

Water Services Entities Bill

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text deleted

Hon Nanaia Mahuta

Water Services Entities Bill

Government Bill

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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):

- (ca) **sections 129 to 134** (which relate to a Government policy statement on water services), and **section 202** so far as it relates to a Government policy statement issued under **clause 6A of Schedule 1**:
- (e) **section 206** (which contains regulation-making powers), and **section 202** so far as it relates to regulations made under **section 206(1)(a)**: 5
- (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%):
- (f) **section 214** (which amends the Local Government Act 2002 in respect of matters related to water services): 10
- (fa) **sections 224 and 225** (which amend the Taumata Arowai—the Water Services Regulator Act 2020 in respect of te Mana o te Wai):
- (fb) **sections 227 and 228** (which amend the Water Services Act 2021 in respect of—
- (i) te Mana o te Wai; and 15
- (ii) consultation on, and accounting for and banking of, cost-recovery levies):
- (g) **Schedule 1** (which contains transitional, savings, and related provisions).
- (2) The rest of this Act comes into force— 20
- (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**.
- (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

25

Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to enable long-term, sustainable improvements in the safety, quality, resilience, accessibility, affordability, efficiency, and performance of— 30
- (a) water services; and
- (b) water services infrastructure.
- (2) This Act seeks to achieve that purpose by—
- (a) establishing 4 water services entities to provide water services in New Zealand: 35
- (b) providing for their service delivery areas and for their governance, reporting, and accountability arrangements:

- (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: 5
- (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.
- 4 Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai** 10
- Duties to give effect*
- (1) All persons performing or exercising duties, functions, or powers under this Act—
- (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. 15
- Interaction with other provisions on te Tiriti/the Treaty*
- (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).
- 5 Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi** 20
- 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:
- (c) in **section 13**, that the operating principles of a water services entity include— 30
- (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, 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—
- (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and 5
 - (ii) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori:
- (f) in **section 74**, that the board of each water services entity must—
- (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— 10
 - (A) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (B) engage with, and understand perspectives of, mana whenua; and 15
 - (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:
- (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. 20

6 Interpretation

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 25

board appointment committee means a committee of a regional representative group appointed under **section 38**

board member—

- (a) means a member of the board appointed under **section 57**; but 30
- (b) for the purposes of **sections 122 to 126**, has the meaning set out in **section 121**

chairperson,—

- (a) of a regional representative group, means— 35
 - (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
- (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*) 10
- committee** means,—
- (a) in relation to a regional advisory panel, a committee or subcommittee appointed under the constitution; and
- (b) in relation to a regional representative group, a committee or subcommittee appointed under the constitution (including the board appointment committee); and 15
- (c) in relation to a board, a committee or subcommittee appointed under the constitution
- constitution** means, in relation to a water services entity,— 20
- (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
- department** means the department for the time being responsible for the administration of this Act 25
- deputy chairperson**,—
- (a) of a regional representative group, means—
- (i) its deputy chairperson (*see section 41*); or
- (ii) if **section 42(2)(c)** applies, both of its deputy co-chairpersons: 30
- (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
- drinking water** has the meaning set out in section 6 of the Water Services Act 2021 35
- 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**
- financial year** means the 12 months ending on the close of 30 June
- funding and pricing plan** means the funding and pricing plan prepared by the board under **section 150** 5
- generally accepted accounting practice** has the meaning set out in section 8 of the Financial Reporting Act 2013
- green water services 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 water services; and 10
- (b) includes an engineered system that is an area, feature, or process that complies with **paragraph (a)**
- Government policy statement** means a Government policy statement on water services issued by the Minister under **section 129** 15
- local authority** has the meaning set out in section 5 of the Local Government Act 2002
- 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 20
- mana whenua panel member** means a mana whenua panel member appointed to a regional advisory panel (*see* **section 51**)
- 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 25
- 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 30
- ministerial body** means a Crown review team, a Crown observer, or a Crown manager appointed under **subpart 2 of Part 5**
- 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 35
- 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

regional representative means a territorial authority representative or mana whenua representative 5

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**

service area means, in relation to a water services entity, the area identified in **Schedule 2** as the service area of the entity 10

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
- (b) includes— 15
 - (i) an overland flow path (as defined in this section):
 - (ii) green water services infrastructure that delivers stormwater water services (as defined in this section)

Te Mana o te Wai—

- (a) 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** of this Act); and 20
- (b) applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991) 25

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

territorial authority has the meaning set out in section 5 of the Local Government Act 2002 30

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**)

territorial authority representative means a territorial authority representative appointed to a regional representative group under **section 32** 35

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

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 5

Treaty settlement deed means a deed or other agreement—

- (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 10

Treaty settlement obligations means obligations under any of the following:

- (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 stormwater

water services entity or **entity** means a water services entity established under **section 10** 20

water services infrastructure—

- (a) means infrastructure owned or operated by a water services entity for the purposes of the delivery of water services; and
- (b) includes— 25
 - (i) a water supply network;
 - (ii) a wastewater network;
 - (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 30

water supply includes—

- (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 35
- (c) water supplied for agricultural or horticultural purposes

- 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: 20
 - (a) any rights or interests in water are preserved, consistent with assurances—
 - (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 206(1)(d)** of this Act or section 25(4) of the Local Government Act 2002.

11 Objectives of water services entities

The objectives of each water services entity are to— 15

- (a) own and operate water services infrastructure, and deliver water services, in an efficient and financially sustainable manner:
- (b) protect and promote public health:
- (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 25
to—
- (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
- (baa) having regard in the delivery of water services to—
 - (i) green water services infrastructure (as defined in **section 6**); and
 - (ii) water-sensitive design; and 10
- (ba) in their employment, and in their procurement (including by way of contractual arrangements, joint arrangements, or joint water services entity arrangements),—
 - (i) having regard to the areas where services are delivered to consumers and communities; and 15
 - (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 20
- (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
 - (iii) reporting on the performance of the water services entity; and 25
- (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
 - (ii) understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and 30
- (e) giving effect to Treaty settlement obligations to the extent that the obligations apply to the performance or exercise of the duties, functions, or powers of the entity; and
- (f) partnering and engaging early and meaningfully with territorial authorities and their communities; and 35
- (g) co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

15 Status of water services entities*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 5
 - (c) continues in existence until it is dissolved by an Act.

Co-owned in shares by territorial authority owners 10

- (2) A water services entity is co-owned—
- (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*). 15
- (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 20
 - (b) a council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or
 - (c) a local government organisation as defined in section 124 of the Local Government Act 2002.

Compare: 2004 No 115 s 15 25

16 Shares in water services entities

- (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: 30
- (a) if that population is not more than 50,000 people, 1 share:
 - (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. 35
- (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 Data and Statistics Act 2022

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— 5

- (a) the establishment date (as defined in **clause 1 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 10
- (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:
 - (i) territorial authority owners named in **Parts 1 to 4 of Schedule 2**: 15
 - (ii) their districts or part districts specified in those Parts; or
- (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. 20

(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. 25

17 Core things water services entities can do

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. 30

(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 35

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

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, an Act; or
 - (b) an act that is done otherwise than for the purpose of performing the entity's functions. 5
- (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 10

- (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—
- (a) of an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or 15
 - (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. 20
- (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. 25

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 30
- (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
- (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 35
- (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).

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. 5

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— 10
- (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)—
- (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 15
- (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. 20
- (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. 25
- (3) Nothing in this section affects a person's right to apply, in accordance with the law, for judicial review.

Compare: 2004 No 115 s 23

25 Interpretation for sections 15 to 24

In **sections 15 to 24**, unless the context otherwise requires,— 30

act includes a transfer of property, rights, or interests to or by a water services entity

do includes—

- (a) to do an act; and
- (b) to have a capacity; and 35
- (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
- (b) includes entry into a contract for, or relating to,— 5
 - (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

person dealing—

- (a) means the other party to the transaction, if the act of the water services entity is a transaction; and 10
- (b) includes a person who has acquired property, rights, or interests from a water services entity.

Compare: 2004 No 115 s 24

Subpart 3—Minister’s role 15

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—

- (a) to issue a Government policy statement on water services under **section 129**: 20
- (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:
- (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: 25
- (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:
- (e) to perform or exercise any other duties, functions, or powers the Minister has, in respect of the entities, under legislation. 30

Subpart 4—Regional representative groups

Establishment, role, and decision making of regional representative group

27 **Establishment and membership of regional representative group**

- (1) This section establishes a regional representative group for each water services entity. 35

- (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—
- (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— 5
- (a) territorial authority representatives; and
 - (b) mana whenua representatives.
- 28 Role of regional representative group**
- 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 10
 - (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
 - (d) approving the appointment and remuneration policy prepared by its board appointment committee under **section 40**; and 15
 - (e) performing or exercising any other duties, functions, or powers it has under legislation.
- 29 Collective duty of regional representative group**
- The regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation— 20
- (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; 25
 - (c) taking into account the interests of future as well as current consumers and communities in that area.
- Compare: 2002 No 84 s 14
- 30 Decision making by regional representative group**
- Decisions made by a regional representative group of a water services entity must be made— 30
- (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 35
 - (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

5

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. 10
- (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*). 15

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. 20

34 Requirements before appointment as regional representative

- (1) Before a person is appointed as a regional representative, the person must— 25
- (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). 30
- (2) A disclosure under **subsection (1)(c)** must be made,—
- (a) in the case of a proposed appointment as a territorial authority representative, to the entity's territorial authority owners: 35
 - (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.

- (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.

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—

- (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.

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. 15
- (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. 20
- (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. 25
- (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

- (1) Each regional representative group must appoint a board appointment committee. 35

- (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,—
- (a) performance monitoring and governance; and
 - (b) network infrastructure industries (for example, water services network infrastructure industries); and 5
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ca) public health; and
 - (cb) the environment; and
 - (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and 10
 - (e) perspectives of consumers and communities; and
 - (f) perspectives of local government.
- (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 15
 - (b) the person is a regional representative.
- 39 Functions of board appointment committee**
- The functions of the board appointment committee are— 20
- (a) to appoint and remove members of the board of a water services entity; and
 - (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. 25
- 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— 30
- (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
 - (b) a remuneration and expenses framework for members of the entity’s board. 35
- (2) The regional representative group must—

- (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. 5
- (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. 10

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)*),— 15
 - (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**. 20

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 25
 - (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 30
 - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's mana whenua representatives; and
 - (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. 35

*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. 5
- (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.
- (3) Whether the regional representatives choose a binding process or a non-binding process, each regional representative must— 10
- (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).
- (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. 15
- (5) The Minister, with a view to assisting the regional representatives to resolve the dispute, may—
- (a) appoint, and meet the costs of, a Crown facilitator: 20
 - (b) direct the regional representatives to use a particular alternative dispute resolution process for that purpose.

Compare: 1991 No 69 s 58S

*Obligation for regional representative group to hold
at least 2 public meetings each financial year* 25

43A Regional representative group must hold at least 2 public meetings each financial year

- (1) The regional representative group of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **group public meetings**). 30
- (2) The group must—
- (a) give public notice of the details of a group public meeting at least 1 month before the meeting; and
 - (b) allocate a reasonable amount of time for members of the public attending a group public meeting to address the group in relation to the subject matter of the meeting. 35

- (3) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the group public meetings (*see* **section 44**).

Official information

- 44 Application of Local Government Official Information and Meetings Act 1987 to regional representative group** 5
- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the regional representative group of a water services entity.
- (2) This section does not limit—
- (aaa) **section 43A** (which requires the group to hold 2 public meetings each financial year to which Part 7 of that Act applies); or 10
- (aab) **section 44A** (which requires the entity’s shareholders to hold at least 1 public meeting each financial year to which Part 7 of that Act applies); or
- (a) **section 55** (which relates to the application of Part 7 of that Act to a regional advisory panel for the group); or 15
- (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).

Obligation for entity’s shareholders to hold at least 1 public meeting each financial year 20

- 44A Shareholders must hold at least 1 public meeting each financial year**
- (1) The territorial authority owners of a water services entity that are shareholders of the entity (*see* **sections 15 and 16**) must hold at least 1 shareholders’ meeting during each financial year that is open to members of the public (the **shareholders’ public meeting**). 25
- (2) The territorial authority owners must—
- (a) give public notice of the details of the shareholders’ public meeting at least 1 month before the meeting; and
- (b) allocate a reasonable amount of time for members of the public attending a shareholders’ public meeting to address the shareholders in relation to the subject matter of the meeting. 30
- (3) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the shareholders’ public meeting (*see* **section 44**).

Subpart 5—Regional advisory panels

Establishment, role, and decision making of regional advisory panels

45 Establishment and membership of regional advisory panels

- (1) The constitution of a water services entity may establish 1 or more regional advisory panels. 5
- (2) Each regional advisory panel must include an equal number of—
 - (a) territorial authority panel members; and
 - (b) mana whenua panel members.

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— 10
 - (a) in the service area of the water services entity; and 15
 - (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— 20
 - (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).

47 Collective duty of regional advisory panel

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— 25

- (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 30
- (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.

Compare: 2002 No 84 s 14 35

- 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 5
 - (b) in any other case, by 75% of the regional advisory panel members present and voting.
- 49 Panel may regulate its own procedure if none specified** 10
- 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** 15
- 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. 20
- 52 Requirements before appointment as regional advisory panel member**
- (1) Before a person is appointed as a regional advisory panel member, the person must— 25
 - (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). 30
 - (2) A disclosure under **subsection (1)(c)** must be made,—
 - (a) in the case of a proposed appointment as a territorial authority panel member, to the entity’s territorial authority owners: 35

- (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.
- (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. 5
- Compare: 2004 No 115 s 31

Chairperson and deputy chairperson

53 Appointment of chairperson and deputy chairperson

- (1) Each regional advisory panel must elect or appoint, in accordance with the constitution (*see* **section 91(f)(x)**),— 10
- (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.
- (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**. 15

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)**),—
- (a) 2 of its regional advisory panel members as co-chairpersons of the panel; 20
and
- (b) 2 of its regional advisory panel members as deputy co-chairpersons of the panel.
- (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,— 25
- (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
- (c) references in legislation, other than this section, to the panel's chair- 30
person 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.

*Official information***55 Application of Local Government Official Information and Meetings Act 1987 to regional 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. 5
- (2) This section does not limit—
- (a) **section 44** (which relates to the application of Part 7 of that Act to the regional representative 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 6—Boards of water services entities*Role, membership, and accountability* 15**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.
- (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. 20
- Compare: 2004 No 115 s 25

57 Membership of board

- (1) The board of a water services entity consists of no fewer than 6, and no more than 10, members. 25
- (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
- (b) network infrastructure industries (for example, water services network infrastructure industries); and 30
- (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (ca) public health; and
- (cb) the environment; and
- (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and
- (e) perspectives of consumers and communities; and 35
- (f) perspectives of local government.

58 Chairperson and deputy chairperson

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 5

- (1) Board members must comply with—
 - (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. 10

Compare: 2004 No 115 s 26

*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**). 15
- (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— 20
 - (a) give public notice of the details of the public meeting at least 1 month before the meeting; and
 - (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. 25
- (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.
- (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. 30
- (6) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the board.

*Official information***61 Application of Local Government Official Information and Meetings Act 1987 to water services entity** 35

- (1) Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a water services entity.

- (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 5
 - (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

- (1) Board members are appointed by a board appointment committee. 10
- (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 15
 - (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**). 20
- (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. 25
- (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— 30
 - (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 35

relating to the entity (if the person is, or is to be, interested, as defined in **section 100**, in those matters).

- (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. 5

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.
- (2) A board member may be reappointed. 10
- (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. 15

- (4) This section is subject to **section 72**.

Compare: 2004 No 115 s 32

66 Validity of board members' acts 20

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. 25

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. 30
- (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 35

- (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—
- (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 5
 - (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 board or the individual duties of members (depending on the seriousness of the breach). 10
- 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 15
 - (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**
- 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. 20
- 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. 25
- (2) The resignation is effective on receipt of the notice by the board appointment committee or at any later time specified in the notice.
- Compare: 2004 No 115 s 44
- 72 Board members ceasing to hold office**
- A board member ceases to hold office if the board member— 30
- (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)**.
- 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. 5

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—

- (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— 10
 - (i) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) engage with, and understand perspectives of, mana whenua; and 15
- (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***75 Duty of board members to comply with relevant legislation** 20

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

76 Duty of board members to act with honesty and integrity 25

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 30

- (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— 35
 - (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
- (b) knowing that their performance or exercise of the duty, function, or power will, or is likely to, cause the entity serious loss. 5
- (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.
- 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)— 10
- (a) the nature of the entity; and
- (b) the nature of the action.
- Compare: 2004 No 115 s 56 15
- 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— 20
- (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.
- Compare: 2004 No 115 s 57(1) 25

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. 30
- (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—
- (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 35
- (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**.
- (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) 5
- 81 Board member’s liability for breach of collective duty**
- (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— 10
- (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
- (b) the right to apply for a court order under **section 84**.
Compare: 2004 No 115 s 58(5), (6), (8) 15
- 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.
- (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). 20
- (3) A water services entity may bring an action against a board member for breach of any individual duty.
- (4) This section and **section 83** do not affect any other ground for removing a board member from office. 25
Compare: 2004 No 115 s 59(1)–(3), (5)
- 83 Board member’s liability for breach of individual duty**
- (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)**. 30
- (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
- (b) the right to apply for a court order under **section 84**. 35
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—
- (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 5
 - (b) granting any consequential relief.
- (2) The court may make an order on the application subject to the following rules:
- (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. 10
- (4) This section is subject to **section 115**.
Compare: 2004 No 115 s 60(1), (3)–(5)

Delegation 15**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:
- (a) a board member: 20
 - (b) the chief executive or any 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)**.
- (2) **Subsection (1)** does not apply to any functions or powers specified in this Act as not being capable of delegation. 25
- (3) The board must not delegate the general power of delegation.
Compare: 2004 No 115 s 73

86 Powers of delegate

- (1) A delegate to whom any functions or powers of a water services entity or its board are delegated— 30
- (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; and 35
 - (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.
- (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 5
- (b) must produce evidence of their authority to do so, if reasonably requested to do so.
- Compare: 2004 No 115 s 74
- 87 Effect of delegation on water services entity or board 10**
- 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 15
- (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
- 88 Revocations of delegations 20**
- (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. 25
- 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. 30

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.

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— 5
- (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
 - (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 10
 - (iii) the procedures for the appointment of mana whenua representatives to the group (*see* **section 33**); and 15
 - (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
 - (vi) the composition of any other committees; and 20
 - (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
 - (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**): 25

Procedures for regional representative group

- (b) how the group will perform or exercise its functions, powers, and duties: 30
- (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—
- (i) the intervals between meetings; and 35
 - (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
- (vi) the quorum and procedure for meetings, including decision-making procedures: 5
- (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)**: 10
- (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)**: 15
- (e) procedures and time frames for making decisions by consensus (*see* **section 30**):
- Composition of regional advisory panel*
- (f) the composition of a regional advisory panel, including— 20
- (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
- (iii) the procedures for the appointment of territorial authority panel members to the panel (*see* **section 50**); and 25
- (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 30
- (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 35
- (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**):

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 5
 - (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 10
 - (vi) the quorum and procedure for meetings, including decision-making procedures:
- (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)**: 15
 - (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)**: 20
- (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* 25
- (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: 30
- (i) remuneration for, and reasonable expenses of,—
 - (A) regional representatives:
 - (B) regional advisory panel members:
 - (ii) reasonable administrative costs of each meeting of that group or panel: 35
 - (iii) reasonable costs of that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution:

- (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: 5
- (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: 10
- (vii) other reasonable costs related to that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution:
- (viii) any unforeseen costs incurred with the prior approval of the board of the entity: 15
- (ja) procedures for the entity to perform its duty under **section 114(1A)** to provide funding to mana whenua to—
 - (i) support and enable mana whenua to provide Te Mana o te Wai statements for water services; and
 - (ii) monitor any plan of the entity, or actions that the entity takes, as part of the entity’s response to a Te Mana o te Wai statement for water services: 20
- 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 25
 - (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 30
 - (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 35
 - (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
- (vi) the quorum and procedure for meetings:
- (m) decision-making procedures, including any requirements relating to voting or consensus decision making: 5
Procedures for dispute resolution
- (n) procedures for dispute resolution (in addition to those in **section 43(4) and (5)**), including procedures for resolving— 10
- (i) disputes within a regional representative group (that is, between regional representatives); and
- (ii) disputes between the regional representative group and the board; and
- (iii) disputes between parties that are able to appoint regional representatives and that are disputes about appointment processes: 15
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**
- (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. 20
- (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): 25
- (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): 30
- (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: 35
- (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)**.

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: 5
 - (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)*): 10
 - (d) confer a power of direction contrary to **section 115**.
- (3) The constitution is binding, in accordance with its terms, as between— 15
- (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 20
 - (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). 25

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.
- (2) But, when that model constitution is first amended or replaced under **section 95 or 96**,— 30
- (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
 - (b) the regulations setting out the model constitution for the entity are revoked. 35

- 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.
- (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. 5
- (3) A draft constitution, or a proposed amendment to the entity's constitution, must be—
- (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 10
- (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—
- (a) provided to the Minister; and 15
- (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.
- (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— 20
- (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)**. 25
- (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.
- (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. 30
- (9) This section applies, without limitation, to an amendment or new constitution increasing the number of regional representatives (*see* **section 206(2B)(b)**), but does not apply to an amendment of a type described in **section 96(1)**.
- 96 Minor or technical amendments** 35
- (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—

- (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.
- (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. 5
- (4) If the group makes the amendment, the amendment is effective—
 - (a) on the day immediately after the date on which the group makes the amendment; or 10
 - (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 15

Qualifications

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. 20
- (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: 25
 - (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988: 30
 - (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—
 - (i) competence to manage their own affairs in relation to their property; or 35
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare:

- (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: 5
- (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:
- (c) a member— 10
- (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** 15
- (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: 20
- (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: 25
- (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:
- (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). 30 35
- (2) This section applies to a regional representative, regional advisory panel member, or board member only if they—
- (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.
- Compare: 2004 No 115 s 61(1), (3)

Conflict of interest disclosure rules 5

99 Water services entity must keep interest registers for entity, regional representative group, and regional advisory panel

A water services entity must keep a separate interest register for each of the following:

- (a) interests of board members: 10
- (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 15
 - (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 20
 - (e) is otherwise directly or indirectly interested in the matter.
- (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 25
 - (c) only because they have past or current involvement in the relevant sector, industry, or practice.
- (3) In this section, **matter** means,— 30
 - (a) in relation to a board member,—
 - (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: 35
 - (b) in relation to a regional representative,—

- (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. 5

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. 10
- (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. 15
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A board member must disclose details of an interest in the interests register kept by the water services entity, and to— 20
 - (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; 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. 25

Compare: 2004 No 115 ss 63, 64

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. 30
- (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. 35
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.

- (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 5
 - (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)*). 10

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. 15
- (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. 20
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A regional advisory panel member must disclose details of an interest in the interests register kept by the water services entity, and— 25
 - (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
 - (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 30
 - (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)*). 35

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—

- (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

105 Consequences of being interested in matter

Board member

5

- (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

10

- (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.

15

Regional representative

- (2) A regional representative who is interested in a matter relating to a regional representative group—

- (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

20

- (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.

Regional advisory panel member

25

- (3) A regional advisory panel member who is interested in a matter relating to a regional advisory panel—

- (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

30

- (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.

Compare: 2004 No 115 s 66

106 Consequences of failing to disclose interest

35

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—

- (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
- (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)*). 5

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. 10

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 15

- (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 20

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. 25
- (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.

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. 30
- (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. 35
- (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 permis-

sion may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see* **section 91(d)**).

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. 5
- (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. 10
- (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

- (9) A permission may state conditions that the board member, regional representative, or regional advisory panel member must comply with. 15
- (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 20

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) 25

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— 30
- (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 35
- (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

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. 5

- (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. 10

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. 15

- (2) In any other case, a water services entity has the onus of establishing that it did not receive fair value.

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— 20

- (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. 25

Compare: 2004 No 115 s 72

Vacancies in membership

113 Vacancies in membership of board, regional representative group, or regional advisory panel 30

- (1) The powers and functions of a water services entity are not affected by any vacancy in the membership of—

- (a) its board; or
 (b) its regional representative group; or
 (c) a regional advisory panel for that group. 35

- (2) The powers and functions of a water services entity's regional representative group are not affected by any vacancy in the membership of—

- (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— 5
- (a) the regional advisory panel; or
 - (b) the regional representative group; or
 - (c) the entity's board.
- Compare: 2004 No 115 s 77 10

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, in accordance with the procedures specified in its constitution (*see section 91(j)*), 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)**. 15

Duty to provide funding for Te Mana o te Wai statements for water services

- (1A) A water services entity must provide funding, in accordance with the procedures specified in its constitution (*see section 91(ja)*), to mana whenua to— 20
- (a) support and enable mana whenua to provide Te Mana o te Wai statements for water services; and
 - (b) monitor any plan of the entity, or actions that the entity takes, as part of the entity's response to a Te Mana o te Wai statement for water services. 25

Duty to provide information

- (2) A water services entity must provide information that the entity holds if that information is required—
- (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 30
 - (b) to help the territorial authority owner, mana whenua, group, or panel perform or exercise its duties, functions, or powers under this Act.
- (3) But personal information within the meaning of the Privacy Act 2020 may be provided under **subsection (2)** only in accordance with that Act. 35

Part 3 Operation of water services entities

Independence of water services entities

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— 5
- (a) in relation to the performance or exercise of a duty, function, or power under this Act; or
- (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. 10
- (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act.
- (3) This section also prevents a constitution of a water services entity from conferring a power of direction that would contravene this section. 15
- (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.
- Compare: 2004 No 115 s 113 20

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. 25
- (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 infrastructure as security for any purpose:
- (b) divest its ownership or other interest in any water services except in accordance with **Schedule 4**: 30
- (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. 35
- (3) In this section,—

significant infrastructure means any of the following:

- (a) water services infrastructure that—
 - (i) is owned or operated by a water services entity for the purposes of the delivery of water services to consumers or communities in any part of the entity's service area; and 5
 - (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
 - (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 10
- (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. 15

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 15 years. 20
- (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 25
 - (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. 30

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 15 years (except a conces- 35

- sion or other franchise agreement relating to the provision of the water services or any aspect of the water services).
- (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: 5
- (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. 10
- (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— 15
 - (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— 20
 - (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 with the water services, unless the water services entity reasonably believes that the sale is— 25
 - (i) incidental to the joint arrangement; and
 - (ii) desirable for the success of the joint arrangement.
- (4) In this section,—
- 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 30
- 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 35
- 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.

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 between the board and the chief executive. 5
- (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:
 - (c) the public interest in prudent stewardship of public resources: 10
 - (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 15

- (1) A water services entity must, if it employs employees,—
- (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 20
 - (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.
- (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— 25
- (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 30
 - (d) recognition of—
 - (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 35

- (f) recognition of the aims and aspirations, employment requirements, and cultural differences of ethnic or minority groups; and
- (g) recognition of the employment requirements of women; and
- (h) recognition of the employment requirements of persons with disabilities; and 5
- (i) recognition of the importance of achieving pay equity between female and male employees; and
- (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 perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons. 10
- Compare: 2004 No 115 s 118 15

Protections from liability

121 Definitions for protections from liability

In **sections 122 to 126**,—

board member—

- (a) means a member of the board appointed under **section 57**; and 20
- (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

effect insurance includes to pay, whether directly or indirectly, the costs of the insurance

employee, in relation to a water services entity,— 25

- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under **section 119**; and
- (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 30

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

indemnify includes to relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning. 35

Compare: 2004 No 115 s 126

- 122 Protections for board members and employees from liabilities of water services entity** 5
- 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.
- 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**: 10
- (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**: 15
- (b) the liability of any person that is not a civil liability:
- (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** 20
- 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).
- Compare: 2004 No 115 s 122
- 125 Insurance for liability of board member or employee** 25
- 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—
- (a) in bad faith; or
- (b) not in the performance or intended performance of the entity's functions. 30
- Compare: 2004 No 115 s 123
- 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. 35

- (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

- 127 Method of contracting** 5
- (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. 10
- (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. 15
- (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. 20

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. 25

Compare: 2004 No 115 s 130

Part 4

Financial and accountability matters

Subpart 1AA—Outline of Part 30

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**). 35

- 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
 - (b) informs and guides agencies involved in, and the activities necessary or desirable for, water services. 5
- Statement of strategic and performance expectations*
- (3) **Subpart 2** is about a regional representative group’s statement of strategic and performance expectations that—
- (a) states the regional representative group’s objectives and priorities for water services in the entity’s service area; and 10
 - (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. 15
- Reporting obligations* 20
- (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: 25
 - (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* 30
- (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. 35

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 later at intervals of no more than 3 years after the most recent review. 5
- (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)**. 10
- (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— 15
- (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: 20
- (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: 25
- (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— 30
- (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: 35
- (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:
- (b) any other matters the Minister considers relevant. 5
- 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—
- (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and 10
- (b) 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
- (ii) the regional representative group of each water services entity; and 15
- (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.
- Compare: 2019 No 50 s 24 20
- 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
- 133 Amending Government policy statement** 25
- (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 30
- (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**
- (1) As soon as practicable after issuing a Government policy statement, the Minister must— 35

- (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 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. 5

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** 10

- (1) The regional representative group of a water services entity must issue a statement of strategic and performance expectations for the entity.
- (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. 15
- (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. 20
- (4) A statement of strategic and performance expectations must relate to at least 10 financial years.
- (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— 25
 - (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)*).

136 **Purpose and content of statement of strategic and performance expectations** 30

- (1) The purpose of a statement of strategic and performance expectations for a water services entity is to—
 - (a) state the regional representative group’s objectives and priorities for water services in the entity’s service area; and 35
 - (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—

- (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: 5
 - (ia) how the group expects the water services entity to respond to any advice—
 - (A) provided to the group by a regional advisory panel; and
 - (B) about how the entity should perform or exercise its duties, functions, or powers in a particular geographic area (*see section 46*): 10
 - (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 15
- (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 20
- (c) consider the needs and concerns of consumers and communities, as articulated in the latest consumer engagement stocktake under **section 204**.
- (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**. 25

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. 30

Compare: 2019 No 50 s 26

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. 35
- (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.

- 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.
- Subpart 3—Te Mana o te Wai statements for water services 5
- 140 Mana whenua may provide Te Mana o te Wai statements 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 10
- (b) whose interests in the service area are recognised in a Treaty settlement Act.
- (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: 15
- (b) relate to 1 water body, or to multiple water bodies.
- (3) Mana whenua who have provided a Te Mana o te Wai statement for water services under **subsection (1)**—
- (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. 20
- (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** 25
- (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—
- (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. 30
- (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. 35

142 Obligation to publish response to Te Mana o te Wai statement for water services

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— 5

- (a) as soon as practicable after issuing the response; and
- (b) in any event, within 2 years after receiving the statement to which it relates.

Subpart 4—Reporting obligations 10*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
 - (b) include forecast financial statements. 15
- (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: 20
 - (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:
 - (c) for significant forecasting assumptions and risks that involve a high level of uncertainty,— 25
 - (i) the fact of that uncertainty; and
 - (ii) an estimate of the potential effects of that uncertainty on the estimates provided in the document.

Compare: 2002 No 84 Sch 10, cl 17 30

*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—

- (a) setting out the entity’s strategic intentions; and 35

- (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

- (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**. 5
- (2) The board must provide a statement of intent annually.
- (3) A statement of intent must—
 - (a) relate to at least the following 10 financial years; and
 - (b) be prepared in accordance with **Part 1 of Schedule 3**. 10
- (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 15
 - (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**. 20
- (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 25
 - (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— 30
 - (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 35
 - (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
- (ii) the direction and priorities in the Government policy statement; and 5
- (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. 10
- 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 15
- (b) significant work that the entity proposes to undertake; and
- (ba) any actions the entity intends to take in a particular geographic area (consistent with the statement of strategic and performance expectations) in response to advice provided (to the entity’s regional representative group) by a regional advisory panel; and 20
- (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 25
- (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. 30
- 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 35
- (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

- (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** 5
- 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,—
- (a) provide the statement to the entity's territorial authority owners; and
- (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. 10

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. 15
- (2) The asset management plan must—
- (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** 20
- An asset management plan for a water services entity must, for the period to which it relates, set out—
- (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 25
- (ii) provide new infrastructure assets; and
- (c) how the plan meets the proposed activities and intention of the entity set out in its statement of intent; and
- (ca) any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel; and 30
- (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. 35

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 5
- (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. 10

*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— 15
 - (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— 20
 - (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 25
 - (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— 30
 - (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
 - (ia) any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel; and 35

- (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
- (iii) other significant factors affecting the entity's ability to maintain existing levels of service and to meet additional demands for services; and 5
- (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. 10

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— 15

- (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
- (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. 20

Planning: infrastructure strategy

153 Board must prepare and adopt infrastructure strategy

- (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. 25
- (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
 - (b) the main options for managing those issues and the implications of those options. 30
- (2) The strategy must—
 - (a) cover a period of at least 30 consecutive financial years; and
 - (b) comply with **section 154**; and
 - (c) be prepared in accordance with **Part 4 of Schedule 3**.

154 Content of infrastructure strategy 35

- (1) An infrastructure strategy must identify—

-
- (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and
 - (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. 5
- (2AAA) An infrastructure strategy must also set out any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity’s regional representative group) by a regional advisory panel. 10
- (2A) An infrastructure strategy must outline how the water services entity intends to manage its infrastructure assets, taking into account the need to— 15
- (a) renew or replace existing assets; and
 - (b) respond to growth or decline in the demand for services reliant on those assets; and
 - (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 20
 - (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— 25
- (a) show indicative estimates of the projected capital expenditure and operating expenditure associated with the management of those assets— 30
 - (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
 - (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 35
 - (c) include the following assumptions on which the scenario is based:
 - (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
- (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.
- (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. 10
- (3A) An infrastructure strategy must also contain a report from the Auditor-General on—
 - (a) whether the strategy gives effect to its purpose stated in **section 153**; and 15
 - (b) the quality of the information and assumptions underlying the forecast information provided in the strategy.
- (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— 20
 - (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. 25

Compare: 2002 No 84 s 101B

155 Obligation to publish infrastructure strategy

- 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,— 30
- (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
 - (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. 35

*Reporting: annual report***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 5
 - (b) provide the report to its regional representative group no later than 15 working days after receiving the audit report provided under **section 161**. 10
- (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—
- (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. 15
- (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. 20
- Compare: 2004 No 115 s 150(1)

157 Form and content of annual report

- (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**; 25
 - (c) the annual financial statements for the entity in accordance with **section 159**;
 - (d) a statement of responsibility in accordance with **section 160**;
 - (e) an audit report in accordance with **section 161**; 30
 - (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); 35
 - (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**):
 - (j) information required by **section 21(3)** (which relates to the enforcement of certain natural person transactions): 5
 - (k) information required by **section 108** (which relates to permission to act despite being interested in a matter):
 - (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. 10
- (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—
- (a) an assessment of the entity's progress in relation to—
 - (i) the strategic elements as set out in the most recent statement of intent (*see* **section 145(1)**); and 15
 - (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**. 20
- (2A) The annual report must also set out any actions the entity has taken in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel.
- (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. 25

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

158 Form and content of statement of service delivery performance

- (1) A statement of service delivery performance must, in relation to a water services entity and a financial year, contain the following information: 30
- (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)**):
 - (b) whether any intended changes to the level of service delivery have been achieved: 35
 - (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)**):
- (cb) the reasons for any significant variation between proposed activities, work, and actions, and actual activities, work, and actions undertaken or taken: 5
- (d) the actual revenue, capital expenditure, and operating expenditure for water supply, wastewater, and stormwater services, compared to the revenue, capital expenditure, and operating expenditure budgeted for those services in the statement of intent: 10
- (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— 15
- (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. 20

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. 25
- (2) The financial statements must—
- (a) include any information or explanations needed to fairly reflect the financial operations and financial position; and 30
- (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

160 Statement of responsibility

- The statement of responsibility must— 35
- (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

- (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 5
- (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 10
- (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** 15
- (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. 20
- (2) The Auditor-General must, within 3 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— 25
- (a) comply with this Act; and
- (b) comply with generally accepted accounting practice; and
- (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** 30
- (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
- (b) a report on the number of employees who were employed by the entity— 35

-
- (i) on the last day of the financial year to which the report relates; 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 5
 - (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
 - (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 10
 - (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.
- (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. 15
- (3) The report must state, as at the last day of the financial year,—
- (a) the number of full-time employees; and 20
 - (b) the full-time equivalent number of all other employees; and
 - (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. 25
- (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) In this section,— 30
- 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
- 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— 35
- (a) any final payment of salary; or
 - (b) any holiday pay; or 40

(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. 5

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

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. 10
15

Compare: 2002 No 84 s 111

164 Insurance of assets

An annual report must state, as at the end of the financial year,—

- (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 20
- (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. 25

Compare: 2002 No 84 Schedule 10 cl 31A

Subpart 5—Other provisions for financial management and
independence 30

Major transactions

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,— 35
assets includes property of any kind, whether tangible or intangible

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 25% of 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 25% of the value of the entity's assets before the disposition; or 5
- (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 25% of the value of the entity's assets before the transaction 10

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 15
 - (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— 20
- (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 25
 - (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.
- (4) This section does not affect or limit **section 116 and Schedule 4**. 30
Compare: 1993 No 105 s 129

Bank accounts

165 Bank accounts of water services entities

- (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: 35

- (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
- (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 5
- (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*.
- (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)**. 10
- (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,—
- (a) during that period, the water services entity may continue to pay money into the bank account; but 15
- (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 that qualifies under **subsection (1)**.
- (8) The period of grace ends on the earlier of— 20
- (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 water services entity.
- Compare: 2004 No 115 s 158 25

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— 30
- (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
- (b) must not receive any equity return, directly or indirectly, from a water services entity; and 35
- (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

- (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 5
- (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,—
- equity return** means—
- (a) profits of the entity; or 10
- (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,—
- (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 15
- (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—
- (a) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and 20
- (b) on terms and conditions generally available to other parties of equivalent creditworthiness
- lend money or provide credit**—
- (a) includes, without limiting the generality of that expression,— 25
- (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
- (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and 30
- (iv) to subscribe for any debt securities or uncalled capital; but
- (b) does not include to sell or supply goods or services on credit—
- (i) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and 35
- (ii) on terms and conditions generally available to other parties of equivalent creditworthiness

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** 5
- (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
 - (b) will, at any time, enable the financial position of the entity to be determined with reasonable accuracy; and 10
 - (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.
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form. 15
- Compare: 2004 No 115 s 168

Subpart 7—Borrowing

- 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. 20

Part 5 Monitoring

Subpart 1—Monitor

Appointment and role of monitor 25

- 169 Appointment and role of monitor**
- (1) The Minister must appoint a department to be the monitor.
- (2) The role of the monitor is—
- (a) to act as a steward to provide oversight of the water services system from a whole of government perspective; and 30
 - (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:

- (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. 5
- (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.
- Compare: 2021 No 31 s 80
- Monitor’s information-gathering power* 10
- 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**.
- (2) The entity or other relevant person must provide the information— 15
- (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**
- (1) A request for information made under **section 170** may be refused if— 20
- (a) the withholding of the information is necessary to protect the privacy of a living natural 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. 25
- (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, functions, or powers under this Act.
- (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 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**. 35

- (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:
- (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. 5
- (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. 10
- Compare: 2021 No 36 s 143

173 Content of notice

- (1) A notice under **section 170** must state—
- (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 15
 - (c) the date by which the water services entity, or other relevant person, must provide the information.
- (2) The notice may require a water services entity, or other relevant person, to provide information—
- (a) by instalments on specified dates: 20
 - (b) by instalments at specified intervals.
- Compare: 2002 No 84 s 257(3), (5)

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 30
 - (b) a significant or persistent failure by the entity—
 - (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 35

- (c) the consequences of a state of emergency (within the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, 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 5
- (e) a potential problem that relates to a matter, circumstance, or failure specified in **paragraph (a), (b), or (d)**.

Crown review team

- 175 Minister may appoint Crown review team** 10
- (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 15
 - (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—
 - (i) the water services entity or the entity's regional representative group is unable or unwilling to effectively address the problem; or 20
 - (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
 - (c) the Minister has received a written request to do so from the water services entity, 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**. 30
 - (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,—
 - (a) investigate and report on the nature and extent of the problem or failure to provide information; and 35
 - (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

- (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 5
- (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) 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. 10
- (6) A water services entity or the entity's regional representative group must—
- (a) co-operate with a Crown review team so that it may comply with its terms of reference; and 15
- (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.
- (7) A Crown review team must produce a final report that complies with **section 188** as soon as practicable after completing a review. 20

Compare: 2002 No 84 s 258

176 Appointment of Crown review team

- (1) A Crown review team comprises 1 or more members.
- (2) If a Crown review team comprises 2 or more members, the Minister must appoint 1 member as the chairperson. 25
- (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—
- (i) an outline of the reason it has been appointed to perform functions under **section 175**; and 30
- (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.

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—
- (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
 - (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
 - (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, 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 observer, the Minister must give notice of the proposed appointment in accordance with **section 185**.
- (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
 - (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
 - (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

- (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.
- (5) A water services entity or the entity's regional representative group must— 5
- (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. 10
- (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. 15
- (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 20
- (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** 25
- (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— 30
- (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 35

- (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, 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. 5
- (2) Before appointing a Crown manager, the Minister must give a notice of the proposed appointment in accordance with **section 185**. 10
- (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 15
- (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 20
- (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. 25
- (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. 30
- (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. 35
- (7) A Crown manager must produce a final report that complies with **section 188** as soon as practicable after their management period ends. 40

Compare: 2002 No 84 s 258D

40

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 5
 - (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

**Subpart 3—General provisions applying to
Minister’s powers to intervene** 10

181 Application

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

182 Minister may consult 15

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.

Compare: 2002 No 84 s 258N 20

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: 25
 - (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: 30
 - (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 later at intervals of no more than 5 years after the most recent review. 35
- (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.
- (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. 5
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**.
- (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. 10
Compare: 2002 No 84 s 258P
- 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— 15
- (a) give the entity and the entity’s regional representative group notice that the Minister intends to make the appointment; and
 - (b) state—
 - (i) the reasons for the proposed appointment; and 20
 - (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: 25
 - (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;
 - (iii) that, for any other reason, the Minister should not make the appointment: 30
 - (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.
- (3) This section does not apply if— 35
- (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 of the people within the water services entity's service area is, or is likely to be, endangered. 5

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—
- (a) be in writing; and 10
 - (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
 - (d) be published in the *Gazette*; and 15
 - (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
 - (b) the type of ministerial body appointed; and 20
 - (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
 - (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*. 25
- (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
 - (b) any other notice that the Minister thinks desirable in the circumstances. 30

Compare: 2002 No 84 ss 258S, 258T

187 Information to Minister

A ministerial body must inform the Minister about—

- (a) the steps it is taking to address the problem; and
- (b) the progress of those steps. 35

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—
- (a) a narrative description of the activities of the ministerial body in relation to its terms of reference; and 5
 - (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; and 10
 - (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 15
 - (e) any other matter required by the ministerial body's terms of reference.
- (2) The Minister must, as soon as practicable,—
- (a) give a copy of the report to the relevant water services entity and the entity's regional representative group; and 20
 - (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.

Compare: 2002 No 84 s 258U

189 Remuneration and expenses of ministerial appointees 25

- (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
 - (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. 30
- (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. 35

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.
- (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 payment 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.

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.
- (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.
- (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.

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.
- (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

- 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. 5
- (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** 10
- 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. 15
- Compare: 2002 No 84 s 258ZA(1), (2), (3)

Part 6

Miscellaneous provisions 20

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. 25
- (2) The relevant period starts on the fifth anniversary, and ends on the sixth anniversary, of the establishment date (as defined in **clause 1 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: 30
- (b) interaction of each water services entity’s regional representative group with the following:
- (i) the entity’s board:
- (ii) territorial authority owners: 35
- (iii) mana whenua in the entity’s service area:

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- (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:
 - (iii) consumers and communities in the entity's service area: 5
 - (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, 10
 - 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: 15
 - (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. 20
- (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 25**
- (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 of Schedule 1**).
 - (3) The comprehensive review required by this section must include consideration 30
 - 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: 35
 - (c) legislation in or made under the Water Services Act 2021:

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- (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:
- (g) any other relevant matters identified by the Minister. 5
- (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** 10
- 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** 15
- (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. 20
- (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. 25
- (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: 30
- (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. 35

- (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. 5
- (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 of Schedule 1**). 10

Subpart 3—Engagement

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) 15
- (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) 20
- (b) **section 206(1)(a) and (2)** (relating to the making of regulations to provide for a model constitution):
- (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). 25
- (2) Engagement requires that a water services entity or the Minister do either or both of the following before deciding on a matter:
- (a) consult on a proposal:
- (b) seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis. 30
- (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.
- (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 35
- (b) must consider the needs of the particular person or persons with whom the water services entity is engaging; and

- (c) must allow adequate time for engagement to occur and for 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.

Compare: 2020 No 42 s 22

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Consumer engagement

203 Consumer forum

- (1) The chief executive of a water services entity must establish 1 or more consumer forums.
- (2) The purpose of a consumer forum is to— 10
 - (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 15
 - (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. 20
- (3A) The chief executive of a water services entity must ensure that each of its consumer forums achieves equitable and reasonable representation of metropolitan, provincial, and rural communities in its service area.
- (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— 25
 - (a) the intervals between meetings; and
 - (b) the number of members that may be on the forum; and
 - (c) the method of selecting forum members; and
 - (d) any additional purposes to those set out in **subsection (2)**; and 30
 - (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 under this section.
- (5) The chief executive must ensure that each consumer forum established has a guidance document. 35

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.
- (2) The purpose of a consumer engagement stocktake is to— 5
- (a) capture consumer and community feedback on, and satisfaction with, how the entity is performing; and
 - (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,— 10
- (a) for the first consumer engagement stocktake, the period from the establishment date (as defined in **clause 1 of Schedule 1**); and
 - (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— 15
- (a) whether the stocktake gives effect to its purpose stated in **subsection (2)**; and
 - (b) whether the water services entity, in preparing the stocktake, has given effect to the principles of engagement in **section 205**. 20
- (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 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 25

In performing its functions under **sections 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: 30
- (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:
- (d) the entity should consider the changing needs of consumers and communities over time, and ensure that engagement will be effective in the future: 35

- (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.

Subpart 4—Regulations

- 206 Regulations** 5
- (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:
- (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: 10
- (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: 15
- (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: 20
- (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (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 territorial authority owners of the entity and mana whenua of the service area. 25
- (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 a number of regional representatives that is— 30
- (a) at least 12; and
- (b) no more than 18.
- (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**. 35
- (3) Regulations made under **subsection (1)(b)** may include requirements relating to—
- (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 4A—Reserved provision

- 206AA Restriction on amendment or repeal of certain provision** 5
- (1) This section applies to ~~section 116 (the reserved provision)~~, which relates to the obligation to maintain ownership and control of water services and significant assets.
 - (2) The reserved provision cannot be repealed or amended unless the proposal for the amendment or repeal— 10
 - (a) is passed by a majority of 60% of all the members of the House of Representatives; or
 - (b) has been carried by a majority of the valid votes cast at a poll of the electors of the General and Māori electoral districts.
 - (3) This section does not apply to the repeal of the reserved provision by a consolidating Act if— 15
 - (a) the reserved provision is re-enacted without amendment; and
 - (b) this section is re-enacted without amendment to apply to the provision as re-enacted.

Subpart 5—Amendments to other Acts 20

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)** 25
- 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)** 30
- 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”.

*Amendments to Goods and Services Tax Act 1985***207 Principal Act** 5

Sections 208 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** 10

209 Section 6 amended (Meaning of term taxable activity)

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) 15

After section 78H, insert:

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%. 20

(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**)—

(a) made by a water services entity to a local authority (within the meaning of the Local Government Act 2002); and 25

(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 30

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

*Amendments to Income Tax Act 2007***210 Principal Act** 35

Sections 211 and 212 amend the Income Tax Act 2007.

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

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. 5

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. 10

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** 15

Amendments to Local Government Act 2002

213 Principal Act

Section 214 amends the Local Government Act 2002.

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 amend the Local Government Official Information and Meetings Act 1987. 25

215A Schedule 1 amended

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 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	
	<i>Amendment to Ombudsmen Act 1975</i>	5
217	Principal Act	
	Section 218 amends the Ombudsmen Act 1975.	
218	Schedule 1 amended	
	In Schedule 1, Part 3, insert in 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	10
	Regional representative groups established under subpart 4 of Part 2 of the Water Services Entities Act 2022	
	Water services entities established under section 10 of the Water Services Entities Act 2022	15
	<i>Amendment to Public Audit Act 2001</i>	
219	Principal Act	
	Section 220 amends the Public Audit Act 2001.	
220	Schedule 1 amended	
	In Schedule 1, insert in its appropriate alphabetical order:	20
	Water services entities established under section 10 of the Water Services Entities Act 2022	
	<i>Amendment to Public Records Act 2005</i>	
221	Principal Act	
	Section 222 amends the Public Records Act 2005.	25
222	Section 4 amended (Interpretation)	
	In section 4, definition of local authority , after paragraph (b), insert:	
	(c) includes a water services entity as defined in section 6 of the Water Services Entities Act 2022	
	<i>Amendments to Taumata Arowai—the Water Services Regulator Act 2020</i>	30
223	Principal Act	
	Section 224 amends the Taumata Arowai—the Water Services Regulator Act 2020.	

224 Section 4 amended (Interpretation)

In section 4, replace the definition of Te Mana o te Wai with:

Te Mana o te Wai—

- (a) 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 5, 10, 17, and 18 of this Act): 5
- (b) applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991) 10

*Amendments to Water Services Act 2021***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: 15

14 Te Mana o te Wai: meaning, application, effect*Meaning and application*

- (1) In this Act, **Te Mana o te Wai—**
 - (a) has the meaning set out in the National Policy Statement for Freshwater Management (as that term is defined in section 5 of this Act); and 20
 - (b) applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991).

Effect

- (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. 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).

-
- (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, 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, statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)): 5
 - (ca) other property (which, in this paragraph, means—
 - (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 10
 - (ii) any estate or interest in any thing specified in **subparagraph (i)**):
 - (d) eligibility for benefits, entitlements, interests, rights, powers, or privileges: 15
 - (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 20
- 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—
- (a) of a water services entity; and 25
 - (b) appointed under **clause 4**
- establishment date** means the earlier of—
- (a) a date set by the Governor-General by Order in Council under **section 2(2)**; and
 - (b) **1 July 2024** 30
- establishment period** means the period—
- (a) commencing on the day after the date on which this Act receives the Royal assent; and
 - (b) ending on the establishment date
- existing employer** has the meaning set out in **clause 15** 35
- 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; and
- (b) any other assets that the water services entity wishes to include in the strategy

local government organisation means any of the following that provides water services: 5

- (a) a local authority;
- (b) a council-controlled organisation;
- (c) a subsidiary of a council-controlled organisation

mixed-shareholder CCO means a council-controlled organisation in which— 10

- (a) 1 or more of the shareholders is a local government organisation; and
- (b) at least 1 of the shareholders is not a local government organisation

water services reform means—

- (a) the establishment of water services entities to deliver water services in accordance with this Act; and 15
- (b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.

Subpart 1—Transitional provisions relating to establishment and governance of water services entities

2 Establishment functions and objectives of water services entities 20

During the establishment period,—

- (a) **section 11** must be read as if—
 - (i) the objective set out **paragraph (a)** 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 **paragraph (f)** 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) **section 12** must be read as if the function described in **paragraph (a)** 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. 35

3 Establishment board of water services entity

During the establishment period, **subparts 6 and 8 of Part 2** 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 5
- (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
- (c) **section 60** (board must hold 2 public meetings each financial year) does not apply; and 10
- (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 15
- (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 20
- (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.

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. 25
- (1A) An appointment of a water services entity's establishment chief executive is taken to have been made under **subclause (1)** if the appointment—
 - (a) is made by the chief executive of the department; and
 - (b) is made before the start of the establishment period; and 30
 - (c) takes effect before, on, or after the start of the establishment period.
- (2) An establishment chief executive is appointed for a term that—
 - (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)**. 35
- (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.

- (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,— 5
- (a) the establishment chief executive is an employee of the department until the appointment of the entity's establishment board takes effect; and
- (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. 15
- (6) This clause—
- (a) applies instead of **section 119(1) to (3)** during the establishment period; and
- (b) continues to apply until the earlier of the following: 20
- (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.
- 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. 25
- (2) A local government organisation must, under **clause 11(1) and (2)(b)**, cooperate 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— 30
- (a) the organisation holds; and
- (b) is or may be necessary or desirable for preparing the allocation schedule for the entity.
- (3) The allocation schedule for a water services entity must— 35
- (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—

- (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— 5
- (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 (*see also clause 5A*). 10
- (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 15
- (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)** and **clause 5A**.
- 5A Guiding principle for treatment in allocation schedule of secondary water services assets or property** 20
- (1) The establishment chief executive of a water services entity must, in preparing or updating the entity’s allocation schedule, have regard to the principle stated in this clause.
- (2) The principle is that secondary water services assets or property of a local government organisation should be specified in the should-not-transfer part of the entity’s allocation schedule, unless the organisation and the establishment chief executive agree otherwise. 25
- (3) In this clause,—
- allocation schedule**, of a water services entity, means the allocation schedule prepared or updated for the entity under **clause 5** 30
- secondary water services assets or property**, for a local government organisation, means any assets or property—
- (a) of the local government organisation; and
- (b) that have or has more than 1 purpose or use (*see also clause 5(3)(b)*); and 35
- (c) whose primary purpose or predominant use is not the delivery of water services

should-not-transfer part, of a water services entity's allocation schedule, means the part of that schedule that—

- (a) is prepared under **clause 5(4)**; and
- (b) specifies assets, liabilities, or other matters that, in the opinion of the establishment chief executive of the entity, should not transfer to the entity. 5

6 Role of Minister during establishment period

- (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. 10
- (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.
- (3) The Minister's additional role also includes issuing, amending, and replacing Government policy statements under **clause 6A**.

6A Government policy statement during establishment period 15

- (1) The purpose of a Government policy statement on water services issued during the establishment period (despite **section 130(1)**) is to—
 - (a) state the Government's overall direction and priorities for water services during the establishment period; and
 - (b) inform and guide the activities involved in establishing the water services entities and preparing them for operation. 20
- (2) During the establishment period, the Minister may issue a Government policy statement on water services—
 - (a) with any content that the Minister considers necessary or desirable in the establishment period, after having had regard to— 25
 - (i) the Minister's additional role under **clause 6**; and
 - (ii) the statement's purpose (as stated in **subclause (1)**); and
 - (iii) content required or permitted by **section 130(2) and (3)**, so far as that content is relevant to that purpose; and
 - (b) if the statement is consistent with the objectives of water services entities under **section 11**; and 30
 - (c) if the Minister has complied with **section 131(a)**.
- (3) When preparing or reviewing a Government policy statement during the establishment period, the Minister is not required to comply with **section 131(b)**, but must instead engage in accordance with **section 202** in relation to the statement with— 35
 - (a) establishment boards of water services entities; and
 - (b) Taumata Arowai—the Water Services Regulator.

- (4) **Section 132**, without limiting the generality of that section,—
- (a) applies to a Government policy statement issued during the establishment period; and
 - (b) requires a water services entity, when performing its functions during that period, to give effect to that statement. 5
- (5) A Government policy statement issued during the establishment period—
- (a) may be amended or replaced under **section 133**; and
 - (b) must be presented and published under **section 134**; and
 - (c) is not required to be reviewed under **section 129(2)**; and
 - (d) that is in force immediately before the end of that period, is revoked at the end of that period. 10

Subpart 2—Transitional arrangements relating to reporting obligations

7 Chief executive of department must prepare and approve establishment water services plan

- (1) The chief executive of the department must prepare and approve an establishment water services plan for a water services entity. 15
- (1A) An establishment water services plan for the entity takes the place of a statement of intent for the period to which that plan applies, which—
- (a) starts on the day after the date of publication of that plan; and
 - (b) ends at the first end of a financial year after the establishment date. 20
- (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—
- (a) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the entity; and 25
 - (b) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the entity; and
 - (baaa) the processes, and required timing, for preparing and adopting for the entity, under **clauses 8 to 8B** of this schedule, the following: 30
 - (i) an initial asset management plan; and
 - (ii) an initial funding and pricing plan; and
 - (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. 35

- (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.
- (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. 5
- 8 Chief executive must prepare draft initial asset management plan and draft initial funding and pricing plan**
- (1) During the establishment period, the chief executive of the department must prepare, for each water services entity,—
- (a) a draft initial asset management plan; and 10
- (b) a draft initial funding and pricing plan.
- (2) Each draft initial plan must—
- (a) cover a period of not less than 10 consecutive financial years; and
- (b) if it is a draft initial asset management plan, be prepared as required by **clause 8A**. 15
- (3) The chief executive of the department must—
- (a) send each draft initial plan to relevant local government organisations and the Commission; and
- (b) give them a reasonable time within the establishment period to review, and provide comment to the chief executive of the department on, the draft initial plan; and 20
- (c) have regard to any comments they provide in response, and make any changes to the draft initial plan; and
- (d) forward the draft initial plan to the entity’s establishment board.
- 8AA Role of entity’s establishment board in respect of initial asset management plan and initial funding and pricing plan** 25
- (1) A water services entity’s establishment board must, in accordance with the processes and required timing in the entity’s establishment water services plan (*see clause 7(3)(baaa)*),—
- (a) review the draft initial plans forwarded under **clause 8** to the establishment board and the Commission; and 30
- (b) before adopting for the entity a final initial asset management plan or final initial funding and pricing plan,—
- (i) send to the Commission a draft of the plan (being a draft of the plan that reflects any changes the chief executive of the department has made in response to comment on the draft plan provided by the Commission under **clause 8B(2)**); and 35

- (ii) give the Commission a reasonable time within the establishment period to scrutinise, and report to the entity, the Minister, and the public on, the draft of the plan, under **clause 8B(3)**; and
- (iii) have regard to any report under **clause 8B(3)** of the Commission, and to any recommendations made to the establishment board in the report; and 5
- (c) adopt for the entity, with or without modifications from the draft initial plans forwarded under **clause 8** to the establishment board, and in accordance with **clause 8A** (if applicable), the entity's—
- (i) final initial asset management plan; and 10
- (ii) final initial funding and pricing plan.
- (2) A final initial asset management plan, or final initial funding and pricing plan, adopted under this clause—
- (a) is, after the commencement of **section 147 or 150**, as applicable, taken to be the entity's asset management plan or funding and pricing plan prepared and provided in accordance with that section and with **Part 2 or 3 of Schedule 3**; and 15
- (b) must, as soon as practicable after the commencement of **section 149(a) or 152(a)**, as applicable, be made publicly available in accordance with that section; and 20
- (c) must be replaced under **section 147 or 150**, as applicable, within 3 years after the commencement of that section.
- 8A Additional requirements for draft and final initial asset management plans**
- (1) This clause applies to a plan that is—
- (a) a draft initial asset management plan prepared for a water services entity by the chief executive of the department under **clause 8**; or 25
- (b) a final initial asset management plan to be adopted for the water services entity by its establishment board under **clause 8AA**.
- (2) The plan must indicate—
- (a) the investment priorities for the entity's infrastructure assets: 30
- (b) how the entity will operate, maintain, and renew its infrastructure assets:
- (c) how it incorporates any commitments that relevant local government organisations have made to mana whenua relating to water services infrastructure:
- (d) how the entity will provide new infrastructure assets. 35
- (3) The chief executive of the department when preparing the plan under **clause 8**, and the entity's establishment board when adopting the plan under **clause 8AA**, must also have regard to—

- (a) information that local government organisations provide to the chief executive of the department or to the water services entity in response to requests for information made under **clause 11**; and
- (b) the initial funding and pricing plan being prepared or, as the case requires, that has been adopted, for the entity; and 5
- (c) the entity's ability to deliver the matters proposed for inclusion in the initial asset management plan.
- 8B Commission's functions and powers in establishment period**
- (1) During the establishment period, the Commission has, in respect of the preparation of an initial asset management plan or an initial funding and pricing plan, the functions and powers in this clause. 10
- (2) The Commission may review, and provide comments to the chief executive of the department on, the draft of the plan sent under **clause 8** to the Commission.
- (3) The Commission may scrutinise, and report to the entity, the Minister, and the public on, the draft of the plan sent under **clause 8AA** to the Commission. 15
- (4) The purpose of the Commission's review and provision of comments, or scrutiny and reporting, under **subclause (2) or (3)** is to help to optimise—
- (a) the plan; and
- (b) decisions covered by the plan. 20
- (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 review and provision of comments, or scrutiny and reporting, under this clause.
- (6) In particular, 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 (for example, information about current or indicative water charges). 25
- (7) The obligation to comply with a request under **subclause (6)** includes a requirement to comply with any reasonable request to— 30
- (a) collate information; or
- (b) provide information in a particular format.
- (8) **Subclause (6)** does not limit the generality of **subclause (5)**, and **subclause (7)** does not limit the generality of **subclause (6)**. 35
- 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.

- (2) The report must include any information required by an establishment water services plan approved under **clause 7** of this schedule.

10 Accountability arrangements for establishment period

- (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— 5
- (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. 10
- (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
- (c) report on compliance with this schedule in respect of the entity; and 15
- (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
- (f) include an audit report in accordance with **subclause (5)**; and 20
- (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.
- (4) A water services entity must forward to the Auditor-General— 25
- (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.
- (5) The Auditor-General must, within 4 months after the end of the financial year concerned,— 30
- (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.
- (6) The audit report must indicate whether those statements and that information—
- (a) comply with this Act; and 35
- (b) comply with generally accepted accounting practice; and
- (c) are free from material misstatement.

10A First infrastructure strategy of water services entity

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 5

- (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.
- (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 department or the water services entity; and 10
 - (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 15
 - (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)**, or information about current or indicative water charges, or both). 20
- (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 25
 - (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
 - (d) enable assurance processes for checking the completeness, integrity, and reliability of the information provided. 30
- (4) A local government organisation may only provide personal information under **subclause (2)(b)** if the information relates to all or any of the following:
- (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. 35
- (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:

- (a) carry out, or have carried out for it, a revaluation of its assets:
 - (b) undertake any public consultation or engagement.
- (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. 5

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. 10
- (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.

13 Chief executive of department may issue direction of non-compliance 15

- (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)**.
- (2) The non-compliance direction must— 20
- (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
 - (c) specify the action required to comply with the non-compliance direction. 25
- (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. 30
- (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 35 if the non-compliance order is withdrawn.

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:

- (a) section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan): 5
- (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). 10

Subpart 3—Transitional provisions relating to employment*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**. 15

*Review of employment positions***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 20
 - (b) determine, in relation to each employee, whether in the chief executive’s reasonable opinion—
 - (i) the purpose, duties, and responsibilities of the employee’s role primarily relate to, or primarily support, the delivery of water services; and 25
 - (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 30
 - (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. 35

- (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— 5
- (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 employees position if role primarily relates to, or primarily supports, delivery of water services** 10
- (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 purpose, duties, and responsibilities of the employee’s role primarily relate to, or primarily support, the delivery of water services; and 15
- (b) the employee does not have a senior management role.
- (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. 20
- (3) If the employee is covered by a collective employment agreement, their terms and conditions are covered by **clauses 19 and 20**.
- (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— 25
- (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. 30
- (4A) The position offered or, as the case requires, its terms and conditions 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. 35

- (4B) Whether the position offered is within a reasonable commuting distance 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 5
 - (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
 - (e) access to transport (for example, a vehicle) provided to the employee by the water services entity; and 10
 - (f) availability of public transport; and
 - (g) any relevant terms of the employee’s current employment agreement.
- (5) Nothing in this clause—
- (a) imposes any obligation on an employee of an existing employer to accept an offer under this schedule; or 15
 - (b) prevents the chief executive of 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.
- 16A Compensation if employee accepts position at new location 20**
- (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 25
 - (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: 30
- | Distance differential | Amount payable (\$) |
|--------------------------------------|----------------------------|
| Less than 2 kms | Nil |
| 2 kms or more, but less than 8 kms | 600 |
| 8 kms or more, but less than 12 kms | 1,080 |
| 12 kms or more, but less than 20 kms | 1,620 |
| 20 kms or more | 2,400 |
- (2) In the table in **subclause (1)(b)**,—
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; and 5
- (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. 10
- (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. 15

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. 20
- (2) The terms and conditions of employment continue to apply in relation to the employee until—
 - (a) the terms and conditions are varied—
 - (i) by agreement between the employee and the relevant water services entity; or 25
 - (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 30
 - (b) the employee accepts a later position with the water services entity or the employee resigns or has their employment terminated.
- (3) To avoid doubt, **subclause (2)** applies,—
 - (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 35
 - (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.

- (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.

Compare: 2010 No 37 s 101

5

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—

- (a) is notified of an offer in accordance with **clause 16(4)**; or
 (b) otherwise accepts a position with the water services entity.

10

- (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:

- (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.

15

- (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

20

- (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**); and
 (b) for a fixed term (within the meaning of section 66 of the Employment Relations Act 2000).

25

- (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.

30

- (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.

35

- (5) **Subclause (4)** applies whether the permanent employment begins before or after the end of the fixed term employment.

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. 5
- (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
- (b) section 41 of the Employment Relations Act 2000 does not apply in relation to the bargaining; and 10
- (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— 15
- (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
- (iii) has not received notice of an offer under **clause 16**; and 20
- (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):
- (ii) work done by the person for their existing employer (if **paragraph (a)(ii) or (iii)** applies). 25
- (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 30
- (c) the person's employment is terminated before that date or the person resigns before that date.
- Compare: 2010 No 37 s 111
- 20 Application of existing collective agreements on and from establishment date** 35
- (1) **Subclause (2)** applies if—

- (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 5
 - (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 10
- (c) the collective agreement does not expire until after the establishment date.
- (2) On and from the establishment date,— 15
- (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. 20
- (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**. 25
- (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. 30
- (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)**. 35
- Compare: 2010 No 37 s 112

Subpart 4—Oversight powers of department

21 Decisions subject to department's oversight powers

Definition

- (1) In this subpart, **decision** means a decision that—

- (a) relates to, or may affect, the provision of water services; and
- (b) is not excluded by **subclause (4)**.

Examples

- (2) Examples of a decision that complies with **subclause (1)(a)** include a decision that relates to, or may affect, the provision of water services, and that is a decision— 5
- (a) by a local authority to adopt an annual plan or to adopt or amend a long-term plan; or
 - (b) by a local authority to adopt a policy required by the Local Government Act 2002; or 10
 - (c) by a local authority that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, a policy or plan adopted by the local authority under the Local Government Act 2002; or
 - (d) by a local authority to purchase or dispose of assets other than in accordance with its long-term plan; or 15
 - (e) by a local government organisation to purchase or dispose of an asset; or
 - (f) by any local government organisation to enter into a contract.
- (3) In **subclause (2)**, **annual plan** and **long-term plan**, of a local authority, have the meanings given to those terms in section 5(1) of the Local Government Act 2002. 20

Exclusion of certain decisions by local government organisations

- (4) However, in this subpart, a **decision** excludes (*see* **subclause (1)(b)**) a decision that complies with **subclause (1)(a)** and that is a decision by a local government organisation to enter into an excluded contract. 25
- (5) An **excluded contract**, in **subclause (4)**, means a contract—
- (a) that is an employment agreement; or
 - (b) that is not an employment agreement, and that imposes an obligation on a local government organisation only before a date determined by the chief executive of the department for the purposes of this paragraph; or 30
 - (c) that is not an employment agreement, and that is a contract for which the consideration is less than an amount 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 35

- (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.
- (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— 5
- (a) reviews a decision of the organisation under **subclause (2)**; and
 - (b) considers, on reasonable grounds, that the decision is a decision to which **clause 23** applies.

Compare: 2009 No 13 s 20 10

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.
- (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. 15
- (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,—
- (a) significantly prejudice the water services reform; or 20
 - (b) significantly constrain the powers or capacity of the water services entities following the water services reform; or
 - (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. 25

Compare: 2009 No 13 s 31(1), (6), (7)

24 Confirmation of decisions of local government organisations

- (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,— 30
- (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. 35
- (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:
- (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. 5

Compare: 2009 No 13 s 21

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 Act 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. 10

26 Crown expenses and capital expenditure recoverable from water services entity 15

- (1) This clause applies to any expenses or capital expenditure incurred by the Crown—
 - (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. 20
- (2) The expenses or capital expenditure must be reimbursed—
 - (a) by the water services entity to the Crown; and
 - (b) on the terms and conditions agreed between—
 - (i) the Minister; and
 - (ii) the Minister of Finance. 25
- (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.
- (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

30

Subpart 6—Payment provisions

26A Support package payment made by water services entity

- (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. 35

-
- (2) In **subclause (1)**, support package payment made by a water services entity means a payment—
- (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 5
 - (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 clause.
- Subpart 7—Treaty settlement obligations 10
- 26B Treaty settlement obligations**
- (1) This clause applies to a person who performs or exercises a duty, function, or power under this Part.
 - (2) The person must, in performing or exercising the duty, function, or power, uphold the integrity, intent, and effect of Treaty settlement obligations. 15
 - (3) This clause does not affect or limit how **section 9** (Treaty settlement obligations prevail) applies to this Part.

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
- 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:
- 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 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**. 15
Compare: 2002 No 84 Schedule 8 cl 1

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 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

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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

15

(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.

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- (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)***).

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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.

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- (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; 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) Only the water services entity may make a divestment proposal.
- (2) The water services entity must forward any proposal made under **subclause (1)** to the regional representative group. 5
- 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. 10
- (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 15
- (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. 20
- 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. 25
- (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. 30
- 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 35

- (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. 5
- (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. 10
- 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. 15
- (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**. 20
- (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. 25
- 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. 30
- (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— 35
- (a) the poll; and

- (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 5
- (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 10
- (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. 15

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— 20
- (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: 25
- (c) if 75% of votes are in favour of the proposal, notify the Minister of the result.

Compare: 2002 No 84 Schedule 3 cl 27

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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

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10 Interpretation

In this subpart, unless the context otherwise requires,—

advertising means advertising in any medium

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: 5
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical: 10
 - (vii) broadcasting by any means:
 - (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: 15
 - (xi) inserting in a film or video; but
- (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. 20

Compare: 2002 No 84 Schedule 3 cl 29

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— 25
 - (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
 - (b) promotes or opposes the implementation of the divestment proposal or a provision of the divestment proposal.
- (2) This clause does not apply to— 30
 - (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 35

- (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. 5

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— 10
 - (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. 15
- (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. 20
- (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)**. 25

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 contact details of the person who initiated or instigated the publication of the advertising. 30
- (2) In this section, **contact details** means 1 or more of the following:
 - (a) a residential or business address:
 - (b) an email address:
 - (c) a post office box number: 35
 - (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)**.

Compare: 2001 No 35 s 113

Offences

14 Offence for publishing advertising in breach of clause 13 5

- (1) A person commits an offence if the person intentionally fails or refuses to comply with **clause 13(1)**.
- (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 25

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:	5
	(a) water supply (as defined in section 6 of the Water Services Entities Act 2022):	
	(b) wastewater:	
	(c) stormwater.	
	<i>Bylaws</i>	10
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:	15
	(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:	20
	(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.	25
(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.	30
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	35

- (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 Part 1 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

30

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)—

35

- (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)**. 5

Legislative history

2 June 2022	Introduction (Bill 136–1)
9 June 2022	First reading and referral to Finance and Expenditure Committee
11 November 2022	Reported from Finance and Expenditure Committee (Bill 136–2)
16 November 2022	Second reading
22 November 2022	Committee of the whole House (Bill 136–3)
6 December 2022	Recommittal to committee of the whole House, committee of the whole House (Bill 136–4)