

House of Representatives

Supplementary Order Paper

Tuesday, 27 August 2019

Local Government Act 2002 Amendment Bill (No 2)

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Local Government Act 2002 Amendment Bill (No 2), which is a Bill that proposes amendments to the Local Government Act 2002 (the **principal Act**). The amendments relate to the following topics:

Removal of power to create council-controlled organisations through reorganisation schemes

The Bill, as introduced, enabled council-controlled organisations (**CCOs**) to be created through reorganisation schemes. This SOP removes that power from the Bill by—

- removing CCOs from the scope of local government reorganisation (*clause 9, s24(h), (i), (j), (k) and (l)*);
- deleting the proposed insertion of references to CCOs into section 26A of the principal Act (duties of local authorities in relation to local government reorganisation) (*clause 13(1), (2), (4), (6), and (8)*);
- amending *Schedule 2* (which sets out amendments to Schedule 3 of the principal Act) by—
 - deleting proposed requirements for reorganisation plans to describe the CCOs in which an affected local authority is, or will be, a shareholder (*clause 14(2)(c)(vii) and (3)(f)*);
 - deleting proposed *new clause 20* relating to the proposed establishment or disestablishment of council-controlled organisations through reorganisation plans;
 - deleting references to transfers of responsibilities to and from CCOs in *new clause 43(1)(b)*;
 - deleting all other references to CCOs in the context of reorganisations, including deleting proposed *new clause 43(1)(haa) and (hab)*, deleting a proposed change to *clause 43(1)(j)*, and deleting proposed amendments to *clause 49*.

Deletion of provisions providing for multiply owned CCOs, transport CCOs, and water services CCOs

The Bill, as introduced, enabled the creation of multiply owned CCOs, transport CCOs, and water services CCOs. This SOP removes that power from the Bill by—

- deleting proposed new definitions of a **multiply owned council-controlled organisation**, **substantive council-controlled organisation**, **transport services council-controlled organisation**, and **water services council-controlled organisation** (*clauses 4 and 5*);
- deleting reference to the provision of infrastructure and services from the new section that will set out the purpose of local government reorganisation provisions (*clause 8, new section 24AA*):

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- deleting references to multiply owned CCOs, transport CCOs, and water services CCOs from the new section that sets out scope of local government reorganisations (*clause 9, new section 24(1)(h) to (l)*):
- deleting other proposed insertions of references to multiply owned CCOs, substantive CCOs, transport CCOs, and water services CCOs throughout the Bill (for example, *clauses 30, 31(2), (3), (4), (5), and (7), and 32, clauses 19 to 22 of Schedule 1, clause 4(1)(c) and (2) of new Schedule 8, new clauses 7A and 28A and Part 5 of Schedule 10*):
- deleting *new Schedule 8A* and *new Schedule 8B* (which list responsibilities, duties, and powers of a water services CCO and a transport CCO):
- amending *Schedule 2* (which sets out amendments to Schedule 3 of the principal Act) by—
 - deleting proposed *new clause 20A* relating to conferring responsibilities, duties, and powers on water services and transport services CCOs:
 - deleting proposed *new clause 46A* relating to bylaws of a transport services CCO:
- amending *Schedule 5* to delete proposed consequential amendments to the Goods and Services Tax Act 1985 (relating to water services CCOs).

Provisions in Part 5 of principal Act relating to CCOs

The Bill, as introduced, proposed to insert a number of new provisions into Part 5 of the principal Act (relating to CCOs and council organisations) to establish a funding and financial framework for CCOs. The Bill, as reported from Select Committee, proposed a complete revision of Part 5 to reorder and redraft the provisions in that part to make them easier to follow. This SOP deletes the clause that proposes to insert a revised Part 5.

The result is that the provisions that are currently in Part 5 of the principal Act will be unchanged, except as specifically provided in *new clauses 21B to 21K*. Those new clauses—

- require local authorities to consider whether knowledge of tikanga Māori may be relevant to governance of a CCO when identifying the skills, knowledge, and experience required of the CCO's directors (*new clause 21B, new section 57(3)*):
- require CCOs, before making a decision that may significantly affect land or a body of water, to take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga (*new clause 21C, new section 60A*):
- require CCOs to prepare and adopt statements of intent, and require shareholding local authorities to publish them on the Internet (*clause 21D, new section 64*):

- enable the shareholders of a CCO to require it to prepare and deliver additional plans, including asset management plans, long-term plans, and thematic plans (*new clause 21D, new section 64A*):
- enable the shareholders of a CCO to prepare a statement of expectations for the CCO (*new clause 21D, new section 64B*):
- provide for a CCO to provide quarterly, as well as half-yearly, reports to its shareholders if requested, and to provide the reports not only to its direct shareholders but also to its indirect shareholders (in the case of organisations indirectly controlled by a local authority, such as a subsidiary of a holding company owned by the local authority), and provide for shareholders who receive quarterly and half-yearly reports from a CCO to publish them on the Internet (*new clauses 21E, 21J, and 21K*):
- require—
 - CCOs to provide their annual reports to their indirect shareholders as well as their direct shareholders; and
 - CCOs to record details of compensation obtained, or undertaken to be obtained, from shareholders in their annual reports; and
 - require shareholders that receive a CCO’s annual report to publish it on the Internet (*new clause 21F*):

Other provisions relating to CCOs

Other changes proposed by this SOP that relate to CCOs are as follows:

- deleting the proposed insertion of *new section 93(2A)*, which requires local authorities that are shareholders in a CCO to allow the board of that CCO a reasonable opportunity to comment on the proposed content of the local authority’s long-term plan (*clause 29A*):
- deleting provisions dealing with the transfer to CCOs of responsibilities for which development contributions are collected and related amendments (*clause 31A, new sections 198B and 198C, clause 38A*):
- amending the provisions in *new Schedule 8* (inserted by *Schedule 4*) to provide for a CCO’s statement of intent to be delivered to indirect shareholders (for example, subsidiaries of a holding company owned by a local authority) as well as direct shareholders, and to allow shareholding local authorities to extend certain deadlines.

Composition and powers of Local Government Commission

The Bill, as introduced, allowed for an increase in the membership of the Local Government Commission (the **Commission**), by providing it must have a minimum of 3 members and a maximum of 5. It also increased the powers of the Commission and provided for accompanying checks and balances. This SOP instead enables a reduction in membership of the Commission and removes the provisions that increase the Commission’s powers, by—

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- deleting amendments to section 16 of the principal Act, that would have required regional councils to advise the Commission (rather than the Minister) when proposing to undertake significant new activities (*clause 6(2)*):
- deleting amendments that set out a process for the Commission to resolve disputes (*clause 6(3) and (4)*, *clause 17*, *new section 31H*, *clause 19*, *new section 35A(1)(b)*, *clause 20*, *new section 48R(3) and (4)*):
- deleting a requirement for local authorities to obtain the agreement of the Commission to proposed transfers of responsibility relating to transport and water services (*clause 7*, *new section 17(3B) and (3C)*):
- deleting *clause 16*, *new section 31A*, which will have the effect of reinstating the current wording in the principal Act (which relates to the Minister’s expectations of the Commission in relation to local government reorganisations):
- inserting *new clause 16A* to amend section 31A of the principal Act by removing the Minister’s power to specify measures as well as expectations and introducing a new requirement that the Minister must state the Minister’s objectives in respect of the expectations specified in a notice:
- deleting *clause 17*, *new sections 31B to 31H*, which imposed certain planning and reporting requirements on the Commission, authorised the Minister to review the Commission’s operations and performance and issue certain written directions to the Commission, and set out a process for the Commission to resolve certain disputes:
- revising membership of the Commission to a minimum of 1 member and a maximum of 3 members (being fewer members than the 3 to 5 proposed by the Bill as introduced, and also allowing for fewer members than the minimum of 3 currently required by section 33) (*clause 18*):
- providing that—
 - if the Commission consists of 2 or 3 members, 1 must have knowledge of tikanga Māori and be appointed after consultation with the Minister for Māori Development, and 1 must have local authority experience and be appointed after consultation with the New Zealand Local Government Association; and
 - if the Commission consists of 1 member, the member must be appointed by the Minister (after taking into consideration those experience requirements and consulting the same persons) (*clause 18*):
- deleting transitional provisions related to the proposed increased powers of the Commission (*Schedule 1, clauses 14A to 17*):
- amending *Schedule 2* (which sets out amendments to Schedule 3 of the principal Act) to remove the power of the Commission to undertake an investigation of its own motion:
- amending *Schedule 3* (which amends Schedule 4 of the principal Act) by—

- deleting the proposed replacement of *clause 29* (which provides for the Commission to appoint a chief executive officer and for the chief executive officer to employ staff on behalf of the Commission); and
- deleting the proposed repeal of *clause 31* (which requires the Commission to provide annual reports to the Minister):
- deleting the proposed insertion of a reference to the Local Government Commission into Schedule 2 of the Public Audit Act 2001 (*Schedule 5*).

Other amendments

The SOP also:

- amends *clause 11*, *new sections 25 and 25A*, which require reorganisation plans and reorganisation implementation schemes to be given effect by Orders in Council, to—
 - remove the requirement for the Order in Council that gives effect to a reorganisation plan to specify the date or dates on which a subsequent Order in Council (to give effect to a reorganisation scheme) will come into effect and the date on which the local government reorganisation will come into effect; and
 - enable the Orders in Council to include provisions that were not in the reorganisation plan or reorganisation implementation scheme but that are necessary to give it legal effect, and to omit explanatory material that was included in the plan or scheme but that is not necessary to give it legal effect:
- deletes proposed amendments to regulation-making powers that would enable the prescription of financial performance measures for local authorities (rather than the prescription of parameters) (*clause 31(3A), (4A), and (7A)*):
- deletes proposed *new section 261CA*, which requires the Secretary to review rules specifying performance measures for local authorities in respect of specified activities (*clause 33A*):
- updates proposed amendments to Schedule 1AA (transitional, savings, and related provisions) to reflect the fact that a new Part 2 has been added into that schedule since the date of introduction of the Bill (*clause 34*):
- deletes a section proposed to be inserted into the Income Tax Act 2007 to confer tax exempt status on CCOs for core services (*clause 38B*):
- inserts new sections into the Land Transport Act 1998, the Land Transport Management Act 2003, and the Local Government Act 1974, to allow responsibilities under those Acts to be transferred between regional councils and territorial authorities (*new clauses 38A to 38F*):
- inserts transitional provisions into *new Part 3* of Schedule 1AA of the principal Act to—

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- delay new publication requirements to be imposed on local authorities and council-controlled organisations for a 3-month period after the Bill commences (*Schedule 1, new clause 16*); and
- set out the processes to be applied in the case of reorganisation applications received by the Local Government Commission before the Bill commences (*Schedule 1, new clauses 17 to 21*);
- amends *Schedule 2* (which sets out amendments to Schedule 3 of the principal Act) to limit who can submit a reorganisation initiative or investigation request to the Commission to affected local authorities, the Minister, or groups of persons comprising at least 10% of electors in the affected area:
- makes other technical amendments to correct errors, update cross-references, improve the consistency of provisions, and make other drafting improvements.

Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2019&no=323&>

Regulatory impact assessment

The Department of Internal Affairs produced 2 regulatory impact assessments on 28 April 2018 (options for improving the way local government is reorganised) and 3 April 2019 (council-controlled organisations) to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

Copies of those regulatory impact assessments can be found at—

- <https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

The Honourable Nanaia Mahuta, in Committee, to propose the amendments shown in the following document.

Hon Nanaia Mahuta

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government Act 2002 Amendment Act **(No 2) 2016**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Local Government Act 2002

3 Principal Act

This Act amends the Local Government Act 2002 (the **principal Act**).

4 Section 5 amended (Interpretation)

(1) In section 5(1), insert in their appropriate alphabetical order:

discretionary function means any activity or service that a local authority is not specifically authorised or required to undertake or provide by or under an enactment but that is instead provided by the local authority in accordance with its discretionary power under section 12(2)

~~**multiply owned council-controlled organisation** has the meaning set out in section 6(1)~~

permanent committee means a committee of 1 or more local authorities that is established or continued by an enactment and that cannot be disestablished or discharged by the local authority or local authorities

reorganisation implementation scheme has the meaning set out in clause 2 of Schedule 3

reorganisation plan has the meaning set out in clause 2 of Schedule 3

~~**substantive council-controlled organisation** has the meaning set out in section 6(1)~~

~~**transport services council-controlled organisation** has the meaning set out in section 6(1)~~

~~**water services council-controlled organisation** has the meaning set out in section 6(1)~~

(2) In section 5(1), definition of **unitary authority**, paragraph (b), replace “reorganisation scheme” with “reorganisation plan”.

5 Section 6 amended (Meaning of council-controlled organisation and council organisation)

(1) In the heading to section 6, replace “~~and council organisation~~” with “~~and related terms~~”.

(2) In section 6(1), insert in their appropriate alphabetical order:

~~**multiply owned council-controlled organisation** means a council-controlled organisation, other than a council-controlled trading organisation, that is wholly owned, or wholly controlled, by 2 or more local authorities~~

~~**substantive council-controlled organisation**—~~

(a) ~~means a council-controlled organisation, other than a council-controlled trading organisation, that is wholly owned, or wholly controlled, by 1 or more local authorities, and that—~~

~~(ii) is a water services council-controlled organisation; or~~

~~(iii) is a transport services council-controlled organisation; or~~

~~(iv) is agreed by all shareholders to be a substantive council-controlled organisation; but~~

(b) ~~does not include a substantive council-controlled organisation of the Auckland Council~~

~~**transport services council-controlled organisation** means—~~

(a) ~~a council-controlled organisation that—~~

~~(i) is wholly owned, or wholly controlled, by 1 or more local authorities; and~~

~~(ii) provides services or undertakes responsibilities relating to local roads, public transport, or land transport planning within the districts or regions of those local authorities, other than under a contract or similar arrangement with 1 or more local authorities; but~~

(b) ~~does not include Auckland Transport or Greater Wellington Rail Limited~~

~~**water services council-controlled organisation** means—~~

(a) ~~a council-controlled organisation that—~~

~~(i) is wholly owned, or wholly controlled, by 1 or more local authorities; and~~

~~(ii) provides a water supply or a wastewater service (within the meaning of section 124) in the districts or regions of those local authorities, other than under a contract or similar arrangement with 1 or more local authorities; but~~

(b) ~~does not include a council-controlled organisation of the Auckland Council~~

(3) Replace section 6(3)(c) with:

- (c) shareholders include any persons with an interest or right in the entity that is comparable to the rights of a shareholder in a company, for example, partners, joint venture partners, members, or other persons holding equity securities in relation to that organisation; and

6 Section 16 amended (Significant new activities proposed by regional council)

- (1) In section 16(1)(c)(ii), delete “or their annual plans”.
- (2) ~~In section 16(2)(a), replace “Minister” with “Commission”.~~
- (3) ~~In section 16(4), replace “submit the matter to mediation” with “refer the matter to the Commission for resolution in accordance with **section 31H**”.~~
- (4) ~~Repeal section 16(5) to (7).~~
- (5) In section 16(8)(d), delete “application”.
- (6) In section 16(9), definition of **affected territorial authority**, paragraph (b), delete “or annual plan”.
- (7) In section 16(9), repeal the definition of **annual plan**.

7 Section 17 amended (Transfer of responsibilities)

- (1) After section 17(3), insert:
- (3A) The terms and conditions agreed under subsection (3) must ensure effective provision for any affected co-governance or co-management arrangements that are established by legislation (including Treaty of Waitangi claim settlement legislation) and that are between local authorities and iwi or Māori organisations.
- (3B) ~~If a local authority proposes to transfer a responsibility, or accept the transfer of a responsibility, relating to the delivery of water, wastewater, stormwater, or transport services, the local authority must obtain the Commission’s written agreement to the proposal before commencing the consultation required in subsection (4).~~
- (3C) ~~If the Commission receives an application for written agreement under **subsection (3B)**, the Commission must, as soon as is reasonably practicable, agree in writing to the proposal unless the Commission is satisfied on reasonable grounds that the disadvantages of the proposal significantly outweigh the advantages of it proceeding.~~
- (2) After section 17(4), insert:
- (4A) ~~In assessing, for the purposes of subsection (4), the benefits and negative impacts of a proposed transfer under subsection (4), a local authority must have regard to the following matters:~~
- (a) whether the transfer will promote—
- (i) better fulfilment of the purpose of local government:

Proposed amendments to

- (ii) productivity improvements within local authorities and districts or regions:
- (iii) efficiencies and cost savings:
- (iv) assurance that the local authorities concerned have the resources necessary to enable them to effectively perform or exercise their responsibilities, duties, and powers:
- (v) effective responses to the opportunities, needs, and circumstances of the affected area:
- (vi) enhanced effectiveness, efficiency, and sustainability of local government services:
- (vii) better support for the ability of local and regional economies to develop and prosper:
- (viii) enhanced ability of local government to meet the changing needs of communities for governance and services into the future:
- (b) the scale and probability of the potential benefits of the transfer to users of local government services:
- (c) the financial, disruption, and opportunity costs of implementing the proposed transfer at the proposed time:
- (d) the consequences and risks of not implementing the proposed transfer at the proposed time:
- (e) existing communities of interest, and the extent to which the proposed transfer will maintain linkages between communities (including iwi and hapū) and sites and resources of significance to them.

(3) Replace section 17(8) with:

(8) In this section, **responsibility**—

- (a) means any responsibility, duty, or legal obligation (including a responsibility, duty, or legal obligation that has previously been transferred under this section and a discretionary function), and any powers associated with that responsibility, duty, or legal obligation; but
- (b) does not include a responsibility, duty, or legal obligation conferred by or under any other Act, unless that Act provides that the responsibility, duty, or legal obligation may be transferred in accordance with this section.

8 Section 24AA replaced (Purpose of local government reorganisation)

Replace section 24AA with:

24AA Purpose of local government reorganisation provisions

The purpose of the local government reorganisation provisions of this Act is to promote good local government by enabling and facilitating improvements to local governance and the provision of infrastructure and services.

9 Section 24 replaced (Scope of local government reorganisation)

Replace section 24 with:

24 Scope of local government reorganisation

- (1) Local government reorganisation may provide for 1 or more of the following matters:
- (a) the union of districts or regions:
 - (b) the constitution of a new district or region, including the constitution of a new local authority for that district or region:
 - (c) the abolition of a district or region, including the dissolution or abolition of the local authority for that district or region:
 - (d) the alteration of the boundaries of any district or region:
 - (e) the transfer from one local authority to another of—
 - (i) a responsibility, duty, or power conferred by an enactment; or
 - (ii) a discretionary function:
 - (f) the assumption by a territorial authority of the responsibilities, duties, and powers of a regional council as a unitary authority:
 - (g) the performance and exercise by a local authority of both—
 - (i) the responsibilities, duties, and powers of a regional council in respect of a region; and
 - (ii) the responsibilities, duties, and powers of a territorial authority in respect of a district that constitutes a part only of that region:
 - ~~(h) the establishment of a multiply owned council-controlled organisation including, without limitation,—~~
 - ~~(i) a multiply owned water services council-controlled organisation; or~~
 - ~~(ii) a multiply owned transport services council-controlled organisation:~~
 - ~~(i) the disestablishment of a council-controlled organisation that is wholly owned by 1 or more local authorities:~~
 - ~~(j) a change in the shareholding of an existing council-controlled organisation that is wholly owned by 1 or more local authorities to add 1 or more local authorities:~~

Proposed amendments to

- (k) ~~the exercise by a water services council-controlled organisation of any or all of the responsibilities, duties, and powers listed in **Schedule 8A**:~~
 - (l) ~~the exercise by a transport services council-controlled organisation of any or all of the responsibilities, duties, and powers listed in **Schedule 8B**:~~
 - (n) the establishment of 1 or more joint committees and the delegation of responsibilities, duties, and powers to those committees:
 - (o) the establishment of a local board area, including the establishment of a local board for that area:
 - (p) in relation to a local board, other than a local board established under the Local Government (Auckland Council) Act 2009,—
 - (i) the means by which the chairperson is elected; and
 - (ii) whether the local board may include appointed members:
 - (q) the abolition of a local board area:
 - (r) the alteration of the boundaries of a local board area:
 - (s) the union of 2 or more local board areas.
- (2) Schedule 3 applies in relation to local government reorganisation.

10 Section 24A amended (Transitional modification or suspension of certain statutory requirements after issue of final proposal for reorganisation)

- (1) In the heading to section 24A, replace “**final proposal for reorganisation**” with “**reorganisation plan**”.
- (2) Replace section 24A(1) with:
 - (1) The purpose of this section is to authorise the extension or postponement of certain statutory requirements after public notice of a reorganisation plan is given under **clause 13 of Schedule 3** if a poll of electors on that plan is to be held under clause 25 of that schedule.
- (3) Replace section 24A(2) with:
 - (2) This section applies to a reorganisation plan only if the plan provides for any of the matters specified in **clause 23(1) of Schedule 3**.
- (4) In section 24A(6), replace the definition of **specified period** with:
 - specified period** means the period—
 - (a) beginning on the date on which public notice is given of the reorganisation plan under **clause 13 of Schedule 3**; and
 - (b) ending on the close of the date that is 6 months after the date on which that public notice is given.

11 Section 25 replaced (Order in Council to give effect to final proposals and reorganisation schemes)

Replace section 25 with:

25 Order in Council to give effect to reorganisation plan

- (1) A reorganisation plan to which **clause 22C(5)** or 33 of Schedule 3 applies—
 - (a) is given effect to by Order in Council made on the recommendation of the Minister; and
 - (b) has effect on and from the date or dates specified for that purpose by that Order in Council (as required by **subsection (3)(aa)(i)**).
- (2) The Minister must recommend the making of an Order in Council under **subsection (1)** unless the Minister is satisfied, on reasonable grounds, that—
 - (a) the process followed in developing the reorganisation plan was not in accordance with the requirements of this Act; or
 - (b) the development of the reorganisation plan failed to give proper weight to the relevant principles, considerations, and criteria set out in this Act.
- (3) An Order in Council made under **subsection (1)**—
 - (aa) must specify— the date or dates on which its provisions come into effect; and
 - (i) ~~the date or dates on which its provisions come into effect; and~~
 - (ii) ~~the date or dates on which an Order in Council made under **section 25A** (to give effect to a reorganisation implementation scheme in relation to the reorganisation plan) will come into effect; and~~
 - (iii) ~~the date on which the local government reorganisation described in the order takes effect (the **implementation date** for the purposes of the provisions of Schedule 3); and~~
 - (a) must establish and provide for 1 or more transition bodies in accordance with—
 - (i) clauses 33 to 40 of Schedule 3; and
 - (ii) the provisions in the reorganisation plan relating to transitional matters; and
 - (b) may, with the agreement of the Commission, suspend any statutory requirement that an affected local authority would otherwise be subject to ~~before a reorganisation plan comes into effect, but only if the coming into effect of the plan if the reorganisation would make compliance with the statutory requirement unnecessary or inappropriate.~~
- (4) An Order in Council made under **subsection (1)** may, if appropriate, amend Part 1 or 2 of Schedule 2.

- (5) An Order in Council giving effect to a reorganisation plan is not invalid merely because it is inconsistent with the provisions of the reorganisation plan if the inconsistency relates to—
- (a) corrections of clerical, grammatical, or typographical errors; or
 - (aa) the inclusion of provisions that are necessary to give legal effect to the reorganisation plan; or
 - (ab) the omission of explanatory material or other material that is not necessary to give legal effect to the reorganisation plan; or
 - (b) matters of a format or referential nature that do not alter the substance or effect of the reorganisation plan.

25A Order in Council to give effect to reorganisation implementation scheme

- (1) A reorganisation implementation scheme prepared and issued under clause 41(2) of Schedule 3—
- (a) is given effect to by Order in Council made on the recommendation of the Minister; and
 - (b) has effect on and from the date or dates specified for that purpose by an Order in Council made under **section 25(1)(a)** (as required by **section 25(3)(aa)(ii)**) by that Order in Council (as required by **subsection (1A)(a)**).
- (1A) An Order in Council made under **subsection (1)** must specify—
- (a) the date or dates on which its provisions come into effect; and
 - (b) the date on which the local government reorganisation described in the order takes effect (the **implementation date** for the purposes of the provisions of Schedule 3).
- (2) An Order in Council giving effect to a reorganisation implementation scheme is not invalid merely because it is inconsistent with the provisions of the reorganisation plan or the reorganisation implementation scheme if the inconsistency relates to—
- (a) corrections of clerical, grammatical, or typographical errors; or
 - (aa) the inclusion of provisions that are necessary to give legal effect to the reorganisation implementation scheme; or
 - (ab) the omission of explanatory material or other material that is not necessary to give legal effect to the reorganisation implementation scheme; or
 - (b) matters of a format or referential nature that do not alter the substance or effect of the reorganisation implementation scheme.
- (3) If a reorganisation implementation scheme does not specifically provide for a matter that the Secretary considers to be necessary, desirable, or incidental as a consequence of the scheme,—

- (a) the Secretary must consult the Commission, and each affected local authority, about the inclusion of the matter in the Order in Council under **subsection (1)**; and
 - (b) the matter may be included in the Order in Council if the Minister considers the inclusion is appropriate.
- (4) Clauses 45 and 46 of Schedule 3 apply in respect of each reorganisation implementation scheme that is given effect to by Order in Council, except to the extent that the ~~scheme~~ Order in Council provides that the clauses are—
- (a) amended in their application ~~by the reorganisation implementation scheme~~; or
 - (b) declared not to apply.
- (5) Clauses 47 to **6060A** of Schedule 3 apply to each reorganisation implementation scheme that is given effect to by Order in Council.

12 Section 26 replaced (Power to amend reorganisation schemes)

Replace section 26 with:

26 Power to amend reorganisation plans and reorganisation implementation schemes

- (1) A reorganisation plan may be amended by a further reorganisation plan that is developed and adopted in accordance with this Act and that is given effect by an Order in Council under **section 25**.
- (2) A reorganisation implementation scheme may be amended by a further reorganisation implementation scheme that is developed and adopted in accordance with this Act and that is given effect by an Order in Council under **section 25A**.

13 Section 26A amended (Duties of local authorities in relation to local government reorganisation)

- (1) ~~In section 26A(1), after “local authority”, insert “and council-controlled organisation”.~~
- (2) ~~In section 26A(2), after “local authority”, insert “or council-controlled organisation” in each place.~~
- (3) In section 26A(2), replace “proposed reorganisation or to the development of a reorganisation scheme” with “reorganisation investigation or to the development of a reorganisation implementation scheme”.
- (4) ~~In section 26A(3), after “local authority”, insert “or council-controlled organisation”.~~
- (5) In section 26A(3), replace “final proposal” with “reorganisation plan”.
- (6) ~~In section 26A(4), after “local authority”, insert “or council-controlled organisation”.~~

Proposed amendments to

- (7) In section 26A(4)(a), replace “final proposal” with “reorganisation plan”.
- (8) ~~Replace section 26A(4)(b) and (c) with:~~
- ~~(b) significantly constrain the powers or capacity of any local authority, subsidiary of a local authority, or council-controlled organisation to be established, changed, or transferred under the reorganisation plan; or~~
 - ~~(c) have a significant negative impact on the assets or liabilities that may be transferred to any local authority or council-controlled organisation in the implementation of the reorganisation plan.~~
- (9) After section 26A(4), insert:
- (5) A local authority that receives a report or recommendation from the Commission under **clause 10 of Schedule 3** must—
- (a) make the report or recommendation publicly available; and
 - (b) consider and respond to the Commission in relation to the report or recommendation; and
 - (c) make the response publicly available.
- (6) A local authority must comply with **subsection (5)**—
- (a) within 30 working days after receiving the report or recommendation; or
 - (b) by a later date specified by the Commission in the report or recommendation.
- (7) Nothing in this section requires a local authority to make publicly accessible any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

14 Section 27 amended (Application to be called city council or district council)

In section 27(1), delete “, instead of making a reorganisation application under Schedule 3,”.

14A Section 29 amended (Commission is body corporate with full powers)

After section 29(2), insert:

- (3) The Commission is a public office for the purposes of the Public Records Act 2005.

15 Section 31 amended (Report to Minister on matters relating to local government)

Repeal section 31(1A).

16 Section 31A replaced (Minister’s expectations of Commission in relation to local government reorganisation)

Replace section 31A with:

31A Minister's expectations of Commission in relation to local government reorganisation

- (1) ~~The Minister may, by notice in writing to the Commission, specify expectations relating to the Commission's performance of its functions and exercise of its powers under Schedule 3.~~
- (1A) ~~The Minister must state in the notice the Minister's objectives in respect of the expectations specified in the notice.~~
- (2) ~~Without limiting **subsection (1)**, the Minister may specify—~~
- ~~(a) any issues, problems, opportunities, or reorganisation objectives that must be regarded by the Commission as having a high priority for investigation;~~
 - ~~(b) any geographic area or areas that must be regarded by the Commission as having a high priority for investigation;~~
 - ~~(c) any matters or geographic areas that must not be the subject of an investigation by the Commission.~~
- (3) ~~Before specifying expectations under this section, the Minister—~~
- ~~(a) must consult the Commission; and~~
 - ~~(b) may consult any other persons or organisations that the Minister considers it appropriate to consult.~~
- (4) ~~The Minister must give any notice under **subsection (1)** to the Commission not less than 3 months before the start of the first financial year to which the expectations in that notice relate.~~
- (4A) ~~As soon as practicable after receiving a notice of expectations, the Commission must publish the content of the notice on an Internet site maintained by or on behalf of the Commission.~~
- (5) ~~If the Minister issues a notice under **subsection (1)** in respect of 1 or more financial years, the Commission must—~~
- ~~(a) take that notice into account in developing its statement of intent under **section 31B** and its annual work programme under **section 31C**; and~~
 - ~~(b) in its annual report under **section 31F** for each year to which the notice relates, describe how and the extent to which it has met the expectations specified in the notice.~~

16A Section 31A amended (Minister's expectations of Commission in relation to local government reorganisation)

- (1) In section 31A(1), (3), (4)(a) and (b), and (5) delete “measures and”.
- (2) After section 31A(1), insert:
- (1A) The Minister must state in the notice the Minister's objectives in respect of the expectations specified in the notice.

17 New sections 31B to 31H inserted

After section 31A, insert:

31B Statement of intent

- (1) ~~The Commission must provide to the Minister a statement of intent that complies with this section.~~
- (2) ~~The statement of intent must relate to the forthcoming financial year and at least the following 3 financial years.~~
- (3) ~~The Commission must provide a statement of intent at least once in every 3-year period.~~
- (4) ~~Sections 141 to 149A of the Crown Entities Act 2004 apply to a statement of intent under this section as if—~~
 - (a) ~~every reference to a Crown entity were a reference to the Commission; and~~
 - (b) ~~every reference to the responsible Minister were a reference to the Minister.~~

Compare: 2004 No 115 s 139

31C Annual work programme

- (1) ~~The Commission must prepare and adopt a work programme that complies with this section for each financial year.~~
- (2) ~~A work programme under **subsection (1)** must be adopted before the commencement of the year to which it relates.~~
- (3) ~~The work programme must identify the intended activity of the Commission during the year including, without limitation,—~~
 - (a) ~~the anticipated commitments of the Commission under the Local Electoral Act 2001 and **section 31H**; and~~
 - (b) ~~the anticipated commitments of the Commission under section 31; and~~
 - (c) ~~the progression and completion of reorganisation investigations under Schedule 3 that are under way at the commencement of the year; and~~
 - (d) ~~any reorganisation investigations under Schedule 3 that the Commission intends to undertake or commence during the year; and~~
 - (e) ~~how the Commission intends to respond to investigation requests and reorganisation initiatives under Schedule 3 during the year, including any criteria to be used to prioritise responses to those requests and initiatives.~~
- (4) ~~The work programme must contain forecast financial statements for the financial year, prepared in accordance with generally accepted accounting practice, that include—~~

- (a) a statement of all significant assumptions underlying the forecast financial statements; and
 - (b) any additional information and explanations needed to fairly reflect the forecast financial operations and financial position of the Commission.
- (6) The Commission must, before adopting a work programme under this section, consult the Minister on the proposed content of the work programme described in **subsection (3)(b) to (e)**.
- (7) As soon as practicable after adopting a work programme under this section, the Commission must publish the work programme on an Internet site maintained by or on behalf of the Commission.
- (8) The adoption of a work programme under this section does not constitute a decision to act on any matter included within that work programme and does not prevent the Commission from acting in a manner that is inconsistent with the work programme.

31D Power to direct Commission to have regard to Government policy

- (1) The Minister may, by notice in writing, direct the Commission to have regard to a Government policy that relates to the Commission's responsibilities, duties, and powers under Schedule 3.
- (2) Section 115 of the Crown Entities Act 2004 applies to a direction under **subsection (1)** as if—
- (a) every reference to a Crown entity were a reference to the Commission; and
 - (b) every reference to the responsible Minister were a reference to the Minister.
- (3) This section does not authorise the Minister to direct the Commission by requiring the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular reorganisation or investigation.
- (4) The Commission must, in performing or exercising its responsibilities, duties, and powers under Schedule 3, have regard to any direction given to it under this section.

Compare: 2004 No 115 ss 104, 113(1)(b)

31E Review of Commission's operations and performance

- (1) The Minister may review the operations and performance of the Commission at any time.
- (2) This section does not limit powers to review in the State Sector Act 1988 or the Public Audit Act 2001 or under any other Act.
- (3) Before the Minister undertakes a review under this section, he or she must—
- (a) consult the Commission about the purpose and nature of the review; and

(b) ~~consider any submissions made by the Commission on the proposed review.~~

(4) ~~The Commission must take all reasonable steps to co-operate with the review.~~

~~Compare: 2004 No 115 s 132~~

31F ~~Obligation to prepare, present, and publish annual report~~

(1) ~~The Commission must,—~~

(a) ~~as soon as practicable after the end of each financial year, prepare a report on its proceedings and operations during that financial year; and~~

(b) ~~provide the report to the Minister no later than 15 working days after receiving the audit report required under **section 31G(1)(d)**.~~

(2) ~~The Minister (or another Minister if **subsection (5)** applies) must present the annual report to the House of Representatives within 5 working days after the Minister receives the annual report or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.~~

(3) ~~The Commission must publish its annual report as soon as practicable after it has been presented to the House of Representatives, but in any case no later than 10 working days after the annual report is received by the Minister, on an Internet site maintained by or on behalf of the Commission.~~

(4) ~~The Commission's annual report may be presented to the House of Representatives in a document that includes any other report or information, whether or not that other report or information relates to the Commission, but only if each report or set of information is separately identifiable within that document.~~

(5) ~~A Minister other than the Minister of Local Government may present the Commission's annual report to the House of Representatives if—~~

(a) ~~the report is presented in a document that includes another report or other information; and~~

(b) ~~that other Minister is responsible for presenting that other report or information.~~

~~Compare: 2004 No 115 s 150~~

31G ~~Form and content of annual report~~

(1) ~~The annual report must contain the following information and reports in respect of the financial year to which it relates:~~

(a) ~~information on the operations of the Commission that complies with **subsection (2)**; and~~

(b) ~~the annual financial statements for the Commission in accordance with section 154 of the Crown Entities Act 2004; and~~

(c) ~~a statement of responsibility in accordance with section 155 of that Act; and~~

(d) ~~the audit report in accordance with section 156 of that Act; and~~

- (e) any new direction given to the Commission by the Minister under ~~section 31D~~ during that financial year, as well as other such directions that remain current; and
 - (f) information required by section 152 of the Crown Entities Act 2004 (which relates to payments in respect of members, committee members, and employees during the financial year); and
 - (g) any matters that relate to or affect the Commission's operations that the Commission is otherwise required, or has undertaken, or wishes to report on in its annual report.
- (2) The annual report must provide the information that is necessary to enable an informed assessment to be made of the Commission's operations and performance for that financial year, including an assessment of the Commission's progress in relation to—
- (a) each item or activity identified in its work programme for that year; and
 - (b) its strategic intentions as set out in the most recent statement of intent.
- (3) The annual report must be in writing, be dated, and be signed on behalf of the Commission by 2 members.
- (4) For the purposes of ~~subsection (1)(b), (c), (d), and (f)~~, sections 152, 154, 155, and 156 of the Crown Entities Act 2004 apply as if—
- (a) every reference to a Crown entity were a reference to the Commission; and
 - (b) every reference to a member or board member were a reference to a member (including a temporary member) of the Commission; and
 - (c) every reference to the board of an entity were a reference to the members of the Commission collectively.

Compare: 2004 No 115 s 151

31H Commission to resolve disputes

- (1) This section applies if any enactment provides for a matter in dispute to be referred to the Commission for resolution.
- (2) An application to the Commission must be in writing, and must state—
 - (a) the matter in dispute; and
 - (b) the parties to the dispute; and
 - (c) the provision authorising the referral of the matter to the Commission for resolution.
- (3) An application must be accompanied by copies of all reports, correspondence, and other information that are relevant to the matter and held by the applicant or applicants.
- (4) Promptly after receiving an application under ~~subsection (2)~~, the Commission must give notice in writing to the presiding member of each local author-

Proposed amendments to

- ity and local board that is a party to the dispute and the chief executive of each local authority that is a party to the dispute and request them to provide, by a reasonable deadline specified in the notice, copies of all information held by the local authority or local board that is relevant to the matter, including all reports and correspondence.
- (5) After receiving the information from each presiding member and chief executive, the Commission must—
- (a) consider the information it has received under **subsections (3) and (4)**; and
 - (b) determine the matter, having regard to—
 - (i) the requirements of all relevant enactments, including any statements of the purpose or objective of requirements or of matters to be taken into account; and
 - (ii) the substantial merits and justice of the case; and
 - (iii) any other matter the Commission considers on reasonable grounds to be relevant.
- (6) For the purposes of making a determination, the Commission—
- (a) must treat the matter as urgent; and
 - (b) may make any inquiries that it considers appropriate; and
 - (c) may (but is not obliged to) hold meetings with any party to the dispute, or with any other person.
- (7) The Commission may apportion the actual and reasonable costs incurred by it in making a determination between the parties to the dispute as it thinks fit, having regard to the merits of the initial positions of those parties.
- (8) The parties must, without unreasonable delay, give effect to a determination under this section.
- (9) In this section, **presiding member**,—
- (a) in relation to a territorial authority, means the mayor of that territorial authority;
 - (b) in relation to a regional council, means the chair of that regional council;
 - (c) in relation to a local board, means the chair of that local board.

18 Section 33 amended (Membership of Commission)

- (1) In section 33(1), replace “3 members” with “a minimum of 3 members 1 member and a maximum of 5 members”.
- (2) After section 33(2), insert:
- (2A) One member of the Commission—
- (a) must have experience as an elected member or the chief executive of a local authority; and

~~(b) is to be appointed after consultation with the New Zealand Local Government Association Incorporated.~~

(2) Replace section 33(2) with:

(2) If the Commission consists of 2 members or 3 members,—

(a) 1 member—

(i) must have a knowledge of tikanga Māori; and

(ii) must be appointed by the Minister after consultation with the Minister for Māori Development; and

(b) 1 member—

(i) must have experience as an elected member or the chief executive of a local authority; and

(ii) must be appointed by the Minister after consultation with the New Zealand Local Government Association Incorporated.

(2A) If the Commission consists of 1 member, that member must be appointed by the Minister, who must—

(a) take into consideration whether the member has a knowledge of tikanga Māori or experience as an elected member or the chief executive of a local authority; and

(b) consult with—

(i) the Minister for Māori Development; and

(ii) the New Zealand Local Government Association Incorporated.

18A Section 34 replaced (Commission is Commission of Inquiry)

Replace section 34 with:

34 Additional powers of Commission

(1) For the purposes of performing its functions under this Act, the Commission—

(a) has the powers of the District Court exercising its civil jurisdiction in respect of citing parties and conducting and maintaining order at any meeting or hearing; and

(b) is to be treated as an inquiry for the purposes of sections 14, 19 to 27, 29, 30, and 34 of the Inquiries Act 2013.

(2) The chairperson of the Commission, or any other person (being a member ~~or employee of the Commission or an officer of the Public Service~~) acting by direction or with the authority of the chairperson, may do any act preliminary or incidental to the investigation or consideration of any matter by the Commission.

19 New section 35A inserted (Application of Official Information Act 1982)

After section 35, insert:

35A Application of Official Information Act 1982

- (1) This section applies to information created or received by the Commission in the course of—
- (a) the consideration of any matter under section 31;
 - (aa) a reorganisation investigation under **Part 1 of Schedule 3**;
 - (ab) the review of a local authority-led reorganisation application under **clause 22C of Schedule 3**;
 - (b) the resolution of a dispute under **section 31H** by the Commission under this Act or another enactment;
 - (c) the determination of an appeal or objection under section 19R of the Local Electoral Act 2001.
- (2) Information to which this section applies is not official information for the purposes of the Official Information Act 1982 until the consideration, investigation, resolution, review, or determination has been completed.

20 Section 48R amended (Disputes about allocation of decision-making responsibilities or proposed bylaws)

Replace section 48R(3) and (4) with:

- (3) If, after acting under subsection (2), the dispute is still unresolved, 1 or more local boards may refer the matter to the Commission for resolution in accordance with **section 31H**.
- (4) For the purposes of **section 31H(5)(b)(i)**, matters that the Commission must have regard to are—
- (a) the requirements of this Act; and
 - (b) the current and future well-being of the communities of the district, and the interests and preferences of the communities within each affected local board area.

21 Section 48S amended (Local Government Commission to determine disputes)

- (1) Replace the heading to section 48S with “**Effect of determination by Commission of dispute as to content of long-term plan**”.
- (2) Repeal section 48S(1) to (5).

21A Part 5 replaced (Council-controlled organisations and council organisations)

Replace Part 5 with:

Part 5

~~Council-controlled organisations and council organisations~~

55 ~~Outline of Part~~

This Part provides for—

- (a) ~~the establishment of council organisations and council-controlled organisations and the transfer of undertakings to council-controlled organisations (see **subpart 1**):~~
- (b) ~~the governance of council organisations and council-controlled organisations (see **subpart 2**):~~
- (c) ~~planning and reporting requirements for council organisations and council-controlled organisations (see **subpart 3**):~~
- (d) ~~how council-controlled organisations are funded (see **subpart 4**):~~
- (e) ~~the regulatory powers of transport services council-controlled organisations and water services council-controlled organisations (see **subpart 5**):~~

~~Subpart 1—Establishment of council organisations and council-controlled organisations~~

~~Principal objective of council-controlled organisations~~

56 ~~Principal objective of council-controlled organisations~~

- (1) ~~The principal objective of a council-controlled organisation is to—~~
 - (a) ~~achieve the objectives of its shareholders, both commercial and non-commercial, as specified in the statement of intent; and~~
 - (b) ~~be a good employer; and~~
 - (c) ~~exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage those interests when able to do so; and~~
 - (d) ~~if the council-controlled organisation is a council-controlled trading organisation, conduct its affairs in accordance with sound business practice.~~
- (2) ~~In **subsection (1)(b)**, **good employer** has the same meaning as in clause 36 of Schedule 7.~~

*General provisions***57 Official information**

- (1) Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a council-controlled organisation as if that organisation were a local authority.
- (2) The Ombudsmen Act 1975 applies to a council-controlled organisation as if that organisation were listed in Part 3 of Schedule 1 of that Act.

57A Activities undertaken on behalf of local authorities

Nothing in this Part restricts or limits the application of section 17A to any arrangement or agreement under which a council-controlled organisation undertakes any responsibility on behalf of a local authority, irrespective of whether the local authority is a shareholder of the council-controlled organisation.

*Establishment***58 Consultation required before council-controlled organisation established**

- (1) Before a local authority may establish or become a shareholder in a council-controlled organisation, the local authority must undertake consultation in accordance with section 82.
- (2) The consultation required in **subsection (1)** may be undertaken as part of another proposal or as part of a long-term plan.
- (3) **Subsection (1)** does not apply to the establishment of, or an allocation of shares in, a council-controlled organisation that is required to implement a reorganisation in accordance with an Order in Council under **section 25 or 25A**.

58A Establishment of multiply owned council-controlled organisation

- (1) This section applies if 2 or more local authorities have resolved to establish a multiply owned council-controlled organisation or 1 or more local authorities have resolved to become shareholders in a multiply owned council-controlled organisation.
- (2) Each of the local authorities, and any local authority that is already a shareholder in the council-controlled organisation, is responsible for ensuring compliance with the provisions of this Act in respect of the establishment of the council-controlled organisation.
- (3) In the event of any dispute between the local authorities about how to comply with **subsection (2)**, the local authorities must make reasonable efforts to reach a mutually acceptable and timely resolution of the dispute, having regard to—
 - (a) the requirements of this Act; and

- (b) the current and future well-being of the communities of their districts, and the interests and preferences of the communities within the districts.
- (4) If the dispute is still unresolved after acting under **subsection (3)**, 1 or more local authorities may refer the matter to the Commission for resolution in accordance with **section 31H**.

58B Commission agreement required before consultation on proposed establishment of transport or water services council-controlled organisation

- (1) If a local authority is proposing to become a shareholder in a multiply-owned transport services council-controlled organisation or water services council-controlled organisation, the local authority must obtain the written agreement of the Commission to the proposal before commencing the consultation required in **section 58(1)**.
- (2) If the Commission receives an application for written agreement under **subsection (1)**, the Commission must, as soon as is reasonably practicable, agree in writing to the proposal unless the Commission is satisfied on reasonable grounds that the disadvantages of the proposal significantly outweigh the advantages of it proceeding.
- (3) **Subsection (1)** does not prevent a local authority from holding initial discussions with other local authorities or any other party in the context of deciding whether to support a proposal to which that subsection would apply.

Transfer of undertakings

59 Transfer of undertakings to council-controlled organisations

Schedule 9 applies to the transfer of an existing undertaking to a council-controlled organisation.

Subpart 2—Governance of council organisations and council-controlled organisations

Directors

60 Appointment of directors

- (1) A local authority must adopt a policy that sets out an objective and transparent process for—
- (a) the identification and consideration of the skills, knowledge, and experience required of directors of a council organisation; and
 - (b) the appointment of directors to a council organisation; and
 - (c) the remuneration of directors of a council organisation.

Proposed amendments to

- (2) ~~A local authority may appoint a person to be a director of a council organisation only if the person has, in the opinion of the local authority, the skills, knowledge, or experience to—~~
- ~~(a) guide the organisation, given the nature and scope of its activities; and~~
 - ~~(b) contribute to the achievement of the objectives of the organisation.~~
- (3) ~~When identifying the skills, knowledge, and experience required of directors of a council-controlled organisation, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation.~~
- (4) ~~A local authority must not appoint a person to be a director of a multiply owned substantive council-controlled organisation if the person is, at the time of the appointment,—~~
- ~~(a) a member of the governing body of a shareholding local authority; or~~
 - ~~(b) a member of a local board or community board of a shareholding local authority.~~
- (5) ~~A director of a multiply owned substantive council-controlled organisation who is elected to be a member of the governing body, a local board, or a community board, of a shareholding local authority must resign from his or her position as a director of the council-controlled organisation before taking up his or her position as an elected member.~~

60A Role of directors of council-controlled organisations

- (1) ~~The role of a director of a council-controlled organisation is to assist the organisation to meet its objectives and any other requirements in its statement of intent, service delivery plan, and statement of expectations.~~
- (2) ~~This section does not limit or affect the other duties that a director of a council-controlled organisation has.~~

Decisions

61 Decisions relating to operation of council-controlled organisations

~~All decisions relating to the operation of a council-controlled organisation must be made by, or under the authority of, the board of the organisation in accordance with—~~

- ~~(a) its statement of intent; and~~
- ~~(b) its constitution; and~~
- ~~(c) its service delivery plan (if the organisation has one); and~~
- ~~(d) its shareholders' statement of expectations (if one exists).~~

~~Compare: 1974 No 66 s 594R~~

61A Significant decisions of substantive council-controlled organisations affecting land or water

Before a substantive council-controlled organisation makes a decision that may significantly affect land or a body of water, it must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.

Governance of substantive council-controlled organisations

62 Constitution of substantive council-controlled organisation

The constitution of a substantive council-controlled organisation must not preclude the council-controlled organisation from using any particular form of charging or source of revenue that would otherwise be available to the council-controlled organisation.

62A Statement of expectations

- (1) The shareholders in a substantive council-controlled organisation must prepare a statement of expectations that—
 - (a) specifies how the organisation is to conduct its relationships with—
 - (i) shareholding local authorities; and
 - (ii) the communities of those local authorities, including any specified stakeholders within those communities; and
 - (iii) iwi, hapū, and other Māori organisations; and
 - (b) requires the organisation to act consistently with—
 - (i) the statutory obligations of the shareholding local authorities; and
 - (ii) the shareholders' obligations pursuant to agreements with third parties (including with iwi, hapū, or other Māori organisations); and
 - (c) includes a statement of the shareholders' expectations in respect of the council-controlled organisation's contributions to, and alignment with, any relevant objectives and priorities of central government.
- (2) A statement of expectations may include other shareholder expectations, such as expectations in relation to community engagement and collaboration with shareholders and others in the delivery of services.
- (3) A statement of expectations must be published on an Internet site maintained by or on behalf of the local authority.

62B Accountability policy

- (1) The shareholders of a substantive council-controlled organisation may adopt a policy on the accountability of the organisation that specifies—

- (a) reporting requirements with which the organisation must comply in addition to those required under this Act;
 - (b) planning requirements with which the organisation must comply in addition to those required under this Act.
- (2) An accountability policy—
- (a) must be notified to the organisation in the statement of expectations prepared in accordance with **section 62A(1)**; and
 - (b) must be published on an Internet site maintained by or on behalf of each local authority shareholder.

62C Shareholders may impose additional accountability requirements on substantive council-controlled organisation

The shareholders of a substantive council-controlled organisation may require the organisation to—

- (a) describe in its statement of intent how the organisation will contribute to the shareholders² and, where appropriate, the Government's objectives and priorities;
- (b) deliver to each shareholder, no later than 1 month after the end of the first and third quarter of each financial year, a report on the organisation's operations during each quarter that includes the information that is required to be included by its statement of intent;
- (c) prepare and adopt a service delivery plan in accordance with **sections 65A to 65F**;
- (d) include an infrastructure strategy in accordance with **section 65C** in a service delivery plan required under **paragraph (c)**;

Governance of multiply owned substantive council-controlled organisations

63 Participants' agreement for multiply owned substantive council-controlled organisation

- (1) The shareholders of a multiply owned substantive council-controlled organisation must establish a participants' agreement for the purposes of this section.
- (2) The participants' agreement may be developed as part of a reorganisation implementation scheme.
- (3) The participants' agreement must provide for—
 - (a) a process for board appointments; and
 - (b) a process for monitoring board performance; and
 - (c) the role and operation of a joint committee, including—
 - (i) the number of members to be appointed by each shareholder; and

- (ii) the matters to be delegated to the committee and any prerequisites for exercising those delegations (such as a requirement to seek shareholders' views); and
 - (iii) any decisions that must be made by a specified proportion of votes that is higher than a simple majority.
- (4) The participants' agreement may provide for other matters that the shareholders consider necessary to manage the ongoing operation of the organisation including, but not limited to,—
- (a) a process for 1 or more shareholders to inject additional capital into the organisation; and
 - (b) a process for a review of the organisation under section 17A to be undertaken jointly by the shareholders (but subject to **subsection (5)**).
- (5) A participants' agreement may not provide for a review of the organisation under section 17A to be undertaken on a date that is earlier than 6 years after the date on which the organisation is established.

63A Governance of multiply owned substantive council-controlled organisation

- (1) The shareholders of a multiply owned substantive council-controlled organisation must establish and maintain a joint committee for the purpose of collectively managing their interests in performing or exercising their responsibilities, duties, and powers as shareholders of the organisation.
- (2) The shareholders may determine the procedures for the joint committee, which may include—
- (a) voting rights that are weighted to take into account the proportion of shares held by each shareholder;
 - (b) the right of shareholders to appoint alternate committee members.
- (3) The shareholders must delegate to the joint committee the following responsibilities, duties, and powers:
- (a) the adoption of a policy on the appointment of directors under **section 60(1)**; and
 - (b) facilitating the development and approval of the service delivery plan for the purposes of **section 65D(1)**, including,—
 - (i) considering shareholder comments on the draft service delivery plan following consultation under **section 65D(2)**; and
 - (ii) considering any amended service delivery plan prepared by the organisation following that consultation; and
 - (iii) resolving inconsistencies in accordance with **section 65B**; and
 - (iv) approving the service delivery plan on behalf of the shareholders; and
 - (c) the adoption of an accountability policy under **section 62B**; and

- (d) ~~the specification of shareholder requirements and expectations under **sections 62A and 62C**.~~
- (4) ~~The joint committee is responsible for making recommendations to the shareholders as to persons to be appointed as directors of the organisation in accordance with **section 60(2) to (4)** and the policy adopted under **subsection (3)(a)**.~~
- (5) ~~Despite clause 30(7) of Schedule 7, a joint committee established for the purposes of **subsection (1)** is not deemed to be discharged on the coming into office of members of the shareholding local authorities elected or appointed at, or following, a triennial general election of members.~~

Transport services and water services council-controlled organisations

64 Shareholding in transport services and water services council-controlled organisations

~~Local authorities must hold and exercise their ownership interest in a transport services council-controlled organisation or a water services council-controlled organisation directly and not through a holding company or other subsidiary of the local authority.~~

Subpart 3—Planning and reporting

Service delivery plans and infrastructure strategies of council-controlled organisations

65 Application

- (1) ~~**Sections 65A to 65F** apply to a council-controlled organisation if the organisation—~~
- ~~(a) is required by shareholders to have a service delivery plan (as provided for in **section 62C(c)**) that includes an infrastructure strategy (as provided for in **section 62C(d)**); or~~
- ~~(b) is required by **section 66** to have a service delivery plan that includes an infrastructure strategy.~~
- (2) ~~**Sections 65A, 65B, and 65D to 65F** apply to a council-controlled organisation if the organisation is required by its shareholders to have a service delivery plan (as provided for in **section 62C(c)**), but is not required to include an infrastructure strategy.~~

65A Content of service delivery plan

- (1) ~~A service delivery plan must cover a period of at least 10 consecutive financial years.~~
- (2) ~~The service delivery plan must—~~
- ~~(a) describe how the organisation intends to—~~

- (i) achieve the intended service levels; and
 - (ii) respond to demographic change, economic change, and other changing environmental factors; and
 - (b) include, for each of the financial years covered by the plan, forecast financial statements for the organisation; and
 - (c) identify or define any strategic assets relevant to the council-controlled organisation and set out any requirements in relation to the organisation's management of those assets, including the process by which the organisation may approve major transactions in relation to them; and
 - (d) if the organisation is required to have an infrastructure strategy, include that infrastructure strategy in accordance with **section 65C**; and
 - (e) include specific proposals to give effect to the long-term plans and resource management policy statements and plans of the organisation's shareholders, insofar as they relate to the activities of the organisation; and
 - (f) include the following statements, at the level of detail specified in **subsection (3)**, in relation to each group of activities of the organisation:
 - (i) a statement of the intended levels of service provision, including identification of any intended changes to the level of service that was provided in the year before the first year covered by the plan and the reasons for those changes; and
 - (ii) a funding impact statement in the prescribed form that identifies—
 - (A) the sources of funding to be used by the organisation; and
 - (B) the amount of funds expected to be produced from each source; and
 - (C) how the funds are to be applied.
- (3) The statements required under **subsection (2)(f)** must be provided,—
- (a) in detail, in relation to each of the first 3 financial years covered by the plan; and
 - (b) in outline, in relation to each of the subsequent financial years covered by the plan.
- (4) In the case of a multiply owned council-controlled organisation, the service delivery plan must also identify—
- (a) the amount of any operating revenue to be contributed by the shareholding local authorities in any year, in accordance with **section 69B(2)**; and
 - (b) any amount to be borrowed from shareholding local authorities in any year, in accordance with **section 69A(2)**.

- (5) In the case of a substantive council-controlled organisation (other than a water services council-controlled organisation) that has adopted, or that proposes to adopt, a development contributions policy in accordance with **section 71A**, the service delivery plan must also identify the following key features of that policy:
- (a) the proportion of growth expenditure to be recovered from development contributions; and
 - (b) the significant assumptions underlying the development contributions policy; and
 - (c) the geographic catchments to be used for calculating development contributions; and
 - (d) the approach to be taken to applications for remission or waiver of development contributions.

65B Resolving conflict between provisions of service delivery plan that give effect to long-term plans of different shareholders

If, in the service delivery plan of a multiply owned substantive council-controlled organisation, an inconsistency arises between provisions that give effect to the long-term plans of different shareholders, that inconsistency must be resolved by the joint committee established under **section 63A**.

65C Content of infrastructure strategy

- (1) If a council-controlled organisation is required to have a current infrastructure strategy, that strategy must—
- (a) be included in the organisation's service delivery plan; and
 - (b) cover a period of at least 30 consecutive financial years.
- (2) The infrastructure strategy must—
- (a) identify significant infrastructure issues for the council-controlled organisation during the period covered by the strategy; and
 - (b) identify the principal options for managing those issues and the implications of those options; and
 - (c) describe how the organisation intends to reliably deliver the services that it provides in a financially sustainable manner.
- (3) Subsections (3) and (4) of section 101B (which relate to the content of a local authority's infrastructure strategy) apply to a council-controlled organisation's infrastructure strategy as if every reference in those subsections to a local authority were a reference to the council-controlled organisation.

65D Adoption of service delivery plan

- (1) A council-controlled organisation may not adopt a service delivery plan unless that plan has been approved by the shareholders.

- ~~(2) Before approving a service delivery plan, each shareholder must consult on the content of the document in a manner that gives effect to section 82.~~
- ~~(3) A service delivery plan must be adopted before the commencement of the first year to which it relates and continues in force until the close of the third consecutive year to which it relates.~~
- ~~(4) In **subsection (3)**, the first year to which a service delivery plan relates is the first year to which the local authority's long-term plan relates.~~

65E Amendment of service delivery plan

- ~~(1) The board of a council-controlled organisation may ask the shareholders of the organisation to agree to amend the organisation's service delivery plan.~~
- ~~(2) The shareholders of a council-controlled organisation may instruct the board of the organisation to prepare a proposed amendment to the organisation's service delivery plan.~~
- ~~(3) The shareholders of the organisation must determine the process by which any proposed amendment to an organisation's service delivery plan is considered and adopted, including whether to undertake public consultation in accordance with section 82.~~
- ~~(4) In the case of a multiply owned council-controlled organisation, the powers and functions in **subsections (2) and (3)** must be exercised and performed by the joint committee of shareholders.~~

65F Publication of service delivery plan

~~Each shareholding local authority of a substantive council-controlled organisation that has a service delivery plan must publish the plan, and maintain it for a period of no less than 7 years, on an Internet site maintained by or on behalf of the local authority.~~

Service delivery plans and infrastructure strategies of transport services and water services council-controlled organisations

66 Transport services and water services council-controlled organisations must have service delivery plan and infrastructure strategy

- ~~(1) Every transport services council-controlled organisation and water services council-controlled organisation must, at all times, have a current service delivery plan, which must include an infrastructure strategy, in accordance with **sections 65A to 65F**.~~
- ~~(2) The first service delivery plan under this section must relate to the period commencing with the first full financial year that commences not less than 8 months after the establishment of the organisation.~~
- ~~(3) The second service delivery plan under this section must relate to the period commencing with the first financial year to which the next long-term plans of the shareholding local authorities relate.~~

- (4) **Subsection (1)** is subject to **subsection (2)**.

Statements of intent

67 Statements of intent for council-controlled organisations

- (1) Every council-controlled organisation must prepare and adopt a statement of intent in accordance with **Part 1 of Schedule 8**.
- (2) The purpose of a statement of intent is to—
- (a) state publicly the activities and intentions of the council-controlled organisation for the year and the objectives to which those activities will contribute; and
 - (b) provide an opportunity for shareholders to influence the direction of the organisation; and
 - (c) provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.
- (3) The statement of intent—
- (a) must not be inconsistent with the constitution of the council-controlled organisation; and
 - (b) may include and apply to 2 or more related council-controlled organisations.
- (4) Every statement of intent of a council-controlled organisation must comply with **Part 2 of Schedule 8**.
- (5) Every statement of intent of a council-controlled trading organisation must comply with **Part 3 of Schedule 8**.
- (6) Every statement of intent of a council-controlled organisation that is not a council-controlled trading organisation must comply with **Part 4 of Schedule 8**.
- (7) All information that is included in a statement of intent under this section 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.
- (8) Despite this section, an organisation that becomes a council-controlled organisation not more than 6 months before the end of a financial year is not required to prepare a statement of intent for that financial year.
- (9) Each shareholding local authority must publish the adopted statement of intent on an Internet site maintained by or on behalf of the local authority and must maintain the statement on that site for a period of no less than 7 years.
- (10) A failure by a council-controlled organisation to comply with any requirement of this section, or with any statement in the organisation's statement of intent, does not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by that organisation.

Monitoring and reporting

68 Performance monitoring

A local authority that is a shareholder in a council organisation must regularly undertake performance monitoring of that organisation to evaluate its contribution to the achievement of—

- (a) the local authority's objectives for the organisation; and
- (b) (if applicable) the desired results, as set out in the organisation's statement of intent, service delivery plan, and infrastructure strategy; and
- (c) the overall aims and outcomes of the local authority.

68A Half-yearly report

- (1) Within 2 months after the end of the first half of each financial year, the board of a council-controlled organisation must deliver to the shareholders a report on the organisation's operations during that half year.
- (2) The report must include the information required to be included by its statement of intent.

Compare: 1974 No 66 s 594Z

68B Annual report

- (1) Within 3 months after the end of each financial year, the board of a council-controlled organisation must deliver to the shareholders, and make available to the public, a report on the organisation's operations during that year.
- (2) The report must include the information required to be included by—
 - (a) **sections 68C and 68D**; and
 - (b) its statement of intent.
- (3) If a council-controlled organisation has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, the undertaking or the amount of compensation obtained must be recorded in the annual report of the council-controlled organisation.
- (4) Each shareholding local authority must publish the annual report on an Internet site maintained by or on behalf of the local authority and must maintain the statement on that site for a period of no less than 7 years.

68C Content of reports on operations of council-controlled organisations

A report on the operations of a council-controlled organisation under **section 68B** must—

- (a) contain the information that is necessary to enable an informed assessment of the operations of that organisation and its subsidiaries, including—

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- (i) a comparison of the performance of the organisation and its subsidiaries with the statement of intent; and
 - (ii) an explanation of any material variances between that performance and the statement of intent; and
 - (iii) if the organisation has a service delivery plan, a report on the achievement of the objectives in that plan; and
 - (iv) if the organisation has an infrastructure strategy, a report on progress towards implementing that strategy; and
- (b) state the dividend, if any, authorised to be paid or the maximum dividend proposed to be paid by the organisation for its equity securities (other than fixed interest securities) for the financial year to which the report relates.

Compare: 1974 No 66 s 594Z

68D Financial statements and auditor's report

- (1) A report on the operations of a council-controlled organisation under **section 68B** must include—
- (a) audited consolidated financial statements for that financial year for that organisation and its subsidiaries; and
 - (b) an auditor's report on—
 - (i) those financial statements; and
 - (ii) the performance targets and other measures by which performance was judged in relation to that organisation's objectives.
- (2) The audited financial statements under **subsection (1)(a)** must be prepared in accordance with generally accepted accounting practice.

Compare: 1974 No 66 s 594Z

68E Auditor-General is auditor of council-controlled organisations

Despite sections 207P to 207V of the Companies Act 1993, a council-controlled organisation or a subsidiary of a council-controlled organisation is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Compare: 1974 No 66 s 594ZC

68F Protection from disclosure of sensitive information

Nothing in this Act requires the inclusion in any statement of intent, annual report, financial statement, or half-yearly report required to be produced under this Act by a council-controlled organisation of any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987.

Compare: 1974 No 66 s 594ZA

68G Application of Part to listed companies

- (1) This section applies to a council-controlled organisation if the shares of any of the following are quoted on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):
- (a) the council-controlled organisation;
 - (b) a holding company of the council-controlled organisation;
 - (e) controlling companies of the council-controlled organisation.
- (2) If **subsection (1)** applies, the council-controlled organisation is not required to—
- (a) have a statement of intent under **section 67**;
 - (b) deliver a half-yearly report under **section 68A**;
 - (e) deliver an annual report under **section 68B**.
- (3) In this section,—
- controlling companies** means 2 or more companies whose degree of control over a council-controlled organisation, if exercisable by 1 notional company, would make the notional company a holding company of the council-controlled organisation
- holding company** has the same meaning as in section 5 of the Companies Act 1993.

68H Application of Act to related companies

Sections 56, 57A, 60 to 61, 67 to 68F, 69E, and 69F, apply to a company as if it were a council-controlled organisation if the company is a related company (within the meaning of section 2(3) of the Companies Act 1993) of a council-controlled organisation.

Subpart 4—Finance and funding

Financial arrangements and funding

69 Funding of multiply owned council-controlled organisation

- (1) The shareholders of a multiply owned council-controlled organisation must agree and adopt a funding allocation formula.
- (2) The formula must specify how each shareholder's contribution to any operating revenue that is required to be paid by shareholders to the council-controlled organisation in any year is to be determined.
- (3) The formula must be adopted, and may be amended, by unanimous agreement of all shareholders.
- (4) If the shareholders are unable to reach unanimous agreement, 1 or more of the shareholding local authorities may refer the matter to the Commission for resolution in accordance with **section 31H**.

Proposed amendments to

- (5) For the purposes of this section, ~~operating revenue~~ does not include—
- (a) revenue received from development contributions; or
 - (b) revenue or funds received in accordance with a development agreement.
- 69A Borrowing by multiply owned substantive council-controlled organisation**
- (1) A multiply owned substantive council-controlled organisation must not incur debt except as provided in its service delivery plan or, if there is no service delivery plan, as provided in its shareholders' participants' agreement or with the approval of the joint committee established under **section 63A**.
- (2) If a multiply owned council-controlled organisation has a service delivery plan that provides for the organisation to borrow from 1 or more of its shareholding local authorities, those local authorities must lend money to the organisation in accordance with that service delivery plan.
- (3) **Subsection (2)** does not prevent—
- (a) a shareholding local authority lending a lesser amount than that specified in the service delivery plan, with the agreement of the board of the multiply owned council-controlled organisation; or
 - (b) 1 or more shareholding local authorities lending a greater amount than that specified in the service delivery plan, with the unanimous agreement of all shareholders.
- 69B Financial management of substantive council-controlled organisation**
- (1) A substantive council-controlled organisation must manage its finances in a manner that will enable long term continuity of service delivery at the levels of service—
- (a) set out in its planning document; and
 - (b) required by or under any enactment.
- (2) If a substantive council-controlled organisation's planning document provides for the shareholding local authority or authorities of the organisation to contribute to the organisation's operating revenue, that local authority or those local authorities must contribute funding to the organisation in accordance with—
- (a) that planning document; and
 - (b) any funding allocation formula adopted under **section 69**.
- (3) **Subsection (2)** does not prevent—
- (a) the shareholding local authority or authorities from contributing a lesser amount than that specified in the planning document, with the agreement of the board of the council-controlled organisation; or
 - (b) the shareholding local authority or authorities from contributing a greater amount than that specified in the planning document, with the unanimous agreement of all shareholders; or

- (e) a shareholding local authority from contracting to purchase additional services from the council-controlled organisation.
- (4) In this section, **planning document** means the substantive council-controlled organisation's current service delivery plan or, if the organisation does not have a current service delivery plan, its current statement of intent.

69C Limitation on capital charges

- (1) A substantive council-controlled organisation must not impose a capital charge for connection to infrastructure or services provided by that organisation, or for authority to use that infrastructure or those services, other than—
- (a) a development contribution authorised in a development contributions policy,—
- (i) in the case of a water services council-controlled organisation, adopted by that organisation in accordance with **section 71**; or
- (ii) in the case of any other substantive council-controlled organisation, adopted by its shareholding territorial authority under section 102, in accordance with **section 71A**; or
- (b) a capital charge provided for in a development agreement entered into in accordance with **section 71D**.
- (2) In this section, **capital charge**—
- (a) means a charge that is wholly or principally to meet the costs of capital expenditure to provide new or additional assets, or to increase the capacity of existing assets, in order to accommodate growth in demand; but
- (b) does not include a toll set or levied under Part 2 of the Land Transport Management Act 2003.
- (3) This section does not prevent a substantive council-controlled organisation from requiring payment of a fee to meet the reasonable costs of establishing a physical connection between a property and any infrastructure, and any associated administrative costs.

69D Prohibition on council-controlled organisations borrowing in foreign currency

- (1) No council-controlled organisation may borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.
- (2) **Subsection (1)** does not apply to an incidental arrangement in relation to an investment in currency other than New Zealand currency.
- (3) In **this subpart**, **borrow** and **incidental arrangement** have the meanings given in section 112.

69E Prohibition on guarantees, etc

A local authority must not give any guarantee, indemnity, or security in respect of the performance of any obligation by a council-controlled trading organisation.

Compare: 1974 No 66 s 594ZP

69F Restriction on lending to council-controlled trading organisation

A local authority must not lend money, or provide any other financial accommodation, to a council-controlled trading organisation on terms and conditions that are more favourable to the council-controlled trading organisation than those that would apply if the local authority were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation.

Compare: 1974 No 66 s 594ZPA

*Dividends to shareholders***70 Prohibition on water services council-controlled organisation distributing surplus**

A water services council-controlled organisation—

- (a) must not pay any dividend or distribute any surplus in any way, directly or indirectly, to any owner or shareholder; and
- (b) is not required to comply with **section 68C(b)**.

*Development contributions to fund capital expenditure by council-controlled organisations***71 Water services council-controlled organisation may develop, adopt, and administer development contributions policy and require contributions**

- (1) A water services council-controlled organisation may develop, adopt, and administer a development contributions policy that provides for a development contribution to be made to the organisation when an authorisation for a service connection is granted.
- (2) A water services council-controlled organisation may require a development contribution provided for in a policy adopted under **subsection (1)**, if—
 - (a) the policy is consistent with section 201; and
 - (b) the policy was in force at the time that the application for authorisation for a service connection was submitted, accompanied by all required information.
- (3) Section 106 and the provisions of subpart 5 of Part 8 (other than section 198) apply, with all necessary modifications, to the development, adoption, and administration of a development contributions policy by a water services council-controlled organisation, as if references to—

- (a) a territorial authority were references to a water services council-controlled organisation; and
 - (b) a development contributions policy under section 102(1) were references to a policy adopted under this section.
- (4) The council-controlled organisation—
- (a) must consult on a draft policy in a manner that gives effect to the requirements of section 82 before adopting a policy under **subsection (1)**; and
 - (b) may amend a policy adopted under **subsection (1)** at any time after consulting on the proposed amendments in a manner that gives effect to section 82.
- (5) A development contributions policy under **subsection (1)** may require a development contribution to fund capital expenditure on assets transferred to the water services council-controlled organisation from a shareholding territorial authority, if development contributions to meet the cost of that capital expenditure were provided for in the shareholding territorial authority's development contribution policy at the date on which the assets were transferred.
- (6) **Subsection (5)** does not limit section 200(4).
- 71A Other substantive council-controlled organisations may develop and adopt development contributions policy**
- (1) This section applies to a substantive council-controlled organisation, other than a water services council-controlled organisation.
 - (2) The organisation may develop and adopt a development contributions policy that provides for development contributions to fund capital expenditure if—
 - (a) the organisation has adopted a service delivery plan under **section 65D** and the development contributions policy is consistent with the key features identified in that plan in accordance with **section 65A(5)**; and
 - (b) the capital expenditure is of a type specified in **subsection (3)**.
 - (3) The types of capital expenditure that may be funded by a substantive council-controlled organisation's development contributions policy are:
 - (a) capital expenditure by the organisation, if that expenditure could be funded under a development contributions policy if it were incurred by a shareholding territorial authority; or
 - (b) capital expenditure by a shareholding territorial authority in respect of assets that have been transferred to the organisation, if development contributions for the cost of that capital expenditure were provided for in the territorial authority's development contributions policy at the date on which the assets were transferred.
 - (4) A development contributions policy under this section may provide for a development contribution to be required to be made when—

Proposed amendments to

- (a) a resource consent is granted under the Resource Management Act 1991 by a shareholding territorial authority for a development within its district;
 - (b) a building consent is granted under the Building Act 2004 for a building work situated in the district of a shareholding territorial authority (whether by the territorial authority or a building consent authority);
 - (c) an authorisation for a service connection is granted by a shareholding territorial authority.
- (5) Before adopting a development contributions policy, the council-controlled organisation must—
- (a) develop a draft policy that contains the information required by sections 106, 201, 201A, and 202 in respect of the proposed development contributions; and
 - (b) consult on the draft policy in a manner that gives effect to the requirements of section 82 (as if the organisation were a local authority).
- (6) If, after complying with **subsection (5)**, the council-controlled organisation adopts a development contributions policy, it must submit that policy to each of its shareholding territorial authorities.
- (7) A council-controlled organisation may amend a policy adopted under this section at any time after consulting on the proposed amendments in a manner that gives effect to the requirements of section 82 (as if the organisation were a local authority).

71B Shareholding territorial authorities must administer development contributions policy adopted by council-controlled organisation

- (1) If a substantive council-controlled organisation adopts a development contributions policy under **section 71A**,—
- (a) the provisions of subpart 5 of Part 8 apply to the policy, with all necessary modifications, as if it were a development contributions policy adopted by the territorial authority; and
 - (b) the provisions of Schedule 13A (which relates to development contribution objections) must be read as requiring all documents, including briefs of evidence, notices, and the commissioners' decision, to be served on the council-controlled organisation as well as on the territorial authority.
- (2) Each shareholding territorial authority of a council-controlled organisation that adopts a development contributions policy must—
- (a) administer that policy in accordance with subpart 5 of Part 8 as if it were a development contributions policy adopted by the territorial authority; and

- (b) pay the amount of all development contributions received in accordance with the policy, less the reasonable costs of administering the policy, to the organisation.

71C Substantive council-controlled organisation's responsibilities in respect of development contributions policy

- (1) This section applies to a council-controlled organisation that adopts a development contributions policy under **section 71A**.
- (2) Subpart 5 of Part 8 applies, with any necessary modifications, to the development contributions policy.
- (3) The council-controlled organisation must review the development contributions policy at least once every 3 years using a consultation process that gives effect to the requirements of section 82.
- (4) To enable a shareholding territorial authority to comply with section 209(1) or 210(1), if the circumstances in either of those sections apply, the council-controlled organisation—
 - (a) must, on request, refund or return to the territorial authority any development contribution paid or land transferred to the organisation by the territorial authority in accordance with **section 71B(2)(b)**; and
 - (b) may retain any portion of the development contribution or land in accordance with section 209(2) or 210(2), as the case may be, as if the council-controlled organisation were the territorial authority.

71D Substantive council-controlled organisation may enter development agreement

- (1) If a substantive council-controlled organisation is involved in the provision of network infrastructure, a development agreement may be entered into between—
 - (a) a developer and the organisation; or
 - (b) a developer, a territorial authority, and the organisation.
- (2) Sections 207A to 207F apply, with all necessary modifications, to a development agreement entered into under **subsection (1)**.

71E Consultation

For the purposes of **sections 71(3), 71A(5)(b) and (7), and 71C(3)**, the board of the council-controlled organisation may delegate the responsibility to undertake consultation in accordance with section 82 to a committee, an officer, or an independent advisor.

Subpart 5—Regulatory powers of transport services and water services council-controlled organisations

Acquisition and disposal of land

72 Acquisition and disposal of land by transport services or water services council-controlled organisation

- (1) This section applies to a transport services council-controlled organisation or water services council-controlled organisation that is approved as a requiring authority under section 167 of the Resource Management Act 1991.
- (2) Sections 185 and 186 of the Resource Management Act 1991 apply as if—
- every reference to a network utility operator were a reference to the council-controlled organisation; and
 - every reference to the Minister of Lands or to the Crown were a reference to the territorial authority in whose district the land is situated; and
 - every reference to a government work were a reference to a local work.
- (3) Any land acquired or taken on behalf of a transport services council-controlled organisation by operation of sections 185 and 186 of the Resource Management Act 1991 (as applied by **subsection (2)**) vests in the territorial authority that acquired it or took it.
- (4) For the purposes of section 186(7) of the Resource Management Act 1991 (as applied by **subsection (2)**),—
- the council-controlled organisation must notify the territorial authority in whose district the land is situated of its decision to dispose of the land; and
 - the territorial authority must dispose of the land in accordance with the requirements of the Public Works Act 1981 and any other relevant enactment.

72A Limitation on acquisition and disposal of land by shareholding local authority for transport-related purposes

A shareholding local authority may exercise its powers as a local authority under the Public Works Act 1981 to acquire, take, or dispose of land, in relation to any component of the transport system or for any transport-related purpose for which a council-controlled organisation has responsibility under an Order in Council under **section 25**, only if the council-controlled organisation has agreed to the acquisition, taking, or disposal of that land.

Powers of transport services council-controlled organisation

73 Statutory powers of transport services council-controlled organisation

- (1) A transport services council-controlled organisation may perform or exercise any of the responsibilities, duties, and powers listed in **Schedule 8B** that are conferred on it by an Order in Council under **section 25**.
- (2) Nothing in this section authorises the transfer of ownership of any road, land, or other property to a council-controlled organisation or affects the operation of section 316(1) of the Local Government Act 1974.
- (3) A shareholding local authority must not perform or exercise any responsibility, duty, or power that is conferred on a transport services council-controlled organisation by an Order in Council under **section 25**.
- (4) This section does not prevent a transport services council-controlled organisation from delegating to a shareholding local authority any responsibility, duty, or power conferred on the council-controlled organisation by an Order in Council under **section 25**.
- (5) Nothing in this section prevents a shareholding local authority from performing or exercising, for a purpose that is not transport-related, any responsibility, duty, or power that is conferred on a transport services council-controlled organisation (for example, to regulate the use of a footpath, public space, or road reserve for alcohol control purposes, or to designate a corridor that passes through a road).
- (6) **Subsection (5)** applies whether the local authority is performing or exercising the responsibility, duty, or power as the owner of a road or other land, or otherwise.

73A Local Government Official Information and Meetings Act 1987 applies to transport services council-controlled organisations that make bylaws

- (1) **Subsection (2)** applies if a transport services council-controlled organisation has the powers of a local authority to make, review, and enforce bylaws under subparts 1 and 2 of Part 8 of this Act (*see clause 6 of Schedule 8B*).
- (2) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the transport services council-controlled organisation as if it were a local authority named in Schedule 2 of that Act, but only in relation to any meeting or part of a meeting at which the council-controlled organisation intends to make, or will make, a bylaw.

Powers of water services council-controlled organisations

74 Statutory powers of water services council-controlled organisation

- (1) A water services council-controlled organisation may perform or exercise any of the responsibilities, duties, and powers listed in **Schedule 8A** that are con-

~~ferred on that council-controlled organisation by an Order in Council under **section 25**.~~

- (2) ~~A shareholding local authority must not perform or exercise any responsibility, duty, or power that is conferred on a water services council-controlled organisation by an Order in Council under **section 25**.~~
- (3) ~~This section does not prevent a water services council-controlled organisation from delegating to a shareholding local authority any responsibility, duty, or power conferred on the council-controlled organisation by an Order in Council under **section 25**.~~

74A Liability for damage by wilful or negligent behaviour towards water supply or wastewater work

~~A person who wilfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any water supply or wastewater works or property owned, constructed, acquired, or used by a water services council-controlled organisation is liable for, as the case may be,—~~

- (a) ~~the amount of the destruction or damage; or~~
- (b) ~~the cost incurred by the organisation in removing the stoppage or obstruction; or~~
- (c) ~~any loss or expenses incurred by the organisation because of the stoppage, obstruction, or interference.~~

74B Bylaws and enforcement for multiply owned water services council-controlled organisation

- (1) ~~The shareholding local authorities of a multiply owned water services council-controlled organisation must appoint a joint committee to perform or exercise the responsibilities and powers of a local authority under **sections 74C and 74D** in respect of proposed bylaws that affect more than 1 district.~~
- (2) ~~The joint committee may be—~~
- (a) ~~the joint committee that is established under **section 63A**; or~~
- (b) ~~a separate joint committee that is established for the purposes of this section.~~
- (3) ~~The shareholders may determine the procedures for a joint committee established for the purposes of **subsection (1)**, which may include—~~
- (a) ~~voting rights that are weighted to take into account the proportion of shares held by each shareholder;~~
- (b) ~~the right of shareholders to appoint alternate committee members.~~
- (4) ~~The joint committee must consult each affected local authority for the purposes of making a decision under **section 74C(2)**.~~
- (5) ~~The shareholding local authorities must delegate to a joint committee responsibility for exercising the enforcement powers of the local authority set out in~~

Part 8, insofar as they relate to the activities undertaken by the organisation, including responsibility for—

- (a) the appointment of enforcement officers with jurisdiction over the districts of all the shareholding local authorities; and
 - (b) the approval of enforcement actions; and
 - (c) the delegation of enforcement powers to appointed officers.
- (6) Despite clause 30(7) of Schedule 7, a joint committee established for the purposes of **subsection (1)** is not deemed to be discharged on the coming into office of members of the shareholding local authorities elected or appointed at, or following, a triennial general election of members.

74C Water services council-controlled organisation may propose bylaw

- (1) A water services council-controlled organisation may propose to a shareholding local authority, in writing, that a bylaw relating to the management or supply of water supply, wastewater, or stormwater services be made by the local authority under a specified enactment.
- (2) As soon as practicable after receiving a proposal under **subsection (1)**, the local authority must decide whether the proposed bylaw meets the following requirements:
 - (a) the proposed bylaw is a bylaw relating to the management or supply of water supply, wastewater, or stormwater services; and
 - (b) the specified enactment under which the bylaw is proposed to be made authorises the making of the bylaw; and
 - (c) the proposed bylaw complies with the applicable statutory requirements of that enactment and any other relevant enactment; and
 - (d) the proposed bylaw is not inconsistent with any strategy, policy, plan, or bylaw of the local authority; and
 - (e) the proposed bylaw can be implemented and enforced in a cost-effective manner.
- (3) If the local authority decides that a proposed bylaw—
 - (a) meets the requirements of **subsection (2)**, it must give written notice of its decision to the organisation;
 - (b) does not meet the requirements of **subsection (2)**, it must give written notice of its decision, with reasons, to the organisation.

74D Water services council-controlled organisation must consult on proposed bylaw

- (1) This section applies if a water services council-controlled organisation has received notice under **section 74C(3)(a)** from a shareholding local authority in respect of a bylaw that the organisation has proposed.

Proposed amendments to

- (2) ~~The organisation must confirm the proposed bylaw and, for that purpose, section 156(1) applies, with any necessary modifications, as if the organisation were a local authority and the bylaw were a bylaw being made under this Act.~~
- (3) ~~If, after acting under **subsection (2)**, the organisation confirms the proposed bylaw, it must give written notice of its decision to the local authority and the local authority must adopt the bylaw by resolution.~~
- (4) ~~If, after acting under **subsection (2)**, the organisation modifies the proposed bylaw, it must give written notice of its decision to the local authority and the local authority must,—~~
 - (a) ~~if satisfied that the proposed bylaw meets the requirements of **section 74C(2)**, adopt the bylaw by resolution; or~~
 - (b) ~~if not satisfied that the proposed bylaw meets the requirements of **section 74C(2)**, give notice to the organisation under **section 74C(3)(b)**.~~
- (5) ~~Where the local authority adopts a bylaw under **subsection (3) or (4)(a)**, the requirements of sections 86, 155, and 156 are deemed to be satisfied in respect of that bylaw.~~

74E Water services council-controlled organisation may propose amendment to bylaw

- (1) ~~A water services council-controlled organisation may propose to a shareholding local authority, in writing, that a bylaw that relates to the management or supply of water supply, wastewater, or stormwater services be amended.~~
- (2) ~~For the purposes of **subsection (1)**, **sections 74C and 74D** apply with any necessary modifications.~~

74F Water services council-controlled organisation may propose revocation of bylaw

- (1) ~~A water services council-controlled organisation may propose to a shareholding local authority, in writing, that a bylaw that relates to the management or supply of water supply, wastewater, or stormwater services be revoked.~~
- (2) ~~As soon as practicable after receiving a proposal under **subsection (1)**, the governing body must decide whether—~~
 - (a) ~~the bylaw proposed for revocation is a bylaw that relates to the management or supply of water supply, wastewater, or stormwater services; and~~
 - (b) ~~the proposed revocation complies with all applicable statutory requirements; and~~
 - (c) ~~the proposed revocation is not inconsistent with any strategy, policy, or plan of the local authority.~~
- (3) ~~If the local authority decides that a proposed revocation—~~
 - (a) ~~meets the requirements of **subsection (2)**, it must give written notice of its decision to the water services council-controlled organisation:~~

- (b) does not meet the requirements of **subsection (2)**, it must give written notice of its decision, with reasons, to the water services council-controlled organisation.
- (4) If the council-controlled organisation receives notice under **subsection (3)(a)**, **section 74D(2), (3), and (5)** applies, with any necessary modifications, as if the proposed revocation were a proposed bylaw.

21B Section 57 amended (Appointment of directors)

After section 57(2), insert:

- (3) When identifying the skills, knowledge, and experience required of directors of a council-controlled organisation, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation.

21C New section 60A inserted (Significant decisions of council-controlled organisations affecting land or water)

After section 60, insert:

60A Significant decisions of council-controlled organisations affecting land or water

Before a council-controlled organisation makes a decision that may significantly affect land or a body of water, it must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.

21D Section 64 and cross-heading replaced

Replace section 64 and the cross-heading above section 64 with:

Council-controlled organisation planning

64 Statements of intent for council-controlled organisations

- (1) Every council-controlled organisation must prepare and adopt a statement of intent in accordance with **Part 1 of Schedule 8**.
- (2) The purpose of a statement of intent is to—
- (a) state publicly the activities and intentions of the council-controlled organisation for the year and the objectives to which those activities will contribute; and
 - (b) provide an opportunity for shareholders to influence the direction of the organisation; and
 - (c) provide a basis for the accountability of the directors to their shareholders for the performance of the organisation.
- (3) The statement of intent—

Proposed amendments to

- (a) must not be inconsistent with the constitution of the council-controlled organisation; and
- (b) may include and apply to 2 or more related council-controlled organisations.
- (4) Every statement of intent of a council-controlled organisation must comply with **Part 2 of Schedule 8**.
- (5) Every statement of intent of a council-controlled trading organisation must comply with **Part 3 of Schedule 8**.
- (6) Every statement of intent of a council-controlled organisation that is not a council-controlled trading organisation must comply with **Part 4 of Schedule 8**.
- (7) All information that is included in a statement of intent under this section 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.
- (8) Despite this section, an organisation that becomes a council-controlled organisation not more than 6 months before the end of a financial year is not required to prepare a statement of intent for that financial year.
- (9) Each shareholding local authority must publish the adopted statement of intent on an Internet site maintained by or on behalf of the local authority within 1 month of adopting it, and must maintain the statement on that site for a period of no less than 7 years.
- (10) A failure by a council-controlled organisation to comply with any requirement of this section, or with any statement in the organisation's statement of intent, does not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by that organisation.

64A Shareholders may require additional plans

- (1) The shareholders of a council-controlled organisation may require the organisation to prepare and deliver additional plans, including—
 - (a) an asset management plan;
 - (b) a long-term plan;
 - (c) 1 or more thematic plans (for example, a climate change mitigation plan).
- (2) A requirement to provide a plan must be notified to the council-controlled organisation in writing and must specify—
 - (a) the date by which the plan must be delivered to the shareholders; and
 - (b) the matters to be addressed in the plan; and
 - (c) the time period that the plan is to cover.

- (3) A requirement to provide a plan may also specify a date or dates by which, or intervals at which, the organisation must report on its progress against the plan.
- (4) The board of a council-controlled organisation must deliver plans, and reports against those plans, in accordance with the terms of the requirement.

64B Statement of expectations

- (1) The shareholders in a council-controlled organisation may prepare a statement of expectations that—
 - (a) specifies how the organisation is to conduct its relationships with—
 - (i) shareholding local authorities; and
 - (ii) the communities of those local authorities, including any specified stakeholders within those communities; and
 - (iii) iwi, hapū, and other Māori organisations; and
 - (b) requires the organisation to act consistently with—
 - (i) the statutory obligations of the shareholding local authorities; and
 - (ii) the shareholders' obligations pursuant to agreements with third parties (including with iwi, hapū, or other Māori organisations).
- (2) A statement of expectations may include other shareholder expectations, such as expectations in relation to community engagement and collaboration with shareholders and others in the delivery of services.
- (3) A statement of expectations must be published on an Internet site maintained by or on behalf of each local authority that is a shareholder of the organisation.

21E Section 66 replaced (Half-yearly report)

Replace section 66 with:

66 Half-yearly or quarterly reports

- (1) During each financial year, the board of a council-controlled organisation must report on the organisation's operations to—
 - (a) its shareholders; and
 - (b) in the case of an organisation that is indirectly controlled by 1 or more local authorities (for example, a subsidiary of a holding company owned by a local authority), to each local authority that indirectly controls the organisation.
- (2) A half-yearly report must be delivered within 2 months after the end of the first half of each financial year.
- (3) If the shareholders of the council-controlled organisation notify the organisation that they require quarterly reporting, quarterly reports must also be delivered within 2 months after the end of the first and third quarters of each financial year.

Proposed amendments to

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- (4) Each report must include the information required to be included by the council-controlled organisation’s statement of intent.
- (5) Each local authority that receives a report under this section must publish the report on an Internet site maintained by or on behalf of the local authority within 1 month of receiving it and must maintain the report on that site for a period of no less than 7 years.
- Compare: 1974 No 66 s 594Z

21F Section 67 amended (Annual report)

- (1) Replace section 67(1) with:
- (1) Within 3 months after the end of each financial year, the board of a council-controlled organisation must—
- (a) complete a report on the organisation’s operations during that year; and
- (b) deliver the report to its shareholders and, in the case of an organisation that is indirectly controlled by 1 or more local authorities (for example, a subsidiary of a holding company owned by a local authority), to each local authority that indirectly controls the organisation; and
- (c) make the report available to the public.
- (2) After section 67(2), insert:
- (3) If a council-controlled organisation has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, the undertaking or the amount of compensation obtained must be recorded in the annual report of the council-controlled organisation.
- (4) Each local authority that receives an annual report under this section must publish the annual report on an Internet site maintained by or on behalf of the local authority within 1 month of receiving it, and must maintain the report on that site for a period of no less than 7 years.

21J Section 71 amended (Protection from disclosure of sensitive information)

In section 71, replace “or half-yearly report” with “half-yearly report, or quarterly report”.

21K Section 71A amended (Application of Part to listed companies)

In section 71A(2)(b), after “half-yearly report”, insert “or quarterly report”.

29A Section 93 amended (Long-term plan)

After section 93(2), insert:

- (2A) Before commencing consultation on the proposed content of its long-term plan under subsection (2), a local authority that is a shareholder in a council-controlled organisation must allow the board of that organisation a reasonable opportunity to comment on the proposed content of the long-term plan, includ-

ing, without limitation, any aspects of the proposed content that are likely to affect or be of interest to the organisation.

29B Section 97 amended (Certain decisions to be taken only if provided for in long-term plan)

Replace section 97(3) with:

- (3) Nothing in this section applies to a decision of a local authority—
- (a) to adopt a local authority-led reorganisation plan under **clause 22A of Schedule 3**; or
 - (b) that is required in order to implement a reorganisation in accordance with an Order in Council under **section 25 or 25A**; or
 - (c) to fund a capital project by lump sum contributions, if the local authority has complied with section 117B(3)(c)(i) of the Local Government (Rating) Act 2002.

30 Section 137 amended (Joint local government arrangements and joint arrangements with other entities)

In section 137(1), definition of **joint local government arrangement**, after “water service”, insert “, but does not include a multiply owned water services council-controlled organisation”.

31A New crossheadings and sections 198B and 198C inserted

After section 198A, insert:

Transfer of responsibilities for which development contributions are collected to council-controlled organisations

198B When territorial authority may require development contributions for transferred responsibilities

- (1) Except as provided in this section, and **section 71B**, a shareholding territorial authority in a council-controlled organisation must not require development contributions in respect of any past or planned capital expenditure if responsibility for that expenditure has been transferred to the council-controlled organisation.
- (2) **Subsection (3)** applies if—
- (a) the development contributions policy of the shareholding local authority provides for development contributions to be required in respect of the capital expenditure; and
 - (b) responsibility for the capital expenditure has been transferred to a substantive council-controlled organisation; and
 - (c) the council-controlled organisation has not adopted a development contributions policy.

- (3) If this subsection applies, the shareholding territorial authority—
- (a) ~~may continue to require development contributions in respect of the capital expenditure for which responsibility has been transferred to the council-controlled organisation until the earlier of—~~
 - (i) ~~the date on which the council-controlled organisation’s first development contributions policy take effect; or~~
 - (ii) ~~1 year after the date on which the council-controlled organisation’s first service delivery plan takes effect; and~~
 - (b) must provide the following information to the council-controlled organisation:
 - (i) a schedule of all completed works in respect of which development contributions were being collected immediately before the transfer;
 - (ii) the amount of the total cost of the capital expenditure that is still to be recovered through development contributions at the date on which the territorial authority ceases to require development contributions for that capital expenditure; and
 - (iii) a definition of the part of the district in respect of which the development contributions for each work were being collected.

198C Amendment of territorial authority development contributions policy where responsibilities transferred

- (1) Each shareholding territorial authority in a council-controlled organisation must amend its development contributions policy to remove provision for the territorial authority to require development contributions in respect of any past or planned capital expenditure for which responsibility has been transferred to the council-controlled organisation.
- (2) The territorial authority must comply with **subsection (1)** by the earlier of—
 - (a) the date on which the first development contributions policy adopted by the council-controlled organisation comes into force; or
 - (b) one year after the date on which responsibility for the capital expenditure is transferred to the organisation.
- (3) Despite section 102(4), an amendment under **subsection (1)** may be made by resolution of the territorial authority without public consultation.

Provisions applying to requirements for development contributions

31 Section 259 amended (Regulations)

- (1) In section 259(1)(d), replace “petitions and polls in relation to final proposals for local government reorganisation” with “polls in relation to reorganisation plans”.

- (2) In section 259(1)(da), after “a financial statement”, insert “of a local authority or substantive council-controlled organisation”.
- (3) In section 259(1)(db), after “and annual report”, insert “of a local authority and the service delivery plan and annual report of a substantive council-controlled organisation”.
- (3A) In section 259(1)(de), replace “parameters” with “financial performance measures”.
- (4) After section 259(1)(de), insert:
- (dea) ~~prescribing financial performance measures or benchmarks for assessing whether a substantive council-controlled organisation is managing its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that will facilitate continuity of service:~~
- (4A) In section 259(1)(dd)(i) and (ii), replace “parameters” with “financial performance measures”.
- (5) After section 259(1)(dd), insert:
- (de) ~~prescribing the manner in which a substantive council-controlled organisation must state, in 1 or more of its service delivery plan, statement of intent, and annual report,—~~
- (i) ~~the planned performance of the organisation against financial performance measures and benchmarks prescribed in regulations made under **paragraph (dca)**:~~
- (ii) ~~the actual performance of the organisation against financial performance measures and benchmarks prescribed in regulations made under **paragraph (dca)**:~~
- (6) In section 259(3), replace “subsection (1)(de)” with “subsection (1)(de) or **(dca)**”.
- (7) In section 259(3)(b), after “local authority”, insert “or substantive council-controlled organisation”.
- (7A) In section 259(3)(a) and (b), replace “parameters” with “financial performance measures”.
- (8) Replace section 259(3)(c) with:
- (e) ~~prescribe financial performance measures or benchmarks in a way that includes or excludes subsidiaries (including council-controlled organisations, council-controlled trading organisations, and council organisations) of a local authority or of a substantive council-controlled organisation.~~

32 Section 261A amended (Purpose of rules specifying performance measures)

- (1) In section 261A, after “applicable to local authorities”, insert “and substantive council-controlled organisations”.
- (2) In section 261A, after “different local authorities”, insert “and substantive council-controlled organisations”.

33A New section 261CA inserted (Review and replacement of rules specifying performance measures)

After section 261C, insert:

261CA Review and replacement of rules specifying performance measures

- (1) The Secretary may revoke and replace a rule made under section 261B, at any time, by following the process set out in section 261B(2) to (5).
- (2) The Secretary must commence a review of the effectiveness of a rule made under section 261B within 7 years after the later of—
 - (a) the date on which the rule came into force under section 261B(5); and
 - (b) the date on which the rule was last reviewed under this section.
- (3) The Minister may, at any time, by notice in the *Gazette*, direct the Secretary to review the effectiveness of 1 or more specified rules made under section 261B.
- (4) A notice under **subsection (3)** is not a disallowable instrument for the purposes of the Legislation Act 2012 and is not required to be presented to the House of Representatives under section 41 of that Act.

34 Schedule 1AA amended

- (1) Replace the Schedule 1AA heading with:

Schedule 1AA
Transitional, savings, and related provisions

s 8A

Part 1
Provisions relating to Local Government Act 2002 Amendment Act 2014

- (2) In Schedule 1AA, after clause ~~13~~ 15, insert the **Part 2 3** set out in **Schedule 1** of this Act.

35 Schedule 3 amended

Amend Schedule 3 as set out in **Schedule 2** of this Act.

36 Schedule 4 amended

Amend Schedule 4 as set out in **Schedule 3** of this Act.

36A Schedule 5 amended

In Schedule 5, in clause 1(2)(b), replace “section 10 of the Commissions of Inquiry Act 1908” with “section 34 of the Inquiries Act 2013”.

36B Schedule 7 amended

(1) In Schedule 7, repeal clause 6(8).

(2) In Schedule 7, insert after clause 23(3) 30A(6), insert:

(4) For the purposes of subclause (3),—

(a) a mayor who is an appointed member of a committee of a territorial authority is counted as a member of that committee for the purposes of determining quorum requirements; but

(b) a mayor who is a member of the committee solely by operation of section 41A(5) is not counted as a member of the committee for the purposes of determining—

(i) the number of members required to constitute a quorum; or

(ii) whether a quorum exists at a meeting.

(6A) For the purposes of subclause (6)(b), a mayor who is a member of the committee solely by operation of section 41A(5) is not counted as a member of the committee for the purposes of determining—

(a) the number of members required to constitute a quorum; or

(b) whether a quorum exists at a meeting.

(3) In Schedule 7, in clause 30A(7), replace “this clause” with “subclauses (1) to (4)”.

37 Schedule 8 replaced

Replace Schedule 8 with the ~~Schedules 8 to 8B~~ **Schedule 8** set out in **Schedule 4** of this Act.

38 Schedule 10 amended

Amend Schedule 10 as set out in **Schedule 4A** of this Act.

~~38A Schedule 13A amended~~

In Schedule 13A, after clause 3(2)(b), insert:

(ba) not be board members or employees of a council-controlled organisation, if a requirement under that organisation’s development contribution policy is the subject of the objection; and

Part 2

Amendments to other enactments

Amendment to Income Tax Act 2007

38B ~~New section CW 39B inserted (Council-controlled organisations: tax exempt status for core services)~~

After section CW 39, insert:

CW 39B Council-controlled organisations: tax exempt status for core services

When this section applies

- (1) This section applies when—
- (a) ~~a multiply owned council-controlled organisation or a substantive council-controlled organisation as defined in section 6(1) of the Local Government Act 2002 (the **organisation**) is established pursuant to a reorganisation that is effected by an Order in Council under **section 25** of the Local Government Act 2002; and~~
 - (b) ~~at least 50% of the assets of the organisation, on the date of its establishment, were previously owned or used by 1 or more local authorities to derive exempt income; and~~
 - (c) ~~after the reorganisation, the performance and exercise of responsibilities, duties, and powers of local authorities to provide 1 or more of the core services listed in section 11A of the Local Government Act 2002 are delegated or transferred to the organisation; and~~
 - (d) ~~the only activities of the organisation are providing those core services, including activities incidental to providing those core services.~~

Local authority

- (2) ~~From the date on which it is established, the organisation is treated as a local authority to which section CW 39 applies and not as a council-controlled organisation for income tax purposes.~~

Election that income not exempt

- (3) ~~Despite **subsection (2)**, the organisation may make an election that income derived by it is not exempt income, making the election in a return of income for the first income year in which the organisation derives an amount of income. The election is irrevocable.~~

Defined in this Act: amount, exempt income, income, income year, local authority, return of income

Amendment to Land Transport Act 1998

38A Amendment to Land Transport Act 1998

Section 38B amends the Land Transport Act 1998.

38B New section 210A inserted (Transfer of responsibilities between regional councils and territorial authorities)

After section 210, insert:

210A Transfer of responsibilities between regional councils and territorial authorities

- (1) A regional council may transfer 1 or more of its responsibilities under this Act to a territorial authority under section 17 of the Local Government Act 2002.
- (2) A territorial authority may transfer 1 or more of its responsibilities under this Act to a regional council under section 17 of the Local Government Act 2002.
- (3) In this section, **responsibility** means any responsibility, duty, or legal obligation under this Act and includes—
 - (a) a responsibility that has previously been transferred under section 17 of the Local Government Act 2002; and
 - (b) any powers associated with the responsibility, duty, or legal obligation.

Amendment to Land Transport Management Act 2003

38C Amendment to Land Transport Management Act 2003

Section 38D amends the Land Transport Management Act 2003.

38D New section 7B inserted (Transfer of responsibilities between regional councils and territorial authorities)

After section 7A, insert:

7B Transfer of responsibilities between regional councils and territorial authorities

- (1) A regional council may transfer 1 or more of its responsibilities under this Act to a territorial authority under section 17 of the Local Government Act 2002.
- (2) A territorial authority may transfer 1 or more of its responsibilities under this Act to a regional council under section 17 of the Local Government Act 2002.
- (3) In this section, **responsibility** means any responsibility, duty, or legal obligation under this Act and includes—
 - (a) a responsibility that has previously been transferred under section 17 of the Local Government Act 2002; and
 - (b) any powers associated with the responsibility, duty, or legal obligation.

Amendment to Local Government Act 1974

38E Amendment to Local Government Act 1974

Section 38F amends the Local Government Act 1974.

38F New section 318A inserted (Transfer of responsibilities between regional councils and territorial authorities)

After section 318, insert:

318A Transfer of responsibilities between regional councils and territorial authorities

- (1) A regional council may transfer 1 or more of its responsibilities under this Part to a territorial authority under section 17 of the Local Government Act 2002.
- (2) A territorial authority may transfer 1 or more of its responsibilities under this Part to a regional council under section 17 of the Local Government Act 2002.
- (3) In this section, **responsibility** means any responsibility, duty, or legal obligation under this Act and includes—
 - (a) a responsibility that has previously been transferred under section 17 of the Local Government Act 2002; and
 - (b) any powers associated with the responsibility, duty, or legal obligation.

Amendments to Local Government (Auckland Council) Act 2009

39 ~~Local Government (Auckland Council) Act 2009 amended~~

~~**Sections 39A to 43** amend the Local Government (Auckland Council) Act 2009.~~

39A ~~Section 40 amended (Operating principles)~~

~~In section 40, replace “section 59” with “**section 56**”.~~

39B ~~Section 42 amended (Auckland Transport’s status as council-controlled organisation and application of Part 5 of Local Government Act 2002)~~

- (1) ~~In section 42(2), replace “Section 60” with “**Section 61**”.~~
- (2) ~~In section 42(2), renumber the paragraphs numbered “(e)” and “(d)” as paragraph numbers “(e)” and “(f)”.~~
- (3) ~~In section 42(3), replace “Section 74” with “**Section 57**”.~~

39C ~~Section 57 amended (Obligations of Auckland water organisation)~~

~~In section 57(1)(e), replace “section 68(b)” with “**section 68C(b)**”.~~

40 ~~New section 59A inserted~~

~~After section 59, insert:~~

59A ~~Capital charging by Auckland water organisations~~

~~**Sections 69C, 71, and 71D** of the Local Government Act 2002 apply to an Auckland water organisation that is a council-controlled organisation, and to the Council, as if the Auckland water organisation were a substantive council-controlled organisation under that Act.~~

41 Section 97 amended (Disputes about allocation of decision-making responsibilities or proposed bylaws)

Replace section 97(3) and (4) with:

- (3) If, after acting under subsection (2), the dispute is still unresolved, 1 or more local boards may refer the matter to the Commission for resolution in accordance with **section 31H** of the Local Government Act 2002.
- (4) For the purposes of **section 31H(5)(b)(i)** of that Act, matters that the Commission must have regard to are —
 - (a) the requirements of this Act; and
 - (b) the current and future well-being of the communities of Auckland, and the interests and preferences of the communities within each affected local board area.

42 Section 98 amended (Local Government Commission to determine disputes)

- (1) Replace the heading to section 98 with “**Effect of Commission determination of dispute as to content of LTP**”.
- (2) Repeal section 98(1) to (5).

43 Section 99 repealed (Local Government Commission may delegate duty to determine dispute)

Repeal section 99.

Amendments to other enactments

44 Consequential amendments to other enactments

Amend the enactments specified in **Schedule 5** as set out in that schedule.

Schedule 1
New Part ~~2~~ 3 inserted in Schedule 1AA

s 34

Part 23
**Provisions relating to Local Government Act 2002 Amendment Act
(No 2) 2016**

Transitional provision relating to reporting and publication requirements

16 Delayed effective date for certain reporting and publication requirements

- (1) Despite **sections 64(9), 64B(3), 66(5), and 67(4)**, a local authority is not required to publish a council-controlled organisation's statement of intent, statement of expectations, half-yearly or quarterly report, or annual report on an Internet site maintained by the local authority before the date that is 3 months after the date of commencement of the Local Government Act 2002 Amendment Act (No 2) 2016.
- (2) Despite **sections 66 and 67(1)(b)**, a council-controlled organisation is not required to deliver a report to a local authority that indirectly controls the organisation before the date that is 3 months after the date of commencement of the Local Government Act 2002 Amendment Act (No 2) 2016.

Transitional provisions relating to scope of local government reorganisations

14AA17 Interpretation

In this Part,—

relevant amendments means the amendments to subpart 2 of Part 3 and to Schedule 3 made by **sections 8 to 14 and 35** of the Local Government Act 2002 Amendment Act (No 2) 2016

relevant provisions means the provisions in subpart 2 of Part 3 and Schedule 3.

1418 ~~Transitional provision relating to scope of local government reorganisations~~ Relevant amendments do not apply if final proposal notified before commencement

(1) In this clause,—

relevant amendments means the amendments to subpart 2 of Part 3 and to Schedule 3 made by ~~**sections 8 to 14 and 35**~~ of the Local Government Act 2002 Amendment Act (No 2) 2016

relevant provisions means the provisions in subpart 2 of Part 3 and Schedule 3.

- (2) The relevant amendments do not apply to a local government reorganisation for which a final proposal was publicly notified under clause 22 of Schedule 3 before the repeal of that clause and the commencement of the relevant amendments. The relevant provisions continue to apply as if the relevant amendments had not been made.
- (3) ~~Subclause (4) applies if, before the commencement of the relevant amendments, the Local Government Commission—~~
- ~~(a) had given notice of a draft proposal under clause 20 of Schedule 3; but~~
 - ~~(b) had not made a decision under clause 21(1) of that Schedule in respect of that draft proposal.~~
- (4) ~~If this subclause applies,—~~
- ~~(a) the relevant amendments apply to consideration of the draft proposal as if it were a reorganisation investigation under subpart 2 of Part 1 of Schedule 3; but~~
 - ~~(b) the Commission must complete the consultation required by clause 20 of Schedule 3 as if that clause had not been repealed, before taking any action under Part 2 of Schedule 3.~~
- (5) ~~Subclause (6) applies if, before the commencement of the relevant amendments, the Local Government Commission—~~
- ~~(a) had notified its decision to assess an application under clause 6 of Schedule 3; and~~
 - ~~(b) had not completed a draft proposal under clause 14 of that schedule for the affected area.~~
- (6) ~~If this subclause applies,—~~
- ~~(a) the relevant amendments apply to the application, and to any alternative applications relating to the application received under clause 10 of Schedule 3, as if each application were a reorganisation initiative under **subpart 1 of Part 1 of Schedule 3**; but~~
 - ~~(b) the Commission must undertake 1 or more investigations covering the proposals in the application or applications, and **clause 5 of Schedule 3** does not apply.~~

Reorganisation applications made before 4 April 2019

19 Process if notice of proposal given, but decision not made, before commencement of relevant amendments

- (1) **Subclause (2)** applies if,—
- (a) before 4 April 2019, the Local Government Commission received a reorganisation application under clause 3 of Schedule 3; and
 - (b) before the commencement of the relevant amendments, the Commission—

Proposed amendments to

Schedule 1

Local Government Act 2002 Amendment Bill (No 2)

- (i) had given notice of a draft proposal under clause 20 of Schedule 3; but
 - (ii) had not made a decision under clause 21(1) of that schedule in respect of that draft proposal.
- (2) If this subclause applies,—
- (a) the relevant provisions, as amended by the relevant amendments, apply to consideration of the draft proposal as if it were a reorganisation investigation under **subpart 2 of Part 1 of Schedule 3**; but
 - (b) the Commission must complete the consultation required by clause 20 of Schedule 3 as if that clause had not been repealed, before taking any action under Part 2 of Schedule 3.

20 Process if decision to assess application notified before commencement of relevant amendments, but draft proposal not completed

- (1) **Subclause (2) applies if,—**
- (a) before 4 April 2019, the Local Government Commission received a reorganisation application under clause 3 of Schedule 3; and
 - (b) before the commencement of the relevant amendments, the Commission—
 - (i) had notified its decision to assess (i) an application under clause 6 of Schedule 3; but
 - (ii) had not completed a draft proposal for the affected area under clause 14 of that schedule.
- (2) If this subclause applies,—
- (a) the relevant provisions, as amended by the relevant amendments, apply to the application, and to any alternative applications relating to the application received under clause 10 of Schedule 3, as if each application were a reorganisation initiative under **subpart 1 of Part 1 of Schedule 3**; but
 - (b) the Commission must undertake 1 or more investigations covering the proposals in the application or applications, and **clause 5 of Schedule 3** does not apply.

Reorganisation applications made after 4 April 2019

21 Process if reorganisation application made between 4 April 2019 and date of commencement of relevant amendments

- (1) **Subclauses (2) to (4) apply if the Commission received a reorganisation application under clause 3 of Schedule 3 in the period starting on 4 April 2019 and ending immediately before the commencement of the relevant amendments.**

- (2) If the reorganisation application was made by a person, body, or group, other than a local authority or the Minister, the Commission must determine whether the application was made on behalf of a group that comprises at least 10% of electors in the affected area.
- (3) If the Commission determines that the application was not made on behalf of a group that comprises at least 10% of electors in the affected area,—
- (a) the Commission must not assess or continue to assess the application; and
 - (b) the Commission must notify the person who submitted the application that—
 - (i) the application will not be assessed; but
 - (ii) the person may propose a reorganisation initiative or make an investigation request in accordance with **subpart 1 of Part 1 of Schedule 3.**
- (4) If the Commission determines that the application was made on behalf of a group that comprises at least 10% of electors in the affected area, the application must be progressed as follows:
- (a) in accordance with **clause 19(2)**, if the circumstances described in **clause 19(1)(b)** apply; and
 - (b) in accordance with **clause 20(2)**, if the circumstances described in **clause 20(1)(b)** apply.

14A Transitional provision relating to transfer of staff from Department of Internal Affairs to Commission

- (1) ~~The person who, immediately before 1 July 2018, holds the office of chief executive officer of the Commission is deemed to have been appointed under **clause 29 of Schedule 4** from 1 July 2018, on the same terms and conditions on which that person was employed immediately before that date.~~
- (2) ~~Before 1 July 2018, the employment of the chief executive officer of the Commission, and other staff of the Commission, must continue as if the Local Government Act 2002 Amendment Act (**No 2**) **2016** had not been enacted.~~
- (3) ~~The Chief Executive of the Department of Internal Affairs must, before 1 July 2018, consult with all permanent employees of the Department who are proposed to be appointed to positions within the Commission.~~
- (4) ~~After the consultation under **subclause (3)**, the Chief Executive of the Department must identify all permanent employees who accept appointment to a position within the Commission and who are to be transferred to the Commission under **subclauses (5) to (7)**.~~
- (5) ~~The employment of a transferred employee must be on terms and conditions no less favourable to the transferred employee than those applying to the employee immediately before 1 July 2018.~~

Proposed amendments to

Schedule 1

Local Government Act 2002 Amendment Bill (No 2)

- (6) **Subclause (5)**—
- (a) continues to apply to the terms and conditions of employment of a transferred employee until those terms and conditions are varied by agreement between the transferred employee and the Commission;
 - (b) does not apply to a transferred employee who receives any subsequent appointment with the Commission.
- (7) Every transferred employee becomes an employee of the Commission on 1 July 2018. However, for the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of the transferred employee,—
- (a) the contract of employment of the employee is deemed to be unbroken; and
 - (b) the employee's period of service with the Department, and every other period of service of the employee that is recognised as continuous service by the Department, is deemed to have been a period of service with the Commission.
- (8) If an employee who is transferred to the Commission under this clause is covered by a collective agreement with the Department immediately before the employee is transferred,—
- (a) the employee continues to be bound by the collective agreement and may enforce the collective agreement against the Commission; and
 - (b) the Commission is bound by the collective agreement only to the extent that it relates to the transferred employee.
- (9) **Subclause (8)** does not apply to a collective agreement to the extent that the Commission and the employee agree otherwise.
- (10) An employee is not entitled to receive any payment or other benefit on the ground that the employee's position with the Department has ceased to exist, if—
- (a) the employee's position ceases to exist as a result of the transfer of functions from the Department to the Commission; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is offered equivalent employment with the Commission (whether or not the employee accepts that offer); or
 - (ii) the employee is offered and accepts other employment with the Commission.
- (11) In **subclause (10)**, employment with the Commission is equivalent to the employee's employment with the Department if the employment with the Commission is—
- (a) in substantially the same position; and
 - (b) in the same general locality; and

- (e) on terms and conditions of employment no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions).
- (12) ~~Subclauses (10) and (11) override Part 6A of the Employment Relations Act 2000.~~
- (13) If a person is an employee transferred to the Commission under this Act and, immediately before becoming an employee of the Commission, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956,—
- (a) the person is, for the purpose of the Government Superannuation Fund Act 1956, to be treated as if he or she continues to be employed in the Government service while the person is an employee of the Commission for the purposes of that Act, and that Act applies to the person as if the person's service as an employee of the Commission were Government service;
- (b) however, if the person ceases to be a contributor to the Government Superannuation Fund after becoming an employee of the Commission, the person may not resume making contributions to the Fund;
- (c) for the purposes of applying the Government Superannuation Fund Act 1956 to this clause, **controlling authority**, in relation to the person, means the Commission.
- (14) The employment of an employee who becomes an employee of the Commission under this Act does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- 14B Transitional provision relating to the transfer of non-employment contracts, assets, records, liabilities, and debts from Department of Internal Affairs to Commission**
- (1) The Chief Executive of the Department of Internal Affairs must identify all assets, records, liabilities, and debts of the Department that, immediately before 1 July 2018, are assets, records, liabilities, and debts used or incurred by the Commission.
- (2) On 1 July 2018, the assets, records, liabilities, and debts identified by the Chief Executive of the Department of Internal Affairs under **subclause (1)** vest in the Commission.
- (3) The following paragraphs apply from 1 July 2018 to a contract, other than an employment agreement, that was made between the Chief Executive of the Department of Internal Affairs and another person and that relates solely or principally to a function or power of the Commission:

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- (a) ~~the contract must be treated as if the Commission were the party to the contract instead of the Chief Executive of the Department of Internal Affairs:~~
- (b) ~~unless the context otherwise requires, every reference in the contract to the Chief Executive of the Department of Internal Affairs, or a delegate of the chief executive, is to be read as a reference to the Commission:~~
- (c) ~~all rights, liabilities, and entitlements of the Chief Executive of the Department of Internal Affairs under the contract become the rights, liabilities, and entitlements of the Commission:~~
- (d) ~~anything done, or omitted to be done, or that is to be done, by, or in relation to, the Chief Executive of the Department of Internal Affairs, is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the Commission:~~
- (e) ~~the commencement, continuation, or enforcement of proceedings by or against the Chief Executive of the Department of Internal Affairs may instead be carried out by or against the Commission without amendment to the proceedings.~~

14C Transitional provision relating to section 34(2)

Before 1 July 2018, **section 34(2)** (as inserted by **section 18A** of the Local Government Act 2002 Amendment Act (**No 2**) 2016) must be read as if the reference to an employee of the Commission were a reference to an officer of the Public Service.

14D Transitional provision relating to Public Audit Act 2001

Despite the insertion of a reference to the Local Government Commission in Schedule 2 of the Public Audit Act 2001 by **section 44** of the Local Government Act 2002 Amendment Act (**No 2**) 2016, the Commission is not to be treated as a public entity for the purposes of that Act at any time before 1 July 2018.

15 Transitional provision relating to Commission's first statement of intent

The Commission must prepare its first statement of intent under **section 31B** in relation to the period commencing on 1 July 2018.

16 Transitional provision relating to Commission's annual work programme

- (1) The Commission must prepare its first annual work programme under **section 31C** within 4 months after the date of Royal assent to the Local Government Act 2002 Amendment Act (**No 2**) 2016 in relation to the remaining period of the financial year commencing on 1 July 2017.
- (2) **Section 31C(4)** does not apply to the Commission's first annual work programme.

17 Transitional provision relating to Commission's annual report

- (1) The Commission must prepare its first annual report under **section 31F** in relation to the financial year commencing on 1 July 2018.
- (2) The Commission must prepare its annual report for the financial years commencing on 1 July 2016 and 1 July 2017 as if the Local Government Act 2002 Amendment Act **(No 2) 2016** had not been enacted.

18 Transitional provision relating to local board disputes

Section 48S applies to any application under section 48R(3) that is received by the Commission before the commencement of **sections 17 and 20** of the Local Government Act 2002 Amendment Act **(No 2) 2016** as if that Act had not been enacted.

19 Transitional provision applying to contents of constitution of substantive council-controlled organisation

- (1) This clause applies to a substantive council-controlled organisation that was in existence immediately before the commencement of **section 21A** of the Local Government Act 2002 Amendment Act **(No 2) 2016**.
- (2) The shareholders of the organisation must take any actions that are necessary to ensure that the constitution of the organisation complies with **section 62** (as inserted by **section 21A** of the Local Government Act 2002 Amendment Act **(No 2) 2016**) by 30 June 2019.

20 Transitional provision applying to accountability policy for substantive council-controlled organisation

- (1) This clause applies to a local authority that was the sole shareholder in 1 or more substantive council-controlled organisations immediately before the commencement of **section 21A** of the Local Government Act 2002 Amendment Act **(No 2) 2016**.
- (2) The local authority is not required to adopt an accountability policy under **section 62B** before the financial year commencing on 1 July 2018.

21 Transitional provision applying to governance of multiply owned substantive council-controlled organisation

- (1) This clause applies to a multiply owned substantive council-controlled organisation that was in existence immediately before the commencement of **section 21A** of the Local Government Act 2002 Amendment Act **(No 2) 2016**.
- (2) The shareholders of the organisation are not required to establish a joint committee under **section 63A** earlier than 1 July 2018.

Proposed amendments to

Schedule 1

Local Government Act 2002 Amendment Bill (No 2)

22 Transitional provision relating to development contributions policy of Auckland water organisation

- (1) Despite ~~section 69C~~ of this Act and ~~section 59A~~ of the Local Government (Auckland Council) Act 2009, an Auckland water organisation—
- (a) ~~may continue to apply infrastructure growth charges until the earlier of—~~
 - (i) ~~the date on which a development contributions policy developed and adopted by the organisation in accordance with **section 71** (as inserted by **section 21A** of the Local Government Act 2002 Amendment Act (**No 2**) 2016) comes into effect; and~~
 - (ii) ~~30 June 2018; and~~
 - (b) ~~may assess, charge, and complete the collection of infrastructure growth charges in respect of a connection application lodged with the organisation before the earlier of those dates.~~
- (2) ~~In this clause, **Auckland water organisation** has the meaning in section 4(1) of the Local Government (Auckland Council) Act 2009.~~

Schedule 2 Amendments to Schedule 3

s 35

Clause 1

In Schedule 3, replace clause 1(3) and (4) with:

- (3) **Part 1** contains 2 subparts, as follows:
- (a) **subpart 1**—
 - (i) ~~provides that any person, body, or group may submit to the Commission—~~
 - (A) ~~a reorganisation initiative; or~~
 - (B) ~~a request for an investigation; and~~
 - (i) provides that a reorganisation initiative or an investigation request may be submitted to the Commission by—
 - (A) 1 or more affected local authorities; or
 - (B) a group comprising at least 10% of electors in the affected area; or
 - (C) the Minister; and
 - (ii) specifies what a reorganisation initiative and ~~a request for an investigation~~ request must contain; and
 - (iii) empowers the Commission to decide whether to undertake an investigation in response to a reorganisation initiative or ~~request~~ request; and
 - (b) **subpart 2**—
 - (i) ~~empowers the Commission to undertake an investigation of its own motion; and~~
 - (ii) authorises the Commission to develop, document, and publish the process for an investigation; and
 - (iii) authorises the Commission to issue reports, with recommendations to which a local authority must respond, in the course of an investigation.
- (4) Part 2 contains 5 subparts, as follows:
- (a) **subpart 1** empowers the Commission to develop and adopt reorganisation plans; and
 - (b) **subpart 1A**—
 - (i) prescribes what a reorganisation plan may contain; and
 - (ii) provides for the Commission to issue and notify a reorganisation plan; and

Clause 1—*continued*

- (c) **subpart 1B** empowers 1 or more local authorities to—
 - (i) develop and publicly consult on a reorganisation plan; and
 - (ii) submit the reorganisation plan to the Commission for approval; and
- (d) subpart 2 provides for the holding of a poll on plans for major reorganisations; and
- (e) subpart 3 places restrictions on advertising by a local authority to promote or oppose a reorganisation plan in the period from the issue of the plan to when a poll is held. This subpart contains an exception for publication of material that is factual or referential.

In Schedule 3, replace clause 1(6) with:

- (6) Part 4 contains 4 subparts, as follows:
 - (a) subpart 1 requires the Commission to prepare a reorganisation implementation scheme if no poll is required on a reorganisation plan, or if a poll has been held and has not defeated the reorganisation plan; and
 - (b) subpart 2 specifies the matters the Commission must and may include in a reorganisation implementation scheme; and
 - (c) subpart 3 contains provisions that apply to a reorganisation ~~implementation scheme~~ unless amended or declared not to apply to that reorganisation by a reorganisation order by the scheme; and
 - (d) **subpart 4** contains provisions that establish the tax treatment of assets transferred in a reorganisation.

In Schedule 3, clause 1(6)(b) and (c), replace “reorganisation scheme” with “reorganisation implementation scheme”.

Clause 2

In Schedule 3, clause 2, replace the definition of **affected area** with:

- affected area**,—
- (a) in relation to a reorganisation investigation, means an area affected, or potentially affected, by 1 or more of the matters to be investigated; and
 - (b) in relation to a reorganisation initiative or plan (other than an initiative or plan that relates solely to 1 or more matters described in **section 24(1)(o) to (s)**), means—
 - (i) an area that would be included in the district or region of a new or different local authority if local government in relation to the area were to be reorganised in accordance with the initiative or plan;
 - (ii) an area that would remain in the district or region of a local authority with changed responsibilities, duties, or powers; if local

Clause 2—*continued*

- government in relation to the area were to be reorganised in accordance with the initiative or plan:
- (iii) ~~an area to which local authority activities or services would be provided by a different local authority organisation if local government in relation to the area were to be reorganised in accordance with the initiative or plan:~~
 - (iv) ~~if the initiative or plan relates solely to 1 or more matters described in **section 24(1)(o) to (s)**, the area comprising the district of the unitary authority; and~~
- (ba) in relation to a reorganisation initiative or plan that relates solely to 1 or more matters described in **section 24(1)(o) to (s)** (which relates to local board areas),—
- (i) for the purposes of any of **clauses 3(1)(aa), 4(1)(b)(i), 4(1)(c)(ii), and 5(1)(aa)**, means the area of the local board or proposed local board; and
 - (ii) for all other purposes, means the area comprising the district of the unitary authority; and
- (c) in the case of a plan to which **clause 23(1)(e)** applies (which relates to the transfer from one local authority to another of responsibilities, duties, and powers under the Resource Management Act 1991 or in relation to water services or transport services) means the districts or regions of both local authorities

In Schedule 3, clause 2, replace the definition of **implementation date** with:

implementation date means the date specified in an Order in Council made under **section 25A(1)** as the date on which the local government reorganisation described in the order takes effect

In Schedule 3, clause 2, repeal the definitions of **local board reorganisation application** and **reorganisation application**.

In Schedule 3, clause 2, definition of **public notice**, replace “reorganisation application, draft proposal, or final proposal” with “reorganisation investigation or reorganisation plan”.

In Schedule 3, clause 2, insert in their appropriate alphabetical order:

affected iwi or hapū means an iwi or a hapū with interests within the affected area, and includes any entity or organisation identified by Te Puni Kōkiri as representing those interests

investigation request means a request to the Commission by a ~~person, body, or group, including group~~ comprising at least 10% of electors in an affected area, a local authority, or the Minister, in accordance with **clause 3**, to con-

Clause 2—continued

duct a reorganisation investigation into an issue or a matter but without proposing a particular reorganisation

reorganisation implementation scheme means a scheme prepared under Parts 3 and 4 of this schedule to give effect to a reorganisation plan

~~**reorganisation order** means an Order in Council made under **section 25 or 25A**~~

reorganisation initiative or **initiative** means a request to the Commission by a person, body, or group, including group comprising at least 10% of electors in an affected area, a local authority, or the Minister, to consider a proposed reorganisation

reorganisation investigation or **investigation** means an investigation by the Commission under **Part 1 of this schedule**, ~~of its own motion or~~ in response to a reorganisation initiative or an investigation request, that may result in the development and adoption of a reorganisation plan

~~**reorganisation order** means an Order in Council made under **section 25 or 25A**~~

reorganisation plan means a plan that includes 1 or more of the matters in **section 24** and that is—

- (a) adopted by the Commission, during or after an investigation; or
- (b) adopted by 1 or more local authorities in accordance with **clause 22A**.

Part 1

In Schedule 3, replace Part 1 with:

Part 1

Reorganisation investigations

Subpart 1—Reorganisation initiatives and investigation requests

3 Who may propose reorganisation initiative or make investigation request

(1) A reorganisation initiative may be proposed, or an investigation request may be made, to the Commission by ~~any person, body, or group, including (but not limited to)~~—

- (a) 1 or more affected local authorities:
- (aa) a group of at least 10% of electors in the affected area:
- (b) the Minister.

(2) The reorganisation initiative or ~~an~~ investigation request must be submitted to the chief executive officer of the Commission.

Part 1—*continued*

4 Contents of reorganisation initiative or investigation request

- (1) A reorganisation initiative or an investigation request must include the following:
- (a) the name and address of the person submitting the initiative or request; and
 - ~~(b) if more than 1 person is submitting the initiative or request, the name and address of the person who is the representative of those persons; and~~
 - (b) if the initiative or request is submitted by a group of electors under **clause 3(1)(aa)**,—
 - (i) evidence that the group comprises at least 10% of electors in the affected area; and
 - (ii) the name and address of the person who is the representative of those persons; and
 - (c) in the case of an initiative, a description of the proposed changes, including (but not limited to)—
 - (i) which of the matters listed in **section 24(1)** is being sought; and
 - (ii) a plan or other description sufficient to identify the affected area or affected areas concerned; and
 - (iii) an explanation of the outcome that the proposed changes are seeking to achieve; and
 - (d) in the case of an investigation request, a description of the matter, issue, problem, or opportunity to be investigated.
- (2) A reorganisation initiative may include—
- (a) any information requested or recommended in any guidelines issued by the Commission; and
 - (b) any other information that demonstrates that the initiative has community support in the affected area; and
 - (c) any other information that the person submitting the initiative considers relevant to the Commission’s consideration of the initiative.

5 Action on receipt of reorganisation initiative or investigation request

- (1) As soon as practicable after receiving a reorganisation initiative or an investigation request, the Commission must,—
- (aa) if the initiative or request was submitted by a group of electors, confirm that the group comprises at least 10% of electors in the affected area (and, if not, notify the person who submitted the initiative or request that the Commission will not undertake an investigation); and

Part 1—continued

- (a) decide whether to undertake an investigation, having regard to the factors listed in **clause 7**; and
 - (b) notify the person who submitted the initiative or request, or that person's representative, of its decision; and
 - (c) if the Commission decides not to undertake an investigation, explain the reasons for that decision in the notice under **paragraph (b)**; and
 - (d) if the Commission decides to undertake an investigation, notify the affected local authorities of that decision.
- (2) Before making a decision under **subclause (1)(a)**, the Commission must consult the local authorities that would be affected by the reorganisation initiative or the requested investigation.

Subpart 2—Reorganisation investigations

6 Commission may initiate reorganisation investigation

- (1) ~~The Commission may, at any time, of its own motion, decide to undertake a reorganisation investigation in relation to any issue or matter that—~~
- (a) ~~affects 1 or more local authorities; and~~
 - (b) ~~relates to an issue, problem, opportunity, or objective that is specified in the Commission's annual work programme under **section 31C**.~~
- (1A) ~~Before deciding to undertake an investigation under **subclause (1)**, the Commission must consult the local authorities that would be affected by the reorganisation investigation.~~
- (2) ~~If the Commission decides to undertake a reorganisation investigation under **subclause (1)**, it must notify the affected local authorities of that decision.~~

7 Factors Commission must have regard to when deciding whether to undertake reorganisation investigation

When deciding whether to undertake a reorganisation investigation under **clause 5(1)(a) or 6(1)**, the Commission must have regard to—

- (a) the purpose of reorganisation set out in **section 24AA**; and
- (b) the potential scale and scope of improvements to local governance and services that might result from the investigation; and
- (ca) the potential costs, disruption, and other negative effects on affected local authorities and their communities that may be caused by the investigation; and
- (c) any time or other constraints that apply to the opportunity to achieve potential improvements to local governance and services; and

Part 1—*continued*

- (d) the need for urgent resolution of any problem identified by the Commission, or in the investigation request or reorganisation initiative; and
- (e) ~~the priority issues and objectives set out in the Commission's annual work programme developed under **section 31C**; and~~
- (f) the resources available to the Commission to undertake the investigation in a timely manner; and
- (g) the likelihood of significant community opposition to any reorganisation that might result from the investigation.

8 Commission must adopt reorganisation investigation process

- (1) As soon as practicable after it makes a decision under **clause 5(1)(a) or 6(1)** to undertake a reorganisation investigation, the Commission must determine and adopt a process for the investigation and record that process in writing.
- (2) The process document must set out how the Commission intends to undertake the investigation, including—
 - (a) the matters to be investigated; and
 - (b) the affected area and the local authorities affected by the investigation; and
 - (c) the procedure and timetable for the investigation; and
 - (ca) each affected iwi or hapū, and how and when they will be given an opportunity to engage with the investigation; and
 - (d) the key stakeholders, and how and when they will be given an opportunity to engage with the investigation; and
 - (e) how and when members of the public will be consulted on the investigation and any proposed recommendations or reorganisation plans that may result; and
 - (f) any other matter that the Commission considers relevant.
- (3) In determining the matters referred to in **subclause (2)**, and in undertaking an investigation, the Commission must have regard to the following principles:
 - (a) early information should be available to the public and stakeholders about the issues to be investigated, the process to be followed, and the opportunities for public input; and
 - (b) the process should be in proportion to the scale, scope, and potential impact of the identified issues and of any reorganisation plan that may result from the investigation; and
 - (c) the process should recognise the relevant evidence and information that the Commission already holds; and
 - (ca) the process should recognise and reflect the nature and extent of the interests of affected iwi or hapū in the outcome of the investigation; and

Part 1—*continued*

- (cb) the process should provide persons, entities, and organisations who wish to have their views on the subject matter of the investigation considered by the Commission with a reasonable opportunity to present those views to the Commission; and
 - (d) the extent and nature of public and stakeholder engagement should—
 - (i) reflect the degree of public interest (including of each affected iwi or hapū) in the issues and in any reorganisation plan that may result from the investigation; and
 - (ii) reflect the importance of—
 - (A) stakeholder input; and
 - (B) community engagement; and
 - (C) public acceptance of the process and the potential outcome; and
 - (iii) appropriately balance the costs and benefits of different processes.
- (3A) Before adopting a process document under **subclause (1)**, the Commission must—
- (a) consult affected local authorities on the proposed process or amendment; and
 - (b) consult all affected iwi or hapū about whether, and how, the proposed reorganisation investigation, or any reorganisation plan that may result from the investigation, may affect their relationship with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga, or affect their relationships with local authorities.
- (4) The Commission may adopt an amendment to a process document under **subclause (1)** at any time and must do so if there is a significant departure from the process.
- (5) The Commission must, as soon as practicable after adopting or amending a process document,—
- (a) publish the process document in full on its Internet site; and
 - (b) give public notice within the affected area of the publication and location of the process document; and
 - (c) notify all affected local authorities, affected iwi or hapū, and key stakeholders identified by the Commission of the publication and location of the process document.
- 9 Commission may require assistance and undertake inquiries when conducting investigations and preparing reorganisation plan**
- (1) In conducting an investigation or preparing a reorganisation plan, the Commission may require a local authority ~~or a council-controlled organisation~~ that is

Part 1—*continued*

affected by the investigation or the plan to provide information to assist the Commission.

- (2) In conducting an investigation or preparing a reorganisation plan, the Commission may undertake inquiries and consultation in relation to the investigation or plan with any persons, bodies, and groups that it considers appropriate.

10 Commission may issue report

- (1) The Commission may, at any time during a reorganisation investigation, or at the completion of the investigation, issue a report and make recommendations to any local authority on any matter arising in the course of, or ancillary to, the investigation.
- (2) Section 26A applies to a report and recommendations under this clause.

11 Objectives that Commission must consider in reorganisation investigation

In assessing the desirability of options for the reorganisation of local government within the affected area, the Commission must ~~consider~~ take into account how best to achieve—

- (a) better fulfilment of the purpose of local government as specified in section 10; and
- (b) productivity improvements within the affected local authorities; and
- (c) efficiencies and cost savings; and
- (d) assurance that any local authority established or changed has the resources necessary to enable it to effectively perform or exercise its responsibilities, duties, and powers; and
- (e) effective responses to the opportunities, needs, and circumstances of the affected areas; and
- (f) enhanced effectiveness, efficiency, and sustainability of local government services; and
- (g) better support for the ability of local and regional economies to develop and prosper; and
- (h) enhanced ability of local government to meet the changing needs of communities for governance and services into the future; and
- (i) effective provision for any co-governance and co-management arrangements that are established by legislation (including Treaty of Waitangi claim settlement legislation) and that are between local authorities and iwi or Māori organisations.

11A Completion of investigation

As soon as practicable after completing an investigation, the Commission must—

Part 1—*continued*

- (a) give public notice of the completion of the investigation; and
- (b) notify all affected local authorities, affected iwi or hapū, and key stakeholders of the completion of the investigation; and
- (c) record the completion of the investigation on its Internet site.

Part 2 heading

In Schedule 3, replace the Part 2 heading and the subpart 1 heading in Part 2 with:

Part 2
Reorganisation plans

New subpart 1 of Part 2 and subpart 1A heading

In Schedule 3, after the **Part 2 heading** (as amended by this ~~Schedule Act~~), insert:

Subpart 1—Adoption and notification of reorganisation plan

12 Commission may adopt reorganisation plan

- (1) The Commission may, during or at the completion of a reorganisation investigation,—
 - (a) develop 1 or more reorganisation plans ~~in accordance with the provisions of **clause 11 and subpart 1A of this Part**~~; and
 - (b) adopt 1 or more reorganisation plans that meet the requirements of **subpart 1A of this Part**.
- (2) In deciding whether to adopt a reorganisation plan, the Commission must have regard to—
 - (a) the scale of the potential benefits of the proposed changes ~~to users of local government services in that area~~, in terms of the objectives set out in **clause 11** and the likelihood of those benefits being realised; and
 - (b) the financial, disruption, and opportunity costs of implementing the proposed changes at the proposed time; and
 - (c) the risks and consequences of not implementing the proposed changes at the proposed time; and
 - (d) existing communities of interest and the extent to which the proposed changes will maintain linkages between communities (including iwi and hapū) and sites and resources of significance to them; and
 - (da) the degree and distribution of demonstrable public support for the proposed changes within communities in the affected area; and
 - (e) the degree and distribution of any public opposition to the proposed changes within communities in the affected area.

New subpart 1 of Part 2 and subpart 1A heading—continued

- ~~(2A) The Commission must not adopt a reorganisation plan under this clause that provides for the establishment of, or modification of the shareholding of, a multiply owned council-controlled organisation unless it has first received the written agreement of each affected local authority to that proposed establishment or modification.~~
- (3) The Commission must not adopt a reorganisation plan under this clause that affects the application of any Act that establishes co-governance or co-management arrangements between local authorities and iwi or Māori organisations (including Treaty of Waitangi claim settlement legislation), without first consulting all iwi or Māori organisations to whom that Act applies, the Attorney-General, and the Minister for Treaty of Waitangi Negotiations.
- (4) A reorganisation plan to which **subclause (3)** 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 subclause.

13 Notification of reorganisation plan

- (1) As soon as practicable after adopting a reorganisation plan, the Commission must—
- (a) give public notice of the plan and, in the notice, specify where copies of the plan may be inspected; and
 - (b) take any other action that it considers necessary to inform persons, bodies, and groups that the Commission identifies as having an interest in the plan.
- (2) The Commission must attach to the reorganisation plan a full and detailed statement that—
- (a) explains how the plan will achieve the objectives set out in **clause 11**; and
 - (b) provides a balanced assessment of the reorganisation plan and outlines the advantages and disadvantages of the proposal including, but not limited to, the advantages and disadvantages of—
 - (i) the creation or alteration of any district or region; and
 - (ii) the exclusion of any remaining area of a district or region affected by the proposal; and
 - (iii) any changes to the responsibilities of each affected local authority; and
 - (iv) any change to how a local government service is managed and provided.

Subpart 1A—Content of reorganisation plans

Clause 14

In Schedule 3, replace clause 14 with:

14 Content of reorganisation plan

- (1) Before adopting a reorganisation plan under **clause 12**, the Commission must ensure that the plan complies with the requirements in this clause.
- (2) The reorganisation plan must describe, for each affected local authority proposed to be continued,—
 - (a) the type of local authority; and
 - (b) the name of the district or region of the local authority; and
 - (c) the nature and extent of any proposed changes to—
 - (i) the boundaries of the district or region; and
 - (ii) the representation arrangements of the local authority; and
 - (iii) the extent to which the areas of interest of affected iwi or hapū are included in the district or region; and
 - (iv) in the case of a unitary authority, any local board areas and any local boards of the local authority; and
 - (v) any communities and any community boards of the local authority; and
 - (vi) the committees of the local authority; and
 - ~~(vii) the council-controlled organisations of which the local authority is a shareholder; and~~
 - (viii) the statutory obligations of the local authority; and
 - (ix) any constraints imposed on the local authority's exercise of the discretion conferred by section 12(2); and
 - (d) any other matters the Commission considers necessary or desirable.
- (3) The reorganisation plan must describe, for each local authority proposed to be established,—
 - (a) the type of local authority; and
 - (b) the name of the district or region of the local authority; and
 - (c) the boundaries of the district or region; and
 - (d) the representation arrangements of the local authority; and
 - (e) the names and areas of interest of all affected iwi or hapū; and
 - ~~(f) the council-controlled organisations of which the local authority will be a shareholder; and~~
 - (g) any local board areas and any local boards of the local authority; and
 - (h) any communities and any community boards of the local authority; and

Clause 14—*continued*

- (i) any other matters the Commission considers necessary or desirable.
- (4) However, the Commission may, if it considers it more appropriate to do so, defer including in a reorganisation plan the representation arrangements or community board arrangements, or both, and include them in the reorganisation implementation scheme.
- (5) The reorganisation plan must also—
 - (a) contain information about the role, powers, and composition of the transition body, including—
 - (i) whether the transition body will include a transition board; and
 - (ii) if a transition board will be included in a transition body, how each affected local authority will be represented on the transition board and whether the transition board will include other persons; and
 - (iii) whether an interim chief executive will be appointed for any local authority under clause 38; and
 - (iv) if an interim chief executive will be appointed, which of the powers listed in clause 39(1) may be exercised by the interim chief executive; and
 - (b) have attached to it a full and detailed explanation of the advantages and disadvantages of the plan and of how it will promote good local government.

Clause 15

In Schedule 3, replace clause 15(1) with:

- (1) Before adopting a reorganisation plan under **clause 12** that proposes the continuation or constitution of a unitary authority, the Commission must ensure that the plan complies with the requirements in this clause.

In Schedule 3, clause 15(2), replace “a draft proposal in relation to the affected area” with “the reorganisation plan”.

In Schedule 3, clause 15(4), replace “A draft proposal” with “If a reorganisation plan includes provision for local boards, that plan”.

In Schedule 3, clause 15(6), replace “draft proposal” with “reorganisation plan”.

In Schedule 3, clause 15(7), replace “clauses 14(3)(f)” with “**clauses 14(3)(h)**”.

In Schedule 3, clause 15(7), replace “draft proposal” with “reorganisation plan”.

Clause 16

In Schedule 3, clause 16, replace “draft proposal” with “reorganisation plan”.

Proposed amendments to

Schedule 2

Local Government Act 2002 Amendment Bill (No 2)

Clause 17

In Schedule 3, clause 17, replace “draft proposal” with “reorganisation plan”.

Clause 18

In Schedule 3, clause 18, replace “draft proposal” with “reorganisation plan”.

In Schedule 3, clause 18, replace “reorganisation scheme” with “reorganisation implementation scheme”.

Clause 19

In Schedule 3, clause 19, replace “draft proposal” with “reorganisation plan”.

In Schedule 3, clause 19, replace “reorganisation scheme” with “reorganisation implementation scheme”.

Clases 20 to 22New clauses 19A to 19C

In Schedule 3, replace clauses 20 to 22 with: In Schedule 3, after clause 19, insert:

20 Council-controlled organisations

- (1) ~~Before adopting a reorganisation plan under **clause 12** that proposes the establishment or disestablishment of a council-controlled organisation or a modification of the shareholding of a council-controlled organisation, the Commission must ensure that the plan complies with the requirements in this clause and **clause 20A**.~~
- (2) ~~If the reorganisation plan includes the establishment of a new council-controlled organisation, the plan must specify whether it is to be—~~
 - ~~(a) a multiply owned council-controlled organisation;~~
 - ~~(b) a council-controlled trading organisation;~~
 - ~~(c) a water services council-controlled organisation;~~
 - ~~(d) a transport services council-controlled organisation.~~
- (3) ~~If the reorganisation plan includes a modification of the shareholding of an existing council-controlled organisation, the plan must specify—~~
 - ~~(a) the current shareholders; and~~
 - ~~(b) the local authorities that are to become shareholders; and~~
 - ~~(c) any transfers of funds, assets, or resources that will be effected or required by the plan.~~
- (4) ~~If the reorganisation plan includes the disestablishment of a council-controlled organisation, the plan must specify how any assets and liabilities of that organisation are to be allocated.~~
- (4A) ~~If the reorganisation plan includes the establishment of a council-controlled organisation or a modification of the shareholding of an existing council-controlled organisation, the plan may specify a date after which that organisation~~

Clauses 20 to 22 ~~New clauses 19A to 19C~~—*continued*

~~may be disestablished, or the shareholding of the organisation may be further modified, by the shareholders without following a further reorganisation process under this schedule.~~

- (6) ~~If the reorganisation plan includes the establishment of a new council-controlled organisation, the plan must provide for the appointment of directors and the development of the initial statement of intent for that organisation required by **clause 1 of Schedule 8** before the organisation is established.~~

20A Conferring responsibilities, duties, and powers on water services and transport services council-controlled organisations

- (1A) ~~If a reorganisation plan includes the establishment or continued existence of a water services council-controlled organisation, the plan must specify the responsibilities, duties, and powers set out in **Schedule 8A** that are conferred on that council-controlled organisation.~~

- (1) ~~If a reorganisation plan includes the establishment or continued existence of a transport services council-controlled organisation, the plan may specify—~~

- (a) ~~the responsibilities, duties, and powers set out in **Schedule 8B** that are conferred on that council-controlled organisation; and~~
(b) ~~the districts or regions in respect of which those responsibilities, duties, and powers must be exercised.~~

- (2) ~~Unless **subclause (3)** applies, the Commission must obtain the written approval of the Minister of Transport before adopting a reorganisation plan that confers responsibilities, duties, and powers on a transport services council-controlled organisation.~~

- (3) ~~Written approval of the Minister of Transport is not required if—~~

- (a) ~~a reorganisation plan confers on a transport services council-controlled organisation—~~

- (i) ~~all of the responsibilities, duties, and powers set out in **Schedule 8B**; or~~
(ii) ~~all of the responsibilities, duties, and powers set out in **Part 1 of Schedule 8B** and no other statutory responsibilities, duties, or powers; and~~

- (b) ~~the transport services council-controlled organisation will perform or exercise responsibilities, duties, and powers in respect of 1 or more whole regions.~~

- (5) ~~If a reorganisation plan confers the responsibilities, duties, and powers of a Regional Transport Committee on a transport services council-controlled organisation, the plan must provide for the board of directors of the organisation to include 1 non-voting director nominated by the New Zealand Transport~~

Clauses 20 to 22 New clauses 19A to 19C—*continued*

~~Agency (who may be a person who is the holder of an identified office or position within the New Zealand Transport Agency).~~

219A Transfer of functions

- (1) Before adopting a reorganisation plan under **clause 12** that proposes the transfer of a responsibility, duty, power, or discretionary function, the Commission must ensure that the plan complies with the requirements in this clause.
- (2) Without limiting **section 24(1)(e)**, a reorganisation plan may provide for the transfer of a responsibility, duty, power, or discretionary function—
 - (a) from a regional council to a territorial authority or from a territorial authority to a regional council; or
 - (b) from one regional council to another; or
 - (c) from one territorial authority to another.
- (3) The transfer of a responsibility, duty, power, or discretionary function may apply in respect of all or part of the region or territory of the transferring regional council or territorial authority.
- (4) Before adopting a reorganisation plan that provides for the transfer of a responsibility, duty, or power, the Commission must consult the Minister responsible for the enactment that confers the responsibility, duty, or power on the affected local authorities.
- (5) If a reorganisation plan includes the transfer of a discretionary function, the plan may—
 - (a) prohibit the local authority from which the discretionary function is to be transferred from undertaking any specified activity or incurring expenses for any specified purpose; and
 - (b) require the local authority to which the discretionary function is to be transferred to achieve specified service levels in the provision of that function.
- (6) If the reorganisation plan includes the transfer of a responsibility, duty, power, or discretionary function to a territorial authority or regional council outside the district or region to which the transferred matter relates, the plan must prescribe the constitution of committees or other governance arrangements that will ensure that—
 - (a) persons and communities in each district or region to which the responsibility, duty, power, or discretionary function relates are represented in decision making that relates to that responsibility, duty, power, or discretionary function; and
 - (b) the territorial authority or regional council is accountable to all persons and communities affected by the performance or exercise of the responsibility, duty, or power, or by the provision of the discretionary function.

Clauses 20 to 22 New clauses 19A to 19C—*continued*

21A19B Committees and joint committees

- (1) Before adopting a reorganisation plan under **clause 12** that proposes the establishment of 1 or more committees of a local authority, or 1 or more joint committees, the Commission must ensure that the plan complies with the requirements in this clause.
- (2) The reorganisation plan may provide for the establishment of 1 or more—
 - (a) committees and joint committees that are permanent committees; or
 - (b) committees and joint committees that must not be disestablished before a date specified in the plan.
- (3) The reorganisation plan may specify—
 - (a) the membership of a committee;
 - (b) the terms of reference of a committee;
 - (c) any delegations to the committee;
 - (d) when and how the matters in **paragraphs (a) to (c)** may be varied.
- (4) If the reorganisation plan provides for a joint committee of an affected local authority; with 1 or more other local authorities or other public bodies, it may specify—
 - (a) the membership of the joint committee;
 - (b) the terms of reference of the joint committee;
 - (c) any delegations to the joint committee by the affected local authority;
 - (d) when and how the matters in **paragraphs (a) to (c)** may be varied;
 - (e) any other matter relating to the appointment, operation, or responsibilities of the joint committee.
- (5) The Commission must not adopt a reorganisation plan that includes provision for a joint committee without first obtaining the written agreement of every public body, other than an affected local authority, that is to be a party to the joint committee.

2219C Local authorities with joint roles

- (1) This clause applies if a reorganisation plan under **clause 12** provides for the performance and exercise by a local authority of both—
 - (a) the responsibilities, duties, and powers of a regional council in respect of a region; and
 - (b) the responsibilities, duties, and powers of a territorial authority in respect of a district that constitutes a part only of that region.
- (2) Before adopting the reorganisation plan, the Commission must ensure that it prescribes the constitution of committees or other governance arrangements that will ensure that—

Clauses 20 to 22 New clauses 19A to 19C—*continued*

- (a) persons and communities in the region and the district to which the roles relate are represented in the performance or exercise of the responsibilities, duties, and powers of the regional council and the territorial authority respectively; and
- (b) the bodies performing and exercising the responsibilities, duties, and powers of the regional council and territorial authority respectively are each accountable to all affected persons and communities.

Clauses 20 to 22

In Schedule 3, repeal clauses 20 to 22.

New subpart 1B of Part 2

In Schedule 3, Part 2, before subpart 2, insert:

Subpart 1B—Local authority-led reorganisation applications

22A Local authorities may develop and adopt reorganisation plan

- (1) One or more local authorities may develop and adopt a reorganisation plan in accordance with this clause.
- (2) Except as provided in **subclause (3)**, ~~clause 11 and subparts 1 and 1A of this Part~~ apply to every reorganisation plan developed under **subclause (1)** as if references to the Commission in that clause and those subparts were references to the local authority or local authorities developing the plan.
- (3) **Clause 14(4)** does not apply to a reorganisation plan under this clause.
- (4) A local authority intending to develop a reorganisation plan under this clause must ensure that written notice of that intention is given to the Commission as soon as is reasonably practicable.

22B Application to Commission

- (1) One or more local authorities may submit a reorganisation plan adopted under **clause 22A** to the Commission in accordance with this clause (a **local authority-led reorganisation application**).
- (2) The reorganisation plan must be accompanied by—
 - (a) a statement that complies with **clause 13(2)**; and
 - (b) a report from each affected local authority, adopted by that local authority, that records—
 - (i) that local authority’s unconditional support for the plan; and
 - (ii) the public consultation undertaken by that local authority; and
 - (iii) the themes and outcomes of that consultation.

New subpart 1B of Part 2—continued

22C Commission review of local authority-led reorganisation application

- (1) As soon as practicable after receiving a local authority-led reorganisation application submitted in accordance with **clause 22B**, the Commission must review that application.
- (2) The Commission must approve the reorganisation plan to which the local authority-led reorganisation application relates unless—
 - (a) the reorganisation plan is not accompanied by the documentation required by **clause 22B**; or
 - (b) the Commission considers, on reasonable grounds, that—
 - (i) the provisions in ~~**clause 11 and subpart 1**~~**subparts 1 and 1A of this Part** were not complied with in developing the plan, as required by **clause 22A(2)**; or
 - (ii) the plan does not have the support of affected communities.
- (3) The Commission must not approve the reorganisation plan to which the local authority-led reorganisation application relates if **subclause (2)(a) or (b)** applies.
- (4) If the Commission approves a reorganisation plan under this clause,—
 - (a) subparts 2 and 3 of this Part do not apply; and
 - (b) Parts 3 and 4 of this schedule apply as if the plan had been adopted under **clause 12**.
- (5) As soon as practicable after the Commission approves a reorganisation plan under this clause,—
 - (a) the Commission must notify each affected local authority of its decision; and
 - (b) the Minister must determine whether to recommend the making of an Order in Council under **section 25**.
- (6) If the Commission does not approve a reorganisation plan under this clause, the Commission—
 - (a) must notify each affected local authority of its decision and the reasons for it; and
 - (b) may undertake an investigation into any matter related to the content of the local authority-led reorganisation application.

Clause 23

In Schedule 3, replace clause 23 with:

23 Application of this subpart

- (1) This subpart applies to a reorganisation plan adopted under **clause 12** that provides for any of the following matters:

Proposed amendments to

Schedule 2

Local Government Act 2002 Amendment Bill (No 2)

Clause 23—*continued*

- (a) the union of districts or regions:
 - (b) the constitution of a new district or region, including the constitution of a new local authority for that district or region:
 - (c) the abolition of a district or region, including the dissolution or abolition of the local authority for that district or region:
 - (d) the assumption by a territorial authority of the powers of a regional council as a unitary authority; ~~and;~~
 - (e) the transfer from one local authority to another of—
 - (i) responsibilities, duties, and powers in relation to water services or transport services; or
 - (ii) responsibilities, duties, and powers under the Resource Management Act 1991.
- (2) Despite **subclause (1)(e)**, this subpart does not apply to a transfer of responsibilities, duties, and powers described in that subclause if the Commission is satisfied, on reasonable grounds, that the transfer—
- (a) is not a major transfer; or
 - (b) has the support of all affected local authorities.
- (3) For the purposes of **subclause (2)**, a transfer of responsibilities, duties, and powers is a **major transfer** if the responsibilities, duties, or powers to be transferred—
- (a) represent 50% or more of the transferring local authority’s operational expenditure, or assets, or staff, in respect of water services, transport services, or resource management functions (as the case may be); or
 - (b) include responsibility for preparing a policy statement, plan, variation, or plan change under the Resource Management Act 1991.

Clause 24

In Schedule 3, repeal clause 24.

Clause 25

In Schedule 3, replace clause 25(1) with:

- (1) A poll of electors on the reorganisation plan must be held in the affected area.

Clause 26

In Schedule 3, clause 26(4)(b), replace “final proposal” with “reorganisation plan”.

Clause 28

In Schedule 3, in the heading to clause 28, replace “**proposal**” with “**reorganisation plan**”.

Clause 28—*continued*

In Schedule 3, clause 28(1) and (2), replace “final proposal” with “reorganisation plan”.

Clause 29

In Schedule 3, clause 29, replace the definition of **specified period** with:

specified period means the period commencing on the day after the date on which public notice of the plan is first given under **clause 13** and ending with the close of the day on which the poll is held

Clause 30

In Schedule 3, clause 30, replace “final proposal” with “reorganisation plan” in each place.

Clause 31

In Schedule 3, clause 31, replace “final proposal” with “reorganisation plan” in each place.

In Schedule 3, clause 31(1)(b)(ii), delete “promoting or signing a petition for the purposes of subpart 2 or”.

Clause 32

In Schedule 3, clause 32(1), replace “final proposal” with “reorganisation plan” in each place.

Clause 33

In Schedule 3, clause 33, replace “final proposal that is issued under clause 21 and notified under clause 22” with “reorganisation plan that is adopted under **clause 12** and notified under **clause 13**”.

In Schedule 3, replace clause 33(a)(i) with:

- (i) has not been held because subpart 2 of Part 2 of this schedule does not apply to the reorganisation plan; or

In Schedule 3, clause 33(a)(ii), replace “final proposal” with “reorganisation plan”.

In Schedule 3, clause 33(b), replace “final proposal is to be” with “reorganisation plan has been”.

Clause 34

In Schedule 3, clause 34, replace “final proposal” with “reorganisation plan” in each place.

In Schedule 3, clause 34, replace “reorganisation scheme” with “reorganisation implementation scheme” in each place.

In Schedule 3, clause 34(3)(a), replace “final reorganisation proposal” with “reorganisation plan”.

Clause 34—*continued*

In Schedule 3, clause 34(3)(a), replace “under section 25(4)” with “under **section 25A(1)**”.

Clause 35

In Schedule 3, clause 35(2), replace “draft proposal” with “reorganisation plan”.

In Schedule 3, clause 35(3), replace “final proposal” with “reorganisation plan”.

Part 4 heading

In Schedule 3, in the Part 4 heading, replace “**Reorganisation schemes**” with “**Reorganisation implementation schemes**”.

Subpart 1 heading in Part 4

In Schedule 3, Part 4, in the subpart 1 heading, replace “reorganisation schemes” with “reorganisation implementation schemes”.

Clause 41

In Schedule 3, in the heading to clause 41, replace “**reorganisation scheme**” with “**reorganisation implementation scheme**”.

In Schedule 3, clause 41, replace “reorganisation scheme” with “reorganisation implementation scheme” in each place.

In Schedule 3, clause 41(1) and ~~(2)(a) and (b)~~ (2)(b), replace “final proposal” with “reorganisation plan”.

In Schedule 3, replace clause 41(2)(a) with:

- (a) sets out the detail of the reorganisation described in the reorganisation plan and describes how it is to be implemented; and

Subpart 2 heading in Part 4

In Schedule 3, Part 4, in the subpart 2 heading, replace “reorganisation schemes” with “reorganisation implementation schemes”.

Clause 42

In Schedule 3, in the heading to clause 42, replace “**reorganisation schemes**” with “**reorganisation implementation scheme**”.

In Schedule 3, in clause 42(1) and (2), replace “reorganisation scheme” with “reorganisation implementation scheme”.

In Schedule 3, clause 42(1)(f) and 42(2), replace “proposal” with “reorganisation plan”.

Clause 42A

In Schedule 3, replace clause 42A with:

Clause 42A—*continued*

42A Content of reorganisation implementation scheme in respect of local boards

Without limiting clause 42, a reorganisation implementation scheme in respect of a reorganisation plan to which clause 15(2) applies—

- (a) must make, in accordance with section 48L, an initial allocation between the unitary authority’s governing body and the local board of decision-making responsibility for the non-regulatory activities of the unitary authority within each local board area; and
- (b) may specify delegations to any local board in accordance with clause 36C of Schedule 7.

Clause 43

In Schedule 3, clause 43(1) and (2), replace “reorganisation scheme” with “reorganisation implementation scheme”.

In Schedule 3, replace clause 43(1)(b) with—:

- (b) provisions that are necessary for the effective transition and future carrying out of responsibilities, duties, powers, or discretionary functions that are to be transferred—
 - (i) from one local authority to another local authority; or
 - (ii) from 1 or more local authorities to a council-controlled organisation; or
 - (iii) from 1 or more local authorities to a joint committee; or
 - (iv) from a council-controlled organisation or joint committee to 1 or more local authorities or council-controlled organisations.

In Schedule 3, after clause 43(1)(h), insert:

- (~~haa~~) if the reorganisation plan or reorganisation implementation scheme provides for the establishment of a multiply owned council-controlled organisation, provisions for—
 - (i) the appointment of the joint committee required by **section 63A**; and
 - (ii) the development of a participants’ agreement under **section 63**;
- (~~hab~~) if the reorganisation plan or reorganisation implementation scheme provides for the establishment of a council-controlled organisation, provisions for—
 - (i) the appointment of directors in accordance with this Act; and
 - (ii) the development of the initial statement of intent for the organisation;

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Clause 43—*continued*

In Schedule 3, clause 43(1)(j), replace “the local authorities” with “local authorities or council-controlled organisations”.

Clause 44

In Schedule 3, clause 44(1)(a), replace “reorganisation scheme” with “reorganisation implementation scheme”.

In Schedule 3, clause 44(1)(a), replace “section 25(4)” with “**section 25A(1)**”.

In Schedule 3, replace clause 44(1)(a) with:

(a) in relation to a reorganisation on and from the implementation date; and

In Schedule 3, clause 44(1)(b), replace “final proposal” with “reorganisation plan”.

In Schedule 3, repeal clause 44(2).

Clause 45

In Schedule 3, in the heading to clause 45, replace “reorganisation scheme” with “reorganisation implementation scheme”.

In Schedule 3, clause 45(1), replace “reorganisation scheme” with “reorganisation implementation scheme” in each place.

In Schedule 3, clause 45, replace “The following provisions apply to a reorganisation scheme unless amended by the reorganisation scheme or declared by the reorganisation scheme not to apply.” with “The following provisions apply to a reorganisation unless amended by a reorganisation order or declared by a reorganisation order not to apply.”

Clause 46

In Schedule 3, clause 46(1), replace “reorganisation scheme” with “reorganisation implementation scheme order” in each place.

New clause 46A

In Schedule 3, after clause 46, insert:

46A Bylaws of transport services council-controlled organisation

(1) **Subclauses (2) to (8)** apply to a bylaw if—

- (a) the bylaw is in force in all or part of a district or region in the jurisdiction of a transport services council-controlled organisation; and
- (b) the power to make bylaws is conferred on that organisation by an Order in Council under **section 25** in accordance with **clause 20A(1)**; and
- (c) the bylaw is in force immediately before the implementation date of the local government reorganisation to which the order in paragraph (b) relates; and

~~New clause 46A—continued~~

- ~~(d) the bylaw is identified in the order as a bylaw for which responsibility is transferred to the transport services council-controlled organisation.~~
- ~~(2) On and from the implementation date of the local government reorganisation, the bylaw must be treated as having been made by the transport services council-controlled organisation.~~
- ~~(3) The bylaw must be reviewed by the transport services council-controlled organisation—~~
 - ~~(a) in accordance with the requirements of the enactment pursuant to which it was made; and~~
 - ~~(b) at the time required by the enactment pursuant to which it was made, based on when it was made or last reviewed by the local authority that made it.~~
- ~~(4) The bylaw remains in force, in the area to which it applied immediately before the implementation date of the local government reorganisation, for a period of 5 years.~~
- ~~(5) At the end of the period of 5 years referred to in **subclause (4)**, the bylaw is revoked unless, before the period ends, the transport services council-controlled organisation—~~
 - ~~(a) confirms the bylaw; or~~
 - ~~(b) amends the bylaw; or~~
 - ~~(c) revokes the bylaw.~~
- ~~(6) Section 156 applies, with any necessary modifications, to a proposal by a transport services council-controlled organisation to confirm, amend, or revoke a bylaw under **subclause (5)**, as if the organisation were a local authority and the bylaw were a bylaw being made under this Act.~~
- ~~(7) If section 159 applies to a bylaw confirmed or amended under **subclause (5)**, the date of the confirmation or amendment of the bylaw must be treated as the date of the last review of the bylaw for the purposes of that section.~~
- ~~(8) In this clause, **bylaw** includes—~~
 - ~~(a) a set of bylaws; and~~
 - ~~(b) an individual bylaw in a set of bylaws; and~~
 - ~~(c) a provision within an individual bylaw.~~

Clause 47

In Schedule 3, replace clause 47(1) with:

- (1) If provision is made in a reorganisation order for a responsibility, duty, power, or discretionary function to be transferred to, or assumed by, a local authority; council-controlled organisation; or joint committee, provision may not be made

Clause 47—*continued*

for the payment of compensation to the local authority from which that responsibility, duty, power, or discretionary function is transferred or assumed.

Clause 49

In Schedule 3, clause 49(1)(a) ~~and (b)~~, replace “reorganisation scheme” with “reorganisation implementation scheme”.

In Schedule 3, clause 49(1)(b), replace “reorganisation scheme” with “reorganisation implementation scheme”.

~~In Schedule 3, replace clause 49(1) with:~~

- (1) This clause applies where—
- (a) a local authority (**entity A**) ceases to exist under a reorganisation plan and its district or region is included in the district or region of another local authority (**entity B**); or
 - (b) a reorganisation implementation scheme provides, under clause 43(j), for the transfer of employees—
 - (i) from a local authority (**entity A**) to another local authority (**entity B**); or
 - (ii) from a local authority (**entity A**) to a council-controlled organisation (**entity B**); or
 - (iii) from a council-controlled organisation (**entity A**) to a local authority (**entity B**); or
 - (iv) from one council-controlled organisation (**entity A**) to another council-controlled organisation (**entity B**).

~~In Schedule 3, clause 49(2), (3)(b), (4)(a), and (5), replace “local authority A” with “entity A”.~~

~~In Schedule 3, clause 49(2), (3)(b), (4), and (5), replace “local authority B” with “entity B”.~~

New subpart 4 of Part 4 inserted

In Schedule 3, after clause 54, insert:

Subpart 4—Tax treatment of assets transferred in reorganisation

55 Application

- (1) This subpart applies for the purposes of the Inland Revenue Acts when, in a reorganisation described in **section 24** of this Act,—
- (a) the assets and liabilities of a terminating entity (the **transferring entity**) become the assets and liabilities of a receiving entity (the **receiving entity**):

New subpart 4 of Part 4 inserted—continued

- (b) some or all of the assets and liabilities of a continuing entity (the **transferring entity**) become the assets and liabilities of another entity (the **receiving entity**):
 - (c) the voting interests and market value interests of a notional single person in a local authority (the **transferring entity**) become the voting interests and market value interests of a notional single person in another entity (the **receiving entity**).
- (2) In this clause and in **clauses 56 to 60**,—
- date of transfer** means the date on which assets and liabilities, or voting interests and market value interests, of a transferring entity become assets and liabilities, or voting interests and market value interests, of a receiving entity
- Inland Revenue Acts** has the meaning given by section 3(1) of the Tax Administration Act 1994
- transfer** means a method of conveying assets and liabilities, or voting interests and market value interests, to a receiving entity so that the assets and liabilities, or voting interests and market value interests, that the transferring entity has before the date on which the conveyance takes place become the assets and liabilities, or voting interests and market value interests, of the receiving entity on and after that date.
- (3) In **this subpart**, terms defined in the Inland Revenue Acts have the meanings given by those Acts.
- (4) If there is a conflict between a provision of **this subpart** and clause 6 of Schedule 9, the provision in **this subpart** prevails.

56 General treatment

For tax purposes, and in relation to a transfer,—

- (a) a receiving entity is treated from the date of transfer as the same person as the transferring entity:
- (b) a thing done by a transferring entity before the date of transfer is treated as done by the receiving entity on the date on which it was done by the transferring entity:
- (c) a receiving entity is treated as having held the voting interests and market value interests without interruption from the date on which the transferring entity acquired them.

57 Income and expenditure

An amount of income derived or expenditure incurred by a transferring entity before the date of transfer does not become income or expenditure of the receiving entity merely because the assets and liabilities of the transferring entity have become the assets and liabilities of the receiving entity.

New subpart 4 of Part 4 inserted—continued**57B Holding companies**

- (1) When an asset other than shares of a transferring entity becomes the asset of a receiving entity, the difference between the market value of the asset and any attributed liability is available subscribed capital of the receiving entity.
- (2) An amount arising from a sale or transfer of shares of a transferring entity is not assessable income of the receiving entity when—
 - (a) the shares have become the asset of the receiving entity through a reorganisation under **section 24**; and
 - (b) the receiving entity—
 - (i) sells the shares and distributes the proceeds to or through a holding company of the entity; or
 - (ii) transfers the shares to a holding company of the entity.

58 Valuation of assets

- (1) For an asset that is a financial arrangement, trading stock, or revenue account property, the value is established as follows:
 - (a) if income derived from the asset is exempt income of a transferring entity and is not exempt income of a receiving entity, the receiving entity is treated as having acquired the asset on the date of transfer at its market value on that date:
 - (b) if income derived from the asset is not exempt income of a transferring entity and is exempt income of a receiving entity, the transferring entity is treated as having disposed of the asset on the date of transfer at its market value on that date.
- (2) For an asset that is an item of depreciable property, the value is established as follows:
 - (a) if income derived from the asset is exempt income of a transferring entity and is not exempt income of a receiving entity, the receiving entity is treated as having acquired the property on the date of transfer at its accounting carrying value on that date:
 - (b) if income derived from the asset is not exempt income of a transferring entity and is exempt income of a receiving entity, the transferring entity is treated as having disposed of the property on the date of transfer at its adjusted tax value on that date.

58B Apportionment on transfers to multiple receiving entities

- (1) This clause applies when the assets and liabilities of, or interests in, a transferring entity are transferred to more than 1 receiving entity. For these purposes, a transferring entity that continues in existence after the date of the transfer is treated as a receiving entity.

New subpart 4 of Part 4 inserted—continued

- (2) A tax loss, loss balance, or credit in a memorandum account of the transferring entity is apportioned among the receiving entities on the basis of the percentage of assets or interests, as applicable, that are transferred to each receiving entity, measured on the date of transfer.
- (3) In relation to the grouping of tax losses and credits, the tax loss, loss balance, or credit is treated as arising on the date of transfer.

60 Goods and services tax

- (1) When the assets and liabilities of a transferring entity become the assets and liabilities of a receiving entity, the transfer is treated as a taxable supply of the assets and liabilities that is charged with tax at the rate of 0%.
- (2) For the purposes of calculating the amount of output tax to be charged or input tax deductible on the date of transfer, the transferring entity and receiving entity are treated for the period up to the date of transfer as if they were the same person.
- (3) If, in relation to a supply of the assets and liabilities of a transferring entity, it is necessary for a tax invoice, credit note, or debit note to be issued before the date of transfer by or to the transferring entity, the invoice or note may be issued by or to a receiving entity. For this purpose, the transferring entity and the receiving entity are treated as if they were the same person in relation to any requirement that the transferring entity holds, has previously been issued with, or has issued to a person an invoice or note for the supply.
- (4) If, in relation to a supply of the assets and liabilities of a transferring entity, a document purporting to be a tax invoice, credit note, or debit note is issued by or to a transferring entity in relation to a supply made by or to a receiving entity on or after the date of transfer, the document is treated as if it were a tax invoice, credit note, or debit note, as applicable, that is issued by or to the receiving entity.

60B Associated persons

A person is not associated with another person for the purposes of sections CB 6A to CB 15 of the Income Tax Act 2007 merely through the application of **this subpart**.

Schedule 3

Amendments to Schedule 4

s 36

Clause 3

In Schedule 4, replace clause 3(2) with:

- (2) A member may, at any time, be removed from office, by written notice from the Minister, for any reason that, in the Minister's opinion, justifies the removal.
- (2A) The notice referred to in **subclause (2)** must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
 - (b) state the reasons for the removal.
- (2B) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice under **subclause (2)**.

Clause 29

In Schedule 4, replace clause 29 with:

29 Chief executive officer

- (1) ~~The Commission may appoint a suitably qualified person to act as the chief executive officer to enable the Commission to perform or exercise its functions, responsibilities, duties, and powers.~~
- (2) ~~The chief executive officer is appointed on the terms and conditions agreed between the Commission and the chief executive officer.~~
- (3) ~~The chief executive officer is responsible to the Commission for employing staff, and negotiating their terms of employment, on behalf of the Commission.~~
- (4) ~~Sections 118 and 119 of the Crown Entities Act 2004 apply to the Commission as if it were a Crown entity.~~

Clause 30

In Schedule 4, clause 30(1) and (2), replace “member” with “member, office holder, or employee of the Commission” in each place.

Clause 31

In Schedule 4, repeal clause 31.

Schedule 4
Schedule 8 replaced and new Schedules 8A and 8B inserted

s 37

Schedule 8
Statements of intent for council-controlled organisations

s 64

Part 1
Adoption of statement of intent

1 Draft statement of intent

~~(1) The board of a council-controlled organisation must deliver to its shareholders a draft statement of intent on or before 1 March in the year preceding the financial year to which the draft statement of intent relates.~~

(1) The board of a council-controlled organisation must deliver a draft statement of intent—

(a) to its shareholders; and

(b) in the case of an organisation that is indirectly controlled by 1 or more local authorities (for example, a subsidiary of a holding company owned by a local authority), to each local authority that indirectly controls the organisation.

(2) The draft statement of intent must be delivered on or before 1 March in the year preceding the financial year to which the draft statement of intent relates.

2 Consideration of shareholder comments

~~(1) The board must—~~

~~(a) consider any comments on the draft statement of intent that are made by the shareholders, or by any of them, on or before 1 May in the year preceding the year to which the draft statement relates; and~~

~~(b) in the case of a substantive council-controlled organisation, give effect to those comments, unless—~~

~~(i) to do so would be unlawful; or~~

~~(ii) to do so would be contrary to the organisation's constitution; or~~

~~(iii) the comments propose conflicting priorities for the organisation.~~

The board must consider any comments on the draft statement of intent that are made by the shareholders, and by local authorities with indirect control, or by any of them, on or before 1 May in the year preceding the year to which the draft statement relates.

- (2) ~~**Subclause (1)(b)** applies to a statement of intent of a substantive council-controlled organisation of the Auckland Council that relates to the 2018/19 financial year or to a later financial year.~~

3 Final statement of intent

The board must deliver the completed statement of intent to the shareholders before the commencement of the financial year to which it relates.

3A Shareholding local authority may extend deadlines by up to 1 month

The shareholders of a council-controlled organisation may, by written notice, extend a deadline specified in **clause 1(2), 2, or 3** for a period or periods not exceeding in total 1 calendar month.

4 Modifications of statements of intent

- (1) The board may, by written notice, modify a statement of intent at any time if the board has first—
- (a) given written notice to the shareholders of the proposed modification; and
 - (b) considered any comments made on the proposed modification by the shareholders or by any of them within—
 - (i) 1 month after the date on which the notice under **paragraph (a)** was given; or
 - (ii) any shorter period that the shareholders may agree; and
 - (c) ~~in the case of a substantive council-controlled organisation, give effect to those comments unless—~~
 - (i) ~~to do so would be unlawful; or~~
 - (ii) ~~to do so would be contrary to the constitution; or~~
 - (iii) ~~the comments propose conflicting priorities for the organisation.~~
- (2) ~~**Subclause (1)(c)** applies to a statement of intent of a substantive council-controlled organisation of the Auckland Council that relates to the 2018/19 financial year or to a later financial year.~~
- ### 5 Modifications of statements of intent by resolution of shareholders
- (1) The shareholders of a council-controlled organisation may, by resolution, require the board to modify the statement of intent in the manner specified in the resolution.
- (2) Every modification that is required by a resolution under **subclause (1)** must be—
- (a) consistent with the objectives of the constitution; and
 - (b) lawful.

- (3) Before making a resolution under **subclause (1)**, the shareholders must consult the board as to the proposed content of the resolution.
- (4) As soon as practicable after receiving a resolution that complies with **subclause (2)**, the board must—
 - (a) prepare and adopt a ~~revised~~ modified statement of intent that incorporates the modifications in the resolution; and
 - (b) deliver the ~~revised~~ modified statement of intent to each shareholder within 1 month of the date of its adoption; and
 - (c) make the ~~revised~~ modified statement of intent publicly available within 1 month of the date of its adoption.
- (5) **Subclause (1)** applies despite any other provision of this Act or of the constitution of the council-controlled organisation.

Part 2

Content of statements of intent: all council-controlled organisations

6 Content of statement of intent

- (1) The statement of intent for a council-controlled organisation must include the information described in **subclause (2)**—
 - (a) for the group comprising the council-controlled organisation and its subsidiaries (if any); and
 - (b) in respect of the financial year to which it relates and each of the immediately following 2 financial years.
- (2) The information required by **subclause (1)** is—
 - (a) the objectives of the group; and
 - (b) a statement of the board's approach to the governance of the group; and
 - (c) the nature and scope of the activities to be undertaken by the group; and
 - (d) the non-financial performance targets and other measures by which the performance of the group may be judged in relation to its objectives; and
 - (e) any additional information that is required to be included in the statement of intent.

7 Additional content of statement of intent

- (1) This clause applies to a council-controlled organisation that provides services, other than under a contract or similar arrangement, in relation to the following groups of activities:
 - (a) water supply;
 - (b) sewerage and the treatment and disposal of sewage;
 - (c) stormwater drainage;

- (d) flood protection and control works;
 - (e) the provision of roads and footpaths.
- (2) The council-controlled organisation's statement of intent must state the matters in **subclause (3)** in relation to each group of activities described in **subclause (1)**.
- (3) The matters required by **subclause (2)** are—
- (a) any performance measures specified in a rule made under section 261B in relation to a group of activities described in **subclause (21)**; and
 - (b) the performance target or targets of the council-controlled organisation for each performance measure.

Part 3

Additional content of statements of intent of council-controlled trading organisations

8 Additional content of statement of intent of council-controlled trading organisations

The statement of intent for a council-controlled trading organisation must include, as well as the information required by **Part 2** of this Schedule, the following information:

- (a) the major accounting policies of the organisation or group; and
- (b) the ratio of consolidated shareholders' funds to total assets, and the definitions of those terms; and
- (c) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders; and
- (d) the board's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, that value is to be reassessed.

Part 4

Additional content of statements of intent of council-controlled organisations that are not trading organisations

9 Additional content of statement of intent of council-controlled organisations that are not trading organisations

The statement of intent for a council-controlled organisation that is not a council-controlled trading organisation must include, as well as the information required by **Part 2** of this Schedule, the following information:

- (a) the major accounting policies of the organisation or group; and

- (b) forecast financial statements of the organisation for the financial year to which the statement of intent relates, and each of the 2 following financial years.

Schedule 8A

Statutory responsibilities, duties, and powers that may be conferred on water services council-controlled organisations

ss 24(4)(k), 74

The responsibilities, duties, and powers that the Commission may include in a reorganisation plan that includes the establishment of, or continued existence of, a water services council-controlled organisation (*see clause 20A of Schedule 3*) are—

- (a) the powers of a local authority under the following sections of the Local Government Act 1974 in relation to wastewater services (and those sections apply accordingly, with any necessary modifications):
 - (i) section 446 (council may cover in watercourse so as to make it a public drain):
 - (ii) section 451 (diversion, etc, of drainage works):
 - (iii) section 459 (council may require owners of land in certain cases to provide private drains):
 - (iv) section 460 (construction of private drains through adjoining premises):
 - (v) section 461 (further provisions with respect to private drains):
 - (vi) section 462 (council may declare private drain to be public drain):
 - (vii) section 467 (unlawful connection of private drain):
 - (viii) section 468 (tree roots obstructing public drains); and
- (b) the powers of a local authority under the following sections of this Act in relation to its services (and those sections apply accordingly, with any necessary modifications):
 - (i) section 171 (general power of entry):
 - (ia) section 172 (power of entry for enforcement purposes):
 - (ii) section 173 (power of entry in cases of emergency):
 - (iv) section 181 (construction of works on private land):
 - (v) section 182 (power of entry to check utility services):
 - (vi) section 186 (local authority may execute works if owner or occupier defaults); and
- (c) the responsibilities, duties, and powers of a local authority under the following sections of this Act in relation to its services (and those sections apply accordingly, with any necessary modifications):
 - (i) section 191 (local authority not authorised to create nuisance):
 - (ii) section 195 (discharge of sewage):
 - (iii) section 196 (discharge of trade wastes); and

- (e) ~~the responsibilities, duties, and powers of a utility operator under the Utilities Access Act 2010 and any code or regulations under that Act.~~

Schedule 8B**Statutory responsibilities, duties, and powers that may be conferred on transport services council-controlled organisations****ss 24(1)(l), 73(1)**

The responsibilities, duties, and powers that the Commission may include in a reorganisation plan that includes the establishment of, or continued existence of, a transport services council-controlled organisation (see **clause 20A of Schedule 3**) are set out in Part 1 and Part 2 below.

Part 1

- 1 The responsibilities, duties, and powers of a local authority and an enforcement authority under the Land Transport Act 1998 for the purposes of prosecuting stationary vehicle offences
- 2 The responsibilities, duties, and powers of a territorial authority under Part 21 of the Local Government Act 1974, except the responsibilities, duties, and powers under sections 316(2), 319(1)(j), 319A, 319B, and 347 to 352 of that Act
- 3 The responsibilities, duties, and powers of a local authority, a territorial authority, and a controlling authority under Part 4 of the Government Roading Powers Act 1989
- 4 The responsibilities, duties, and powers of an enforcement authority under the Land Transport Act 1998 in relation to prosecuting infringement offences under that Act that relate to the use of special vehicle lanes (including the appointment of enforcement officers in accordance with sections 5(1) and 177 of this Act)
- 5 The responsibilities, duties, and powers of a road controlling authority and a local authority under the Land Transport Act 1998 and any regulations or rules made under that Act
- 6 The responsibilities, duties, and powers of a local authority to make and enforce bylaws under subparts 1 and 2 of Part 8 of this Act (except the power conferred by section 147)
- 7 The responsibilities, duties, and powers of a public road controlling authority under Part 2 of the Land Transport Management Act 2003 in relation to road tolling schemes

Part 2

- 8 The responsibilities, duties, and powers of a regional transport committee under Part 2 of the Land Transport Management Act 2003

**Proposed amendments to
Local Government Act 2002 Amendment Bill (No 2)**

Schedule 4

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- | | |
|----|---|
| 9 | The responsibilities, duties, and powers of a regional council under Part 5 of the Land Transport Management Act 2003 in relation to public transport planning and regulation |
| 10 | The responsibilities, duties, and powers of a territorial authority under section 591 of the Local Government Act 1974 (except the power conferred by section 591(1)(a) of that Act) |
| 11 | The responsibilities, duties, and powers of an enforcement authority under the Land Transport Act 1998 in relation to prosecuting infringement offences under that Act that relate to a failure to pay a public transport service fare |

Schedule 4A

Amendments to Schedule 10

s 38

Clause 7

In Schedule 10, clause 7, replace “in relation to each council-controlled organisation” with “in relation to each council-controlled organisation in which the local authority is a shareholder”.

New clause 7A

In Schedule 10, after clause 7, insert:

- 7A Additional information to be included in long-term plan of local authority shareholder in multiply owned substantive council-controlled organisation**
- A local authority that is a shareholder in a multiply owned substantive council-controlled organisation must, in addition to the information to be provided under clause 7,—
- (a) disclose the following projected local authority funding for that organisation for each of the financial years covered by the local authority’s long-term plan:
 - (i) the shareholder’s contribution to the organisation’s operating revenue under **section 69(2)**; and
 - (ii) the shareholder’s lending to the organisation under **section 69A(2)**; and
 - (b) identify the significant projects contained in the multiply owned council-controlled organisation’s service delivery plan that will contribute to the local authority’s community outcomes; and
 - (c) explain the contribution to be made by each of those projects.

Clause 28

In Schedule 10, clause 28, replace “in relation to each council-controlled organisation” with “in relation to each council-controlled organisation in which the local authority is a shareholder”.

New clause 28A

In Schedule 10, after clause 28, insert:

~~New clause 28A—continued~~

~~**28A Additional information to be included with annual report of local authority shareholder in multiply owned substantive council-controlled organisation**~~

~~A local authority that is a shareholder in a multiply owned substantive council-controlled organisation must, in addition to the information to be provided under clause 28,—~~

- ~~(a) disclose separately the following actual local authority funding provided to that council-controlled organisation for the financial year:
 - ~~(i) the shareholder's contribution to the organisation's operating revenue under **section 69(2)**; and~~
 - ~~(ii) the shareholder's lending to the organisation under **section 69A(2)**; and~~~~
- ~~(b) report on progress in relation to the significant projects contained in the multiply owned council-controlled organisation's service delivery plan that will contribute to the local authority's community outcomes; and~~
- ~~(c) explain the implications of any significant variation between planned progress and actual progress in respect of each project.~~

~~**New Part 5**~~

~~In Schedule 10, after clause 37, insert:~~

~~**Part 5**~~
~~**Provisions applying to local authority shareholders in council-controlled organisations**~~

~~**38 Treatment of wholly owned substantive council-controlled organisations**~~

- ~~(1) This clause applies to a local authority that is the sole shareholder in a substantive council-controlled organisation.~~
- ~~(2) The local authority may—
 - ~~(a) describe the services provided by the organisation as local authority activities in its long-term plans, annual plan, and annual reports;~~
 - ~~(b) prepare a combined infrastructure strategy for inclusion in its long-term plan that incorporates both the local authority's infrastructure strategy described under section 101B and the organisation's infrastructure strategy under **section 65C**.~~~~

~~**39 Treatment of multiply owned substantive council-controlled organisations**~~

- ~~(1) This clause applies to a local authority that is a shareholder in a multiply owned substantive council-controlled organisation.~~

New Part 5—*continued*

- (2) ~~The local authority may not describe a service provided by the organisation as local authority activity in its long-term plans, annual plan, or annual reports.~~
- (3) ~~The local authority may include relevant information from the organisation's infrastructure strategy under **section 65C** in the local authority's infrastructure strategy under section 101B to identify the contribution to be made by the organisation to managing the infrastructure issues of the local authority over the period covered by the strategy.~~

Schedule 5 Consequential amendments to other enactments

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Freedom Camping Act 2011 (2011 No 61)

In section 6(1)(a)(ii), after “managed by”, insert “or on behalf of”.

~~Goods and Services Tax Act 1985 (1985 No 141)~~

After section 5(7E), insert:

- ~~(7F) For the purposes of this Act, in relation to a water services council-controlled organisation (as defined in **section 6(1)** of the Local Government Act 2002),—~~
- ~~(a) the organisation is to be treated as supplying goods and services to a person if the person is required to make a development contribution to the organisation under that Act:~~
 - ~~(b) a person who makes a contribution to the organisation is treated as supplying goods and services to the organisation to the extent to which the contribution—~~
 - ~~(i) consists of land; and~~
 - ~~(ii) is a development contribution under that Act.~~

After section 11B(1C), insert:

- ~~(1F) For the purposes of subsections (1B) and (1C), a local authority includes a water services council-controlled organisation (as defined in section 6(1) of the Local Government Act 2002).~~

Greater Christchurch Regeneration Act 2016 (2016 No 14)

In section 134(3), replace “Section 56” with “**Section 58**”.

Land Transport Management Act 2003 (2003 No 118)

In section 5(1), definition of **regional council**, replace paragraph (b)(iii) with:

- (iii) Part 5, includes—
 - (A) Auckland Transport;
 - (B) a unitary authority except the Auckland Council;
 - (C) any territorial authority to which the regional council has transferred the functions, powers, and duties of a regional council under that Part;
 - ~~(D) a council-controlled organisation on which an Order in Council under **section 25** of the Local Government Act 2002 has conferred the functions, powers, and duties of a regional council under that Part~~

Land Transport Management Act 2003 (2003 No 118)—*continued*

In section 5(1), definition of **regional transport committee**, paragraph (b)(ii), after “member”, insert “; or”.

In section 5(1), definition of **regional transport committee**, after paragraph (b), insert:

- (e) the governing body of a council-controlled organisation on which an Order in Council under **section 25** of the Local Government Act 2002 has conferred the functions, powers, and duties of a regional transport committee under Part 2

Local Government Act 1974 (1974 No 66)

Repeal section 318.

Local Government Borrowing Act 2011 (2011 No 77)

In section 9(2), replace “section 62” with “**section 69E**”.

In section 9(3), replace “section 63” with “**section 69F**”.

In section 11, insert as subsection (2):

- (2) **Section 69D** of the Local Government Act 2002 does not apply to the Funding Agency.

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)

In section 17(1) and (2), replace “section 25” with “**section 25A**”.

In section 17(2), replace “reorganisation scheme” with “reorganisation implementation scheme”.

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Local Government Commission

Public Audit Act 2001 (2001 No 10)

In Schedule 2, insert in its appropriate alphabetical order:

Local Government Commission