointment, had not arisen or had ended. 15
- Compare: 2004 No 115 s 34
- 67 Validity of appointments of board members**
- (1) The appointment of a person as a member, chairperson, or deputy chairperson of the board is not invalid only because a defect existed in the appointment of the person. 20
- (2) This section does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson (if any).  
Compare: 2004 No 115 s 35(1) and (2)(a)
- 68 Removal of board members** 25
- (1) The board appointment committee may, at any time for just cause, remove a board member from office.
- (2) The removal must be made by written notice to the board member (with a copy to the water services entity).
- (3) The notice must state— 30
- (a) the date on which the removal takes effect which must not be earlier than the date on which the board member receives the notice; and
  - (b) the reasons for the removal.
- (4) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the 35

board or the individual duties of members (depending on the seriousness of the breach).

Compare: 2004 No 115 ss 37, 39(1)–(3), 40

## **69 Process for removal**

The board appointment committee may remove a board member with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the principles of natural justice; and
- (b) a proper consideration of the matter.

Compare: 2004 No 115 s 41(a) and (b)

## **70 No compensation for board member's loss of office** 10

A board member is not entitled to any compensation or other payment or benefit relating to them ceasing, for any reason, to hold office as a board member.

Compare: 2004 No 115 s 43

## **71 Resignation of board members**

- (1) A board member may resign from office by giving written notice to the board appointment committee (with a copy to the water services entity) signed by the board member. 15
- (2) The resignation is effective on receipt of the notice by the board appointment committee or at any later time specified in the notice. 20

Compare: 2004 No 115 s 44

## **72 Board members ceasing to hold office**

A board member ceases to hold office if the board member—

- (a) resigns in accordance with **section 71**; or
- (b) is removed from office in accordance with **section 68**; or
- (c) becomes disqualified from being a member under **section 97(2)**. 25

Compare: 2004 No 115 s 45

### *Collective duties of board*

## **73 Board must act consistently with objectives, functions, operating principles, and statement of intent**

The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent. 30

Compare: 2004 No 115 s 49

## **74 Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi**

The board of a water services entity must— 35

- (a) ensure that the entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, the entity has the capacity and capability to—
- (i) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and 5
- (ii) engage with, and understand perspectives of, mana whenua; and
- (b) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi.
- Individual duties of board members* 10
- 75 Duty of board members to comply with relevant legislation**
- A board member of a water services entity must not contravene, or cause the contravention of, or agree to the entity contravening, this Act or the Water Services Act 2021.
- Compare: 2004 No 115 s 53 15
- 76 Duty of board members to act with honesty and integrity**
- A board member of a water services entity must, when acting as a board member, act with honesty and integrity.
- Compare: 2004 No 115 s 54
- 77 Duty of board members to act in good faith and not at expense of water services entity's interests** 20
- (1) A board member of a water services entity must, when acting as a board member, act in good faith and not pursue their own interests at the expense of the entity's interests.
- (2) A board member of a water services entity commits an offence if the board member performs or exercises a duty, function, or power of a board member of the entity— 25
- (a) in 1 or both of the following ways:
- (i) other than in good faith;
- (ii) knowingly pursuing their own interests at the expense of the entity's interests; and 30
- (b) knowing that their performance or exercise of the duty, function, or power will, or is likely to, cause the entity serious loss.
- (3) A person convicted of an offence against **subsection (2)** is liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000. 35
- Compare: 1993 No 105 ss 138A, 373(4); 2004 No 115 s 55



**78 Duty of board members to act with reasonable care, diligence, and skill**

A board member of a water services entity must, when acting as a board member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the entity; and 5
- (b) the nature of the action.

Compare: 2004 No 115 s 56

**79 Duty not to disclose information**

A board member of a water services entity who has information in their capacity as a board member that would not otherwise be available to them must not disclose that information to any person or make use of, or act on, that information, except— 10

- (a) in the performance of the entity's functions; or
- (b) as required or permitted by law; or
- (c) in complying with the requirements for board members to disclose interests. 15

Compare: 2004 No 115 s 57(1)

*Effect of non-compliance with duties***80 Accountability for collective board duties**

- (1) The duties of the board and board members of a water services entity under **sections 73 and 74 (collective duties)** are duties owed to the entity's regional representative group. 20
- (2) If a board does not comply with any of its collective duties, the board appointment committee may remove all or any of the board members from office.
- (3) However, **subsection (2)** does not apply to a board member if— 25
  - (a) the board member did not know, and could not reasonably be expected to know, that the duty was to be or was being breached; or
  - (b) the board member took all reasonable steps in the circumstances to prevent the duty being breached.
- (4) The taking of reasonable steps does not require a board member to apply to a court for an order under **section 84**. 30
- (5) This section and **section 81** do not affect any other ground for removing a board member from office.

Compare: 2004 No 115 s 58(1)–(4), (7)

**81 Board member's liability for breach of collective duty** 35

- (1) A board member of a water services entity is not liable for a breach of a collective duty under this Act.

- (2) However, **subsection (1)** does not limit **section 80(2)**.
- (3) **Subsection (1)** does not affect—
- (a) anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or 5
- (b) the right to apply for a court order under **section 84**.
- Compare: 2004 No 115 s 58(5), (6), (8)
- 82 Accountability of board members for individual duties**
- (1) The duties of the board members of a water services entity under **sections 75 to 79 (individual duties)** are duties owed to the entity and the entity’s regional representative group. 10
- (2) If a board member does not comply with their individual duties, that board member may be removed from office (subject to any requirements in **sections 68 and 69** that are applicable to the board member).
- (3) A water services entity may bring an action against a board member for breach of any individual duty. 15
- (4) This section and **section 83** do not affect any other ground for removing a board member from office.
- Compare: 2004 No 115 s 59(1)–(3), (5)
- 83 Board member’s liability for breach of individual duty** 20
- (1) A board member of a water services entity is not liable for a breach of an individual duty under this Act except as provided in **section 82(2) and (3)**.
- (2) **Subsection (1)**—
- (a) does not affect anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or 25
- (b) the right to apply for a court order under **section 84**.
- Compare: 2004 No 115 s 59(4), (6)
- 84 Court actions requiring or restraining board or board members**
- (1) The Minister or a regional representative may apply to a court for an order— 30
- (a) restraining the board or a board member of a water services entity from engaging in conduct that would contravene any requirement under this Act; and
- (b) granting any consequential relief.
- (2) The court may make an order on the application subject to the following rules: 35
- (a) an order may be made only if it is just and equitable to do so:
- (b) no order may be made in respect of conduct that has been completed.

- (3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order.
- (4) This section is subject to **section 115**.  
Compare: 2004 No 115 s 60(1), (3)–(5) 5

### *Delegation*

#### **85 Board's ability to delegate**

- (1) The board of a water services entity may delegate any of the functions or powers of the entity or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons: 10
- (a) a board member:
  - (b) the chief executive or any ~~other~~ employee of the entity:
  - (c) a committee of the board:
  - (d) any class of persons comprising any of the persons listed in **paragraphs (a) to (c)**. 15
- (2) **Subsection (1)** does not apply to any functions or powers specified in this Act as not being capable of delegation.
- (3) The board must not delegate the general power of delegation.  
Compare: 2004 No 115 s 73

#### **86 Powers of delegate** 20

- (1) A delegate to whom any functions or powers of a water services entity or its board are delegated—
- (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the entity or the board; 25  
and
  - (b) may delegate the function or power only—
    - (i) with the prior written consent of the board; and
    - (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate. 30
- (2) A delegate who purports to perform a function or exercise a power under a delegation—
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
  - (b) must produce evidence of their authority to do so, if reasonably requested to do so. 35

Compare: 2004 No 115 s 74

**87 Effect of delegation on water services entity or board**

No delegation in accordance with this Act—

- (a) affects or prevents the performance of any function or the exercise of any power by a water services entity or its board; or
- (b) affects the responsibility of the board for the actions of any delegate acting under the delegation; or 5
- (c) is affected by any change in the membership of the board, or of any committee or class of persons, or by any change in a chief executive or other employee.

Compare: 2004 No 115 s 75 10

**88 Revocations of delegations**

- (1) A delegation under **section 85** may be revoked at will by—
  - (a) resolution of the board and written notice to the delegate; or
  - (b) any other method provided for in the delegation.
- (2) A delegation under **section 86(1)(b)** may be revoked at will by written notice of the delegate to the subdelegate. 15

Compare: 2004 No 115 s 76

*Board procedure***89 Board may regulate its own procedure if none specified**

The board may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter. 20

*Subpart 7—Constitutions of water services entities***90 Entity must have constitution**

Each water services entity must have a constitution that complies with the requirements of this Act. 25

**91 What constitution must contain**

The constitution of a water services entity must provide for the following matters:

*Composition of regional representative group*

- (a) the composition of the regional representative group, including— 30
  - (i) ~~whether the group consists of 12 or 14 regional representatives (see **section 27(2) and (3)**); and~~
  - (i) the group's number (which must be a whole number and an even number) of regional representatives (see **section 27(2) and (3)**); and 35

- (ii) the procedures for the appointment of territorial authority representatives to the group (*see* **section 32**), which must include procedures for ensuring that appointed representatives achieve equitable and reasonable representation of relevant metropolitan, provincial, and rural authorities; and 5
- (iii) the procedures for the appointment of mana whenua representatives to the group (*see* **section 33**); and
- (iv) the requirements before appointment to the group, including disclosure of interests (*see* **section 34**); and
- (v) the procedures for the appointment of regional representatives to the board appointment committee (*see* **section 38**); and 10
- (vi) the composition of any other committees; and
- (vii) the term of office of regional representatives; and
- (viii) how a person ceases to be a regional representative; and
- (ix) the process and grounds for removing regional representatives; and 15
- (x) how the group's chairperson and deputy chairperson are elected or appointed or, if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, how they are elected or appointed (*see* **sections 41 and 42**): 20
- Procedures for regional representative group*
- (b) how the group will perform or exercise its functions, powers, and duties:
- (ba) procedures to enable or support effective decision making by the group:
- (c) arrangements and requirements for meetings of the group and of committees (including the board appointment committee) of the group, including— 25
- (i) the intervals between meetings; and
- (ii) the information that must be presented at meetings; and
- (iii) when minutes are required to be kept; and
- (iv) the manner of calling meetings; and 30
- (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
- (vi) the quorum and procedure for meetings, including decision-making procedures: 35
- (d) if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see* **section 42**),—
- (i) the procedure, for a regional representative to disclose details of an interest, required for the purposes of **section 102(4)(c)**:

- (ii) the procedure, for the board to notify a failure by a board member to comply with **section 101 or 105(1)**, and the acts affected, required for the purposes of **section 106(1)(b)**:
- (iii) the procedure, for giving a permission for 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by **section 105**, required for the purposes of **section 107(5)**: 5
- (e) procedures and time frames for making decisions by consensus (*see section 30*): 10
- Composition of regional advisory panel*
- (f) the composition of a regional advisory panel, including— 10
- (i) the total number of regional advisory panel members (*see section 45(2)*); and
- (ii) the particular geographic area for which the panel is responsible (*see section 46*); and 15
- (iii) the procedures for the appointment of territorial authority panel members to the panel (*see section 50*); and
- (iv) the procedures for the appointment of mana whenua panel members to the panel (*see section 51*); and
- (v) the requirements before appointment as a regional advisory panel member, including disclosure of interests (*see section 52*); and 20
- (vi) the composition of any committees; and
- (vii) the term of office of regional advisory panel members; and
- (viii) how a person ceases to be a regional advisory panel member; and
- (ix) the process and grounds for removing regional advisory panel members; and 25
- (x) how the panel's chairperson and deputy chairperson are elected or appointed or, if the constitution provides that the panel has co-chairpersons and deputy co-chairpersons, how they are elected or appointed (*see sections 53 and 54*): 30
- Procedures for regional advisory panel*
- (g) arrangements and requirements for meetings of a regional advisory panel and of committees of the panel, including—
- (i) the intervals between meetings; and
- (ii) the information that must be presented at meetings; and 35
- (iii) when minutes are required to be kept; and
- (iv) the manner of calling meetings; and

- (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
- (vi) the quorum and procedure for meetings, including decision-making procedures: 5
- (h) if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons (*see* **section 54**),—
- (i) the procedure, for a regional advisory panel member to disclose details of an interest, required for the purposes of **section 103(4)(c)**: 10
- (ii) the procedure, for giving a permission for 1 or more regional advisory panel members, or regional advisory panel members with a specified class of interest, to do anything otherwise prohibited by **section 105**, required for the purposes of **section 107(8)**: 15
- (i) procedures and time frames for making decisions by consensus (*see* **section 48**):
- Procedures for performing duty to provide funding for specified remuneration, expenses, or costs*
- (j) procedures for the entity to perform its duty under **section 114(1)** to provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the following remuneration, expenses, or costs: 20
- (i) remuneration for, and reasonable expenses of,— 25
- (A) regional representatives:
- (B) regional advisory panel members:
- (ii) reasonable administrative costs of each meeting of that group or panel:
- (iii) reasonable costs of that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution: 30
- (iv) reasonable costs related to that group or panel establishing or operating committees:
- (v) reasonable costs of territorial authority owners and mana whenua related to participating in appointment procedures for that group or panel: 35
- (vi) reasonable costs for that group or panel obtaining advice to enable it to perform or exercise effectively its duties, functions, or powers under this Act or the constitution:

- (via) reasonable costs of training, or capacity building, for that group or panel:
- (vii) other reasonable costs related to that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution: 5
- (viii) any unforeseen costs incurred with the prior approval of the board of the entity:
- Composition of board*
- (k) the composition of the board, including—
- (i) the procedures for the appointment of board members by the board appointment committee (*see sections 62 and 63*); and 10
- (ii) the requirements before appointment to the board, including disclosure of interests (*see section 64*); and
- (iii) the term of office of board members (*see section 65*); and
- (iv) how a person ceases to be a board member (*see section 72*); and 15
- (v) how the chairperson and deputy chairperson of the board will be appointed and their term of office:
- Procedures for board*
- (l) the procedures for the board, including—
- (i) the intervals between meetings; and 20
- (ii) the information that must be presented at meetings; and
- (iii) when minutes are required to be kept; and
- (iv) the manner of calling meetings; and
- (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and 25
- (vi) the quorum and procedure for meetings:
- (m) decision-making procedures, including any requirements relating to voting or consensus decision-making:
- Procedures for dispute resolution* 30
- (n) procedures for dispute resolution (in addition to those in **section 43(4) and (5)**), including procedures for resolving—
- (i) disputes within a regional representative group (that is, between regional representatives); and
- (ii) disputes between the regional representative group and the board; 35  
and
- (iii) disputes between parties that are able to appoint regional representatives and that are disputes about appointment processes:



*Procedures for 1 or more meetings each year of territorial authority owners*

- (na) procedures for 1 or more meetings each year of territorial authority owners (which must include, without limitation, procedures that ensure that Part 7 of the Local Government Official Information and Meetings Act 1987 applies to those meetings): 5

*Procedures for reviewing, amending, or replacing the constitution*

- (o) procedures for reviewing, amending, or replacing the constitution (*see sections 95 and 96*).

**92 Constitution may contain other matters not inconsistent with Act** 10

- (1) The constitution of a water services entity may provide for any other matters that are not inconsistent with this Act or any other legislation.
- (2) In particular, the constitution may provide for—
- (a) collective or individual experience, expertise, qualifications, or skills required of a regional representative group, its committees, or its regional representatives (in addition to those required by **section 38(2)** for members of a board appointment committee): 15
- (b) collective or individual experience, expertise, qualifications, or skills required of any regional advisory panel, its committees, or its members:
- (c) collective experience, qualifications, skills or expertise required of the board (in addition to those required by **section 57(2)** for board members): 20
- (d) additional reporting and monitoring requirements imposed on the board by the regional representative group, over and above requirements in the statement of strategic and performance expectations, statement of intent, annual report, asset management plan, funding and pricing plan, and infrastructure strategy: 25
- (e) reviews, done by the regional representative group, of the board's performance, including the intervals between those reviews.
- (3) **Subsection (2)** does not limit **subsection (1)**. 30

**93 Effect of constitution**

- (1) A constitution of a water services entity has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other legislation.
- (2) The constitution cannot—
- (a) delegate or transfer duties, functions, or powers imposed or conferred by this Act: 35
- (b) confer decision-making rights weighted by shares held by a territorial authority owner for any matter:

- (c) confer on a territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative any right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (*see also sections 15(3) and 166(1)(a)*): 5
- (d) confer a power of direction contrary to **section 115**.
- (3) The constitution is binding, in accordance with its terms, as between—
- (a) the regional representative group, its regional representatives, and its committees; and
- (b) the regional representative group, and the territorial authority owners and mana whenua who, under this Act (*see sections 32 and 33*) and the constitution, appoint and remove regional representatives; and 10
- (c) any regional advisory panel, its members, and its committees; and
- (d) the board, its members, and its committees.
- (4) **Subsection (2)** is subject to the rest of this Act (for example, to the board's ability under **sections 85 to 88** to delegate the functions or powers of the entity or the board). 15
- 94 First constitution of water services entity**
- (1) The first constitution of a water services entity is the model constitution for the entity set out in regulations. 20
- (2) But, when that model constitution is first amended or replaced under **section 95 or 96**,—
- (a) that model constitution as so amended or replaced must set out all provisions of the entity's constitution (including any unchanged from that model constitution); and 25
- (b) the regulations setting out the model constitution for the entity are revoked.
- 95 Process for amending or replacing constitution**
- (1) A regional representative group may propose to amend the water services entity's constitution or adopt a new constitution for the entity in the manner provided in this section. 30
- (2) A proposed amendment to the entity's constitution or a proposed new constitution for the entity must be approved by the Minister before it is effective.
- (3) A draft constitution, or a proposed amendment to the entity's constitution, must be— 35
- (a) in writing; and
- (b) approved at a general meeting of the group by a resolution passed by a 75% majority of all of the group's regional representatives; and

- (c) otherwise proposed in accordance with the constitution.
- (4) The regional representative group must ensure that written notice of the draft constitution or proposed amendment is ~~provided to the Minister.~~—
- (a) provided to the Minister; and
- (b) published, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 5
- (4A) The Minister may, after that 20-working-day period, approve or reject the amendment or proposed new constitution.
- (5) If the Minister approves the amendment or proposed new constitution, the amendment or replacement constitution is effective— 10
- (a) on the day immediately after the date of that approval; or
- (b) on a later date that is specified in the amendment or replacement, and that is in accordance with the terms of the resolution of the group under **subsection (3)(b).**
- (6) A proposed amendment to the entity’s constitution or a proposed new constitution for the entity has no effect if rejected by the Minister. 15
- (7) The constitution as amended or replaced under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (8) For that Act, the regional representative group is, despite the Minister’s approval, taken to be the maker of the constitution. 20
- (9) This section does not apply to an amendment of a type described in **section 96(1).**

## **96 Minor or technical amendments**

- (1) A regional representative group may, in the manner provided by the constitution, amend the water services entity’s constitution under this section if the amendment— 25
- (a) has no more than a minor effect; or
- (b) corrects errors or makes similar technical alterations.
- (2) The regional representative group must, in accordance with the constitution, ensure that written notice of the amendment is sent to the monitor. 30
- (3) If no objection from the monitor is received within 20 working days after the date on which the notice is served (or any longer period specified in the entity’s constitution), the regional representative group may make the amendment.
- (4) If the group makes the amendment, the amendment is effective— 35
- (a) on the day immediately after the date on which the group makes the amendment; or
- (b) on a later date that is specified in the amendment.

- (5) The constitution as amended under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 8—General provisions relating to regional representatives,  
regional advisory panel members, and board members

*Qualifications* 5

**97 Qualifications of regional representatives, regional advisory panel members, and board members**

- (1) A natural person who is not disqualified by this section may be a regional representative, a regional advisory panel member, or a board member of a water services entity. 10
- (2) The following persons are disqualified from being a regional representative, regional advisory panel member, or a board member:
- (a) a person who is an undischarged bankrupt;
  - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993: 15
  - (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
  - (d) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person’s— 20
    - (i) competence to manage their own affairs in relation to their property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare: 25
  - (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person: 30
  - (f) a member of Parliament.
- (3) The following persons are also disqualified from being a board member:
- (a) a regional representative;
  - (b) a regional advisory panel member: 35
  - (c) a member—
    - (i) of a territorial authority; and

(ii) elected under section 19B or 19C of the Local Electoral Act 2001.

Compare: 2004 No 115 s 30

*Reliance on information and advice*

- 98 When regional representatives, regional advisory panel members, and board members may rely on certain information and advice** 5
- (1) A regional representative, regional advisory panel member, or board member, of a water services entity may, when acting as a regional representative, regional advisory panel member, or board member, rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: 10
- (a) an employee of a water services entity whom the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned: 15
- (b) a professional adviser or expert in relation to matters that the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be within the person's professional or expert competence: 20
- (c) any other regional representative, regional advisory panel member, or board member or a committee on which the regional representative, regional advisory panel member, or board member did not serve in relation to matters within the designated authority of the regional representative, regional advisory panel member, board member, or committee (as applicable). 25
- (2) This section applies to a regional representative, regional advisory panel member, or board member only if they— 25
- (a) act in good faith; and
- (b) make proper inquiry if the need for inquiry is indicated by the circumstances; and
- (c) have no knowledge that the reliance is unwarranted. 30

Compare: 2004 No 115 s 61(1), (3)

*Conflict of interest disclosure rules*

- 99 Water services entity must keep interest registers for entity, regional representative group, and regional advisory panel** 35
- A water services entity must keep a separate interest register for each of the following:
- (a) interests of board members:
- (b) interests of regional representatives:

- (c) interests of regional advisory panel members.

### 100 When person is interested

- (1) A person is **interested** in a matter if the person—
- (a) may derive a financial benefit from the matter; or
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) is otherwise directly or indirectly interested in the matter. 10
- (2) However, a person is not interested in a matter—
- (a) because the person receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or
  - (b) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under this Act or another Act; or 15
  - (c) only because they have past or current involvement in the relevant sector, industry, or practice.
- (3) In this section, **matter** means,—
- (a) in relation to a board member,— 20
    - (i) a water services entity’s performance of its functions or exercise of its powers; or
    - (ii) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the entity:
  - (b) in relation to a regional representative,— 25
    - (i) a regional representative group’s performance of its functions or exercise of its powers; or
    - (ii) a board appointment committee’s performance of its functions or exercise of its powers:
  - (c) in relation to a regional advisory panel member, a regional advisory panel’s performance of its functions or exercise of its powers. 30

Compare: 2004 No 115 s 62

### 101 Obligation of board member to disclose interest

- (1) A board member who is interested in a matter relating to a water services entity must disclose details of the interest in accordance with **subsection (4)** as soon as practicable after the board member becomes aware that they are interested. 35

- (2) A general notice of an interest in a matter relating to a water services entity, or in a matter that may in future relate to the entity, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 5
- (4) A board member must disclose details of an interest in the interests register kept by the water services entity, and to—
- (a) the chairperson of the board or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the board; 10  
or
- (b) the regional representative group, if there is neither a chairperson nor a deputy chairperson of the board, or if both the chairperson and the deputy chairperson of the board are unavailable or interested.
- Compare: 2004 No 115 ss 63, 64 15

## 102 Obligation of regional representative to disclose interest

- (1) A regional representative who is interested in a matter relating to an entity's regional representative group must disclose details of the interest in accordance with **subsection (4)** as soon as practicable after the member becomes aware that they are interested. 20
- (2) A general notice of an interest in a matter relating to a regional representative group, or in a matter that may in future relate to the group, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 25
- (4) A regional representative must disclose details of an interest in the interests register kept by the water services entity, and—
- (a) to the chairperson of the regional representative group or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the group; or 30
- (b) to the monitor, if there is neither a chairperson nor a deputy chairperson of the regional representative group, or if both the chairperson and the deputy chairperson of the group are unavailable or interested; or
- (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see sections 42 and 91(d)*). 35

Compare: 2004 No 115 ss 63, 64

**103 Obligation of regional advisory panel member to disclose interest**

- (1) A regional advisory panel member who is interested in a matter relating to a regional advisory panel for an entity's regional representative group must disclose details of the interest in accordance with **subsection (4)** as soon as practicable after the member becomes aware that they are interested. 5
- (2) A general notice of an interest in a matter relating to a regional advisory panel, or in a matter that may in future relate to the panel, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 10
- (4) A regional advisory panel member must disclose details of an interest in the interests register kept by the water services entity, and—
- (a) to the chairperson of the regional advisory panel or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the panel; or 15
  - (b) to the monitor, if there is neither a chairperson nor a deputy chairperson of the regional advisory panel, or if both the chairperson and the deputy chairperson of the panel are unavailable or interested; or
  - (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the panel to have co-chairpersons and deputy co-chairpersons (*see sections 54 and 91(h)*). 20

Compare: 2004 No 115 ss 63, 64

**104 What must be disclosed**

The details that must be disclosed under **sections 101, 102, and 103** are— 25

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

Compare: 2004 No 115 s 65 30

**105 Consequences of being interested in matter***Board member*

- (1) A board member who is interested in a matter relating to a water services entity—
- (a) must not vote or take part in any discussion or decision of the board or otherwise participate in any activity of the entity that relates to the matter; and 35
  - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and



- (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a discussion or decision relating to the matter occurs or is made.

*Regional representative*

- (2) A regional representative who is interested in a matter relating to a regional representative group— 5
- (a) must not vote or take part in any discussion or decision of the group or otherwise participate in any activity of the group that relates to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the group during which a discussion or decision relating to the matter occurs or is made. 10

*Regional advisory panel member*

- (3) A regional advisory panel member who is interested in a matter relating to a regional advisory panel— 15
- (a) must not vote or take part in any discussion or decision of the panel or otherwise participate in any activity of the panel that relates to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the panel during which a discussion or decision relating to the matter occurs or is made. 20

Compare: 2004 No 115 s 66

## **106 Consequences of failing to disclose interest**

*Board*

- (1) As soon as practicable after becoming aware of a failure by a board member to comply with **section 101 or 105(1)**, the board must notify the failure and the acts affected— 25
- (a) to the chairperson of the regional representative group (if the constitution does not provide for the group to have co-chairpersons and deputy co-chairpersons); or 30
- (b) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see sections 42 and 91(d)*).

*Regional representative group*

- (2) The regional representative group must notify the monitor of a failure by a regional representative to comply with **section 102 or 105(2)**, and the acts affected, as soon as practicable after becoming aware of the failure. 35

*Regional advisory panel*

- (3) The regional advisory panel must notify the monitor of a failure by a regional advisory panel member to comply with **section 103 or 105(3)**, and the acts affected, as soon as practicable after becoming aware of the failure.

*Validity of act or matter*

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- (4) A failure to comply with **section 101, 102, 103, or 105** does not affect the validity of an act or a matter.
- (5) However, **subsection (4)** does not limit the right of any person to apply, in accordance with law, for judicial review.

Compare: 2004 No 115 s 67

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**107 Permission to act despite being interested in matter***Board*

- (1) The chairperson of the board may, by prior written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by **section 105** if the chairperson is satisfied that it is in the public interest to do so.
- (2) The deputy chairperson (if any) of the board may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.

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*Regional representative group*

- (3) The chairperson of a regional representative group may, by prior written notice to the regional representative group, permit 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by **section 105** if the co-chairperson is satisfied that it is in the public interest to do so.
- (4) The deputy chairperson of a regional representative group may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (5) Despite **subsections (3) and (4)**, if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see section 42*), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see section 91(d)*).

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*Regional advisory panel*

- (6) The chairperson of a regional advisory panel may, by prior written notice to the regional advisory panel, permit 1 or more regional advisory panel members, or regional advisory panel members with a specified class of interest, to do anything otherwise prohibited by **section 105** if the co-chairperson is satisfied that it is in the public interest to do so.
- (7) The deputy chairperson of a regional advisory panel may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.

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- (8) Despite **subsections (6) and (7)**, if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons (*see section 53*), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see section 91(h)*).  
*Permission* 5
- (9) A permission may state conditions that the board member, regional representative, or regional advisory panel member must comply with.
- (10) A permission may be amended or revoked in the same way as it may be given.  
 Compare: 2004 No 115 s 68(1)–(5)
- 108 Permission must be disclosed in annual report** 10
- The water services entity must disclose an interest to which a permission under **section 107** relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.  
 Compare: 2004 No 115 s 68(6) 15
- 109 Entity may avoid certain acts done in breach of conflict of interest rules**
- (1) A water services entity may avoid a natural person act done by the entity in respect of which a board member was in breach of **section 105**.
- (2) However, the act of a board member—
- (a) may be avoided only within 3 months of the affected act being notified— 20
- (i) to the chairperson of the regional representative group, under **section 101(a)**; or
- (ii) under **section 106(1)(b)**, and in accordance with the procedure specified, for the purposes of **section 106(1)(b)**, in the constitution; and 25
- (b) cannot be avoided if the entity receives fair value in respect of the act.
- (3) An act in which a board member is interested can be avoided on the ground of the board member’s interest only in accordance with this section.  
 Compare: 2004 No 115 s 69 30
- 110 What is fair value**
- (1) A water services entity is presumed to receive fair value in respect of an act that is done by the entity in the ordinary course of its business and on usual terms and conditions.
- (2) Whether a water services entity receives fair value in respect of an act must be determined on the basis of the information known to the entity and to the interested board member at the time the act is done. 35  
 Compare: 2004 No 115 s 70

**111 Onus of proving fair value**

- (1) A person who is seeking to prevent an act from being avoided, and who knew, or ought reasonably to have known, of the board member's interest at the time the act was done, has the onus of establishing fair value.
- (2) In any other case, a water services entity has the onus of establishing that it did not receive fair value. 5

Compare: 2004 No 115 s 71

**112 Effect of avoidance on third parties**

The avoidance of an act under **section 109** does not affect the title or interest of a person to or in property that the person has acquired if the property was acquired— 10

- (a) from a person other than the water services entity; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the act under which the person referred to in **paragraph (a)** acquired the property from the entity. 15

Compare: 2004 No 115 s 72

*Vacancies in membership***113 Vacancies in membership of board, regional representative group, or regional advisory panel**

- (1) The powers and functions of a water services entity are not affected by any vacancy in the membership of— 20
- (a) its board; or
- (b) its regional representative group; or
- (c) a regional advisory panel for that group.
- (2) The powers and functions of a water services entity's regional representative group are not affected by any vacancy in the membership of— 25
- (a) the entity's board; or
- (b) the regional representative group; or
- (c) a regional advisory panel for that group.
- (3) The powers and functions of a regional advisory panel for the regional representative group of a water services entity are not affected by any vacancy in the membership of— 30
- (a) the regional advisory panel; or
- (b) the regional representative group; or
- (c) the entity's board. 35

Compare: 2004 No 115 s 77

*Duties to provide funding and information***114 Duties to provide funding and information***Duty to provide funding for remuneration, expenses, or costs*

- (1) A water services entity must provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the remuneration, expenses, or costs specified in **section 91(j)**. 5

*Duty to provide information*

- (2) A water services entity must provide information that the entity holds if that information is required— 10
- (a) by any territorial authority owner, any mana whenua in the service area, the entity's regional representative group, or a regional advisory panel for that group; and
- (b) to help the territorial authority owner, mana whenua, group, or panel perform or exercise its duties, functions, or powers under this Act. 15
- (3) But personal information within the meaning of the Privacy Act 2020 may be provided under **subsection (2)** only in accordance with that Act.

**Part 3****Operation of water services entities***Independence of water services entities* 20**115 Safeguarding independence of water services entities**

- (1) The Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity or a board member or an employee of a water services entity—
- (a) in relation to the performance or exercise of a duty, function, or power under this Act; or 25
- (b) to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.
- (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act. 30
- (3) This section also prevents a constitution of a water services entity from conferring a power of direction that would contravene this section.
- (4) However, nothing in this section affects the performance or exercise of a territorial authority's regulatory duties, functions, or powers under legislation other than this Act. 35

Compare: 2004 No 115 s 113

*Obligation to maintain ownership and control of water services and significant assets*

**116 Obligation to maintain water services**

- (1) A water services entity must continue to provide water services and maintain its capacity to perform or exercise its duties, functions, or powers under this Act. 5
- (2) In order to perform or exercise its duties, functions, or powers under this Act, a water services entity must not do any of the following:
- (a) use water services ~~assets~~ infrastructure as security for any purpose;
  - (b) divest its ownership or other interest in any water services except in accordance with **Schedule 4**: 10
  - (c) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area except—
    - (i) in accordance with **Schedule 4**; or
    - (ii) if, in doing so, the entity retains its capacity to perform or exercise its duties, functions, or powers. 15
- (3) In this section,—
- significant infrastructure** means any of the following:
- (a) water services ~~assets~~ infrastructure that—
    - (i) ~~are~~ is owned ~~and~~ or operated by a water services entity for the purposes of delivering the delivery of water services to consumers or communities in any part of the entity's service area; and 20
    - (ii) a water services entity needs to retain to—
      - (A) maintain its capacity to achieve its objectives; or
      - (B) perform or exercise its duties, functions, or powers; or 25
      - (C) promote an outcome that the entity has identified as important to the current or future well-being of consumers or communities in the entity's service area; and
  - (b) infrastructure that is identified by the water services entity as being material to its operations and that is included in the entity's current statement of intent. 30

~~water services assets includes existing or proposed assets used or proposed to be used by the water services entity to provide water services.~~

Compare: 2002 No 84 s 130(2), (3)(a), (b), (c)

*Contracting out of water services***117 Contracts relating to provision of water services**

- (1) Despite **section 116**, a water services entity may enter into a contract for any aspect of the operation of all or part of water services for a term not longer than ~~35~~15 years. 5
- (2) If a water services entity enters into a contract under **subsection (1)**, it must—
- (a) continue to be legally responsible for providing the water services; and
  - (b) maintain ownership of the infrastructure and assets relating to the water services; and 10
  - (c) retain control over—
    - (i) the pricing of water services; and
    - (ii) developing policy related to the delivery of water services.
- (3) This section does not prevent a water services entity from entering into a contract with 1 or more other water services entities if the purpose of the contract relates solely to water services. 15

Compare: 2002 No 84, s 136

**118 Joint arrangements for purpose of providing water services**

- (1) **Section 116** does not prevent a water services entity from entering into, for the purpose of providing water services, a joint arrangement or joint water services entity arrangement for a term not longer than ~~35~~15 years (except a concession or other franchise agreement relating to the provision of the water services or any aspect of the water services). 20
- ~~(2) Before a water services entity enters into a joint arrangement or joint water services entity arrangement, it must have consulted in accordance with the procedures set out in Part 6 of the Local Government Act 2002 as if it were a local authority.~~ 25
- (2) Before a water services entity enters into a joint arrangement or joint water services entity arrangement, it must have engaged in accordance with **section 202** in relation to the arrangement with the following: 30
- (a) the territorial authority owners in whose district services will be delivered, or other arrangements made, as part of the arrangement; and
  - (b) the consumers and communities, and mana whenua, in the entity's service area; and
  - (c) any other interested persons that the board considers appropriate. 35
- (3) If a water services entity enters into a joint arrangement under **subsection (1)**, it must—
- (a) continue to be legally responsible for providing the water services; and

- (b) retain control over—
- (i) the pricing of water services; and
  - (ii) developing policy related to water services; and
- (c) after the end of the joint arrangement, retain ownership of all the infrastructure associated with the water services, whether or not the infrastructure was— 5
- (i) provided by the water services entity at the beginning of the joint arrangement; or
  - (ii) developed or purchased during the joint arrangement; and
- (d) not sell or transfer ownership of any existing infrastructure associated 10  
with the water services, unless the water services entity reasonably believes that the sale is—
- (i) incidental to the joint arrangement; and
  - (ii) desirable for the success of the joint arrangement.
- (4) In this section,— 15
- concession or other franchise agreement** means an agreement under which a person other than a water services entity is entitled to receive a payment from any person other than the water services entity for the supply of the water services
- joint arrangement** means an arrangement entered into by 1 or more water services entities with 1 or more bodies that are not water services entities for the purpose of providing water services or any aspect of a water service 20
- joint water services entity arrangement** means an arrangement entered into by 2 or more water services entities for the purpose of providing water services or any aspect of a water service. 25
- Compare: 2002 No 84 ss 136, 137

*Employees of water services entities*

**119 Employment of chief executive**

- (1) A chief executive of a water services entity is appointed by the entity's board.
- (2) The terms and conditions of employment of a chief executive must be agreed 30  
between the board and the chief executive.
- (3) When considering the terms and conditions of a chief executive, the board must have regard to all of the following (among any other relevant factors):
- (a) the legal, commercial, and operational context of the entity;
  - (b) the person's knowledge, skills, experience, and performance: 35
  - (c) the public interest in prudent stewardship of public resources;
  - (d) relevant market information.



- (4) A failure to comply with this section does not invalidate the acts of a chief executive of a water services entity.

Compare: 2004 No 115 s 117

## 120 Water services entity to be good employer

- (1) A water services entity must, if it employs employees,— 5
- (a) operate a personnel policy that complies with the principle of being a good employer; and
  - (b) make the policy (including the equal employment opportunities programme) available to its employees; and
  - (c) ensure its compliance with the policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance. 10
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy that contains provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring— 15
- (a) good and safe working conditions; and
  - (b) an equal employment opportunities programme; and
  - (c) the impartial selection of suitably qualified persons for appointment; and
  - (d) recognition of— 20
    - (i) the aims and aspirations of Māori; and
    - (ii) the employment requirements of Māori; and
    - (iii) the need for involvement of Māori as employees of the entity; and
  - (e) opportunities for enhancing the abilities of individual employees; and
  - (f) recognition of the aims and aspirations, employment requirements, and cultural differences of ethnic or minority groups; and 25
  - (g) recognition of the employment requirements of women; and
  - (h) recognition of the employment requirements of persons with disabilities; and
  - (i) recognition of the importance of achieving pay equity between female and male employees; and 30
  - (j) recognition of the importance of decisions about remuneration being free from bias including, but not limited to, gender bias.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers that cause or 35

perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Compare: 2004 No 115 s 118

### *Protections from liability*

- 121 Definitions for protections from liability** 5
- In **sections 122 to 126**,—
- board member**—
- (a) means a member of the board appointed under **section 57**; and
- (b) includes a board member who is a board member at any time after the commencement of this section but who ceases to be a board member 10
- effect insurance** includes to pay, whether directly or indirectly, the costs of the insurance
- employee**, in relation to a water services entity,—
- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under **section 119**; and 15
- (b) includes a person who is an employee at any time after the commencement of this section but who ceases to be an employee
- entity's functions** includes any function that an Act confers separately on a board member or employee of the entity
- excluded act or omission** means an act or omission by the board member or employee in good faith and in performance or intended performance of the entity's functions 20
- indemnify** includes to relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning. 25
- Compare: 2004 No 115 s 126
- 122 Protections for board members and employees from liabilities of water services entity**
- A board member or an employee of a water services entity is not liable for any liability of the entity by reason only of being a board member or an employee. 30
- Compare: 2004 No 115 s 120
- 123 Immunity from civil liability**
- (1) A board member of a water services entity is not liable, in respect of an excluded act or omission,—
- (a) to the entity, unless the excluded act or omission is also a breach of an individual duty under any of **sections 75 to 79**: 35
- (b) to any other person.

- (2) An employee of a water services entity is not liable to any person in respect of an excluded act or omission.
- (3) Nothing in this section affects—
- (a) the making of an order under **section 84**:
  - (b) the liability of any person that is not a civil liability: 5
  - (c) the right of any person to apply, in accordance with the law, for judicial review.
- Compare: 2004 No 115 s 121
- 124 Indemnities in relation to excluded act or omission**
- A water services entity may only indemnify a board member or an employee in respect of an excluded act or omission (including costs incurred in defending or settling any claim or proceeding relating to that excluded act or omission). 10
- Compare: 2004 No 115 s 122
- 125 Insurance for liability of board member or employee**
- A water services entity may effect insurance cover for a board member or an employee of the entity in relation to their acts or omissions, except an act or omission that is— 15
- (a) in bad faith; or
  - (b) not in the performance or intended performance of the entity’s functions.
- Compare: 2004 No 115 s 123 20
- 126 Breach of indemnity and insurance limits**
- (1) A board member or an employee who is indemnified or insured by a water services entity in breach of this Act must repay to the entity the cost of providing or effecting that indemnity or insurance cover, to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act. 25
- (2) The water services entity may recover the amount as a debt due in a court of competent jurisdiction.
- Compare: 2004 No 115 s 125
- Dealings with third parties by water services entities* 30
- 127 Method of contracting**
- (1) A contract or other enforceable obligation may be entered into by a water services entity as provided in this section.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of a water services entity in writing, signed under the name of the entity, by 2 or more of its board members. 35

- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of a water services entity in writing by a person acting under the entity's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of a water services entity in writing or orally by a person acting under the entity's express or implied authority. 5
- (5) This section applies to a contract or other obligation—
- (a) whether or not that obligation was entered into in New Zealand; and
- (b) whether or not the law governing that obligation is the law of New Zealand. 10
- Compare: 2004 No 115 s 127

### **128 Address for service and location of head office**

- (1) The address for service in respect of a water services entity is the address of the head office of the entity.
- (2) The head office of a water services entity must be located within its service area. 15
- Compare: 2004 No 115 s 130

## **Part 4**

### **Financial and accountability matters**

#### Subpart 1AA—Outline of Part 20

#### **128A Outline of Part (financial and accountability matters)**

##### *Planning, performance, and reporting continuous, and integrated with engagement*

- (1) Subparts 1 to 4 provide for a cycle of planning, performance, and reporting that is continuous, and that is integrated with engagement requirements (see sections 202 to 205). 25

##### *Government policy statement on water services*

- (2) Subpart 1 is about a Government policy statement on water services that—
- (a) states the Government's overall direction and priorities for water services; and 30
- (b) informs and guides agencies involved in, and the activities necessary or desirable for, water services.

##### *Statement of strategic and performance expectations*

- (3) Subpart 2 is about a regional representative group's statement of strategic and performance expectations that— 35

- (a) states the regional representative group’s objectives and priorities for water services in the entity’s service area; and
- (b) informs and guides the decisions and actions of the board of the entity.
- Te Mana o te Wai statement for water services*
- (4) **Subpart 3** is about a Te Mana o te Wai statement for water services provided to a water services entity by mana whenua. The entity must prepare, in accordance with engagement requirements (*see sections 202 to 205*), a response to the statement. That response must include a plan that sets out how the entity intends to give effect to Te Mana o te Wai, to the extent that it applies to the entity’s duties, functions, and powers.
- Reporting obligations*
- (5) **Subpart 4** provides for reporting obligations of a water services entity, through the following documents which, except for an annual report, are also prepared in accordance with engagement requirements (*see sections 202 to 205*):
- (a) a statement of intent;
- (b) an asset management plan;
- (c) a funding and pricing plan;
- (d) an infrastructure plan;
- (e) an annual report.
- Financial management and independence, accounting, and borrowing*
- (6) **Subpart 5** provides further for financial management and independence.
- (7) **Subpart 6** contains provisions about accounting records.
- (8) **Subpart 7** contains provisions about borrowing.
- Status of outline*
- (9) This outline is only a guide to this Part’s general scheme and effect.

#### Subpart 1—Government policy statement on water services

#### 129 Minister may issue Government policy statement on water services

- (1) The Minister may issue a Government policy statement on water services.
- (2) The Minister must review a Government policy statement no later than 3 years after the date on which it is issued and ~~subsequently later~~ at intervals of no more than 3 years after the most recent review.
- (3) A Government policy statement may be issued under **subsection (1)** if—
- (a) the Government policy statement is consistent with the objectives of water services entities under **section 11**; and
- (b) the Minister has complied with **section 131(b)**.

- (4) A Government policy statement issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2019 No 50 s 22

### **130 Purpose and content of Government policy statement**

- (1) The purpose of a Government policy statement is to— 5
- (a) state the Government’s overall direction and priorities for water services; and
  - (b) inform and guide agencies involved in, and the activities necessary or desirable for, water services.
- (2) A Government policy statement must include the following: 10
- (a) the Government’s overall direction for water services, which must include a multi-decade outlook;
  - (b) the Government’s priorities for water services;
  - (c) how the Government expects other agencies to support that direction and those priorities: 15
  - (d) the Government’s expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai;
  - (e) how the Government expects water services entities to take into account the well-being of consumers and communities.
- (3) A Government policy statement may also include— 20
- (a) the Government’s expectations in relation to the contribution of water services entities to the outcomes sought by the Government in the following areas:
    - (i) public health;
    - (ii) the environment: 25
    - (iii) planning processes, growth, and housing and urban development;
    - (iv) climate change mitigation and adaptation;
    - (v) water security;
    - (vi) resilience to natural hazards;
    - (vii) local procurement, employment, joint arrangements, and joint water services entity arrangements: 30
  - (b) any other matters the Minister considers relevant.

Compare: 2019 No 50 s 23

### **131 Preparation or review of Government policy statement**

When preparing or reviewing a Government policy statement, the Minister must— 35

- (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and
- (b) ~~consult~~ engage in accordance with **section 202** in relation to the preparation or review of the Government policy statement with—
- (i) the water services entities; and 5
  - (ii) the regional representative group of each water services entity; and
  - (iii) Taumata Arowai—the Water Services Regulator; and
  - (iv) other persons, and representative groups of persons, who have an interest in water services in New Zealand. 10

Compare: 2019 No 50 s 24

### **132 Water services entities to give effect to Government policy statement**

A water services entity must give effect to any Government policy statement (as that term is defined in **section 6**) when performing its functions.

Compare: 2019 No 50 s 26

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### **133 Amending Government policy statement**

- (1) The Minister may amend a Government policy statement at any time.
- (2) **Sections 131 and 134** (which relate to the preparation and availability of a Government policy statement)—
- (a) apply with the necessary modifications to an amendment to the Government policy statement; but 20
  - (b) do not apply if the amendment to the Government policy statement is not significant.

Compare: 2019 No 50 s 29

### **134 Obligation to publish and present Government policy statement** 25

- (1) As soon as practicable after issuing a Government policy statement, the Minister must—
- (a) present a copy to the House of Representatives; and
  - (b) arrange for a copy to be given to each water services entity.
- (2) The department must make the Government policy statement publicly available 30 as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible.

Compare: 2019 No 50 s 28

Subpart 2—Regional representative group’s  
statement of strategic and performance expectations

- 135 Regional representative group must issue and review, and may replace, statement of strategic and performance expectations**
- (1) The regional representative group of a water services entity must issue a statement of strategic and performance expectations for the entity. 5
- (2) The regional representative group must, at least once during every year after the year in which a statement of strategic and performance expectations is issued, review the statement.
- (3) The regional representative group may, following a review, issue a new statement of strategic and performance expectations that replaces the statement of strategic and performance expectations that was reviewed, in which case, the reviewed statement expires when it is replaced. 10
- (4) A statement of strategic and performance expectations must relate to at least ~~3~~ 10 financial years. 15
- (5) Before issuing a statement or new statement, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
- (a) on the statement or new statement; and
- (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (see **section 91(f)(ii)**). 20
- 136 Purpose and content of statement of strategic and performance expectations**
- (1) The purpose of a statement of strategic and performance expectations for a water services entity is to— 25
- (a) state the regional representative group’s objectives and priorities for water services in the entity’s service area; and
- (b) inform and guide the decisions and actions of the board of the entity.
- (2) A statement of strategic and performance expectations for a water services entity must— 30
- (a) include the following matters:
- (i) the regional representative group’s expectations and strategic priorities for the entity;
- (ii) the outcomes the group expects to be achieved through the delivery of water services by the entity: 35



- (iii) how the group expects the water services entity to meet its objectives, perform or exercise its duties, functions and powers, and comply with its operating principles:
- (iv) how the group expects the water services entity to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity's duties, functions, and powers; and 5
- (b) require the entity to give effect to the objective under **section 11(a)** of delivering water services and related infrastructure in an efficient and financially sustainable manner; and
- (c) consider the needs and concerns of consumers and communities, as articulated in the latest consumer engagement stocktake under **section 204.** 10
- (3) A matter under **subsection (2)(a)** must not be inconsistent with the direction and priorities for water services in the Government policy statement (if any) issued under **section 129.** 15

**137 Water services entity to give effect to statement of strategic and performance expectations**

The board of a water services entity must give effect to the statement of strategic and performance expectations for the entity when performing its functions.

Compare: 2019 No 50 s 26

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**138 Obligation to publish statement of strategic and performance expectations**

- (1) The regional representative group of a water services entity must provide a copy of a statement of strategic and performance expectations to the board of the entity as soon as practicable after issuing it.
- (2) The board must make the statement of strategic and performance expectations publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 25

**139 Obligation of regional representative group to review board performance**

The regional representative group of a water services entity must annually review the performance of the board in giving effect to the statement of strategic and performance expectations. 30

Subpart 3—Te Mana o te Wai statements for water services

**140 Mana whenua may provide Te Mana o te Wai statements for water services**

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- ~~(1) Mana whenua whose rohe or takiwā includes a freshwater body in the service area of a water services entity may provide the entity with a Te Mana o te Wai statement for water services.~~

- (1) A Te Mana o te Wai statement for water services may be provided to a water services entity by mana whenua—
- (a) whose rohe or takiwā includes a water body in the service area; or
- (b) whose interests in the service area are recognised in a Treaty settlement Act. 5
- (2) A Te Mana o te Wai statement for water services provided under **subsection (1)** may—
- (a) be provided by an individual iwi or hapū, or by a group of iwi or hapū:
- (b) relate to 1 ~~fresh~~water body, or to multiple ~~fresh~~water bodies.
- (3) Mana whenua who have provided a Te Mana o te Wai statement for water services under **subsection (1)**— 10
- (a) may review the statement at any time; and
- (b) following a review, may provide a new statement that replaces the statement that was reviewed, in which case, the reviewed statement expires when it is replaced. 15
- (4) A statement provided under **subsection (1) or (3)(b)** expires after 10 years.
- 141 Water services entity must respond to Te Mana o te Wai statement for water services**
- (1) As soon as practicable after receiving a Te Mana o te Wai statement for water services under **section 140**, the board of a water services entity must— 20
- (a) acknowledge receipt of the statement; and
- (b) engage with the mana whenua who provided the statement in accordance with **section 202** in relation to the preparation of a response to the Te Mana o te Wai statement for water services.
- (2) A response to a Te Mana o te Wai statement for water services must include a plan that sets out how the water services entity intends (consistent with, and without limiting, **section 4(1)(b)**) to give effect to Te Mana o te Wai, to the extent that it applies to the entity’s duties, functions, and powers. 25
- 142 Obligation to publish response to Te Mana o te Wai statement for water services** 30
- The board of a water services entity must make its response to a Te Mana o te Wai statement for water services publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible—
- (a) as soon as practicable after issuing the response; and 35
- (b) in any event, within 2 years after receiving the statement to which it relates.

## Subpart 4—Reporting obligations

*Forecasting assumptions and risks***142A Forecasting assumptions and risks to be identified**

- (1) This section applies to a reporting obligations document that must—
- (a) be prepared under this subpart; and 5
  - (b) include forecast financial statements.
- (2) The document must identify clearly—
- (a) all significant forecasting assumptions and risks underlying the financial estimates;
  - (b) in particular the following assumptions on which the financial estimates are based: 10
    - (i) the entity’s assumptions about the life cycle of significant assets; and
    - (ii) the entity’s assumptions about sources of funds for the future replacement of significant assets; 15
  - (c) for significant forecasting assumptions and risks that involve a high level of uncertainty,—
    - (i) the fact of that uncertainty; and
    - (ii) an estimate of the potential effects of that uncertainty on the estimates provided in the document. 20

Compare: 2002 No 84 Sch 10, cl 17

*Planning: statement of intent***143 Purpose of statement of intent**

The purpose of a statement of intent is to promote the public accountability of a water services entity by— 25

- (a) setting out the entity’s strategic intentions; and
- (b) providing a base against which the water services entity’s actual performance can later be assessed.

Compare: 2004 No 115 s 138

**144 Board must prepare statement of intent** 30

- (1) The board of a water services entity must provide to the regional representative group a statement of intent that complies with this section and **section 145**.
- (2) The board must provide a statement of intent annually.
- (3) A statement of intent must—
  - (a) relate to at least the following ~~3~~10 financial years; and 35

- (b) be prepared in accordance with **Part 1 of Schedule 3**.
- (4) A statement of intent must contain a report from the Auditor-General on—
- (a) whether the statement gives effect to its purpose stated in **section 143**; and
  - (b) whether the statement provides a reasonable basis for long term integrated planning and accountability; and 5
  - (c) the reasonableness of assumptions, and information, underlying the forecasts information provided in the statement; and
  - (d) whether required disclosures have been made.
- (5) A statement of intent must also describe the significant longer-term issues, risks, and challenges, that the entity may face over a 30-year period, consistent with the entity’s infrastructure strategy adopted under **section 153**. 10
- (6) A statement of intent must include the information in **section 145(2)(e) and (3)(a) and (c)**—
- (a) in detail for each of the first 3 financial years covered by the statement; and 15
  - (b) in outline for each of the later financial years covered by the statement.

#### 145 Content of statement of intent

##### *Strategic elements*

- (1) A statement of intent for a water services entity must, for the period to which it relates, set out— 20
- (a) how the entity intends to meet its objectives, perform or exercise its duties, functions, and powers, and comply with its operating principles; and
  - (b) the outcomes the board expects to achieve through the delivery of water services; and 25
  - (c) how the entity intends to give effect to—
    - (i) the expectations, strategic priorities, and outcomes outlined in the statement of strategic and performance expectations for the entity; and 30
    - (ii) the direction and priorities in the Government policy statement; and
  - (d) how the statement relates to engagement requirements and will respond to or reflect the results of engagement; and
  - (e) an explanation of how the proposals in the statement are linked to the matters raised in, and the findings from, consumer engagement stock-takes. 35

*Operational elements*

- (2) A statement of intent for a water services entity must, for the period to which it relates, set out—
- (a) the nature and scope of the activities the entity proposes to undertake; and 5
  - (b) significant work that the entity proposes to undertake; and
  - (c) any actions the entity intends to take (consistent with its plan under **section 141(2)**) relating to water services as part of its response to a Te Mana o te Wai statement for water services; and
  - (d) how the entity proposes to approach consumer and community engagement; and 10
  - (e) a forecast statement of service delivery performance for water supply, wastewater, and stormwater services, including non-financial performance measures and targets about the quality of the services to be delivered. 15

*Financial elements*

- (3) A statement of intent must also include—
- (a) the forecast financial statements for each financial year in the period to which the statement of intent relates; and
  - (b) the financial statements for the financial year immediately preceding the period to which the statement of intent relates; and 20
  - (c) a forecast of expenditure to be applied to—
    - (i) meet additional demand for water supply, wastewater, and stormwater services; and
    - (ii) improve the level of the service delivery performance; and 25
    - (iii) replace existing assets.
- (4) For the purposes of this section, budgeted expenditure applied for 2 or all of the purposes in **subsection (3)** may be treated as if it were applied solely in relation to the primary purpose of the expenditure.

**146 Board must publish statement of intent** 30

The board of a water services entity must, as soon as practicable after providing a statement of intent to the entity's regional representative group, ~~make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.~~

- (a) provide the statement to the entity's territorial authority owners; and 35
- (b) make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

*Planning: asset management plan***147 Board must prepare asset management plan**

- (1) The board of a water services entity must provide an asset management plan to the entity's regional representative group at least once in every 3-year period.
- (2) The asset management plan must— 5
- (a) cover a period of not less than 10 consecutive financial years; and
  - (b) comply with **section 148**; and
  - (c) be prepared in accordance with **Part 2 of Schedule 3**.

**148 Content of asset management plan**

An asset management plan for a water services entity must, for the period to which it relates, set out— 10

- (a) the investment priorities for the infrastructure assets of the entity; and
- (b) how the entity will—
  - (i) operate, maintain, and renew its infrastructure assets; and
  - (ii) provide new infrastructure assets; and 15
- (c) how the plan meets the proposed activities and intention of the entity set out in its statement of intent; and
- (d) how the plan relates to any actions the entity intends to take (consistent with its plan under **section 141(2)**) as part of its response to a Te Mana o te Wai statement for water services. 20

**149 Obligation to publish asset management plan**

As soon as practicable after an asset management plan is provided to the regional representative group, the chief executive of a water services entity must—

- (a) make the plan publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and 25
- (b) prepare and publish a report on how the entity considered consumer and community, and territorial authority owner, input into, and feedback on, the plan and incorporated it into the plan. 30

*Planning: funding and pricing plan***150 Board must prepare funding and pricing plan**

- (1) The board of a water services entity must provide a funding and pricing plan to the entity's regional representative group at least once in every 3-year period.
- (2) The funding and pricing plan must— 35

- (a) cover a period of not less than 10 consecutive financial years; and
- (b) comply with **section 151**; and
- (c) be prepared in accordance with **Part 3 of Schedule 3**.

### **151 Content of funding and pricing plan**

- (1) A funding and pricing plan for a water services entity must, for the period to which it relates, set out— 5
- (a) the sources of, and the entity’s intended approach to, funding, revenue, and pricing; and
  - (b) the entity’s intended approach to pricing its services and charging consumers; and 10
  - (c) a financial strategy for all of the consecutive financial years covered by the funding and pricing plan.
- (2) A financial strategy must—
- (a) include a statement of the factors that are expected to have a significant impact on the water services entity during the consecutive financial years covered by the strategy, including— 15
    - (i) the expected changes in population and the use of land in the entity’s service area, and the capital costs and operating costs of providing for those changes; and
    - (ii) the expected capital expenditure and operating expenditure on network infrastructure that is required to maintain existing levels of service currently provided by the entity; and 20
    - (iii) other significant factors affecting the entity’s ability to maintain existing levels of service and to meet additional demands for services; and 25
  - (b) specify the entity’s policy on the giving of security for its borrowing; and
  - (c) specify the entity’s objectives for holding and managing financial investments and equity securities and its quantified targets for returns on those investments and equity securities. 30

Compare: 2002 No 84 s 101A(1), (3)(a), (c), (d)

### **152 Obligation to publish funding and pricing plan**

As soon as practicable after a funding and pricing plan is provided to the regional representative group, the chief executive must—

- (a) make the plan publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and 35

- (b) prepare and publish a report on how the entity considered consumer and community, and territorial authority owner, input into, and feedback on, the plan and incorporated it into the plan.

*Planning: infrastructure strategy*

- 153 Board must prepare and adopt infrastructure strategy** 5
- (1) The board of a water services entity must provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period.
- (1A) The purpose of an infrastructure strategy is to identify—
- (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and 10
- (b) the main options for managing those issues and the implications of those options.
- (2) The strategy must—
- (a) cover a period of at least 30 consecutive financial years; and
- (b) comply with **section 154**; and 15
- (c) be prepared in accordance with **Part 4 of Schedule 3**.
- 154 Content of infrastructure strategy**
- (1) An infrastructure strategy must identify—
- (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and 20
- (b) the main options for managing those issues and the implications of those options.
- (2) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends to operate, maintain, and renew its existing infrastructure assets and provide for new infrastructure over the period covered by the strategy. 25
- (2A) An infrastructure strategy must outline how the water services entity intends to manage its infrastructure assets, taking into account the need to—
- (a) renew or replace existing assets; and
- (b) respond to growth or decline in the demand for services reliant on those assets; and 30
- (c) allow for planned increases or decreases in levels of service provided through those assets; and
- (d) maintain or improve public health and environmental outcomes, or mitigate adverse effects on them; and 35



- (e) provide for the resilience of infrastructure assets by identifying and managing risks relating to natural hazards and by making appropriate financial provision for those risks.
- (2B) An infrastructure strategy must outline the most likely scenario for the management of the water services entity's infrastructure assets over the period of the strategy and, in that context, must— 5
- (a) show indicative estimates of the projected capital expenditure and operating expenditure associated with the management of those assets—
- (i) in each of the first 10 years covered by the strategy; and
- (ii) in each later period of 5 years covered by the strategy; and 10
- (b) identify—
- (i) the significant decisions about capital expenditure the entity expects it will be required to make; and
- (ii) when the entity expects those decisions will be required; and
- (c) include the following assumptions on which the scenario is based: 15
- (i) the entity's assumptions about the life cycle of significant infrastructure assets:
- (ii) the entity's assumptions about growth or decline in the demand for relevant services:
- (iii) the entity's assumptions about increases or decreases in relevant levels of service; and 20
- (d) if assumptions referred to in **paragraph (c)** involve a high level of uncertainty,—
- (i) identify the nature of that uncertainty; and
- (ii) include an outline of the potential effects of that uncertainty. 25
- (3) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends (consistent with, and without limiting, **section 4(1)(b)**) to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity's duties, functions, and powers.
- (3A) An infrastructure strategy must also contain a report from the Auditor-General on— 30
- (a) whether the strategy gives effect to its purpose stated in **section 153**; and
- (b) the quality of the information and assumptions underlying the forecast information provided in the strategy. 35
- (4) An infrastructure strategy for a water services entity must also identify and explain any significant connections with, or interdependencies between, the matters included in—
- (a) that infrastructure strategy; and

- (b) the infrastructure strategies prepared and adopted (under section 101B of the Local Government Act 2002) by local authorities in the entity's service area.

Compare: 2002 No 84 s 101B

**155 Obligation to publish infrastructure strategy** 5

The chief executive of a water services entity must, as soon as practicable after an infrastructure strategy is provided to the entity's regional representative group,—

- (a) make the strategy publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and 10
- (b) prepare and publish a report on how consumer and community, and territorial authority owner, input into, and feedback on, the strategy was considered and incorporated into the strategy.

*Reporting: annual report* 15

**156 Obligation to prepare and publish annual report**

- (1) A water services entity must,—
- (a) as soon as practicable after the end of, and within 4 months after, each financial year, prepare a report (with the contents required by **section 157**) on the affairs of the water services entity in the financial year to which the report relates; and 20
- (b) provide the report to its regional representative group no later than 15 working days after receiving the audit report provided under **section 161.**
- (2) A water services entity must publish a copy of its annual report on an Internet site maintained by, or on behalf of, the entity— 25
- (a) as soon as practicable after it has been provided to the regional representative group; and
- (b) in any event, no later than 20 working days after receiving the audit report. 30
- (3) When publishing the annual report, the entity must also consider whether to take additional or specific steps to ensure it is appropriately available to interested people.

Compare: 2004 No 115 s 150(1)

**157 Form and content of annual report** 35

- (1) An annual report of a water services entity must contain the following information and reports in respect of the financial year to which it relates:
- (a) information on operations that complies with **subsection (2):**

- (b) a statement of service delivery performance in accordance with **section 158**:
- (c) the annual financial statements for the entity in accordance with **section 159**:
- (d) a statement of responsibility in accordance with **section 160**: 5
- (e) an audit report in accordance with **section 161**:
- (f) information on compliance with its obligation to be a good employer, including its equal employment opportunities programme (*see section 120*):
- (g) information required by **section 162** (which relates to payments in respect of board members, chief executives, and employees during that financial year): 10
- (h) information on responses the board has made to Te Mana o te Wai statements for water services during that financial year (*see section 141*):
- (i) information on any action that the entity has taken (consistent with its plan under **section 141(2)**) as part of its response to a Te Mana o te Wai statement for water services (*see section 141*): 15
- (j) information required by **section 21(3)** (which relates to the enforcement of certain natural person transactions):
- (k) information required by **section 108** (which relates to permission to act despite being interested in a matter): 20
- (l) any matters that relate to or affect the entity's operations that the entity is otherwise required, or has undertaken, or wishes to report on in its annual report.
- (2) The annual report must provide the information that is necessary to enable an informed assessment to be made of the entity's operations for that financial year, including ~~an assessment of the entity's progress in relation to its strategic intentions as set out in the most recent statement of intent, asset management plan, and funding and pricing plan.~~ 25
- (a) an assessment of the entity's progress in relation to— 30
- (i) the strategic elements as set out in the most recent statement of intent (*see section 145(1)*); and
- (ii) the most recent asset management plan; and
- (iii) the most recent funding and pricing plan; and
- (b) an assessment of whether the entity is complying with its operating principles set out in **section 13**. 35

- (3) The annual report must present information about entity progress and performance in a clear manner, that is accessible to, and easy to comprehend by, consumers and communities.

Compare: 2004 No 115 s 151(1)(a)–(e), (g)–(k), (2)

**158 Form and content of statement of service delivery performance** 5

- (1) A statement of service delivery performance must, in relation to a water services entity and a financial year, contain the following information:
- (a) a comparison of the actual performance achieved with the forecast statement of service delivery performance in the statement of intent (*see **section 145(2)(e)***): 10
  - (b) whether any intended changes to the level of service delivery have been achieved:
  - (c) the reasons for any significant variation between the level of service delivery achieved and the intended level of service delivery:
  - (ca) whether proposed activities, work, and actions have been undertaken or taken as set out in the statement of intent (*see **section 145(2)(a), (b), and (c)***): 15
  - (cb) the reasons for any significant variation between proposed activities, work, and actions, and actual activities, work, and actions undertaken or taken: 20
  - (d) the actual revenue, capital expenditure, and operating expenditure, ~~and capital expenditure~~ for water supply, wastewater, and stormwater services, compared to the revenue, capital expenditure, and operating expenditure, ~~and capital expenditure~~ budgeted for those services in the statement of intent: 25
  - (e) information on consumer engagement stocktakes, including any relevant metrics, and a progress update on how the entity has been addressing and responding to consumer and community concerns.
- (2) For the purposes of **subsection (1)(d)**, the statement must separately provide for actual and budgeted expenditure applied to— 30
- (a) meet additional demand for the water supply, wastewater, and stormwater services:
  - (b) improve the level of service delivery performance:
  - (c) replace existing assets.
- (3) For the purposes of this section, actual or budgeted expenditure for 2 or all of the purposes in **subsection (2)** may be treated as if it were made solely in relation to the primary purpose of the expenditure. 35

Compare: 2004 No 115 s 153

**159 Annual financial statements**

- (1) As soon as practicable after the end of each financial year, a water services entity must prepare financial statements in relation to the entity for that financial year.
- (2) The financial statements must— 5
- (a) include any information or explanations needed to fairly reflect the financial operations and financial position; and
- (b) include the forecast financial statements prepared at the start of the financial year for comparison with the actual financial statements.

Compare: 2004 No 115 s 154

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**160 Statement of responsibility**

The statement of responsibility must—

- (a) contain a statement of the signatories' responsibility for the preparation of the financial statements and statement of performance and for the judgments in them; and 15
- (b) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and
- (ba) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of performance reporting; and 20
- (c) contain a statement that, in the opinion of the signatories, the financial statements and statement of performance for the financial year fairly reflect the financial position and operations of the water services entity; and 25
- (d) be dated and signed—
- (i) by 2 board members on behalf of the board; and
- (ii) by the chief executive.

Compare: 2004 No 115 s 155

**161 Audit report**

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- (1) A water services entity must forward to the Auditor-General—
- (a) the entity's annual financial statements and statement of service delivery performance; and
- (b) any other information that the Auditor-General has agreed, or is required, to audit. 35
- (2) The Auditor-General must, within 4 months after the end of a financial year,—
- (a) audit the statements and information referred to in **subsection (1)**; and

- (b) provide an audit report on those statements and that information to the water services entity.
- (3) The audit report must indicate whether those statements and that information—
- (a) comply with this Act; and
- (b) comply with generally accepted accounting practice; and 5
- (c) are free from material misstatement.
- Compare: 2004 No 115 s 156(1), (2)
- 162 Disclosure of payments in respect of board members and employees**
- (1) The annual report must include, in respect of the water services entity,—
- (a) a report on the remuneration that, in the financial year to which the report relates, was received by, or was payable to, each of the chief executive and each board member of the water services entity; and 10
- (b) a report on the number of employees who were employed by the entity—
- (i) on the last day of the financial year to which the report relates; 15  
and
- (ii) on the last day of the immediately preceding financial year; and
- (c) the amount of any severance payments made in the financial year to any person who vacated office as the chief executive; and
- (d) the number of employees of the entity to whom, in the financial year, severance payments were made and the amount of each severance payment (if any); and 20
- (e) the details of any indemnity provided by the entity during the financial year to the chief executive, any board member, or any employee; and
- (f) the details of any insurance cover effected by the entity during the financial year in respect of the liability or the costs of the chief executive, any board member, or any employee. 25
- (2) The report under **subsection (1)(a)** must include, in relation to the chief executive and each board member, the total annual remuneration (including the value of any non-financial benefits) that was paid to the person, or was payable to the person, in their capacity as a chief executive or as a board member of the entity during the financial year. 30
- (3) The report must state, as at the last day of the financial year,—
- (a) the number of full-time employees; and
- (b) the full-time equivalent number of all other employees; and 35
- (c) the number of employees receiving total annual remuneration of less than \$100,000; and

- (d) the number of employees receiving total annual remuneration of \$100,000 or more, expressed in bands of \$10,000.
- (4) If the number of employees in any band to which **subsection (3)(d)** applies is 5 or fewer, the number for that band must be combined with the next-highest band and the statement in the report in relation to that subsection must be adjusted accordingly. 5
- (5) In this section,—
- board member, chief executive, and employee** include a person who was a board member, the chief executive, or an employee at any time after the commencement of this section but who is no longer a board member, the chief executive, or an employee 10
- severance payment** means any consideration that a water services entity has agreed to provide to an employee in respect of that employee's agreement to the termination of their employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to— 15
- (a) any final payment of salary; or
- (b) any holiday pay; or
- (c) any superannuation contributions
- total annual remuneration**, in relation to an employee, a board member, or the chief executive of a water services entity, includes the value of any non-financial benefit that, during the year, was paid to the employee, board member, or chief executive, or was payable to the employee, board member, or chief executive, by the water services entity. 20
- Compare: 2004 No 115 s 152; 2002 No 84 Schedule 10, cls 32, 32A, 33
- 163 Information to be prepared in accordance with generally accepted accounting practice** 25
- All information that is required by any provision of this subpart to be included in a statement of intent, a funding and pricing plan, an asset management plan, an infrastructure strategy, or an annual report must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards. 30
- Compare: 2002 No 84 s 111
- 164 Insurance of assets**
- An annual report must state, as at the end of the financial year,— 35
- (a) the total value of all assets of the water services entity that are covered by insurance contracts and the maximum amount to which they are insured; and

- (b) the total value of all assets of the water services entity that are covered by financial risk sharing arrangements and the maximum amount available to the water services entity under those arrangements; and
- (c) the total value of all assets of the water services entity that are self-insured and the value of any fund maintained by the water services entity for that purpose. 5

Compare: 2002 No 84 Schedule 10 cl 31A

## Subpart 5—Other provisions for financial management and independence

### Major transactions 10

#### **164A Major transactions**

- (1) A water services entity must not enter into a major transaction unless the transaction is approved by, or contingent on approval by, a special resolution.
- (2) In this section,—
  - assets includes property of any kind, whether tangible or intangible 15
  - major transaction, in relation to a water services entity, means—
    - (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the entity’s assets before the acquisition; or
    - (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the entity the value of which is more than half the value of the entity’s assets before the disposition; or 20
    - (c) a transaction that has or is likely to have the effect of the entity acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the entity’s assets before the transaction 25
  - special resolution means a resolution—
    - (a) presented to all the entity’s regional representative group’s regional representatives in writing before that group’s meeting in which the resolution will be voted on; and 30
    - (b) approved by a majority of 75% of those representatives voting on the resolution.
- (3) In assessing the value of any contingent liability for the purposes of **paragraph (c)** of the definition of major transaction in **subsection (2)**, the entity’s board members— 35
  - (a) must have regard to all circumstances that the board members know, or ought to know, affect, or may affect, the value of the contingent liability; and



- (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (c) may take account of—
- (i) the likelihood of the contingency occurring; and
- (ii) any claim the entity is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability. 5
- (4) This section does not affect or limit **section 116 and Schedule 4.**  
Compare: 1993 No 105 s 129

### *Bank accounts*

- 165 Bank accounts of water services entities** 10
- (1) A water services entity must ensure that all money received by the entity is paid, as soon as practicable after it is received, into 1 or more bank accounts that are established, maintained, and operated by the entity at 1 or more of the following:
- (a) a registered bank or registered building society that satisfies a relevant credit-rating test specified in a notice in the *Gazette* published by the Minister of Finance; or 15
- (b) a registered bank or registered building society that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or 20
- (c) a bank outside New Zealand that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; ~~or.~~
- (d) ~~a bank outside New Zealand if the conditions specified in **subsection (2)** are met.~~
- (2) ~~The conditions referred to in **subsection (1)(d)** are as follows:~~ 25
- (a) ~~the water services entity must be authorised to establish, maintain, and operate 1 or more bank accounts at 1 or more banks outside New Zealand—~~
- (i) ~~by the Minister of Finance in writing; or~~
- (ii) ~~by a notice in the *Gazette* published by the Minister of Finance; and~~ 30
- (b) ~~the bank account or bank accounts must be of a type approved—~~
- (i) ~~by the Minister of Finance in writing; or~~
- (ii) ~~by a notice in the *Gazette* published by the Minister of Finance.~~
- (3) ~~A water services entity must establish, maintain, and operate a bank account referred to in **subsection (2)** subject to—~~ 35
- (a) ~~any conditions specified in a notice published in the *Gazette* by the Minister of Finance; and~~

- (b) ~~any conditions of the authorisation or approval given by the Minister of Finance.~~
- (4) A water services entity must ensure that it does not establish, maintain, or operate a bank account other than as provided for in **subsection (1)**.
- (5) ~~All money in a bank account at a registered bank or a registered building society must be denominated in New Zealand dollars unless the Minister of Finance allows otherwise.~~ 5
- (6) A water services entity must properly authorise the withdrawal or payment of money from a bank account of the entity.
- (7) There is a period of grace if a bank account ceases to qualify under **subsection (1)** and,— 10
- (a) during that period, the water services entity may continue to pay money into the bank account; but
- (b) by the end of the period, the water services entity must have closed the account and paid all the money in the account into another bank account 15 that qualifies under **subsection (1)**.
- (8) The period of grace ends on the earlier of—
- (a) the date that is 2 months after the bank account ceases to qualify under **subsection (1)**; and
- (b) the date that is specified by the Minister of Finance and notified to the 20 water services entity.

Compare: 2004 No 115 s 158

### *Financial independence*

#### **166 Financial independence**

- (1) A territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative— 25
- (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (and the constitution cannot confer any such right, title, or interest—*see also sections 15(3) and 93(2)(c)*); and 30
- (b) must not receive any equity return, directly or indirectly, from a water services entity; and
- (c) must not give a water services entity any financial support or capital; and
- (d) must not lend money or provide credit to a water services entity; and 35
- (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by a water services entity.
- (2) However, nothing in **subsection (1) or (3)** limits or affects—

- (a) the allocation or reallocation of shares under **sections 15(2) and 16**; or
- (b) the holding of those shares by the relevant territorial authority owner; or
- (c) voting under **Schedule 4** on a divestment proposal.
- (3) In this section,— 5
- equity return** means—
- (a) profits of the entity; or
- (b) distributions from the entity; or
- (c) any benefit derived, directly or indirectly, from a water services entity that represents, is calculated by reference to, or is determined by,— 10
- (i) a share in or proportion of the entity’s capital; or
- (ii) the entity’s surplus or residual economic value (after satisfying prior contractual claims); or
- (iii) the entity’s profitability or any other indicator of its success
- give financial support or capital** does not include to sell or supply goods or services on credit— 15
- (a) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
- (b) on terms and conditions generally available to other parties of equivalent creditworthiness 20
- lend money or provide credit**—
- (a) includes, without limiting the generality of that expression,—
- (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and
- (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and 25
- (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
- (iv) to subscribe for any debt securities or uncalled capital; but
- (b) does not include to sell or supply goods or services on credit— 30
- (i) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
- (ii) on terms and conditions generally available to other parties of equivalent creditworthiness 35
- security** has the meaning set out in section 6 of the Financial Markets Conduct Act 2013.

Compare: 2010 No 116 Schedule 2 cl 6; 2020 No 47 s 114

### Subpart 6—Accounting records

#### 167 Board must ensure that proper accounting records are kept

- (1) The board of a water services entity must cause accounting records to be kept that—
- (a) correctly record and explain the transactions of the entity; and 5
  - (b) will, at any time, enable the financial position of the entity to be determined with reasonable accuracy; and
  - (c) will enable the board members of the entity to ensure that the financial statements of the entity comply with **sections 159 and 163**; and
  - (d) will enable the financial statements of the water services entity to be readily and properly audited. 10
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form.

Compare: 2004 No 115 s 168

### Subpart 7—Borrowing 15

#### 168 Borrowing in foreign currency

A water services entity may borrow or enter into incidental arrangements within or outside New Zealand in currency other than New Zealand currency.

## Part 5 Monitoring 20

### Subpart 1—Monitor

#### *Appointment and role of monitor*

#### 169 Appointment and role of monitor

- (1) The Minister ~~may~~ must appoint a department to be the monitor.
- (2) The role of the monitor is— 25
- (a) to act as a steward to provide oversight of the water services system from a whole of government perspective; and
  - (b) to assist the Minister to carry out the Minister's role (which is described in **section 26**); and
  - (c) to perform or exercise any or all of the following functions or powers: 30
    - (i) administering appropriations:
    - (ii) administering legislation:
    - (iii) tendering advice to Ministers:

- (iv) any other functions or powers in this Act or another Act that may, or must, be performed by the monitor.
- (3) The monitor may exercise all powers that are—
- (a) conferred on the monitor by this Act; or
  - (b) reasonably necessary for performing the monitor's functions and duties. 5
- Compare: 2021 No 31 s 80

*Monitor's information-gathering power*

**170 Monitor's power to request information**

- (1) The monitor may, by notice in writing, require a water services entity, or any other relevant person, to provide it with information the monitor considers necessary to carry out its role under **section 169**. 10
- (2) ~~An~~ The entity or other relevant person must provide the information—
  - (a) by the date specified in the notice; or
  - (b) by any other date the monitor has agreed to.

**171 Good reason for refusing to supply requested information** 15

- (1) A request for information made under **section 170** may be refused if—
  - (a) the withholding of the information is necessary to protect the privacy of a living natural person ~~(whether or not a natural person or a deceased person)~~; or
  - (b) the supply of the information would limit the ability of the water services entity, or of any of its employees or board members, to perform or exercise duties, functions, or powers under this Act in relation to a particular matter. 20
- (2) A reason in **subsection (1)(a)** applies only if it is not outweighed by the monitor's need to have the information in order to exercise or perform its duties and functions, or powers under this Act. 25
- (3) The information cannot be withheld other than for the reasons in **subsection (1)**, and cannot be withheld at all if it could not properly be withheld under the ~~Official Information Act 1982~~ Local Government Official Information and Meetings Act 1987. 30

Compare: 2004 No 115 s 134

**172 Civil proceedings relating to non-compliance with information request**

- (1) The monitor may apply to the High Court for an order if an entity, or other relevant person, does not comply with **section 170**.
- (2) If the court is satisfied that the entity, or other relevant person, has not complied with **section 170**, the court may make either or both of the following: 35

- (a) an order directing the entity, or other relevant person, to comply with **section 170**;
- (b) an order imposing a civil pecuniary penalty not exceeding \$50,000.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that it considers appropriate in the circumstances, including an order directing the entity, or other relevant person, to pay to the monitor the reasonable costs of the proceedings. 5

Compare: 2021 No 36 s 143

### 173 Content of notice

- (1) A notice under **section 170** must state— 10
  - (a) the information required by the monitor; and
  - (b) the form in which the water services entity, or other relevant person, must provide the information; and
  - (c) the date by which the water services entity, or other relevant person, must provide the information. 15
- (2) The notice may require a water services entity, or other relevant person, to provide information—
  - (a) by instalments on specified dates;
  - (b) by instalments at specified intervals.

Compare: 2002 No 84 s 257(3), (5) 20

## Subpart 2—Minister’s powers to intervene

### 174 Meaning of problem for purposes of subpart

In this subpart, **problem** means a matter, circumstance, or failure (for example, any of the following matters, circumstances, or failures) that has actual or probable adverse consequences for consumers or communities in a water services entity’s service area: 25

- (a) a matter or circumstance relating to the management or governance of the entity that detracts from, or is likely to detract from, its ability to give effect to its purpose; and
- (b) a significant or persistent failure by the entity— 30
  - (i) to perform 1 or more of its functions or duties under this Act; or
  - (ii) to give effect to a Government policy statement issued by the Minister under **section 129**; and
- (c) the consequences of a state of emergency (within the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, 35
  - or recently affecting, the entity’s service area; and

- (d) a failure by the entity to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings; and
- (e) a potential problem that relates to a matter, circumstance, or failure specified in **paragraph (a), (b), or (d)**. 5

*Crown review team*

**175 Minister may appoint Crown review team**

- (1) The Minister may appoint a Crown review team to perform functions under this section if—
  - (a) the water services entity has received a notice under **section 170** and, without good reason, has not provided the information required by the notice by the stated or agreed date; or 10
  - (b) the Minister believes on reasonable grounds that a problem relating to the water services entity or the entity's regional representative group may exist and— 15
    - (i) the water services entity or the entity's regional representative group is unable or unwilling to effectively address the problem; or
    - (ii) a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group has recommended the appointment; or 20
  - (c) the Minister has received a written request to do so from the water services entity ~~or~~ the entity's regional representative group, or all or any of the entity's territorial authority owners, and the Minister believes on reasonable grounds that a problem relating to the entity or the entity's regional representative group may exist. 25
- (2) Before appointing a Crown review team, the Minister must give notice of the proposed appointment in accordance with **section 185**.
- (3) Before the Crown review team begins its review, the Minister must give notice of the appointment in accordance with **section 186**.
- (4) A Crown review team must, to the extent authorised by its terms of reference,— 30
  - (a) investigate and report on the nature and extent of the problem or failure to provide information; and
  - (b) make recommendations to the water services entity and the Minister on how the water services entity or the entity's regional representative group could address the problem (if any); and 35
  - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should

- appoint any other ministerial body in relation to the entity or the entity's regional representative group; and
- (d) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished. 5
- (5) To the extent authorised by its terms of reference, a Crown review team may also investigate, and report on, any related matter recommended by a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group.
- (6) A water services entity or the entity's regional representative group must— 10
- (a) co-operate with a Crown review team so that it may comply with its terms of reference; and
- (b) comply with any reasonable request of the Crown review team to provide any relevant information that the water services entity or the entity's regional representative group holds. 15
- (7) A Crown review team must produce a final report that complies with **section 188** as soon as practicable after completing a review.

Compare: 2002 No 84 s 258

#### **176 Appointment of Crown review team**

- (1) A Crown review team comprises 1 or more members. 20
- (2) If a Crown review team comprises 2 or more members, the Minister must appoint 1 member as the chairperson.
- (3) The Minister must appoint each member by notice in writing.
- (4) Each notice of appointment must include—
- (a) the terms of reference of the Crown review team, including— 25
- (i) an outline of the reason it has been appointed to perform functions under **section 175**; and
- (ii) the extent of its authority; and
- (b) the start and end dates of each member's appointment; and
- (c) the start and end dates of the review period. 30

Compare: 2002 No 84 s 258A

#### *Crown observer*

#### **177 Minister may appoint Crown observer**

- (1) The Minister may appoint a Crown observer to perform functions under this section if— 35



- (a) the Minister believes, on reasonable grounds, that a problem relating to a water services entity or the entity's regional representative group exists and—
- (i) the appointment of a Crown observer is necessary to enable, or better enable, the water services entity or the entity's regional representative group to effectively address the problem; or 5
- (ii) the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity's or the entity's regional representative group's progress in addressing the problem; or 10
- (iii) a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group has recommended the appointment; or
- (b) the Minister has received a written request to do so from the water services entity ~~or~~ the entity's regional representative group, or all or any of the entity's territorial authority owners, and the Minister believes, on reasonable grounds, that a problem relating to the entity or the entity's regional representative group exists. 15
- (2) Before appointing a Crown observer, the Minister must give notice of the proposed appointment in accordance with **section 185.** 20
- (3) Before the Crown observer begins their observation period, the Minister must give notice of the appointment in accordance with **section 186.**
- (4) A Crown observer must, to the extent authorised by the Crown observer's terms of reference,—
- (a) assist the water services entity or the entity's regional representative group to address the problem; and 25
- (b) monitor the water services entity's or the entity's regional representative group's progress in relation to the problem; and
- (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and 30
- (d) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished; and 35
- (e) assist the water services entity or the entity's regional representative group with, and monitor progress on, any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity or the entity's regional representative group. 40
- (5) A water services entity or the entity's regional representative group must—

- (a) co-operate with a Crown observer so that it may comply with its terms of reference; and
  - (b) comply with any reasonable request of the Crown observer to provide any relevant information that the water services entity or the entity's regional representative group holds. 5
- (6) A Crown observer must produce a final report that complies with **section 188** as soon as practicable after its observation period ends.
- Compare: 2002 No 84 s 258B

### **178 Appointment of Crown observer**

- (1) The Minister must appoint a Crown observer by notice in writing. 10
- (2) Each notice of appointment must include—
  - (a) the terms of reference of the Crown observer, including—
    - (i) an outline of the problem that the Crown observer has been appointed to observe; and
    - (ii) the extent of the Crown observer's authority; and 15
  - (b) the start and end dates of the Crown observer's appointment; and
  - (c) the start and end dates of the observation period.

Compare: 2002 No 84 s 258C

### *Crown manager*

### **179 Minister may appoint Crown manager** 20

- (1) The Minister may appoint a Crown manager to perform functions under this section if—
  - (a) the Minister believes, on reasonable grounds, that a problem relating to the water services entity or the entity's regional representative group exists and— 25
    - (i) the nature and extent of the problem is such that the water services entity or the entity's regional representative group is unlikely to effectively address the problem without the appointment of a Crown manager; or
    - (ii) the water services entity or the entity's regional representative group has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or 30
    - (iii) a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group has recommended the appointment; or 35
  - (b) the Minister has received a written request to do so from the water services entity ~~or~~ the entity's regional representative group, or all or any of

- the entity's territorial authority owners, and the Minister believes, on reasonable grounds, that a problem relating to the entity or the entity's regional representative group exists.
- (2) Before appointing a Crown manager, the Minister must give a notice of the proposed appointment in accordance with **section 185.** 5
- (3) Before the Crown manager begins their management period, the Minister must give notice of the appointment in accordance with **section 186.**
- (4) A Crown manager must, to the extent authorised by their terms of reference,—
- (a) direct the water services entity, or the board of the water services entity, or the entity's regional representative group to act to address the problem; and 10
- (b) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and 15
- (c) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished; and
- (d) direct the water services entity or the entity's regional representative group on any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity or the entity's regional representative group. 20
- (5) A Crown manager may work together with, or apart from, the board of a water services entity, or the entity's regional representative group. 25
- (6) A water services entity or the entity's regional representative group must—
- (a) co-operate with a Crown manager so that it may comply with its terms of reference; and
- (b) comply with the directions of a Crown manager; and
- (c) comply with any reasonable request of a Crown manager to provide any relevant information that the water services entity or the entity's regional representative group holds. 30
- (7) A Crown manager must produce a final report that complies with **section 188** as soon as practicable after their management period ends. 35
- Compare: 2002 No 84 s 258D

## **180 Appointment of Crown manager**

- (1) The Minister must appoint a Crown manager by notice in writing.
- (2) Each notice of appointment must include—
- (a) the terms of reference of the Crown manager, including—

- (i) an outline of the problem it has been appointed to manage; and
- (ii) the extent of the Crown manager's authority; and
- (b) the start and end dates of the Crown manager's appointment; and
- (c) the start and dates of the management period.

Compare: 2002 No 84 s 258E

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### Subpart 3—General provisions applying to Minister's powers to intervene

#### 181 Application

This subpart applies in relation to any appointment the Minister makes under **subpart 2**.

10

#### 182 Minister may consult

The Minister may consult any person, organisation, or group—

- (a) when determining what action, if any, to take under **subpart 2**;
- (b) when appointing a ministerial body;
- (c) when formulating the terms of reference for a ministerial body.

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Compare: 2002 No 84 s 258N

#### 183 Minister must publish list of matters

- (1) The Minister must publish a list of matters relevant to determining what action, if any, the Minister will take under **subpart 2**.
- (2) Without limiting **subsection (1)**, the list must include the following matters:
  - (a) guiding principles that the Minister is likely to adopt when making decisions under this Part;
  - (b) matters or circumstances relating to the management or governance of a water services entity that the Minister considers are likely to detract from the ability of the entity to give effect to its objectives or undertake its functions;
  - (c) the types and sources of information that the Minister is likely to consider when making decisions under this Part.
- (3) The Minister must review the list no later than 5 years after the date on which it is published and ~~subsequently~~ later at intervals of no more than 5 years after the most recent review.
- (4) The Minister must republish the list after each review.
- (5) Before publishing or republishing a list, the Minister—
  - (a) must consult Local Government New Zealand; and
  - (b) may consult any other person, organisation, or group.

35

- (6) In this section, **publish** and **republish** mean to publish in the *Gazette* and on an Internet site maintained by, or on behalf of, the monitor.

Compare: 2002 No 84 s 258O

#### **184 Minister must have regard to published list**

- (1) The Minister must, when determining what action, if any, to take under **subpart 2**, have regard to the list published under **section 183**. 5

- (2) However, the Minister may act under **subpart 2** and appoint a ministerial body in relation to a water services entity even if the problem in relation to the water services entity does not relate to a matter on the list.

Compare: 2002 No 84 s 258P

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#### **185 Notice of proposed appointment of ministerial body**

- (1) Before appointing a ministerial body to perform functions under this subpart in relation to a water services entity, the Minister must—

- (a) give the entity and the entity's regional representative group notice that the Minister intends to make the appointment; and 15

- (b) state—

(i) the reasons for the proposed appointment; and

(ii) the proposed terms of reference; and

- (c) give the entity an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, which must be no earlier than 10 working days after the date on which the Minister gives the notice to the entity: 20

(i) that the reasons for the Minister to make the appointment do not exist:

(ii) that the water services entity is acting effectively to address the problem (if any) or the reasons for the proposed appointment: 25

(iii) that, for any other reason, the Minister should not make the appointment:

(iv) that the Minister should appoint a different ministerial body.

- (2) The Minister must notify a water services entity, in writing, if the Minister decides not to appoint a ministerial body. 30

- (3) This section does not apply if—

- (a) the water services entity has requested the Minister to make the appointment; or

- (b) the problem in relation to which the Minister intends to make the appointment relates to the consequences of a state of emergency and the Minister believes, on reasonable grounds, that the public health or safety 35

of the people within the water services entity's service area is, or is likely to be, endangered.

Compare: 2002 No 84 s 258Q

### **186 Notice of appointment of ministerial body**

- (1) A notice of appointment of a ministerial body under **section 175(3), 177(3), or 179(3)** must— 5
- (a) be in writing; and
  - (b) be given as soon as is reasonably practicable after the Minister makes the appointment; and
  - (c) be sent to the relevant water services entity and the entity's regional representative group; and 10
  - (d) be published in the *Gazette*; and
  - (e) be publicly notified.
- (2) A notice of appointment must include—
- (a) a statement that the Minister has appointed a ministerial body in relation to the relevant water services entity; and 15
  - (b) the type of ministerial body appointed; and
  - (c) the terms of reference; and
  - (d) the start and end dates of the ministerial body's appointment; and
  - (e) the name of each member of the ministerial body; and 20
  - (f) if applicable, the name of the chairperson of the ministerial body.
- (3) The Minister must notify any change in the membership of a ministerial body by notice in the *Gazette*.
- (4) In this section, **publicly notify** means to publish—
- (a) a notice on an Internet site maintained by, or on behalf of, the monitor; and 25
  - (b) any other notice that the Minister thinks desirable in the circumstances.

Compare: 2002 No 84 ss 258S, 258T

### **187 Information to Minister**

A ministerial body must inform the Minister about— 30

- (a) the steps it is taking to address the problem; and
- (b) the progress of those steps.

Compare: 2020 No 47 s 128(1)

### **188 Final report of ministerial body**

- (1) A final report produced by a ministerial body under **section 175(7), 177(6), or 179(7)** must include— 35

- (a) a narrative description of the activities of the ministerial body in relation to its terms of reference; and
- (b) in respect of the problem in relation to which the ministerial body was appointed, an assessment of progress in addressing the problem; and
- (c) any final recommendations of the ministerial body to all or any of the Minister, the water services entity, and the entity's regional representative group ~~or both~~; and 5
- (d) without limiting **paragraph (c)**, any final recommendations of the ministerial body to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and 10
- (e) any other matter required by the ministerial body's terms of reference.
- (2) The Minister must, as soon as practicable,— 15
- (a) give a copy of the report to the relevant water services entity and the entity's regional representative group; and
- (b) make the report publicly available, excluding any information that it is necessary to withhold for any of the reasons stated in section 6 or 7 of the Local Government Official Information and Meetings Act 1987. 20

Compare: 2002 No 84 s 258U

### **189 Remuneration and expenses of ministerial appointees**

- (1) A ministerial appointee is entitled—
- (a) to receive remuneration for services as a member of a ministerial body as determined by the Minister in accordance with the fees framework; and 25
- (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in providing the services as a member in accordance with the fees framework.
- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 30

Compare: 2002 No 84 s 258V

### **190 Recovery of expenses from water services entity**

- (1) A water services entity owes, as a debt to the Crown, any expenses that the Crown incurs for the appointment of a Crown manager in relation to the entity, including the payment of remuneration and expenses to the Crown manager. 35
- (2) Any expenses that the Crown incurs for the appointment of a Crown observer or a Crown review team in relation to a water services entity, including the pay-

ment of remuneration and expenses to the Crown observer or any member of the Crown review team, may be recovered by the Crown from the entity if—

- (a) the Minister decides that it is reasonable to do so in the circumstances; and
- (b) the terms of reference authorise the recovery.

5

Compare: 2002 No 84 s 258W

### **191 Minister may terminate appointment of ministerial body or ministerial appointee**

(1) The Minister may terminate the appointment of a ministerial body or ministerial appointee at any time by notice in writing.

10

(2) The Minister must give notice of the termination of a ministerial body—

- (a) in writing to the water services entity and the entity's regional representative group; and
- (b) by notice in the *Gazette*; and
- (c) by public notice.

15

(3) The Minister must give notice of the termination of the appointment of a ministerial appointee in writing to the appointee, the water services entity, and the entity's regional representative group.

(4) No compensation is payable to a ministerial appointee as a result of the appointee's termination.

20

Compare: 2002 No 84 s 258X

### **192 Protection from liability for ministerial appointees**

(1) A ministerial appointee is not liable for any act done or omitted to be done by the appointee in good faith in the performance or intended performance of the appointee's functions, responsibilities, and duties, or the exercise of the appointee's powers as a ministerial appointee.

25

(2) The protection from liability in **subsection (1)** includes protection in relation to acts done or omitted to be done by a Crown manager when directing a water services entity to act.

Compare: 2002 No 84 s 258Y

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### **193 Disclosure of information held by water services entity**

(1) For the purposes of this Part, information held by a water services entity may be disclosed to the Minister or a ministerial body despite anything to the contrary in the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987, or the Privacy Act 2020.

35



- (2) However, the Minister, the ministerial body, or a ministerial appointee must not publish or disclose the information to any other person except in accordance with those Acts.

Compare: 2002 No 84 s 258Z

**194 Decisions and directions of Crown manager remain in force** 5

On and from the expiry of the term of a Crown manager appointed in relation to a water services entity,—

- (a) a direction given to the water services entity by the Crown manager ceases to have effect; and
- (b) despite **paragraph (a)**, any decision made by the water services entity giving effect to the direction continues in force unless and until the board of the entity revokes or amends the decision. 10

Compare: 2002 No 84 s 258ZA(1), (2), (3)

## Part 6

### Miscellaneous provisions 15

#### Subpart 1—Reviews

**195 Interim review of governance and accountability arrangements under Act**

- (1) The Minister must, in the relevant period, commission a review of the need for, and the operation and effectiveness of, the governance and accountability arrangements under this Act. 20
- (2) The relevant period starts on the fifth anniversary, and ends on the sixth anniversary, of the establishment date (as defined in **clause 1(4) of Schedule 1**).
- (3) The interim review required by this section must include consideration of the following matters:
- (a) governance structures, and related roles and responsibilities, under this Act: 25
- (b) interaction of each water services entity’s regional representative group with the following:
- (i) the entity’s board:
- (ii) territorial authority owners: 30
- (iii) mana whenua in the entity’s service area:
- (iv) consumers and communities in the entity’s service area:
- (c) interaction of each water services entity with the following:
- (i) territorial authority owners:
- (ii) mana whenua in the entity’s service area: 35
- (iii) consumers and communities in the entity’s service area:

- (iv) the entity’s consumer forums:
- (d) each water services entity’s—
- (i) relationships with financiers; and
- (ii) financing arrangements:
- (e) accountability, strategic direction, or planning or reporting mechanisms, 5  
including each—
- (i) Government policy statement:
- (ii) regional representative group’s statement of strategic and performance expectations:
- (iii) Te Mana o te Wai statement for water services: 10
- (iv) statement of intent:
- (v) other planning or reporting document under this Act:
- (f) each water services entity’s constitution, including amendments to it, or its replacement:
- (g) any other relevant matters identified by the Minister. 15
- (4) Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit.
- 196 Comprehensive review of water services legislation 20**
- (1) The Minister must, in the relevant period, commission a review of the need for, and operation and effectiveness of, water services legislation.
- (2) The relevant period starts on the ninth anniversary, and ends on the tenth anniversary, of the establishment date (as defined in **clause 1(4) of Schedule 1**).
- (3) The comprehensive review required by this section must include consideration 25  
of the following:
- (a) legislation in or made under this Act, plus each water services entity’s constitution:
- (b) legislation in or made under Taumata Arowai—the Water Services Regulator Act 2020: 30
- (c) legislation in or made under the Water Services Act 2021:
- (d) legislation about economic regulation of, or consumer protection in respect of, water services:
- (e) interaction of relevant regulators and relevant regulatory systems:
- (f) oversight, monitoring, and stewardship arrangements: 35
- (g) any other relevant matters identified by the Minister.

- (4) Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit.
- 197 Reviewer** 5
- A review required by this subpart must be done by the following reviewer:
- (a) the monitor, if the monitor is asked by the Minister to do the review:
- (b) in any other case, a review panel commissioned by or on behalf of the Minister.
- 198 Reviewer’s power to request information** 10
- (1) The reviewer may, by notice in writing, require a water services entity, or other relevant person, to provide the reviewer with information the reviewer thinks necessary to do the review.
- (2) The entity or other relevant person must provide the requested information by the reasonable date that the reviewer has specified for that purpose in the notice. 15
- (3) **Sections 171 to 173** apply, with all necessary modifications, to a request under this section.
- 199 Report**
- (1) The reviewer must prepare a report on a review required by this subpart. 20
- (2) The report must include at least the following contents:
- (a) any terms of reference, consistent with **section 195 or 196**:
- (b) the process that was followed:
- (c) the issues that were examined:
- (d) the key findings: 25
- (e) any recommendations arising out of the review, including—
- (i) whether any amendments to any of the legislation reviewed are necessary or desirable:
- (ii) any other matters that the reviewer recommends be considered by the Minister. 30
- (3) The reviewer must ensure that the people and organisations that the reviewer thinks appropriate are consulted, during the preparation of the report, about the matters to be considered in the report.
- (4) The reviewer must, after completing the report, promptly present the report to the Minister. 35
- (5) The Minister must, after receiving the report, promptly present a copy to the House of Representatives.

**200 Repeal of this subpart**

This subpart is repealed on the 15th anniversary of the establishment date (as defined in **clause 1(4) of Schedule 1**).

~~Subpart 2—Rights or interests in water preserved~~~~**201 Rights or interests in water preserved**~~

5

*Purpose*

(1) ~~The purpose of this section is to achieve both of the following outcomes:~~

(a) ~~any rights or interests in water are preserved, consistent with assurances given by the Crown to the Supreme Court in 2012, and recorded in *New Zealand Māori Council v Attorney General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145];~~

10

(b) ~~this Act, and duties, functions, and powers under this Act, operate effectively.~~

~~*Act does not create, transfer, extinguish, or limit rights or interests*~~

(2) ~~No legislation in or made under this Act—~~

15

(a) ~~creates or transfers any proprietary right or interest in water;~~

(b) ~~extinguishes or limits any customary right or interest (for example, one founded on, or arising from, aboriginal title or customary law) any iwi or hapū may have in water.~~

~~*Nothing in section affects duties, functions, and powers under Act*~~

20

(3) ~~Nothing in this section affects, or affects the lawfulness or validity of the performance or exercise by any person of, any duty, function, or power under this Act.~~

~~Compare: 2010 No 24 s 90(1)(a); 2014 No 74 s 15(5)(a); 2017 No 7 s 46(1), (2)(b)~~

## Subpart 3—Engagement

25

**202 Engagement requirements**

(1) This section applies to engagement that a water services entity or the Minister must undertake in accordance with any of the following provisions:

(aa) **section 118(2)** (relating to joint arrangements, or joint water services entity arrangements, for the purpose of providing water services):

30

(ab) **section 131(b)** (relating to preparation or review of a Government policy statement):

(a) **section 141(1)(b)** (relating to the preparation of a response to a Te Mana o te Wai statement for water services):

(b) **section 206(1)(a) and (2)** (relating to the making of regulations to provide for a model constitution):

35

- (c) **clauses 1, 7, 14, and 19 of Schedule 3** (relating to statements of intent, asset management plans, funding and pricing plans, and infrastructure strategies).
- (2) Engagement requires that a water services entity or the Minister do either or both of the following before deciding on a matter: 5
- (a) consult on a proposal:
- (b) seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis.
- (3) Input or feedback may be sought via hui or meetings, social media, or any other forum that the water services entity or the Minister thinks appropriate. 10
- (4) In undertaking an approach to engagement on a matter, a water services entity or the Minister—
- (a) must consider the purpose of the engagement; and
- (b) must consider the needs of the particular person or persons with whom the water services entity is engaging; and 15
- (c) must allow adequate time for engagement to occur and for ~~territorial authority owners, and for consumers and communities, to respond~~ a response or responses from the particular person or persons with whom the water services entity or the Minister is engaging; and
- (d) may consider the relevance and sufficiency of any earlier engagement. 20

Compare: 2020 No 42 s 22

### *Consumer engagement*

#### **203 Consumer forum**

- (1) The chief executive of a water services entity must establish a consumer forum.
- (2) The purpose of a consumer forum is to— 25
- (a) assist with effective and meaningful consumer and community engagement; and
- (b) gather and compile consumer views; and
- (c) assist the water services entity to understand consumer needs, expectations, and service requirements; and 30
- (d) reflect and represent the interests and diversity of consumers across the entity's region.
- (3) A consumer forum may be established under this section—
- (a) for the whole or part of a service area; and
- (b) in relation to all, or a particular class of, consumers. 35

- (4) The chief executive of the entity must provide a guidance document to each consumer forum established under this section that provides for the composition and procedures of the forum, including—
- (a) the intervals between meetings; and
  - (b) the number of members that may be on the forum; and 5
  - (c) the method of selecting forum members; and
  - (d) any additional purposes to those set out in **subsection (2)**; and
  - (e) the roles and responsibilities of forum members; and
  - (f) the term of membership of the forum; and
  - (g) any other matters not inconsistent with the purpose of a consumer forum 10  
under this section.
- (5) The chief executive must ensure that each consumer forum established has a guidance document.
- 204 Consumer engagement stocktake**
- (1) The chief executive of a water services entity must prepare a consumer engagement stocktake annually and no later than 3 months before the end of a financial year. 15
- (2) The purpose of a consumer engagement stocktake is to—
- (a) capture consumer and community feedback on, and satisfaction with, how the entity is performing; and 20
  - (b) set out how the water services entity will respond to consumer and community needs and address consumer and community concerns.
- (2A) A consumer engagement stocktake must cover,—
- (a) for the first consumer engagement stocktake, the period from the establishment date (as defined in **clause 1 of Schedule 1**); and 25
  - (b) for later consumer engagement stocktakes, the period since the last consumer engagement stocktake.
- (2B) A consumer engagement stocktake must contain a report from the Auditor-General on—
- (a) whether the stocktake gives effect to its purpose stated in **subsection (2)**; and 30
  - (b) whether the water services entity, in preparing the stocktake, has given effect to the principles of engagement in **section 205.**
- (3) The chief executive must, by the end of a financial year, make the consumer engagement stocktake publicly available as soon as practicable after it is issued 35  
by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

**205 Principles of engagement**

In performing its functions under ~~sections 447 143 to 155~~ and **204**, a water services entity must be guided and informed by the following principles:

- (a) the entity's communication to consumers and communities should be clear and appropriate and recognise the different communication needs of consumers and communities: 5
- (b) the entity should be openly available for consumer and community feedback and seek a diversity of consumer voices:
- (c) the entity should clearly identify and explain the role of consumers and communities in the engagement process: 10
- (d) the entity should consider the changing needs of consumers and communities over time, and ensure that engagement will be effective in the future:
- (e) the entity should prioritise the importance of consumer and community issues to ensure that the entity is engaging with issues that are important to its consumers and communities. 15

## Subpart 4—Regulations

**206 Regulations**

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes: 20
  - (a) providing for a model constitution for the purposes of **section 94**:
  - (b) providing for financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy that are consistent with generally accepted accounting practice: 25
  - (c) providing for transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in **Schedule 1**, including transitional reporting obligations to apply to local government organisations or water services entities: 30
  - (d) changing the name of a water services entity by amending or replacing the references to that entity in **Schedule 2**:
  - (e) providing for anything this Act says may or must be provided for by regulations:
  - (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 35
- (2) The Minister must, before recommending the making of regulations under **subsection (1)(a)** in relation to a water services entity, engage in accordance

with **section 202** in relation to the regulations with the territorial authority owners of the entity and mana whenua of the service area.

- (2A) Regulations made under **subsection (1)(a)** in relation to a water services entity must, despite **sections 27(2) and 91(a)(i)**, provide that the entity’s regional representative group consists of 12 or 14 regional representatives. 5
- (2B) However, **subsection (2A)** does not limit **sections 27(2) and 91(a)(i)** when the entity’s model constitution is amended or replaced under **section 95**.
- (3) Regulations made under **subsection (1)(b)** may include requirements relating to— 10
- (a) the type of information that must be provided; and
  - (b) the frequency of the reporting.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

#### Subpart 5—Amendments to other Acts 15

##### *Amendments to Crown Organisations (Criminal Liability) Act 2002*

#### **206A Principal Act**

**Sections 206B to 206D** amend the Crown Organisations (Criminal Liability) Act 2002.

#### **206B Section 4 amended (Interpretation)** 20

In section 4, definition of **government-related organisation**, after paragraph (j), insert:

- (k) a water services entity (as defined in **section 6** of the Water Services Entities Act **2022**)

#### **206C Section 6 amended (Prosecutions against Crown organisations)** 25

After section 6(1)(e), insert:

- (f) an offence against the Water Services Act 2021.

#### **206D Section 7 amended (Legal status of certain Crown organisations)**

In section 7(a), replace “or Part 3 of the Children’s Act 2014” with “Part 3 of the Children’s Act 2014, or the Water Services Act 2021”. 30

##### *Amendments to Goods and Services Tax Act 1985*

#### **207 Principal Act**

**Sections ~~208 and 209~~ to 209A** amend the Goods and Services Tax Act 1985.



**208 Section 2 amended (Interpretation)**

In section 2(1), insert in its appropriate alphabetical order:

**water services entity** means a water services entity as defined in **section 6** of the Water Services Entities Act **2022**

**209 Section 6 amended (Meaning of term taxable activity)**

5

In section 6(1)(b), replace “or any local authority or”, with “, local authority, water services entity, or”.

**209A New section 78I inserted (Support package payment made by water services entity to be zero-rated)**

After section 78H, insert:

10

**78I Support package payment made by water services entity to be zero-rated**

(1) A support package payment made by a water services entity is, when and after it is made, treated as being consideration for a taxable supply that is charged with tax at the rate of 0%.

(2) In this section, support package payment made by a water services entity means a payment (of an amount, if any, determined by the chief executive of the department under **clause 26A** of **Schedule 1** of the **Water Services Entities Act 2022**)—

15

(a) made by a water services entity to a local authority (within the meaning of the Local Government Act 2002); and

20

(b) made under the Three Waters Reforms Programme—Support package (announced in July 2021); and

(c) made under that package’s “better off” component or under that package’s “no worse off” component; and

(d) arising from a funding proposal made or finalised, before, on, or after the commencement of this section.

25

*Amendments to Income Tax Act 2007***210 Principal Act**

**Sections 211 and 212** amend the Income Tax Act 2007.

**211 New section CW 38C inserted (Water services entities)**

30

After section CW 38B, insert:

**CW 38C Water services entities**

*Exempt income: sinking funds*

(1) An amount of income derived from sinking funds relating to the debt of a water services entity is exempt income.

35

*Exempt income: other income*

- (2) Any other amount of income derived by a water services entity is exempt income.

*Exclusion: amounts received in trust*

- (3) **Subsection (2)** does not apply to an amount of income that a water services entity derives as a trustee. 5

**212 Section YA 1 amended (Definitions)**

In section YA 1, insert in its appropriate alphabetical order:

**water services entity** means a water services entity as defined in **section 6** of the Water Services Entities Act **2022** 10

*Amendments to Local Government Act 2002***213 Principal Act**

**Section 214** amends the Local Government Act 2002.

**214 ~~New section 159A inserted and repealed (Review of water services bylaws may be deferred during transition period)~~** 15

- (1) ~~After section 159, insert:~~

**~~159A Review of water services bylaws may be deferred during transition period~~**

- (1) ~~The local authority may decide to defer a review required by section 158(1) or (2) or 159 if all the following requirements are met:~~

- (a) ~~the review relates only to a water services bylaw;~~ 20  
 (b) ~~for that bylaw, the 5 year period in section 158(1) or (2)(b) or, as the case requires, the 10 year period in section 159 ends in the transition period;~~  
 (c) ~~the local authority makes the decision in the transition period;~~  
 (d) ~~the local authority gives prompt public notice of the deferral;~~ 25  
 (e) ~~that public notice identifies clearly the bylaw.~~

- (2) ~~A deferral under **subsection (1)** has the results specified in **subsections (3) to (5)**.~~

- (3) ~~The review is required only if the bylaw is not revoked in the transition period.~~

- (4) ~~The review, if required, is required no later than the second anniversary of the establishment date.~~ 30

- (5) ~~For the purposes of section 160A, the last date on which the bylaw should have been reviewed under section 158 or 159 must be taken to be the second anniversary of the establishment date.~~

- (6) ~~**Subsections (2) to (5)** apply despite sections 158, 159, and 160A.~~ 35

- (7) ~~In this section,—~~  
~~bylaw, without limiting the generality of that term as defined in section 5(1),~~  
~~includes—~~
- (a) ~~a set of bylaws; and~~
  - (b) ~~an individual bylaw in a set of bylaws; and~~ 5
  - (c) ~~a provision within an individual bylaw~~
- ~~establishment date has the meaning in **clause 1(1) of Schedule 1** of the~~  
~~Water Services Entities Act **2022**~~
- ~~transition period means the period—~~
- (a) ~~starting on the day after the date of Royal assent of the Water Services~~ 10  
~~Entities Act **2022**; and~~
  - (b) ~~ending at the close of the day before the establishment date~~
- ~~water services bylaw means a bylaw that relates to all or any of the following:~~
- (a) ~~water supply (as defined in **section 6** of the Water Services Entities Act~~ 15  
~~**2022**);~~
  - (b) ~~wastewater;~~
  - (c) ~~stormwater.~~
- (2) ~~Repeal **section 159A** on **1 July 2028**.~~
- 214 Amendments set out in Schedule 5** 20  
Amend the Act as set out in **Schedule 5** of this Act.
- Amendments to Local Government Official Information and Meetings Act 1987*
- 215 Principal Act**
- Sections 215A and 216** amends the Local Government Official Information and Meetings Act 1987.
- 215A Schedule 1 amended** 25  
In Schedule 1, Part 1, insert in its appropriate alphabetical order:  
Water services entities established under **section 10** of the Water Services  
Entities Act **2022**
- 216 Schedule 2 amended** 30  
 In Schedule 2, Part 1, insert in ~~its~~ their appropriate alphabetical order:  
Boards of water services entities established under **section 10** of the Water  
Services Entities Act **2022**  
Regional advisory panels for regional representative groups established under  
**subpart 5 of Part 2** of the Water Services Entities Act **2022**

Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2022**

*Amendment to Ombudsmen Act 1975*

**217 Principal Act**

**Section 218** amends the Ombudsmen Act 1975. 5

**218 Schedule 1 amended**

In Schedule 1, Part 3, insert in ~~its~~ their appropriate alphabetical order:

Regional advisory panels for regional representative groups established under subpart 5 of Part 2 of the Water Services Entities Act 2022

Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2022** 10

Water services entities established under section 10 of the Water Services Entities Act 2022

*Amendment to Public Audit Act 2001*

**219 Principal Act**

**Section 220** amends the Public Audit Act 2001. 15

**220 Schedule 1 amended**

In Schedule 1, insert in its appropriate alphabetical order:

Water services entities established under section 10 of the Water Services Entities Act 2022

20

*Amendment to Public Records Act 2005*

**221 Principal Act**

**Section 222** amends the Public Records Act 2005.

**222 Section 4 amended (Interpretation)**

In section 4, definition of **local authority**, after paragraph (b), insert: 25

(c) includes a water services entity as defined in **section 6** of the Water Services Entities Act **2022**

*Amendments to Taumata Arowai—the Water Services Regulator Act 2020*

**223 Principal Act**

**Sections 224 and 225** amend the Taumata Arowai—the Water Services Regulator Act 2020. 30

- 224 Section 4 amended (Interpretation)**  
In section 4, definition of Te Mana o te Wai, after “the 2020 statement”, insert “(and see also sections 5, 5A, 10, 17, and 18)”.
- 225 New section 5A inserted (Application of Te Mana o te Wai)**  
 After section 5, insert: 5
- 5A Application of Te Mana o te Wai**  
Te Mana o te Wai applies, for the purposes of this Act, not only to all fresh-water, but also to all coastal water, and to all geothermal water (as those 3 terms are defined in section 2(1) of the Resource Management Act 1991).
- Amendments to Water Services Act 2021* 10
- 226 Principal Act**  
**Sections 227 and 228** amend the Water Services Act 2021.
- 227 Section 14 replaced (Effect and interpretation of Te Mana o te Wai)**  
 Replace section 14 with:
- 14 Te Mana o te Wai: meaning, effect, application** 15
- Meaning*
- (1) In this Act, Te Mana o te Wai has the meaning set out in the National Policy Statement for Freshwater Management (as that term is defined in section 5 of this Act).**
- Effect* 20
- (2) When exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty.**
- Application*
- (3) Te Mana o te Wai applies, for the purposes of this Act, not only to all fresh-water, but also to all coastal water, and to all geothermal water (as those 3 terms are defined in section 2(1) of the Resource Management Act 1991).** 25
- 228 Section 201 amended (Levy)**
- (1) After section 201(2), insert:**
- (2A) Before making a recommendation under subsection (1) during the establishment period (as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022), the Minister must also consult the following as if they were levy payers:** 30
- (a) water services entities established under section 10 of that Act:**
- (b) their territorial authority owners (as defined in section 6 of that Act).** 35

(2B) **Subsection (2A)** and this subsection are repealed on the establishment date (as defined in **clause 1 of Schedule 1** of the Water Services Entities Act **2022**).

(2) Replace section 201(5) with:

(5) Taumata Arowai—

(a) must ensure that each levy payment received under the regulations is separately accounted for; and

(b) may, but need not, pay each such payment into a Crown Bank Account.

5

**Schedule 1**  
**Transitional, savings, and related provisions**

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## Part 1

### Provisions relating to this Act as enacted

#### 1 Interpretation

- † In this Part, unless the context otherwise requires,—
- assets, liabilities, and other matters**, of a local government organisation, 5  
include, without limitation, the organisation’s—
- (a) assets (for example, infrastructure assets):
  - (b) contracts, engagements, or information:



- (c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, in relation to any moneys payable, proceedings, ~~or~~ statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)):
- (ca) other property (which, in this paragraph, means— 5
- (i) any other thing that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; or
- (ii) any estate or interest in any thing specified in **subparagraph (i)**: 10
- (d) eligibility for benefits, entitlements, interests, rights, powers, or privileges:
- (e) duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):
- (f) ineligibility for benefits, entitlements, interests, rights, powers, or privileges 15
- council-controlled organisation** has the same meaning as in section 6 of the Local Government Act 2002
- decision** has the meaning set out in **clause 21**
- establishment chief executive** means a chief executive— 20
- (a) of a water services entity; and
- (b) appointed under **clause 4**
- establishment date** means the earlier of—
- (a) a date ~~appointed~~ set by the Governor-General by Order in Council under **section 2(2)**; and 25
- (b) **1 July 2024**
- establishment period** means the period—
- (a) commencing on the day after the date on which the Act receives the Royal assent; and
- (b) ending on the establishment date 30
- existing employer** has the meaning set out in **clause 15**
- infrastructure assets** includes—
- (a) existing or proposed assets to be used to provide services by, or on behalf of, the water services entity in relation to water services; and
- (ab) water supply networks, wastewater networks, and stormwater networks; 35
- and
- (b) any other assets that the water services entity wishes to include in the strategy

<b>local government organisation</b> <del>has the same meaning as in section 124 of the Local Government Act 2002</del> <u>means any of the following that provides water services:</u>	
(a) <u>a local authority:</u>	
(b) <u>a council-controlled organisation:</u>	5
(c) <u>a subsidiary of a council-controlled organisation</u>	
<b>mixed-shareholder CCO</b> <u>means a council-controlled organisation in which—</u>	
(a) <u>1 or more of the shareholders is a local government organisation; and</u>	
(b) <u>at least 1 of the shareholders is not a local government organisation</u>	10
<b>water services reform</b> means—	
(a) the establishment of water services entities to deliver water services in accordance with this Act; and	
(b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.	
(2) <del>An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</del>	15
 Subpart 1—Transitional provisions relating to establishment and governance of water services entities	
<b>2 Establishment functions and objectives of water services entities</b>	
During the establishment period,—	20
(a) <b>section 11</b> must be read as if—	
(i) the objective set out <b>paragraph (a)</b> of that section were to ensure that, by the establishment date, the water services entity will deliver water services and related infrastructure in an efficient and financially sustainable manner; and	25
(ii) the objective set out <b>paragraph (f)</b> of that section were to ensure that, by the establishment date, the water services entity will deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards; and	30
(b) <b>section 12</b> must be read as if the function described in <b>paragraph (a)</b> of that section were to ensure that, by the establishment date, the water services entity will have sufficient capacity and capability to provide safe, reliable, and efficient water services in its area.	
<b>3 Establishment board of water services entity</b>	35
During the establishment period, <b>subparts 6 and 8 of Part 2</b> of this Act apply with the following modifications:	

- (a) **section 57(1)** must be read as if it required the board to consist of no fewer than 3, and no more than 6, members; and
- (b) all references to the constitution (for example, in **section 58**) do not apply (because only after that period will a model constitution for the purposes of **section 94** be provided for by regulations made under **section 206(1)(a)**); and 5
- (c) **section 60** (board must hold 2 public meetings each financial year) does not apply; and
- (d) all references to the regional representative group and the board appointment committee of the regional representative group in **subpart 6 of Part 2** of this Act must be read as if they were references to the Minister; and 10
- (e) **subpart 8 of Part 2** of this Act applies only in relation to board members, and all references in that subpart to the regional representative group and the board appointment committee of the regional representative group in relation to an obligation of the board or members of the board must be read as if they were references to the Minister; and 15
- (f) **section 65** must be read as if it provided that a member of the board of a water services entity holds office for the establishment period or for any shorter period stated in the notice of appointment. 20
- 4 Appointment of establishment chief executive**
- (1) The chief executive of the department must appoint an establishment chief executive to each water services entity during the establishment period.
- (1A) An appointment of a water services entity's establishment chief executive is taken to have been made under **subclause (1)** if the appointment— 25
- (a) is made by the chief executive of the department; and
- (b) is made before the start of the establishment period; and
- (c) takes effect before, on, or after the start of the establishment period.
- (2) An establishment chief executive is appointed for a term that— 30
- (a) commences in accordance with the terms and conditions agreed under **subclause (3)**; and
- (b) ends at the close of the day that is 24 months after the establishment date unless earlier terminated in accordance with **subclause (5)**.
- (3) The terms and conditions of employment of an establishment chief executive must be determined by agreement between the chief executive of the department and the establishment chief executive. 35
- (4) When considering the terms and conditions of an establishment chief executive, the chief executive of the department must have regard to the matters listed in **section 119(3)(a) to (d)**.

- (4A) If an appointment under **subclause (1)** of a water services entity’s establishment chief executive takes effect before the appointment under clause 3 of the entity’s establishment board takes effect,—
- (a) the establishment chief executive is an employee of the department until the appointment of the entity’s establishment board takes effect; and 5
- (b) after the appointment of the entity’s establishment board takes effect, the establishment chief executive ceases to be an employee of the department, and becomes instead an employee of the entity on the same terms and conditions of employment that applied to the establishment chief executive immediately before that appointment took effect. 10
- (5) The board of a water services entity may remove the establishment chief executive of the entity from office at any time on or after the establishment date.
- (6) This clause—
- (a) applies instead of **section 119(1) to (3)** during the establishment period; and 15
- (b) continues to apply until the earlier of the following:
- (i) the date that is 24 months after the establishment date; and
- (ii) the time of the removal or resignation, after the establishment date, of a chief executive appointed under this clause. 20
- 5 Establishment chief executive must prepare allocation schedule**
- (1) During the establishment period, the establishment chief executive of a water services entity must prepare, and may update, an allocation schedule for the entity.
- (2) A local government organisation must, under **clause 11(1) and (2)(b)**, co-operate with a relevant water services entity to facilitate the water services reform and, in particular, must comply with any reasonable request by the entity for information that— 25
- (a) the organisation holds; and
- (b) is or may be necessary or desirable for preparing the allocation schedule for the entity. 30
- (3) The allocation schedule for a water services entity must—
- (a) specify assets, liabilities, and other matters that relate wholly to the provision of water services by relevant local government organisations:
- (b) specify assets, liabilities, and other matters that relate— 35
- (i) partly to the provision of water services by relevant local government organisations; and
- (ii) partly to the provision of other services by relevant local government organisations.

- (4) The allocation schedule for a water services entity may also specify assets, liabilities, and other matters (whether specified in **subclause (3)(a) and (b)** or otherwise) that—
- (a) relate wholly to 1 or more relevant local government organisations; and
  - (b) in the opinion of the establishment chief executive of the entity, should not transfer to the entity. 5
- (5) The allocation schedule for a water services entity must be not inconsistent with a plan approved under **clause 7(1)** (*see clause 7(3)(a) and (b)*).
- (6) The allocation schedule for a water services entity—
- (a) must not specify assets, liabilities, or other matters that belong to any mixed-shareholder CCO; but 10
  - (b) must list the shares in that mixed-shareholder CCO that are held by the 1 or more shareholders that are local government organisations.
- (7) **Subclause (6) overrides subclauses (1) to (5).**
- 6 Role of Minister during establishment period** 15
- (1) During the establishment period, in addition to the Minister’s role under **section 26**, the Minister has the additional role of overseeing the establishment of the water services entities.
- (2) The Minister’s additional role includes functions and powers to appoint and remove members of the board of each water services entity under this schedule. 20
- Subpart 2—Transitional arrangements relating to reporting obligations
- 7 Chief executive of department ~~may~~ must prepare and approve establishment water services plan**
- (1) The chief executive of the department ~~may~~ must prepare and approve an establishment water services plan for a water services entity. 25
- (1A) An establishment water services plan for the entity takes the place of a statement of intent for (and so the entity’s board is, despite **sections 143 to 146**, not required to prepare a statement of intent until after) the period to which that plan applies, which—
- (a) starts on the day after the date of publication of that plan; and 30
  - (b) ends at the first end of a financial year after the establishment date.
- (2) The chief executive of the department must, before approving a plan under **subclause (1)**, consult with the relevant water services entity.
- (3) A plan approved under **subclause (1)** for a water services entity must include— 35

- (a) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the entity; and
- (b) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the entity; and 5
- (ba) performance expectations for the period to which it applies; and
- (c) the reporting requirements for the quarterly reports to be provided to the chief executive of the department under **clause 9** of this schedule.
- (4) The plan may include any other matters that the Minister considers relevant and asks the chief executive of the department to include in the plan. 10
- (5) The plan must be consistent with an initial asset management plan, and with an initial funding and pricing plan, prepared under **clause 8**.
- (6) The chief executive of the department must make the plan publicly available, as soon as practicable, by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible. 15
- 8 Transitional requirements for initial asset management plan and initial funding and pricing plan during establishment period**
- ~~During the establishment period, **sections 147 to 152** (relating to the requirements to prepare an asset management plan and a funding and pricing plan) apply with the following modifications:~~ 20
- ~~(a) references to the regional representative group must be read as references to the chief executive of the department;~~
- ~~(b) **sections 147(2)(c), 149(b), 150(2)(c), and 152(b)** (which relate to engagement with consumers and the regional representative group) do not apply.~~ 25
- (1) During the establishment period,—
- (a) **sections 147 to 152** (relating to the requirements to prepare an asset management plan and a funding and pricing plan) do not apply; and
- (b) this clause applies instead.
- (2) During the establishment period, the chief executive of the department must prepare, for each water services entity (and for that entity’s establishment board to adopt, in that period, and with or without modifications),— 30
- (a) an initial asset management plan;
- (b) an initial funding and pricing plan.
- (3) Each such plan must— 35
- (a) cover a period of not less than 10 consecutive financial years; and
- (b) be prepared in draft form, then in final form; and

- (c) if an initial asset management plan, be prepared as required by **clause 8A**.
- (4) The chief executive of the department must—
- (a) send a draft of each such initial plan to the entity’s establishment board and to relevant local government organisations; and 5
- (b) give them a reasonable time within the establishment period to scrutinise, and provide comment to the chief executive of the department on, the draft; and
- (c) have regard to any comments they provide in response in settling the final form of each such initial plan. 10
- (5) Preparation of each such plan is also subject to the Commission’s functions and powers during the establishment period (see **clause 8B**).
- 8A Additional requirements for draft and final initial asset management plans**
- (1) An initial asset management plan prepared under **clause 8** must indicate—
- (a) the investment priorities for the entity’s infrastructure assets; 15
- (b) how the entity will operate, maintain, and renew its infrastructure assets;
- (c) how the entity will provide new infrastructure assets.
- (2) An initial asset management plan prepared under **clause 8** may indicate—
- (a) how the plan meets the proposed activities and intentions of the entity set out in its statement of intent; 20
- (b) how the plan relates to any actions that the entity intends to take as part of its response to a Te Mana o te Wai statement.
- (3) When preparing under **clause 8** a draft or final initial asset management plan, the chief executive of the department must also have regard to—
- (a) information that local government organisations provide in response to requests for information made under **clause 11**; and 25
- (b) the initial funding and pricing plan being prepared for the entity; and
- (c) the entity’s ability to deliver the matters proposed for inclusion in the initial asset management plan.
- 8B Commission’s functions and powers during establishment period** 30
- (1) During the establishment period, the Commission has, in respect of preparation of an initial asset management plan or an initial funding and pricing plan, the functions and powers in this clause.
- (2) Before the final plan is adopted by the establishment board of a water services entity, the board must— 35
- (a) deliver to the Commission a draft of the plan; and

- (b) give the Commission a reasonable time within the establishment period to scrutinise, and report to the entity, to the Minister, and to the public on, the draft of the plan; and
- (c) have regard to, and to any recommendations made to the establishment board in, the Commission's report. 5
- (3) The Commission may scrutinise, and report to the entity, to the Minister, and to the public on, the draft of the plan delivered to the Commission.
- (4) The purpose of the Commission's scrutiny, and reporting, under this clause, is to help to optimise the plan and decisions covered by the plan.
- (5) During the establishment period, a local government organisation, or an establishment chief executive or establishment board of a water services entity, must co-operate with the Commission to facilitate the Commission's scrutiny, and reporting, under this clause. 10
- (6) Without limiting **subclause (5)**, a local government organisation, or an establishment chief executive or establishment board of a water services entity, must comply with any reasonable request by the Commission for information that the local government organisation or the water services entity holds. 15
- (7) The obligation to comply with a request under **subclause (6)** includes a requirement to comply with any reasonable request to—
- (a) collate information; or 20
- (b) provide information in a particular format; or
- (c) disclose current pricing information or indicative water charges on invoices during the establishment period.
- 9 Quarterly reports**
- (1) The board of a water services entity must, during the establishment period, provide a quarterly report to the chief executive of the department. 25
- (2) The report must include any information required by an establishment water services plan approved under **clause 7** of this schedule.
- 10 ~~First annual report of water services entity~~ Accountability arrangements for establishment period** 30
- (1) ~~An entity established during the last 4 months of a financial year—~~
- (a) ~~is not required to provide an annual report for that financial year; but~~
- (b) ~~must, after the end of the entity's first full financial year, provide an annual report that covers the period from the date on which the entity is established until the end of the entity's first full financial year.~~ 35
- (2) ~~The annual report referred to in **subclause (1)(b)** must contain the information required to be included in the entity's annual report, except that the information must be in respect of the period referred to in that subclause.~~



- (1) A water services entity must produce an establishment period annual report for, and within 4 months after the end of, a financial year, if—
- (a) the establishment period starts before or during that financial year; and
  - (b) some or all of that financial year is before the establishment date.
- (2) However, if the period from the start of the establishment period to the end of the financial year is less than 4 months, that period must be covered in the entity's next establishment period annual report. 5
- (3) The establishment period annual report referred to in **subclause (1)** must—
- (a) describe, accessibly, the entity's activities during the relevant period; and
  - (b) report on performance against the entity's performance expectations set out in the establishment water services plan (*see clause 7*); and 10
  - (c) report on compliance with this schedule in respect of the entity; and
  - (d) include financial statements for the entity; and
  - (e) contain information prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards; and 15
  - (f) include an audit report in accordance with **subclause (5)**; and
  - (g) be made publicly available, as soon as practicable and no later than 4 months after the end of the financial year concerned, by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 20
- (4) A water services entity must forward to the Auditor-General—
- (a) the entity's annual financial statements; and
  - (b) any other information for establishment period annual report that the Auditor-General has agreed, or is required, to audit. 25
- (5) The Auditor-General must, within 4 months after the end of the financial year concerned,—
- (a) audit the statements and information referred to in **subsection (4)**; and
  - (b) provide an audit report on those statements and that information to the water services entity. 30
- (6) The audit report must indicate whether those statements and that information—
- (a) comply with this Act; and
  - (b) comply with generally accepted accounting practice; and
  - (c) are free from material misstatement.
- 10A** **First infrastructure strategy of water services entity** 35
- A water services entity must provide its first infrastructure strategy (despite **sections 2(2) and 153 to 155**) within 3 years after the establishment date.

- 11 Duty of local government organisations to co-operate with department and water services entities**
- (1) During the establishment period, a local government organisation must co-operate with the department and any relevant water services entity to facilitate the water services reform. 5
- (2) Without limiting **subclause (1)**, a local government organisation must—
- (a) comply with any reasonable request by the chief executive of the department or the water services entity for employees of the local government organisation to be seconded to the water services entity; and
- (ab) co-operate to enable employees to whom **clause 16** applies, whenever it is reasonably practicable for them to do so, to remain in their current locality; and 10
- (b) comply with any reasonable request by the chief executive of the department or the water services entity for information that the local government organisation holds (for example, information of the kind specified in **clause 5(2)**). 15
- (3) The obligation to comply with a request under **subclause (2)(b)** includes a requirement to comply with any reasonable request to—
- (a) collate information; or
- (b) provide information in a particular format; or 20
- ~~(e) disclose current pricing information or indicative water charges on invoices during the establishment period.~~
- (c) disclose to the public, as requested, and in a manner and format requested, by the department and by any relevant water services entity, the information provided; or 25
- (d) enable assurance processes for checking the completeness, integrity, and reliability of the information provided.
- (4) A local government organisation may only provide personal information under **subclause (2)(b)** if the information relates to ~~employment matters~~. all or any of the following: 30
- (a) employment matters;
- (b) persons actually using land or persons actually using a rating unit, or liability for rates, under the Local Government (Rating) Act 2002.
- (4A) However, the obligation to comply with a request under **subclause (2)(b)** in respect of preparation under **clause 8**, and during the establishment period, of an initial asset management plan or an initial funding and pricing plan, does not include a requirement that a local government organisation do any of the following: 35
- (a) carry out, or have carried out for it, a revaluation of its assets;
- (b) undertake any public consultation or engagement. 40

- (5) In this clause, **relevant water services entity** means the water services entity whose service area includes the district or region that the local government organisation services.

## 12 Duty of water services entity to co-operate

- (1) During the establishment period, a water services entity must co-operate with the department and with its territorial authority owners to facilitate the water services reform. 5
- (2) Without limiting **subclause (1)**, a water services entity must comply with any reasonable request by the chief executive of the department for information that the water services entity holds that is relevant to the water services reform. 10

## 13 Chief executive of department may issue direction of non-compliance

- (1) The chief executive of the department may issue a non-compliance direction to a local government organisation if they fail to comply with **clause 8B or 11** or any disclosure requirements required by regulations made under **section 206(1)(b)**. 15
- (2) The non-compliance direction must—
- (a) identify the local government organisation to which it relates; and
  - (b) specify the non-compliance (for example, non-compliance with **clause 11** in respect of a request for information of the kind specified in **clause 5(2)**); and 20
  - (c) specify the action required to comply with the non-compliance direction.
- (3) The chief executive of the department may apply to the District Court for an order to compel a local government organisation to comply with a non-compliance direction.
- (4) The District Court may make an order to compel a local government organisation to comply with a non-compliance direction if satisfied that the local government organisation has failed to comply with the non-compliance direction. 25
- (5) The chief executive of the department may withdraw a non-compliance direction issued under this clause at any time.
- (6) An order of the District Court to compel a local government organisation to comply with a non-compliance direction under **subclause (4)** ceases to apply if the non-compliance order is withdrawn. 30

## 14 Relationship of this Part with Local Government Act 2002

The following provisions of the Local Government Act 2002 do not apply to any actions taken by a local government organisation in order to comply with this schedule or facilitate the water services reform: 35

- (a) section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan):

- (b) section 97 (which requires certain decisions to be taken only if provided for in a long-term plan):
- (c) section 130(3) (relating to certain obligations to maintain water services).

Subpart 3—Transitional provisions relating to employment 5

*Application of subpart*

**14A Subpart does not apply to mixed-shareholder CCOs**

- (1) This subpart does not apply to any mixed-shareholder CCO.
- (2) This clause overrides **clauses 15 to 20.**

*Review of employment positions* 10

**15 Review of employment positions by chief executive of department during establishment period**

- (1) The chief executive of the department must, during the establishment period,—
  - (a) review, in consultation with the persons affected, the positions of persons employed by existing employers; and 15
  - (b) determine, in relation to each employee, whether ~~the employee in the~~ chief executive's reasonable opinion—
    - (i) ~~primarily undertakes functions that will be transferred to a water services entity~~ the purpose, duties, and responsibilities of the employee's role primarily relate to, or primarily support, the delivery of water services; and 20
    - (ii) the employee has a senior management role.
- (1A) In making a determination under **subclause (1)(b),** the chief executive must consider—
  - (a) whether more than half the employee's time is spent undertaking duties and responsibilities that primarily relate to, or primarily support, the delivery of water services; and 25
  - (b) whether the removal of duties and responsibilities that do not primarily relate to, or primarily support, the delivery of water services would result in a substantial change to the employee's role. 30
- (2) The chief executive of the department must, before the establishment date, notify in writing each employee and their existing employer of the determination made in relation to the employee under **subclause (1)(b).**
- (3) In this subpart, **existing employer**, in relation to a water services entity, means a local government organisation that— 35

- (a) provides water services in the service area of the water services entity before the establishment date; and
- (b) employs employees.
- 16 Obligation to offer ~~certain employees position that involves same or similar duties and responsibilities~~ if role primarily relates to, or primarily supports, delivery of water services** 5
- (1) The chief executive of a water services entity must offer an employee of an existing employer an employment position if the chief executive of the department determines under **clause 15** that—
- (a) ~~the employee primarily undertakes functions that will be transferred to the water services entity~~ the purpose, duties, and responsibilities of the employee's role primarily relate to, or primarily support, the delivery of water services; and 10
- (b) the employee does not have a senior management role.
- ~~(2) The terms and conditions of the position offered under **subclause (1)** must—~~ 15
- ~~(a) involve the same or similar duties and responsibilities; and~~
- ~~(b) include core terms that are no less favourable than the core terms that applied immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and~~
- ~~(c) be in substantially the same general locality or a locality within reasonable commuting distance from the employee's location of work immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and~~ 20
- ~~(d) involve the same or similar hours and days of work to those worked by the employee immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and~~ 25
- ~~(e) recognise the employee's employment with the existing employer as if it were continuous service with the water services entity.~~
- ~~(3) In **subclause (2)**, **core terms** includes the employee's salary, leave entitlements, and any entitlement to redundancy compensation.~~ 30
- (2) If the employee is covered by an individual employment agreement, the employee may—
- (a) choose to remain on the terms of their existing agreement; or
- (b) accept any new agreement offered by the water services entity.
- (3) If the employee is covered by a collective employment agreement, their terms and conditions are covered by **clauses 19 and 20.** 35
- (4) The chief executive of the relevant water services entity must, before the establishment date, notify each employee who is being offered a position with the water services entity—

- (a) that the employee is being offered a position with the same or similar duties and responsibilities with the water services entity; and
- (b) of the terms and conditions of employment of the position being offered; and
- (c) of the date by which the employee is to notify the chief executive as to whether the employee accepts or declines the offer. 5
- (4A) The terms and conditions of the position offered must—**
- (a) be in substantially the same general locality; and**
- (b) be within a reasonable commuting distance; and**
- (c) recognise the employee’s employment with the existing employer as if it were continuous service with the water services entity.** 10
- (4B) Whether the position offered is in substantially the same general locality must be decided in consultation with the employee, and after considering all relevant factors, including—**
- (a) the distance between the old and new location, and the distances between them and the employee’s place of residence; and** 15
- (b) the time required to travel between the old and new locations and the employee’s place of residence; and**
- (c) the employee’s usual travel arrangements; and**
- (d) how often the employee is required to work at the new location; and** 20
- (e) access to transport (for example, a vehicle) provided to the employee by the water services entity; and**
- (f) availability of public transport; and**
- (g) any relevant terms of the employee’s current employment agreement.**
- (5) Nothing in this clause— 25
- (a) imposes any obligation on an employee of an existing employer to accept an offer under this schedule; or
- (b) prevents the chief executive of ~~the department~~ a water services entity from offering a position to any other employee of the existing employer on any terms and conditions the chief executive considers appropriate. 30
- 16A Compensation if employee accepts position at new location**
- (1) If an employee referred to in clause 16 takes up a position at a new location, the employee is entitled to—**
- (a) any compensation otherwise payable under the terms and conditions of employment applicable immediately before the establishment date as if the employee had continued to be employed by their existing employer; but** 35

- (b) if no compensation is payable under **paragraph (a)**, or any compensation payable under **paragraph (a)** is less favourable than the compensation provided in the following table, compensation by way of a single amount in accordance with the following table:

<u>Distance differential</u>	<u>Amount payable (\$)</u>
<u>Less than 2 kms</u>	<u>Nil</u>
<u>2 kms or more, but less than 8 kms</u>	<u>600</u>
<u>8 kms or more, but less than 12 kms</u>	<u>1,080</u>
<u>12 kms or more, but less than 20 kms</u>	<u>1,620</u>
<u>20 kms or more</u>	<u>2,400</u>

- (2) In the table in **subclause (1)(b)**,— 5
- distance** means the shortest distance by road
- distance differential** means the difference derived by subtracting the distance referred to in **paragraph (a)** from the difference referred to in **paragraph (b)**:
- (a) the distance as on the establishment date from the employee's normal residence to the employee's place of work with their existing employer; 10  
and
- (b) the distance as on the establishment date (or as on any later date on which the employee's place of work shifts to the new location) from the employee's normal residence to the employee's place of work with their new employer. 15
- (3) However, an amount payable in the table in **subclause (1)(b)**—
- (a) is for an employee who is required to travel the additional distance on each of 5 working days per week; and
- (b) must be adjusted, on a pro-rata basis, if, and to the extent that, an employee is required to travel the additional distance on each of fewer, or of more, than 5 working days per week. 20

Compare: 2010 No 37 s 105

## 17 **Transfer of employment positions**

- (1) An employee who accepts an offer of employment made under **clause 16(4)** becomes an employee of the water services entity, on and from the establishment date, on the terms and conditions offered under that subclause. 25
- (2) The terms and conditions of employment continue to apply in relation to the employee until—
- (a) the terms and conditions are varied— 30
- (i) by agreement between the employee and the relevant water services entity; or
- (ii) in accordance with the employee's terms and conditions of employment; or

- (iii) because of the application of section 61(1)(b) of the Employment Relations Act 2000; or
- (b) the employee accepts a ~~subsequent~~ later position with the water services entity or the employee resigns or has their employment terminated.
- (3) To avoid doubt, **subclause (2)** applies,— 5
- (a) in the case of an employee bound by an applicable collective agreement, subject to section 61(1)(b) of the Employment Relations Act 2000 and, without limiting this paragraph, subject to an applicable collective agreement that comes into force on the establishment date; and
- (b) in the case of an employee not bound by an applicable collective agreement, subject to any variation in terms and conditions of employment agreed to before the establishment date but to come into force on that date. 10
- (4) This clause applies only if the employee continues to be an employee of the existing employer at the close of the day before the establishment date. 15  
Compare: 2010 No 37 s 101
- 18 Employees not entitled to redundancy or other compensation just because position or employer ceases to exist**
- (1) This clause applies to an employee of an existing employer who— 20
- (a) is notified of an offer in accordance with **clause 16(4)**; or
- (b) otherwise accepts a position with the water services entity.
- (2) An employee to whom this clause applies is not entitled to receive any payment or any other benefit (**compensation**) for any of the following reasons: 25
- (a) the position held by the employee with an existing employer ceases to exist:
- (b) the employee ceases to be an employee of an existing employer:
- (c) the employee's employer ceases to exist.
- (3) This clause is subject to **clause 18A**.  
Compare: 2010 No 37 s 103
- 18A Compensation deferred, and may cease to be payable, if permanent employee accepts fixed term employment with water services entity** 30
- (1) This clause applies to an employee who is a permanent employee of an existing employer and accepts a position with a new employer that is a water services entity, but only if that position with a new employer is—
- (a) not one as an establishment chief executive (as defined in **clause 1**); 35  
and
- (b) for a fixed term (within the meaning of section 66 of the Employment Relations Act 2000).



- (2) Any compensation payable to the employee in relation to the employee's permanent employment is not to be paid until the conclusion of their fixed term employment.
- (3) **Subclause (2)** applies subject to **subclauses (4) and (5).**
- (4) Compensation deferred under **subclause (2)** ceases to be payable to the employee if the employee, before the end of their fixed term employment with the new employer, accepts an offer of permanent employment with the new employer. 5
- (5) **Subclause (4)** applies whether the permanent employment begins before or after the end of the fixed term employment. 10
- Compare: 2010 No 37 s 106(1)–(4)

*Collective bargaining and collective agreements*

- 19 Collective bargaining before establishment date for new collective agreement to come into force on that date**
- (1) **Subclause (2)** applies if an employee whose position is subject to review under **clause 15** is a member of a union that enters into bargaining for a collective agreement to come into force on the establishment date. 15
- (2) For the purposes of the bargaining during the establishment period,—
- (a) the employees are to be treated as if they were employees of the water services entity; and 20
- (b) section 41 of the Employment Relations Act 2000 does not apply in relation to the bargaining; and
- (c) the other provisions of the Employment Relations Act 2000 apply accordingly with any necessary modifications.
- (3) For the purposes of ratifying a collective agreement, a person is to be treated as an employee of the entity only if— 25
- (a) the person—
- (i) has accepted an offer of a position; or
- (ii) has neither accepted nor declined an offer notified under **clause 16**; or 30
- (iii) has not received notice of an offer under **clause 16**; and
- (b) the following work comes within the coverage clause in the collective agreement:
- (i) work to be done by the person for the water services entity (if **paragraph (a)(i)** applies): 35
- (ii) work done by the person for their existing employer (if **paragraph (a)(ii) or (iii)** applies).
- (4) A person ceases to be an employee for the purposes of this clause if—

- (a) the person declines an offer of a position with the water services entity; or
- (b) the person is notified that their employment is to be terminated on and from the establishment date; or
- (c) the person's employment is terminated before that date or the person resigns before that date. 5

Compare: 2010 No 37 s 111

## 20 Application of existing collective agreements on and from establishment date

- (1) **Subclause (2)** applies if— 10
  - (a) an employee of an existing employer—
    - (i) has received and accepted an offer of employment with a water services entity; or
    - (ii) has received notification of an offer under **clause 16(4)** and neither accepted nor declined the offer; or 15
    - (iii) has not been notified in accordance with **clause 16(4)** as to whether they are being offered a position with a water services entity or their employment with an existing employer is to be terminated; and
  - (b) the employees are bound by a collective agreement under the Employment Relations Act 2000 in relation to their employment with their existing employer; and 20
  - (c) the collective agreement does not expire until after the establishment date.
- (2) On and from the establishment date,— 25
  - (a) the collective agreement is to be treated as a separate collective agreement in relation to the water services entity; and
  - (b) the water services entity is to be treated as a party to the collective agreement in place of the previous employer; and
  - (c) the collective agreement continues to apply to and bind only the employees referred to in **subclause (1)** to the extent that the nature of the work they undertake for the water services entity comes within the coverage clause of the collective agreement. 30
- (3) **Subclause (2)** applies only if the collective agreement is not replaced on the establishment date by a collective agreement in accordance with **clause 19**. 35
- (4) A union that is a party to a separate collective agreement under this clause may, by notice in writing to the relevant water services entity, specify a date on which the agreement is to expire, being a date that is earlier than a date on

which the agreement would otherwise expire under section 52(3) of the Employment Relations Act 2000.

- (5) Section 58 of the Employment Relations Act 2000 (which is a section about an employee who resigns as a member of a union but does not resign as employee) does not apply to any employees who transfer to a water services entity under **subclause (2)**. 5

Compare: 2010 No 37 s 112

#### Subpart 4—Oversight powers of department

### 21 Decisions subject to department’s oversight powers

In this subpart, **decision**— 10

- (a) means a decision that—
- (i) relates to the provision of water services; or
  - (ii) may affect the provision of water services; and
- (b) includes a decision—
- (i) by a local authority to adopt or amend a ~~long-term council community plan~~ long-term plan or to adopt an annual plan (as those terms are defined in section 5(1) of the Local Government Act 2002): 15
  - (ii) by a local authority to adopt a policy required by the Local Government Act 2002: 20
  - (iii) by a local authority that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the local authority under the Local Government Act 2002:
  - (iv) by a local authority to purchase or dispose of assets other than in accordance with its long-term council community plan: 25
  - (v) by any local government organisation to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity to provide water services or on the financial well-being of the organisation: 30
  - (vi) by any local government organisation to enter into any contract (other than an employment agreement)—
    - (A) that imposes, or will continue to impose, any obligation on the local authority after a date determined by the chief executive of the department for the purposes of this paragraph: 35
    - (B) for which the consideration is, or is equivalent to or more than, an amount set by the chief executive of the department for the purposes of this paragraph:

- (vii) by any local government organisation to borrow money for a period that extends beyond a date set by the chief executive of the department for the purposes of this paragraph.

Compare: 2009 No 13 s 31(4), (5)

**22 Review of local government organisation decisions and meeting agendas during establishment period** 5

- (1) During the establishment period, each local government organisation must provide the department with information about an intended decision.
- (2) The chief executive of the department may review any decision made by, or on behalf of, a local government organisation during the establishment period. 10
- (3) Despite **subclause (2)**, the department must not review a decision under this clause that it has confirmed under **clause 24(2)(a)**.
- (4) The department must, without delay, notify a local government organisation if it—
- (a) reviews a decision of the organisation under **subclause (2)**; and 15
- (b) considers, on reasonable grounds, that the decision is a decision to which **clause 23** applies.

Compare: 2009 No 13 s 20

**23 Decision making during establishment period**

- (1) The chief executive of a local government organisation must ensure that, before implementing a decision to which this clause applies, the department has confirmed the decision in writing. 20
- (2) A decision to which this clause applies is void and of no effect until it is confirmed by the chief executive of the department.
- (3) This clause applies to a decision of a local government organisation that is made during the establishment period and that may, directly or because of its consequences,— 25
- (a) significantly prejudice the water services reform; or
- (b) significantly constrain the powers or capacity of the water services entities following the water services reform; or 30
- (c) have a significant negative impact on the assets, liabilities, or other matters that are transferred to the water services entities as a result of the water services reform.

Compare: 2009 No 13 s 31(1), (6), (7)

**24 Confirmation of decisions of local government organisations** 35

- (1) This clause applies to the department if a local government organisation seeks confirmation of a decision to which **clause 23** applies.
- (2) The department must, as soon as practicable and in writing,—

- (a) confirm the decision; or
- (b) decline to confirm the decision and give reasons for doing so (with reference to the matters in **clause 23(3)**); or
- (c) if it considers that it has insufficient information to make a decision, request further information from the chief executive and then act under **paragraph (a) or (b)**, as applicable. 5
- (3) The chief executive of the department may decline to confirm a decision if they determine that 1 or more of the following criteria are met:
- (a) the decision will significantly prejudice the water services reform:
- (b) the decision will significantly constrain the powers or capacity of a water services entity following the water services reform: 10
- (c) the decision will have a significant negative impact on the assets, liabilities, or other matters that are transferred to a water services entity as a result of the water services reform.
- Compare: 2009 No 13 s 21 15

### Subpart 5—Transitional tax relief, and recovery of costs

#### 25 Transitional tax relief

No water services entity or local government organisation will have any tax liability under the Income Tax 2007 or the Goods and Services Act 1985 arising from the vesting of assets, liabilities, or other matters in, or the transfer of employees from a local government organisation to, a water services entity. 20

#### 26 Crown expenses and capital expenditure recoverable from water services entity

- (1) This clause applies to any expenses or capital expenditure incurred by the Crown— 25
- (a) before, on, or after the commencement of this clause; and
- (b) before the establishment date; and
- (c) in relation to establishing a water services entity.
- (2) The expenses or capital expenditure must be reimbursed—
- (a) by the water services entity to the Crown; and 30
- (b) on the terms and conditions agreed between—
- (i) the Minister; and
- (ii) the Minister of Finance.
- (3) The terms and conditions may, for example, specify, or specify classes, descriptions, or kinds of, all or any of the expenses or capital expenditure. 35

- (4) The duty to reimburse the expenses or capital expenditure is not the Crown lending money for the purposes of the Public Finance Act 1989.

Compare: 1989 No 44 ss 4, 65K, 65L, 65O, 65P, 65Q; 2009 No 13 s 23

### Subpart 6—Payment provisions

- 26A Support package payment made by water services entity** 5
- (1) On or before the establishment date, a water services entity must pay each local authority whose district is included in its service area an amount, if any, determined by the chief executive of the department relating to the support package payment made by a water services entity.
- (2) In **subclause (1), support package payment made by a water services entity** means a payment— 10
- (a) made by a water services entity to a local authority; and
- (b) made under the Three Waters Reforms Programme—Support package (announced in July 2021); and
- (c) made under that package’s “better off” component or under that package’s “no worse off” component; and 15
- (d) arising from a funding proposal made or finalised, before, on, or after the commencement of this clause.

## Schedule 2

### Water services entities and their service areas

s 10

#### Part 1

#### Northern Water Services Entity 5

The Northern Water Services Entity's service area includes the districts of the following territorial authorities:

- Auckland Council:
- Far North District Council:
- Kaipara District Council: 10
- ~~Whangārei~~ Whangarei District Council.

#### Part 2

#### Western-Central Water Services Entity

The Western-Central Water Services Entity's service area includes the districts of the following territorial authorities: 15

- Hamilton City Council:
- Hauraki District Council:
- Kawerau District Council:
- Matamata-Piako District Council:
- New Plymouth District Council: 20
- Ōpōtiki District Council:
- Ōtorohanga District Council:
- Rangitikei District Council:
- Rotorua District Council:
- Ruapehu District Council: 25
- South Taranaki District Council:
- South Waikato District Council:
- Stratford District Council:
- ~~Tauāpō~~ Taupo District Council:
- Tauranga City Council: 30
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:

- Waitomo District Council:
- Western Bay of Plenty District Council:
- Whakatane District Council:
- Whanganui District Council.

### Part 3

5

#### Eastern-Central Water Services Entity

The Eastern-Central Water Services Entity's service area includes the districts of the following territorial authorities:

- Carterton District Council:
- Central Hawke's Bay District Council: 10
- Chatham Islands Council:
- Gisborne District Council:
- Hastings District Council:
- Horowhenua District Council:
- Hutt City Council: 15
- Kapiti Coast District Council:
- Manawatu District Council:
- Marlborough District Council (excluding those parts included in the service area of the Southern Water Services Entity under **Part 4** of this schedule):
- Masterton District Council: 20
- Napier ~~District~~ City Council:
- Nelson City Council:
- Palmerston North City Council:
- Porirua City Council:
- South Wairarapa District Council: 25
- Tararua District Council:
- Tasman District Council (excluding those parts included in the service area of the Southern Water Services Entity under **Part 4** of this schedule):
- Upper Hutt City Council:
- Wairoa District Council: 30
- Wellington City Council.



## Part 4

### Southern Water Services Entity

The service area of the Southern Water Services Entity is the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996, and including—

- the districts of the following territorial authorities: 5
  - Ashburton District Council:
  - Buller District Council:
  - Central Otago District Council:
  - Christchurch City Council:
  - Clutha District Council: 10
  - Dunedin City Council:
  - Gore District Council:
  - Grey District Council:
  - Hurunui District Council:
  - Invercargill City Council: 15
  - Kaikoura District Council:
  - Mackenzie District Council:
  - Queenstown-Lakes District Council:
  - Selwyn District Council:
  - Southland District Council: 20
  - Timaru District Council:
  - Waimakariri District Council:
  - Waimate District Council:
  - Waitaki District Council:
  - Westland District Council; and 25
- the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996:
  - Marlborough District Council:
  - Tasman District Council. 30

## Schedule 3 Preparation of planning documents

ss 144, 147, 150, 153, 202

### Part 1

#### Preparation of statement of intent 5

##### 1 Draft statement of intent

- (1) The board of a water services entity must deliver a draft statement of intent to the entity's regional representative group.
- (2) The draft statement of intent must be delivered on or before 1 March in the year preceding the start of the period to which the draft statement of intent relates. 10
- (3) Before delivering the draft statement of intent to the entity's regional representative group, the board of the entity must engage with any people the board considers appropriate in accordance with **section 202**.

Compare: 2002 No 84 Schedule 8 cl 1 15

##### 2 Strategic elements must be approved by regional representative group

- (1) The strategic elements (*see* **section 145(1)**) must, before being set out in the final statement of intent, be—
  - (a) set out in the draft statement; and
  - (b) approved by the water services entity's regional representative group. 20
- (2) The group may approve those elements with, or without, changes agreed with the entity's board.

##### 3 Board must also consider group's comments on operational and financial elements

The board of a water services entity must consider any comments made— 25

- (a) on the operational and financial elements (*see* **section 145(2) and (3)**) of the draft statement of intent; and
- (b) by the regional representative group; and
- (c) at least 2 months before the start of the period to which the draft statement relates. 30

Compare: 2002 No 84 Schedule 8 cl 2

##### 4 Final statement of intent

The board of a water services entity must deliver the final statement of intent to the entity's regional representative group before the start of the period to which it relates. 35

Compare: 2002 No 84 Schedule 8 cl 3

- 5 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice to the board, extend a deadline specified in **clause 1(2), 3, or 4** for a period or periods not exceeding in total 1 calendar month.
- Compare: 2002 No 84 Schedule 8 cl 4 5
- 6 Modifications of statement of intent**
- The board of a water services entity may, by written notice to the regional representative group, modify a statement of intent at any time if the board has first—
- (a) given written notice to the regional representative group of the proposed modification; and 10
- (b) considered any comments made on the proposed modification by the regional representative group within—
- (i) 1 month after the date on which the board gave the notice under **paragraph (a)**; or 15
- (ii) any shorter period that the regional representative group may agree; and
- (c) obtained the regional representative group’s approval of the proposed modification. 20
- Compare: 2002 No 84 Schedule 8 cl 5 20

## Part 2

### Preparation of asset management plan

- 7 Engagement on asset management plan proposals**
- The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an asset management plan in accordance with **section 202**. 25
- 8 Draft asset management plan**
- (1) The board of a water services entity must deliver a draft asset management plan to the entity’s regional representative group.
- (2) The draft asset management plan ~~should~~ must include— 30
- (a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and
- (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (2A) The draft asset management plan must be accompanied by a statement of asset data quality and confidence ratings. 35

- (3) The draft asset management plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.  
Compare: 2002 No 84 Schedule 8 cl 1
- 9 Consideration of regional representative group comments** 5
- (1) The board of a water services entity must consider any comments on the draft asset management plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group— 10
- (a) on the draft asset management plan; and
- (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (see **section 91(f)(ii)**). 15
- Compare: 2002 No 84 Schedule 8 cl 2
- 10 Final asset management plan**
- (1) The board of a water services entity must deliver the final asset management plan to the regional representative group of the entity before the commencement of the financial year to which it relates. 20
- (2) The final asset management plan must include the board's responses to the comments considered under **clause 9**.  
Compare: 2002 No 84 Schedule 8 cl 3
- 11 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 8(3), 9, or 10(1)** for a period or periods not exceeding in total 1 calendar month. 25  
Compare: 2002 No 84 Schedule 8 cl 4
- 12 Modifications of asset management plan**
- The board of a water services entity may, by written notice, modify an asset management plan at any time if the board has first— 30
- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within— 35
- (i) 1 month after the date on which the notice under paragraph (a) was given; or

- (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

### Part 3

#### Preparation of funding and pricing plan

5

#### 13 Engagement on funding and pricing plan proposals

The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt a funding and pricing plan in accordance with **section 202**.

#### 14 Draft funding and pricing plan

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- (1) The board of a water services entity must deliver a draft funding and pricing plan to the entity's regional representative group.
- (2) The draft funding and pricing plan should include—
- (a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and
- (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (3) The draft funding and pricing plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.

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#### 15 Consideration of regional representative group comments

- (1) The board of a water services entity must consider any comments on the draft funding and pricing plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
- (a) on the draft funding and pricing plan; and
- (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (see **section 91(f)(ii)**).

25

30

Compare: 2002 No 84 Schedule 8 cl 2

#### 16 Final funding and pricing plan

- (1) The board of a water services entity must deliver the final funding and pricing plan to the regional representative group of the entity before the commencement of the financial year to which it relates.

35

- (2) The final funding and pricing plan must include the board's responses to the comments considered under **clause 15** of this schedule.  
Compare: 2002 No 84 Schedule 8 cl 3
- 17 Regional representative group may extend deadlines by up to 1 month**  
The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 14(3), 15, or 16(1)** for a period or periods not exceeding in total 1 calendar month. 5  
Compare: 2002 No 84 Schedule 8 cl 4
- 18 Modifications of funding and pricing plan**  
The board of a water services entity may, by written notice, modify a funding and pricing plan at any time if the board has first— 10
- (a) given written notice to the regional representative group of the entity of the proposed modification; and
  - (b) considered any comments made on the proposed modification by the regional representative group of the entity within— 15
    - (i) 1 month after the date on which the notice under **paragraph (a)** was given; or
    - (ii) any shorter period that the regional representative group of the entity may agree.
- Compare: 2002 No 84 Schedule 8 cl 5 20

## Part 4

### Preparation of infrastructure strategy

- 19 Engagement on infrastructure strategy proposals**  
The board must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an infrastructure strategy in accordance with **section 202**. 25
- 20 Draft infrastructure strategy**
- (1) The board of a water services entity must deliver a draft infrastructure strategy to the entity's regional representative group.
  - (2) The draft infrastructure strategy should include— 30
    - (a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and
    - (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.

- (3) The draft infrastructure strategy must be delivered on or before 1 March in the year preceding the financial year to which the draft infrastructure strategy relates.  
Compare: 2002 No 84 Schedule 8 cl 1
- 21 Consideration of regional representative group comments** 5
- (1) The board of a water services entity must consider any comments on the draft infrastructure strategy that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group— 10
- (a) on the draft infrastructure strategy; and
- (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (see **section 91(f)(ii)**). 15
- Compare: 2002 No 84 Schedule 8 cl 2
- 22 Final infrastructure strategy**
- (1) The board of a water services entity must deliver the final infrastructure strategy to the regional representative group of the entity before the commencement of the financial year to which it relates. 20
- (2) The final infrastructure strategy must include the board's responses to the comments considered under **clause 21**.
- Compare: 2002 No 84 Schedule 8 cl 3
- 23 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 20(3), 21, or 22(1)** for a period or periods not exceeding in total 1 calendar month. 25
- Compare: 2002 No 84 Schedule 8 cl 4
- 24 Modifications of infrastructure strategy**
- The board may, by written notice, modify an infrastructure strategy at any time if the board has first— 30
- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within— 35
- (i) 1 month after the date on which the notice under **paragraph (a)** was given; or

- (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5



## Schedule 4

### Divestment proposals

s 116

#### 1 Interpretation

In this schedule, unless the context otherwise requires,— 5

**affected elector** means—

- (a) a person who is a residential elector (within the meaning of section 23 of the Local Electoral Act 2001), if the address in respect of which the person is registered is in an affected area:
- (b) a person who is a ratepayer elector (within the meaning of section 24 of the Local Electoral Act 2001), if the person is qualified as a ratepayer elector in respect of a rating unit in an affected area 10

**divestment proposal** means a proposal (*see* **section 116(2)(b) or (c)(i)**) for a water services entity to do all or any of the following in breach of **section 116(1)** but in accordance with this schedule: 15

- (a) divest its ownership or other interest in any water services;
- (b) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area (if, in doing so, the entity does not retain its capacity to perform or exercise its duties, functions, or powers—*see* **section 116(2)(c)(ii) and (3)**) 20

**Local Government Commission** or **Commission** means the Local Government Commission continued under section 28 of the Local Government Act 2002

**public notice**, in relation to a notice of a divestment proposal given by the Local Government Commission,— 25

- (a) means a notice published—
  - (ia) in the *Gazette*; or
  - (i) in 1 or more newspapers circulating in the affected area; ~~and~~ or
  - (ii) on an Internet site maintained by, or on behalf of, the Commission and that is publicly available as far as practicable and free of charge; and 30
- (b) includes any other notice that the Commission thinks desirable in the circumstances.

## Part 1

### Divestment proposal

- 2 Water services entity must refer proposal to regional representative group**
- (1) A divestment proposal may be made—
- (a) on the water services entity’s own initiative; or 5
  - (b) by any other person.
- (2) A proposal made under **subclause (1)(b)** must be made in writing to the water services entity.
- (3) A water services entity must forward any proposal made under **subclause (1)(a) or (b)** to the regional representative group. 10
- 3 Regional representative group may, after consultation, resolve by 75% majority to refer proposal to territorial authority owners**
- (1) A regional representative group forwarded a divestment proposal under **clause 2** may resolve to refer the divestment proposal to the territorial authority owners. 15
- (2) Before voting on whether to refer the proposal to a poll, the regional representative group must consult—
- (a) all of the territorial authority owners of the water services entity; and
  - (b) mana whenua of rohe or takiwā within the area of the water services entity; and 20
  - (c) the Minister.
- (3) The resolution fails unless supported by a vote of not less than 75% of the regional representatives present and voting.
- (4) A regional representative group that resolves to refer a divestment proposal to territorial authority owners under this clause must notify those owners of the resolution. 25
- 4 Territorial authority owners may resolve unanimously to refer proposal to poll**
- (1) After receiving notification of a resolution under **clause 3**, the territorial authority owners may resolve to refer a divestment proposal to a poll. 30
- (2) The resolution fails unless supported by a unanimous vote of all the territorial authority owners (instead of only all those present and voting).
- (3) Territorial authority owners that resolve to refer a divestment proposal to a poll under this clause must notify the Commission of the resolution.

## 5 Notification of divestment proposal

- (1) As soon as practicable after receiving notification of a resolution under **clause 4**, the Commission must—
- (a) give public notice of the proposal and, in the notice, specify where copies of the proposal may be inspected; and 5
  - (b) provide a balanced assessment of the proposal to persons, bodies, and groups that the Commission identifies as having an interest in the proposal; and
  - (c) take any other action that it considers necessary to inform persons, bodies, and groups that the Commission identifies as having an interest in the proposal. 10
- (2) The costs incurred by the Commission under **subclause (1)** are to be apportioned among the affected water services entities according to the number of affected electors on the electoral rolls of the territorial authority owners of the water services entity in the manner set out in regulations. 15
- Compare: 2002 No 84 Schedule 3 cl 13(1)

## Part 2 Poll

### 6 Poll to be held

- (1) A poll of electors on the proposal must be held in the service area. 20
- (2) Except as otherwise provided in this Part, a poll under this clause must be held under the Local Electoral Act 2001 and the provisions of that Act apply, with any necessary modifications, to the conduct of the poll.
- (3) The Local Government Commission must ensure that 1 electoral officer is designated to conduct the poll and to declare the official result of the poll under **clause 8**. 25
- (4) The costs of the poll are to be apportioned among the affected water services entities on the basis of the number of affected electors on the electoral rolls of the water services entity. 30
- Compare: 2002 No 84 Schedule 3 cl 26

### 7 Timing of poll

- (1) A poll required by **clause 6** must be held on a date determined by the Local Government Commission in accordance with this clause.
- (2) In determining the date on which a poll is to be held, the Commission must consult the electoral officer required to conduct the poll. 35
- (3) The Commission must, as soon as practicable after complying with **subclause (2)**, give written notice of the date determined under **subclause (1)** to the

Secretary, to the chief executive of each affected water services entity, and to the electoral officer required to conduct the poll.

- (4) The electoral officer who receives written notification under **subclause (3)** must, within 7 days after receiving the notification, give public notice of—
- (a) the poll; and 5
  - (b) the place or places at which the divestment proposal and the explanatory statement may be inspected.
- (5) The date determined under **subclause (1)** for the conduct of the poll must,—
- (a) if written notice under **subclause (3)** is to be given on or after 28 September and before 21 November in any year, be a day no earlier than 17 February and no later than 24 February in the following year; and 10
  - (b) if written notice under **subclause (3)** is to be given on or after 21 November and before 16 December in any year, be a day no earlier than 14 March and no later than 21 March in the following year; and
  - (c) if written notice under **subclause (3)** is to be given on or after 16 December in any year and before 13 January in the following year, be a day no earlier than 11 April and no later than 18 April in that following year; and 15
  - (d) in any other case, be a day no later than 89 days after the day on which written notice under **subclause (3)** is given to the electoral officer. 20

Compare: 2002 No 84 Schedule 3 cl 26

## 8 Official result of poll

The electoral officer must,—

- (a) when declaring the official result of the poll under section 86 of the Local Electoral Act 2001, include a statement of— 25
  - (i) the total number of electors on the roll or rolls compiled for the purpose of the poll; and
  - (ii) the total number of valid votes cast:
- (b) as soon as practicable after declaring the result, notify the chief executive of the department, the chief executive of the water services entity and each territorial authority in the service area, and the Local Government Commission of the result: 30
- (c) if 75% of votes are in favour of the proposal, notify the Minister of the result. 35

Compare: 2002 No 84 Schedule 3 cl 27

## 9 Effect of poll

A divestment proposal must not be implemented unless 75% of the votes cast in the poll are in favour of the proposal.

### Part 3 Advertising of poll

#### 10 Interpretation

In this subpart, unless the context otherwise requires,—

**advertising** means advertising in any medium 5

**publish**, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—
  - (i) displaying in any medium:
  - (ii) distributing by any means: 10
  - (iii) delivering to an address:
  - (iv) leaving at a place:
  - (v) sending by post or otherwise:
  - (vi) printing in a newspaper or other periodical:
  - (vii) broadcasting by any means: 15
  - (viii) disseminating by means of the Internet or any other electronic medium:
  - (ix) storing electronically in a way that is accessible to the public:
  - (x) incorporating in a device for use with a computer:
  - (xi) inserting in a film or video; but 20
- (b) excludes addressing 1 or more persons face to face

**specified period** means the period commencing on the day after the date on which public notice of the proposal is first given under **clause 5** and ending with the close of the day on which the poll is held.

Compare: 2002 No 84 Schedule 3 cl 29 25

#### 11 Advertising in relation to polls

- (1) A local authority or water services entity affected by a divestment proposal may not, at any time in a specified period, do anything (including publishing any advertising) that—
  - (a) involves the expenditure of the authority's or the entity's money or use of the authority's or the entity's resources; and 30
  - (b) promotes or opposes the implementation of the divestment proposal or a provision of the divestment proposal.
- (2) This clause does not apply to—

- (a) any investigations or research undertaken by, or on behalf of, the water services entity or local authority that relate to the divestment proposal or its effects; or
- (b) the making of submissions or other representations to the Commission by the water services entity or local authority; or 5
- (c) the publication of any news or comment relating to the divestment proposal or the poll in any medium by any person other than the water services entity or local authority; or
- (d) anything done by a water services entity or local authority to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987. 10

Compare: 2002 No 84 Schedule 3 cl 30

## 12 Provision of referential information

- (1) **Clause 11** does not preclude a local authority affected by a divestment proposal from publishing material that— 15
  - (a) does not expressly or impliedly promote or oppose the divestment proposal; but
  - (b) contains factual or referential material presented—
    - (i) in a balanced way; and
    - (ii) to assist electors considering voting in a poll to make a better-informed decision. 20
- (2) A local authority or water services entity may (but does not have to) seek a ruling from the Local Government Commission that material proposed to be published by the authority or the entity under **subclause (1)** complies with that subclause. 25
- (3) If the Local Government Commission provides a ruling that the material complies with **subclause (1)**, then publication of the material by the local authority or water services entity is to be treated as published in accordance with **subclause (1)**. 30

Compare: 2002 No 84 Schedule 3 cl 31

## 13 Authorisation of advertising

- (1) A person may not publish advertising that promotes or opposes the implementation of the divestment proposal, or a provision of the divestment proposal, unless the advertising contains a statement setting out the true name and address—contact details of the person who initiated or instigated the publication of the advertising. 35
- (2) ~~In **subclause (1)**, address means,—~~
  - (a) ~~in relation to an individual,—~~

- (i) ~~the full street address of the place where the individual usually lives; or~~
- (ii) ~~the full street address of any other place where the individual can usually be contacted between the hours of 9 am and 5 pm on any working day;~~ 5
- (b) ~~in relation to a body corporate or unincorporated,~~
- (i) ~~the full street address of the body's main place of business; or~~
- (ii) ~~the full street address of the body's head office.~~
- (2) In this section, **contact details** means 1 or more of the following:
- (a) a residential or business address: 10
- (b) an email address:
- (c) a post office box number:
- (d) a phone number:
- (e) a link to a page on an Internet site, if the page contains 1 or more of the contact details specified in **paragraphs (a) to (d)**. 15

Compare: 2001 No 35 s 113

### *Offences*

#### **14 Offence for publishing advertising in breach of clause 13**

- (1) A person commits an offence if the person intentionally fails or refuses to comply with **clause 13(1)**. 20
- (2) A person who commits an offence against **subclause (1)** is liable on conviction to a fine not exceeding \$20,000.

**Schedule 5**  
**Amendments to Local Government Act 2002**

s 214

In section 25(4), after “Schedule 2”, insert “of this Act, and may amend Schedule 2 of the Water Services Entities Act 2022, if appropriate, to reflect any future changes to the names, water services entity service areas, or both, of the local authorities referred to in that schedule”.

After section 101B(4), insert:

(4A) A local authority must, for a long-term plan for or after 2027–2037, identify and explain, in the infrastructure strategy, any significant connections with, or interdependencies between,—

(a) the matters included in that infrastructure strategy; and

(b) the matters that are—

(i) included in an infrastructure strategy prepared and adopted by a water services entity under **section 153** (and *see also clause 10A of Schedule 1*) of the Water Services Entities Act 2022; and

(ii) relevant to the local authority’s district or region.

In Schedule 1AA,—

(a) insert the following Part as the last Part; and

(b) make all necessary consequential amendments:

**Part 6**

**Provisions relating to Water Services Entities Act 2022**

*Definitions*

**24 Definitions**

In this **Part**,—

**bylaw**, without limiting the generality of that term as defined in section 5(1), includes—

(a) a set of bylaws; and

(b) an individual bylaw in a set of bylaws; and

(c) a provision within an individual bylaw

**establishment date** has the meaning in **clause 1 of Schedule 1** of the Water Services Entities Act 2022



**transition period** means the period—

- (a) starting on the day after the date of Royal assent of the Water Services Entities Act 2022; and
- (b) ending at the close of the day before the establishment date

**water services bylaw** means a bylaw that relates to all or any of the following:

- (a) water supply (as defined in **section 6** of the Water Services Entities Act 2022):
- (b) wastewater;
- (c) stormwater.

### *Bylaws*

## **25 Review under section 158 or 159 of water services bylaws may be deferred during transition period**

(1) The local authority may decide to defer a review required by section 158(1) or (2) or 159 if all the following requirements are met:

- (a) the review relates only to a water services bylaw;
- (b) for that bylaw, the 5-year period in section 158(1) or (2)(b) or, as the case requires, the 10-year period in section 159 ends in the transition period;
- (c) the local authority makes the decision in the transition period;
- (d) the local authority gives prompt public notice of the deferral;
- (e) that public notice identifies clearly the bylaw.

(2) A deferral under **subclause (1)** has the results specified in **subclauses (3) to (5)**.

(3) The review is required only if the bylaw is not revoked in the transition period.

(4) The review, if required, is required no later than the second anniversary of the establishment date.

(5) For the purposes of section 160A, the last date on which the bylaw should have been reviewed under section 158 or 159 must be taken to be the second anniversary of the establishment date.

(6) **Subclauses (2) to (5)** apply despite sections 158, 159, and 160A.

## **26 Duty to identify before 1 January 2024 specified water services bylaws**

Each local authority must, before **1 January 2024**,—

- (a) create a list of every water services bylaw that is—
  - (i) made by that local authority; and
  - (ii) in force immediately before **1 January 2024**; and

- (b) publish the list on an Internet site maintained by or on behalf of the local authority.

Long-term planning

**27 Long-term planning to exclude water services during establishment period**

- (1) This clause applies to the following long-term planning: 5
- (a) a draft or final long-term plan or an amendment to a long-term plan (under section 93 and Part 1 of Schedule 10), or associated material or documentation:
- (b) a consultation document related to a long-term plan, and information relied on by the content of that document (under sections 93A to 93G): 10
- (c) a financial strategy (under section 101A):
- (d) an infrastructure strategy (under section 101B).
- (2) That long-term planning must, during the establishment period, exclude any content (for example, any proposals or associated information) relating to water services. 15
- (3) Examples of content relating to water services include content relating to all or any of the following that is, or are, related to water services:
- (a) activities (for example, delivery of services):
- (b) asset management:
- (c) funding arrangements: 20
- (d) infrastructure.
- (4) This clause does not affect or limit **subpart 2 of Schedule 1** of the Water Services Entities Act **2022**, including, without limitation,—
- (a) transitional requirements for water services entities’ asset management plans and funding and pricing plans during the establishment period: 25
- (b) any duty of local government organisations under that subpart to co-operate with the department and water services entities.

In Schedule 3, clause 7(2)(a), after “the matters to be investigated”, insert “(which must include any connections with, and any potential implications for, a relevant water services entity and the application of the Water Services Entities Act **2022**)”. 30

In Schedule 3, replace clause 7(4)(a) with:

- (a) consult the following on the proposed process or amendment:
- (i) affected local authorities; and
- (ii) the relevant water services entities, their territorial authority owners, regional representative groups, mana whenua, and the responsible Minister and monitor under the **Water Services Entities Act 2022**; and 35

In Schedule 3, replace clause 7(6)(c) with:

- (c) notify the following of the publication and location of the process document:
  - (i) all affected local authorities; and
  - (ii) affected iwi or hapū; and
  - (iii) the relevant water services entities, their territorial authority owners, regional representative groups, mana whenua, and the responsible Minister and monitor under the **Water Services Entities Act 2022**; and
  - (iv) key stakeholders identified by the Commission.

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In Schedule 3, after clause 10(i), insert:

- (j) effective provision for any arrangements that are—
  - (i) established by the Water Services Entities Act **2022**; and
  - (ii) between local authorities and iwi or Māori organisations.

In Schedule 3, after clause 12(2)(f), insert:

- (g) the implications of the proposed changes for the arrangements in or established under the Water Services Entities Act **2022**.

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In Schedule 3, after clause 12(4), insert:

- (5) The Commission must not adopt a reorganisation plan under this clause that affects the arrangements in or established under the Water Services Entities Act **2022** without first consulting—
  - (a) the relevant water services entities, regional representative groups, territorial authority owners, and mana whenua under the Act; and
  - (b) the responsible Minister and monitor under the Act.
- (6) A reorganisation plan to which **subclause (5)** applies must provide for the same level and scope of participation in decision making by iwi or Māori organisations as the arrangement specified in the Act referred to in that sub-clause.

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In Schedule 3, after clause 14(2)(c)(viii), insert:

- (ix) any arrangements relating to water services entities under the Water Services Entities Act **2022**, including (but not limited to)—
  - (A) any proposed changes to the arrangements for the ownership of those entities by territorial authorities; and
  - (B) the composition of regional representative groups; and

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In Schedule 3, after clause 14(3)(g), insert:

- (h) any arrangements relating to water services entities under the Water Services Entities Act **2022**, including (but not limited to)—

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- (i) any proposed changes to the arrangements for the ownership of those entities by territorial authorities; and
- (ii) the composition of regional representative groups; and

In Schedule 3, after clause 14(4), insert:

(4A) However, a reorganisation plan must include, and the Commission cannot defer and include in the reorganisation implementation scheme, the matters in **sub-clause (3)(h).**

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### Legislative history

2 June 2022  
9 June 2022

Introduction (Bill 136–1)  
First reading and referral to Finance and Expenditure Committee