

Local Government (Auckland Reorganisation) Bill

Government Bill

Explanatory note

General policy statement

Background

Governance arrangements for the Auckland Region have been a cause of concern for at least the past 50 years. Successful government of Auckland requires the management and resolution of both regional and local issues. Having different local authorities manage these different interests has increased tension and slowed resolution of problems, particularly as the Auckland population has increased.

Auckland is home to some of the most important commercial, educational, and business organisations in the country. It is the region where nearly one third of the population of New Zealand chooses to live. However, Auckland's potential is restricted by the fragmented way the city is run. Regional issues are tangled with the competing interests of local councils and community matters are tangled within the territorial authorities' focus on the Auckland-wide issues.

A succession of Government attempts at reform, from the establishment of the Auckland Regional Authority in 1963 through to the reforms of the late 1980s, which saw widespread amalgamation and the establishment of the Auckland Regional Council, to the enhanced planning and participation provided for in the Local Government Act 2002, have failed to provide enduring solutions. Changes focused on

particular sectors or aspects of the issues, for example, transport and ownership of regional assets, have not been enough to provide Auckland with the governance it needs to succeed.

The previous Government commissioned a Royal Commission on Auckland Governance. The Commission reported to the Government on 25 March 2009, recommending the concept of 1 local authority for Auckland with enhanced powers for its Mayor. The Government agreed with these recommendations, but has rejected the Commission's recommendations for 6 second-tier local councils in favour of local boards (to enhance community participation and local democracy).

Legislation is required to give effect to many of the Government's decisions on Auckland local governance. Three Bills are anticipated, with this being the first Bill.

This legislation begins the transitional process from the existing local authorities (Auckland currently has 7 territorial authorities (or local councils) and 1 regional council) to 1 unitary authority, Auckland Council. Auckland Council will create a vision for Auckland and plan and manage its assets and deliver its core services. The new local boards will link communities to the new Council. The Bill provides for the dissolution of the existing local authorities on 1 November 2010.

This Bill will also—

- establish the Auckland Transition Agency (**ATA** or **Transition Agency**) as the body responsible for planning and managing the reorganisation of the new Auckland local governance arrangements; and
- place safeguards and constraints on decision making by the current local authorities and their subsidiaries (council-controlled organisations and council organisations).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. *Part 2* (which establishes the Auckland Council) comes into force on 1 November 2010. *Clauses 27 and 28* and *subpart 3 of Part 3* come into force on 31 October 2010. The rest of the Bill comes into force on the day after it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the background to and purpose of the Bill.

Clause 4 provides an outline of the Bill.

Clause 5 is the interpretation clause.

Clause 6 sets out the relationship between this Bill and other local government legislation. This Bill prevails if there is any inconsistency between its provisions and the following enactments: the Local Government Act 2002, the Local Government (Auckland) Amendment Act 2004, the Local Government Act 1974, the Local Electoral Act 2001, and any regulations made under those Acts.

Clause 7 provides that the Act binds the Crown.

Clause 8 repeals the Act on the close of 1 November 2010. This is the day on which the legislation is effectively spent.

Part 2

Auckland Council

Clause 9 establishes a unitary authority for Auckland to be known as the Auckland Council and consequentially amends Schedule 2 of the Local Government Act 2002 (which lists all regional councils and territorial authorities) by including this Council and omitting all references to the existing local authorities in Auckland (being Auckland Regional Council, Auckland City Council, Franklin District Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council, and Waitakere City Council).

Part 3

Transitional arrangements

Subpart 1—Auckland Transition Agency

Clause 10 establishes the Auckland Transition Agency.

Clause 11 provides for the governing body of the Transition Agency.

Clause 12 requires the governing body of the Transition Agency to appoint a chief executive for the Agency and sets out the chief executive's responsibilities.

Functions and duties of Transition Agency

Clause 13 sets out the functions, duties, and powers of the Transition Agency during the transition period (effectively the period of its existence). The transition period is defined in *clause 5(1)* as being the period that commences on the day after the date on which the Bill receives the Royal assent and concludes on the close of 31 October 2010.

Clause 14 requires the Transition Agency to appoint an electoral officer for Auckland to exercise the powers and carry out the duties conferred on an electoral officer in relation to the October 2010 triennial general elections (at which the electors of Auckland will vote, for the first time, for members of the Auckland Council).

Clause 15 requires the Transition Agency to determine 2 electoral matters for the purposes of preparing for the October 2010 triennial general elections, being whether voting documents at that election be processed during the voting period and the order of candidates' names on voting documents.

Clause 16 requires the Transition Agency to appoint a chief executive to an existing local authority if a vacancy occurs at any time during the transition period.

Clause 17 requires the Transition Agency to appoint an interim chief executive for the Auckland Council. The term of the appointment may extend into the period that the Auckland Council is actually established (on and after 1 November 2010) but may not extend into that period any later than 30 June 2012.

Clause 18 sets out the interim chief executive's powers and provides that he or she may exercise the powers during the transition period as if the Auckland Council were already established.

Clause 19 authorises the Transition Agency to exercise the interim chief executive's powers under *clause 18* with the agreement of that person or as the chief executive, if no person is, for the time being, appointed as the interim chief executive.

Clause 20 authorises the Transition Agency to review, and, if it thinks fit on reasonable grounds, require an existing local government organisation (as defined in *clause 5(1)*) to have confirmed by the Agency,—

- any decision made by, or on behalf of, the local government organisation during the transition period; or

- any item on the agenda for any meeting of the organisation or any committee of the organisation to be held during the transition period.

Clause 21 sets out the process by which the Transition Agency must confirm a decision that an existing local government organisation seeks confirmation of under *clause 31*.

Expenditure and recovery of costs

Clause 22 requires the Transition Agency to obtain the approval of the Minister of Local Government and the Minister of Finance for its budgeted expenditure for the period of its existence.

Clause 23 states that any expenses or capital expenditure that the Crown incurs in relation to establishing the Transition Agency, or for the purposes of the Transition Agency, constitute a debt due by the Transition Agency to the Crown on the terms and conditions agreed between the Minister of Local Government, the Minister of Finance, and the Transition Agency.

Application of certain enactments to Transition Agency

Clause 24 states that the Ombudsmen Act 1975 and the Official Information Act 1982 apply to the Transition Agency as if the Transition Agency were an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975. Accordingly, the Transition Agency will be subject to the Official Information Act 1982 for the duration of its existence.

Clause 25 applies the Public Audit Act 2001 to the Transition Agency as if the Transition Agency were an entity listed in Schedule 2 of that Act.

Clause 26 inserts an item relating to the Transition Agency into Schedule 4 of the Public Finance Act 1989. This means that the Agency will be subject to certain financial accountability requirements under that Act for the duration of its existence.

Dissolution of Transition Agency

Clause 27 dissolves the Transition Agency on the close of 31 October 2010 (being the last day of the transition period and immediately before the date on which the Auckland Council is established).

Clause 28 consequentially removes the item relating to the Transition Agency from the Public Finance Act 1989.

Subpart 2—Existing local authorities and local government organisations

Clause 29 sets out the obligations of the existing local authorities during the transition period.

Clause 30 sets out the obligations of other existing local government organisations during the transition period.

Clause 31 requires an existing local government organisation to obtain the written confirmation of the Transition Agency in relation to decisions made by the organisation during the transition period that may, directly or because of their consequences,—

- significantly prejudice the reorganisation:
- significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation:
- have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.

Clause 32 negates the requirement of an existing local authority to hold, or make decisions in relation to, the October 2010 triennial general elections.

Clause 33 applies sections 117(2) to (6), 118, and 119 of the Local Electoral Act 2001, with all necessary modifications, to any extraordinary vacancy that occurs in the office of an elected member of an existing local authority (or in the office of an elected member of a community board of an existing local authority) during the transition period. Accordingly, even if a vacancy occurs during the transition period that is more than 12 months before the October 2010 elections, the vacancy may be left unfilled or filled by the local authority (or community board) appointing a member.

Clause 34 requires the chief executive of an existing local authority to ensure, so far as is practicable, that the other employees and resources of the existing local authority are available for the purposes of co-operating with the Transition Agency and every other existing local government organisation during the transition period.

Subpart 3—Miscellaneous provisions

Clause 35 dissolves each existing local authority on and from 1 November 2010 and sets out how the functions, duties, powers, assets, information, money, etc, of the local authorities must be dealt with.

Clause 36 deals with the transfer, to the Auckland Council, of persons who are employees of an existing local authority immediately before the close of 31 October 2010.

Clause 37 sets out the relationship between this Part of the Bill with any enactment that applies to any existing local government organisation.

The *Schedule* contains provisions relating to members, meetings, conflicts of interest, and the procedure of the governing body of the Transition Agency.

Regulatory impact statement

Executive summary

Governance arrangements for the Auckland region have been a cause of concern for at least the last 50 years. Auckland local government arrangements are important for the citizens of Auckland and the prosperity of Auckland. This Bill proposes the establishment of an Auckland Council, as a unitary authority, and the Auckland Transition Agency (ATA) to manage the reorganisation.

Adequacy statement

The Regulatory Impact Analysis Team (RIAT) considers that the proposals relating to Auckland's future governance arrangements are economically significant. RIAT has not assessed the regulatory impact statement because it was prepared after Cabinet's decisions were made.

Status quo and problem

Current situation

The current local government arrangements for Auckland involve the Auckland Regional Council (ARC), 7 territorial local authorities, and 30 community boards.

Problem definition

Governance arrangements for the Auckland Region have been a cause of concern for at least the last 50 years. The tension between regional and local interests has amplified the challenges associated with a large and rapidly growing urban population. A succession of Governments have attempted reform but the results have failed to provide enduring solutions. These have included both changes to governance structures and changes focused on particular sectors or aspects, such as transport and ownership of regional assets.

Royal Commission

The previous Government established a Royal Commission to address concerns about the governance arrangements for the region. It reported back to the Government on 25 March 2009 with recommendations for Auckland local governance. The Royal Commission noted 2 broad systemic problems evident in current Auckland local government arrangements—

- regional governance is weak and fragmented; and
- community engagement is poor.

The Royal Commission noted that “Auckland’s regional council and seven territorial authorities lack the collective sense of purpose, constitutional ability, and momentum to address issues effectively for the overall good of Auckland. Disputes are regular among councils over urban growth and the development and sharing of key infrastructure, including roads, water and waste facilities, and cultural and sporting amenities. Councils cannot agree on, or apply, consistent standards and plans. Sharing of services among councils is limited, yet there is scope for so much more activity in this area”.

Need for structural change

The Royal Commission noted that there is no lack of good intent and noted the work done by Auckland's councils over the past 18 months to advance the One Plan—a single strategic framework and action plan, which sets a clear direction for how the region plans to achieve sustainable development, with a focus on the region's infrastructure. In terms of regional leadership, the Royal Commission noted that “regional governance should not have to rely for its success on voluntary agreements or the special skills of individual leaders, but should be built on a sounder footing”.

Objectives

The primary objective is to provide for democratic and effective local government in Auckland and, in particular, to maximise, in a cost-effective manner,—

- the current and future well-being of Auckland and its communities; and
- Auckland's contribution to wider national objectives and outcomes.

Alternative options

Auckland Council

Broadly, there are 2 alternative approaches to the status quo. They are—

- retain a regional council and territorial authorities and change the structures and relationships between the 2 tiers; or
- use the Royal Commission model.

Retain regional council and territorial authorities and change structures and relationships between 2 tiers

This option would retain a regional council and a number of territorial authorities. There are a number of permutations of this option. For example, the roles and responsibilities between the 2 tiers could be changed and the number of territorial authorities could be increased or decreased.

The Royal Commission considered a range of options relating to retaining a regional council and territorial authorities. However, it de-

cided they were not feasible because having separate council entities would not resolve existing tensions and competition between councils, and would not address the need “to create a common identity and purpose for the region”.

Royal Commission model: unitary authority with 6 second-tier local councils

The Royal Commission proposed a unitary authority with 6 second-tier local councils. Using a unitary model would go some way towards resolving the existing tensions and competition between councils and provide a common identity and purpose for the region. The Local Government (Auckland Council) Bill addresses the second tier for the Auckland Council.

The Royal Commission estimated that efficiency gains of between \$76 million to \$113 million per year could be made under this option. It noted that the gains are from having unified services (for example, back-office functions such as human resources). The Royal Commission estimated that the integration costs have been assessed to range in total from \$120 million to \$240 million over a 4-year implementation time frame.

The Royal Commission has not estimated the benefits to Auckland arising from its proposals for Auckland governance. However, it notes that there are “wider costs associated with not taking action. Failure to take action will result in citizens and businesses continuing to incur high transaction costs in dealing with councils, in important decisions either not being made or made too late, and in central government being unable to develop an effective partnership with Auckland local government”.

Preferred option

Part of Royal Commission model: unitary authority with alternative second tier arrangements

A unitary authority is the preferred overarching Auckland local governance arrangement. As noted by the Royal Commission, retaining separate council entities would not resolve existing tensions and competition between councils, and would not address the need to create a common purpose for the region.

The Local Government (Auckland Council) Bill provides for the creation of local boards as an alternative second tier of the Auckland Council. The Royal Commission's proposed second tier has significant weaknesses.

Implementation and review

The overarching timetable for implementation is—

- enactment of first Bill in May 2009; and
- appointment of Board of ATA as early as possible after enactment of first Bill; and
- enactment of second Bill by 24 September 2009; and
- introduction of third Bill in October 2009; and
- appointment of an electoral officer by November 2009; and
- enactment of third Bill by May 2010; and
- local authority elections in October 2010 to elect the Mayor and councillors for the Auckland Council and members of local boards; and
- rationalisation of, and transition to, the new core arrangements significantly completed by October 2010; and
- establishment of structures for Auckland Council by 1 November 2010; and
- development of a new unified rating system as part of a new planning and budgeting cycle from 2012.

Legislation

Legislation is required to give effect to the Government's decisions on Auckland local governance. Three Bills are anticipated, with this being the first Bill.

Transition

The size and scope of the transition to the Auckland Council is very large, involving the replacement of 8 local authorities with 6 300 staff, \$27.2 billion in assets, and annual revenue of \$2.3 billion.

The Royal Commission's report made a number of recommendations for the transition process, some of which were supported. The Government did not accept the Royal Commission's recommendations

that the rationalisation occur after October 2010. The 4-year implementation time frame was considered too long. Tolerance for change and disruption in Auckland will only last for a short time and implementation needs to proceed at a rapid pace. The Government did not want the majority of the newly established Auckland Council's time to be focused on transition, but rather focused on the future.

The Government considered a range of options across a spectrum from an establishment board being focused solely on change management, with no oversight of existing council business, through to full control by the establishment board of existing councils' responsibilities as well as change management.

Preferred option

The Government decided to establish a transition agency (ATA) and place safeguards and constraints on decision making by existing Auckland local authorities and their subsidiaries (that is, council-controlled organisations and similar organisations).

Councils and council organisations will retain their existing responsibilities but the scope and nature of their decision making is subject to oversight. Existing councils and other local government organisations are required to have any decision that may significantly prejudice the reorganisation or impact on the Auckland Council confirmed by the transition agency in writing before implementing the decision. The transition agency will also monitor councils and council organisations and have statutory powers to intervene in council decision making that may adversely impact on the reorganisation itself, or the new governance entity.

Legislation is needed to establish ATA and provide it with powers to undertake its role. The key features of the transition process are—

- the appointment of an independent establishment board to head a transition agency (known as ATA); and
- ATA appoints an interim chief executive for the Auckland Council; and
- ATA and the interim chief executive can, before 1 November 2010, establish the organisational structure for the Auckland Council, including appointing staff.

The key advantages of this approach are that it preserves local democracy by allowing the existing councils to continue business as

usual but manages the risks of perverse behaviour, key projects are protected, and there is a shorter period of uncertainty for staff and public.

Monitoring and evaluation

ATA will report to the Minister of Local Government. There is also a Cabinet Committee for Auckland that will monitor the transition progress at a high level. In addition, the Secretary for Local Government will monitor the work of ATA and will report to the Minister of Local Government at regular intervals.

Consultation

The Royal Commission conducted an extensive consultation programme involving a public submission process, which resulted in more than 3 500 written submissions and formal hearings conducted in 9 locations throughout the region, including Waiheke Island and Great Barrier Island (these involved hearing nearly 550 submitters at over 27 hearing days). It also undertook a Māori consultation programme.

The Royal Commission carefully considered the submissions it received on Auckland governance. A summary of the submissions received by the Royal Commission is provided on its website www.royalcommission.govt.nz. The Royal Commission noted that “suggestions were wide ranging, relating, variously, to the number and sizes of councils, mayoral powers, representation and participation arrangements, council administration, urban design, social and environmental responsibilities, and the role of council entities such as Watercare Services Ltd or the Auckland Regional Transport Authority. When all the combinations of views on these elements are considered, the evidence presented almost every conceivable shade of opinion for the Commission’s consideration”.

Departments

A number of agencies were involved in providing advice to Ministers on the Royal Commission’s recommendations and on an initial high-level Government response: The Department of Internal Affairs led this process in consultation with the Ministries of Economic Development, Environment, Transport, and Social Develop-

ment, the Treasury, the Department of Building and Housing, and Te Puni Kōkiri. All these Government agencies support the recommended transition option. The Department of the Prime Minister and Cabinet was kept informed of developments.

Hon Rodney Hide

Local Government (Auckland Reorganisation) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government (Auckland Reorganisation) Act **2009**.
- 2 Commencement** 5
- (1) **Part 2** comes into force on **1 November 2010**.
- (2) **Sections 27 and 28 and subpart 3 of Part 3** come into force on the close of **31 October 2010**.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10

**Part 1
Preliminary provisions**

- 3 Background and purpose of Act**
- (1) Local government arrangements for the Auckland region have caused considerable concern for at least 50 years. 15
- (2) Over the next 100 years, it is expected that the Auckland region will face enormous change brought about by global economic, environmental, and political forces. Local trends, including high population growth, add to the challenges and opportun-

ities the region faces. To meet these challenges and opportunities, Auckland requires local and regional governance of the highest standard.

- (3) Accordingly, a Royal Commission was established in October 2007 to inquire into, investigate, and recommend local government arrangements for the Auckland region over the foreseeable future (*Gazette* 2007, p 3110). 5
- (4) The Royal Commission reported to the Government on 25 March 2009, its principal recommendation being that the local authorities governing the Auckland region be dissolved and a single entity be formed to replace them (Royal Commission on Auckland Governance, *Report: Royal Commission on Auckland Governance*). 10
- (5) The Government considered the Royal Commission's report and agreed with many of its recommendations, including the creation, through legislation, of— 15
- (a) a single governing body for the Auckland region; and
 - (b) an entity to effect the necessary changes.
- (6) The Government also determined that the legislation should be enacted so that the members of the governing body and second tier bodies be elected at the October 2010 local government triennial general elections. 20
- (7) The purpose of this Act, therefore, is—
- (a) to establish a single unitary authority to govern the entire Auckland region on and from **1 November 2010**, and 25
 - (b) to dissolve the existing local authorities that govern the Auckland region (being 1 regional and 7 territorial authorities) at the close of the preceding day; and
 - (c) to establish an entity to facilitate the transition to the new local government arrangements; and 30
 - (d) to require the existing local authorities and other local government organisations to support the reorganisation by both doing specified things and refraining from doing specified things; and 35
 - (e) to make any necessary amendments to any other enactments.

4 Outline of Act

- (1) The general scheme and effect of this Act is set out in the following subsections. This section is by way of explanation only and does not limit or affect the other provisions of this Act. 5
- (2) **Part 1** provides for preliminary matters.
- (3) **Part 2** establishes the Auckland Council as a unitary authority. This Part does not come into force (and, therefore, the Council does not come into existence) until **1 November 2010**, being a date soon after the next local government triennial general elections. At these elections, the electors of Auckland will be voting for the inaugural members of the Auckland Council. 10
- (4) **Part 3** is concerned with the transitional arrangements that must be made in order for the Auckland Council to be ready to assume its role as the unitary authority for Auckland on and from **1 November 2010**. Accordingly, this Part (other than **sections 27 and 28 and subpart 3**) commences on the day after the date on which this Act receives the Royal assent. 15
- (5) **Subpart 1 of Part 3** establishes the Auckland Transition Agency. The Agency is responsible for making arrangements to enable the Auckland Council to operate on and from its establishment on **1 November 2010**. This will involve developing the Council's structure and operational arrangements and determining how the systems, plans, and policies of the existing local authorities (Auckland Regional Council, Auckland, Manukau, North Shore, and Waitakere City Councils, and Rodney, Franklin, and Papakura District Councils) and other local government organisations will be linked to and integrated within that structure. 20 25
- (6) **Subpart 2 of Part 3** sets out the obligations of the existing local authorities and other existing local government organisations during the period between the enactment of this Act and **1 November 2010** (the **transition period**). In certain situations, the existing entities must obtain the consent of the Transition Agency before implementing decisions they have made. 30 35
- (7) **Subpart 3 of Part 3** deals with miscellaneous (but important and necessary) matters relating to the setting up of the Auck-

land Council, including the dissolution of the existing local authorities and consequential amendments to other legislation.

5 Interpretation

(1) In this Act, unless the context otherwise requires,—

Auckland means the area described as the Auckland region in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247) 5

Auckland Council or **Council** means the Auckland Council established by **section 9**

Auckland Transition Agency or **Transition Agency** means the entity established by **section 10** 10

existing local authority means the Auckland Regional Council, Auckland City Council, Franklin District Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council, and Waitakere City Council 15

existing local government organisation—

(a) means—

- (i) an existing local authority; and
- (ii) a council-controlled organisation of an existing local authority; and 20

(b) includes—

- (i) Watercare Services Limited and any subsidiary of Watercare Services Limited; and
- (ii) Ports of Auckland Limited and any subsidiary of Ports of Auckland Limited; and 25
- (iii) Auckland Regional Transport Authority (established under section 7 of the Local Government (Auckland) Amendment Act 2004); and
- (iv) Auckland Regional Holdings (established under section 18 of the Local Government (Auckland) Amendment Act 2004) 30

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Local Government Act 2002 35

- reorganisation** means the reorganisation of local governance in Auckland as provided for by this Act
- transition period** means the period that—
- (a) commences on the day after the date on which this Act receives the Royal assent; and 5
 - (b) expires on the close of **31 October 2010**.
- (2) Unless the context otherwise requires, terms and expressions used and not defined in this Act, but defined in the Local Government Act 2002, have the same meaning as in that Act.
- 6 Relationship with Local Government Act 2002, Local Government (Auckland) Amendment Act 2004, Local Government Act 1974, and Local Electoral Act 2001** 10
- If there is any inconsistency between this Act and the Local Government Act 2002, the Local Government (Auckland) Amendment Act 2004, the Local Government Act 1974, the 15
Local Electoral Act 2001, or any regulations made under those Acts, this Act prevails.
- 7 Act binds the Crown**
- This Act binds the Crown.
- 8 Act repealed on close of 1 November 2010** 20
- This Act is repealed on the close of **1 November 2010**.

Part 2 Auckland Council

- 9 Auckland Council established**
- (1) This section establishes a territorial authority for Auckland to be known as the Auckland Council. 25
 - (2) The Auckland Council has, in relation to Auckland, the responsibilities, duties, and powers of a regional council.
 - (3) Section 23 of the Local Government Act 2002 is consequentially amended by repealing subsection (5) and substituting the following subsection: 30
 - “(5) Despite subsection (1), the Auckland Council and the Chatham Islands Council are territorial authorities.”

- (4) Schedule 2 of the Local Government Act 2002 is consequentially amended by—
- (a) omitting from Part 1 the item relating to the Auckland Regional Council; and
 - (b) omitting from Part 2 the items relating to the Franklin District Council, Manukau City Council, North Shore City Council, Papakura District Council, Rodney District Council, and Waitakere City Council; and
 - (c) omitting from Part 2 the item relating to the Auckland City Council and substituting the following item: 10

Auckland Council **section 9** of the Local Government (Auckland Reorganisation) Act **2009**

Part 3

Transitional arrangements

Subpart 1—Auckland Transition Agency

- 10 Auckland Transition Agency established** 15
- (1) This section establishes the Auckland Transition Agency. 15
 - (2) The Transition Agency is a body corporate with perpetual succession.
 - (3) For the purpose of performing its functions and duties, the Transition Agency has—
 - (a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction; and 20
 - (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.
 - (4) **Subsections (2) and (3)** are subject to this Act, any other enactment, and the general law. 25
- 11 Governing body of Transition Agency**
- (1) The Transition Agency must have a governing body consisting of a chairperson and no fewer than 2 but no more than 4 other members appointed by the Minister.
 - (2) The governing body is responsible and accountable for the exercise of the powers and the performance of the functions and duties of the Transition Agency. 30

- (3) The Minister must notify appointments to the governing body in the *Gazette* as soon as practicable after making them.
- (4) The **Schedule** applies to the members and procedure of the governing body.

12 Chief executive of Transition Agency 5

- (1) The governing body of the Transition Agency must appoint a chief executive for the Transition Agency.
- (2) The chief executive is responsible for—
 - (a) implementing the decisions of the governing body; and
 - (b) providing advice to the governing body; and 10
 - (c) maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the Transition Agency; and
 - (d) employing, on behalf of the Transition Agency, the staff of the Transition Agency; and 15
 - (e) negotiating the terms of employment of the staff of the Transition Agency; and
 - (f) establishing and maintaining an interests register in relation to the governing body.

Functions and duties of Transition Agency 20

13 Functions and duties of Transition Agency

- (1) The Transition Agency has the following functions and duties:
 - (a) to plan and manage all matters in relation to the reorganisation to ensure that the Auckland Council is ready to function on and from **1 November 2010**: 25
 - (b) to advise the Minister on any matter associated with the reorganisation, including in relation to existing or proposed legislation:
 - (c) to report to the Minister,—
 - (i) at regular intervals, on progress in relation to the reorganisation and on the matters referred to in **clause 15 of the Schedule**; and 30
 - (ii) at the end of the transition period, by submitting a final report on its affairs for presentation to the House of Representatives (together with the fi- 35

- financial statements required by section 45J of the Public Finance Act 1989):
- (d) to provide information to existing local government organisations and their employees in relation to the reorganisation: 5
 - (e) to provide information to the public of Auckland, or any section of that public, as it thinks fit, in relation to the reorganisation:
 - (f) to second employees from any existing local government organisation to the Transition Agency: 10
 - (g) to carry out any other functions conferred on the Transition Agency by or under this Act or any other enactment, including—
 - (i) appointing an electoral officer under **section 14** and determining certain electoral matters under **section 15**; and 15
 - (ii) appointing a chief executive for an existing local authority under **section 16**; and
 - (iii) appointing an interim chief executive for the Auckland Council under **section 17**; and 20
 - (iv) assisting and supporting the interim chief executive of the Auckland Council in carrying out his or her responsibilities under **section 18** (and, in certain circumstances, carrying out those responsibilities under **section 19**); and 25
 - (v) reviewing, under **section 20**, a decision made by, or on behalf of, an existing local government organisation or any item on the agenda for a meeting of an existing local government organisation (or any committee of an existing local government organisation) to be held during the transition period; and 30
 - (vi) confirming a decision made by an existing local government organisation under **section 31**.
- (2) Without limiting **subsection (1)(a)**, the Transition Agency must— 35
- (a) develop an organisational structure for the Auckland Council so that it can operate efficiently and effectively on and from **1 November 2010**; and

- (b) develop a change management plan that includes protocols and processes for managing the transition of—
 - (i) assets from existing local government organisations to the Council structure referred to in **paragraph (a)**; and 5
 - (ii) staff from existing local government organisations to the Council structure referred to in **paragraph (a)**, having regard to the existing employment agreements applying to the staff.
 - (3) The Transition Agency, in exercising its powers or performing its functions and duties, must ensure that— 10
 - (a) its activities are conducted efficiently and effectively (including in a cost-effective manner); and
 - (b) it operates in a financially responsible manner; and
 - (c) key local government projects in Auckland are not hindered or interrupted. 15
 - (4) An employee of an existing local government organisation who is seconded to the Transition Agency under **subsection (1)(f)** continues to be employed and remunerated— 20
 - (a) by the existing local government organisation; and
 - (b) on terms and conditions that are agreed between the Transition Agency, the existing local government organisation, and the employee.
- 14 Appointment of electoral officer for October 2010 triennial general elections** 25
- (1) No later than **1 November 2009**, the Transition Agency must appoint an electoral officer for Auckland to exercise the powers and carry out the duties conferred on an electoral officer by the Local Electoral Act 2001 and any other enactment in relation to the October 2010 triennial general elections. 30
 - (2) For the purposes of this section, the electoral officer must exercise those powers and carry out those duties as if **Part 2** of this Act were in force and the Auckland Council were established.

- 15 Determination of certain electoral matters**
- For the purposes of preparing for the October 2010 triennial general elections, the Transition Agency has the powers of a local authority—
- (a) under section 79 of the Local Electoral Act 2001 (being the power to determine that voting documents at that election be processed during the voting period) and that section applies accordingly with any necessary modification: 5
 - (b) under regulation 31 of the Local Electoral Regulations 2001 (being the power to determine the order of candidates' names on voting documents) and that regulation applies accordingly with any necessary modification. 10
- 16 Appointment of chief executive of existing local authority if vacancy arises during transition period** 15
- (1) **Subsection (2)** applies if, during the transition period, the position of chief executive of an existing local authority becomes vacant.
 - (2) The Transition Agency must appoint a person to the position on the terms and conditions, and for the period, that it considers appropriate having regard to the requirements of this Act and clause 33 of Schedule 7 of the Local Government Act 2002. 20
 - (3) In making an appointment, the Transition Agency must consult the governing body of the existing local authority. 25
 - (4) To avoid doubt, clauses 34 and 35 of Schedule 7 of the Local Government Act 2002 do not apply to an appointment made under this section.
- 17 Appointment of interim chief executive for Auckland Council** 30
- (1) The Transition Agency must, as soon as practicable, appoint a chief executive for the Auckland Council for a term ending no later than **30 June 2012**.
 - (2) In making an appointment under **subsection (1)**, the Transition Agency must have regard to— 35

- (a) the matters that a local authority must consider in relation to appointing a chief executive under clause 33 of Schedule 7 of the Local Government Act 2002; and
- (b) the skills and experience required to—
- (i) prepare for the establishment of the Auckland Council on **1 November 2010**; and
 - (ii) exercise the powers set out in **section 18**; and
 - (iii) provide effective leadership of the staff and management of the systems and resources of the Council during its infancy.
- (3) For the purposes of this section, and to the extent necessary, the chief executive must exercise the powers and carry out the functions and duties of the position as if **Part 2** of this Act were in force and the Auckland Council were established. 10
- 18 Interim chief executive may appoint staff and enter into contracts** 15
- (1) A chief executive appointed under **section 17** may—
- (a) employ, on behalf of the Council, staff for the Council (whose start date may be before, on, or after **1 November 2010** as the chief executive thinks fit); and 20
 - (b) on behalf of the Council, enter into contracts, leases, and other agreements to enable the Council to operate efficiently and effectively on and from **1 November 2010**.
- (2) In acting under **subsection (1)(a)**, the chief executive must follow the change management plan developed under **section 13(2)(b)** and any other protocols or processes developed by the Transition Agency. 25
- (3) For the purposes of this section, the chief executive must exercise the powers and carry out the functions described in this section as if **Part 2** of this Act were in force and the Auckland Council were established, and— 30
- (a) any appointment made under **subsection (1)(a)** by him or her before **1 November 2010** is—
 - (i) deemed to be made with the express authority of the Auckland Council; and 35
 - (ii) valid and enforceable; and

- (b) any contract, lease, or other agreement entered into under **subsection (1)(b)** by him or her before **1 November 2010** is—
- (i) deemed to be entered into with the express authority of the Auckland Council; and 5
 - (ii) valid and enforceable.
- (4) Despite **subsection (3)**, the Transition Agency is responsible for all costs and other obligations associated with any appointment, contract, lease, or other agreement made by the chief executive under **subsection (1)** and incurred before **1 November 2010**. 10
- 19 Transition Agency may exercise powers under section 18 in certain circumstances**
- The Transition Agency may exercise the powers of the chief executive described in **section 18**— 15
- (a) with the agreement of the chief executive; or
 - (b) as the chief executive, if no person is, for the time being, appointed under **section 17**.
- 20 Review of existing local government organisation decisions and meeting agendas during transition period** 20
- (1) The Transition Agency may review—
- (a) any decision made by, or on behalf of, an existing local government organisation during the transition period; and
 - (b) any item on the agenda for any meeting of an existing local government organisation or any committee of an existing local government organisation to be held during the transition period. 25
- (2) Despite **subsection (1)**, the Transition Agency may not review a decision under this section that it has confirmed under **section 21(2)(a)**. 30
- (3) The Transition Agency must, without delay, notify an existing local government organisation if it—
- (a) reviews a decision of the organisation under **subsection (1)(a)**; and 35
 - (b) considers, on reasonable grounds, that the decision is a decision to which **section 31** applies.

- (4) The Transition Agency must, without delay, notify an existing local government organisation if it—
- (a) reviews an item under **subsection (1)(b)**; and
 - (b) considers, on reasonable grounds, that a decision in relation to that item will, or may, be a decision to which **section 31** applies. 5

21 Confirmation of decisions of existing local government organisations

- (1) This section applies to the Transition Agency if an existing local government organisation seeks confirmation of a decision to which **section 31** applies. 10
- (2) The Transition Agency must, as soon as practicable and in writing,—
- (a) confirm the decision; or
 - (b) decline to confirm the decision and give reasons for doing so (with reference to the matters in **section 31(1)**); or 15
 - (c) if it considers that it has insufficient information to make a decision, request further information from the chief executive and then act under **paragraph (a) or (b)**, as the case may be. 20

Expenditure and recovery of costs

22 Expenditure to be approved by Ministers

The Transition Agency must obtain the approval of the Minister and the Minister of Finance for its budgeted expenditure for the period of its existence. 25

23 Crown expenses and capital expenditure recoverable from Transition Agency

Any expenses or capital expenditure that the Crown incurs in relation to establishing the Transition Agency, or for the purposes of the Transition Agency, constitute a debt, due by the Transition Agency to the Crown on the terms and conditions agreed between the Minister, the Minister of Finance, and the Transition Agency. 30

*Application of certain enactments to Transition Agency***24 Application of Ombudsmen Act 1975 and Official Information Act 1982**

The Ombudsmen Act 1975 and the Official Information Act 1982 apply to the Transition Agency as if the Transition Agency were an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975. 5

25 Application of Public Audit Act 2001

The Public Audit Act 2001 applies to the Transition Agency as if the Transition Agency were an entity listed in Schedule 2 of that Act. 10

26 Schedule 4 of Public Finance Act 1989 amended to include Transition Agency

Schedule 4 of the Public Finance Act 1989 is amended by inserting the following item in its appropriate alphabetical order: 15

Name or description of organisation	SOI	Annual report	SSP	Securities	Borrowing	Guarantees	Derivatives	Surplus
	139	150	153	161	162	163	164	165
Auckland Transition Agency				✓	✓	✓	✓	

*Dissolution of Transition Agency***27 Dissolution of Auckland Transition Agency**

- (1) The Transition Agency is dissolved on the close of **31 October 2010**. 20
- (2) Any assets and liabilities of the Transition Agency remaining at the time of its dissolution become assets and liabilities of the Auckland Council.
- (3) To avoid doubt, **section 36** does not apply to—
- (a) a person appointed under **section 12(1)** (being the chief executive of the Transition Agency); or
 - (b) any staff employed by that person under **section 12(2)(d)**. 25

- 28 Consequential amendment to Public Finance Act 1989**
Schedule 4 of the Public Finance Act 1989 is consequentially amended by omitting the item relating to the Auckland Transition Agency.
- 5
- Subpart 2—Existing local authorities and
local government organisations
- 29 Obligations of existing local authorities during transition period**
- (1) An existing local authority must continue, subject to the provisions of this subpart, to perform its role as a local authority (as described in section 11 of the Local Government Act 2002) during the transition period. 10
- (2) An existing local authority must co-operate with the Transition Agency and every other existing local government organisation (including existing local authorities) to facilitate the re-organisation. 15
- (3) Without limiting **subsection (2)**, an existing local authority must—
- (a) comply with any reasonable request by the Transition Agency for employees of the existing local authority to be seconded to the Transition Agency under **section 13(1)(f)**; and 20
- (b) comply with any reasonable request by the Transition Agency for any information that the existing local authority holds that is relevant to the reorganisation (including personal information relating to employment matters); and 25
- (c) act in accordance with **section 31**.
- 30 Obligations of existing local government organisations (other than existing local authorities) during transition period** 30
- (1) This section applies to all existing local government organisations other than existing local authorities.
- (2) An existing local government organisation must continue, subject to the provisions of this subpart, to fulfil its legal obligations and perform its duties during the transition period. 35

- (3) An existing local government organisation must co-operate with the Transition Agency and every other existing local government organisation (including every existing local authority) to facilitate the reorganisation.
- (4) Without limiting **subsection (2)**, an existing local government organisation must—
- (a) comply with any reasonable request by the Transition Agency for employees of the existing local government organisation to be seconded to the Transition Agency under **section 13(1)(f)**; and 10
 - (b) comply with any reasonable request by the Transition Agency for any information that the existing local government organisation holds that is relevant to the reorganisation (including personal information relating to employment matters). 15
- (5) In this section, **existing local government organisation** includes a council organisation (as defined in section 6(1)(a) of the Local Government Act 2002).
- 31 Decision making during transition period** 20
- (1) **Subsections (5) and (6)** apply to any decision of an existing local government organisation—
- (a) during the transition period; and
 - (b) that may, directly or because of its consequences,—
 - (i) significantly prejudice the reorganisation:
 - (ii) significantly constrain the powers or capacity of the Auckland Council or any subsidiary of the Auckland Council following the reorganisation: 25
 - (iii) have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation. 30
- (2) Without limiting **subsection (1)**, **subsections (5) and (6)** apply to any decision—
- (a) made by an existing local authority and to which **subsection (3)** applies; or
 - (b) made by an existing local government organisation other than an existing local authority and to which **subsection (4)** applies. 35
- (3) This subsection applies to a decision—

- (a) in respect of which the Transition Agency has notified the existing local authority under **section 20**:
 - (b) to adopt or amend a long-term council community plan or to adopt an annual plan:
 - (c) to adopt a policy required by the Local Government Act 2002: 5
 - (d) that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the existing local authority under the Local Government Act 2002: 10
 - (e) to set a rate other than in accordance with its long-term council community plan:
 - (f) to purchase or dispose of assets other than in accordance with its long-term council community plan:
 - (g) to appoint a chief executive or to modify the terms and conditions on which the chief executive is employed: 15
 - (h) to terminate the chief executive's employment:
 - (i) to enter into any contract (other than a contract that terminates on or before the close of **30 June 2011**) the consideration for which is, or is equivalent to, \$5,000 or more: 20
 - (j) to borrow money for a period that extends beyond **30 June 2011**:
 - (k) to establish, or become a shareholder in, a council-controlled organisation: 25
 - (l) to adopt or amend a policy concerning the appointment or remuneration of directors of a council-controlled organisation:
 - (m) to appoint a person as a director of a council-controlled organisation: 30
 - (n) to agree to, or modify, the statement of intent of a council-controlled organisation.
- (4) This subsection applies to a decision—
- (a) in respect of which the Transition Agency has notified the existing local government organisation under **section 20**: 35
 - (b) to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity or financial well-being of the organisation:

- (c) to appoint a chief executive, or to appoint any person to a position established only after the commencement of the transition period:
- (d) to enter into any contract (other than a contract that terminates on or before the close of **30 June 2011**) the consideration for which is, or is equivalent to, \$5,000 or more: 5
- (e) to borrow money for a period that extends beyond **30 June 2011**.
- (5) The chief executive of the existing local government organisation must ensure that the decision has been confirmed in writing by the Transition Agency before implementing the decision. 10
- (6) A decision to which this section applies is void and of no effect until it is confirmed. 15
- 32 No October 2010 triennial general election for existing local authorities**
- Despite section 10 of the Local Electoral Act 2001,—
- (a) a triennial general election is not required to be held on 9 October 2010 for— 20
- (i) an existing local authority; or
- (ii) a community board of an existing local authority; and
- (b) sections 19H to 19ZI of that Act do not apply to an existing local authority during the transition period. 25
- 33 Extraordinary vacancy during transition period**
- Sections 117(2) to (6), 118, and 119 of the Local Electoral Act 2001 apply, with all necessary modifications, to any extraordinary vacancy that occurs—
- (a) in the office of an elected member of an existing local authority or in the office of an elected member of a community board of an existing local authority; and 30
- (b) at any time during the transition period.
- 34 Chief executives of existing local authorities**
- (1) The chief executive of an existing local authority is, in addition to the matters set out in section 42(2) and (3) of the Local 35

Government Act 2002, responsible for ensuring, so far as is practicable, that the other employees and resources of the authority are available for the purposes of **section 29(2)**.

- (2) Nothing in this Act affects the employment agreement of any person appointed as a chief executive under section 42 of the Local Government Act 2002 by an existing local authority. 5

Subpart 3—Miscellaneous provisions

35 Dissolution of existing local authorities

- (1) On **1 November 2010** each existing local authority is dissolved and— 10
- (a) the functions, duties, and powers of each existing local authority under any enactment become the functions, duties, and powers of the Auckland Council; and
 - (b) all property belonging to each existing local authority vests in the Auckland Council; and 15
 - (c) all information held by each existing local authority is held by the Auckland Council; and
 - (d) all money payable to or by each existing local authority becomes payable to or by the Auckland Council; and
 - (e) all rights, liabilities, contracts, entitlements, and engagements of each existing local authority become the rights, liabilities, contracts, entitlements, and engagements of the Auckland Council; and 20
 - (f) anything done, or omitted to be done, or that is to be done, by, or in relation to, each existing local authority (including, to avoid doubt, the existing community boards of each existing local authority) must be treated as having been done, or having been omitted to be done, or to be done, by, or in relation to, the Auckland Council; and 25
 - (g) the commencement, continuation, or enforcement of proceedings by or against each existing local authority must instead be commenced, continued, or enforced by or against the Auckland Council without amendment to the proceedings; and 30
 - (h) the completion of a matter or thing that would have, but for this section, been completed by an existing local authority, must be completed by the Auckland Council. 35

- (2) To avoid doubt, the dissolution of an existing local authority does not, of itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the existing local authority in relation to the performance of the authority's functions and duties or the exercise of its powers under any enactment: 5
 - (b) any proceedings commenced by or against the existing local authority:
 - (c) any other matter or thing arising out of the existing local authority's performance, or purported performance, of the authority's functions and duties, or the exercise, or purported exercise, of its powers under any enactment. 10
- (3) The dissolution of an existing local authority and the transfer of its property, rights, and obligations to the Council—
- (a) is not to be treated as placing a person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making the person guilty of a civil wrong; and 15
 - (b) is not to be treated as entitling a person to—
 - (i) terminate or cancel or modify a contract, an agreement, or an arrangement; or 20
 - (ii) enforce or accelerate the performance of an obligation; or
 - (iii) require the performance of an obligation not otherwise arising for performance; and 25
 - (c) does not release any surety wholly or in part from all or any obligation; and
 - (d) does not invalidate or discharge any contract or security.
- 36 Transfer of remaining employees**
- (1) Every person who is an employee of an existing local authority immediately before the close of **31 October 2010** becomes an employee of the Auckland Council on the same terms and conditions as applied immediately before he or she became an employee of the Council. 30
- (2) The terms and conditions of employment of an employee to whom **subsection (1)** applies immediately before the employee was transferred to the Auckland Council continue to apply in relation to that employee until— 35

- (a) the terms and conditions are varied by agreement between the transferred employee and the Council; or
 - (b) the transferred employee accepts a subsequent appointment with the Council.
 - (3) To avoid doubt, **subsection (1)** does not limit or prevent alternative terms and conditions agreed before **31 October 2010** that are to take effect on or after **1 November 2010**. 5
 - (4) For the purposes of every law, determination, contract, and agreement relating to the employment of a transferred employee,— 10
 - (a) the employment agreement of the employee is to be treated as continuous; and
 - (b) the employee’s period of service with an existing local authority, and every other period of service of the employee that is recognised by the existing local authority as continuous service, is to be treated as a period of service with the Auckland Council. 15
 - (5) To avoid doubt, the employment of a transferred employee by the Auckland Council does not constitute new employment for the purposes of the KiwiSaver Act 2006. 20
 - (6) A transferred employee is not entitled to receive any payment or any other benefit because—
 - (a) the position held by the employee in an existing local authority has ceased to exist; or
 - (b) the employee has ceased (as a result of the transfer to the Council) to be an employee of an existing local authority; or 25
 - (c) the employee has been transferred to a suitable alternative position.
 - 37 Relationship of Part with enactments applying to existing local government organisations 30**

If there is any inconsistency between this **Part** and any enactment that applies to any existing local government organisation, this **Part** prevails.
-

Schedule		s 11(4)
Provisions relating to members, meetings, conflicts of interest, and procedure of governing body of Auckland Transition Agency		5
Members		
1	Terms and conditions of appointment	
(1)	A member (including the member appointed as the chairperson) is to be appointed for the term that is specified in his or her appointment.	10
(2)	Members holding office at the close of 31 October 2010 cease to hold office at that time.	
2	Removal from and vacation of office	
(1)	The Minister may, at any time and entirely at his or her discretion, remove a member by written notice to the member (with a copy to the Transition Agency).	15
(2)	The notice takes effect on—	
	(a) the date on which the member receives the notice; or	
	(b) any later date specified in the notice.	
(3)	The Minister must notify the removal in the <i>Gazette</i> as soon as practicable after giving the notice.	20
(4)	If a member dies, resigns, or is removed from office, his or her office becomes vacant.	
(5)	A vacancy under this clause must be filled in the manner in which the appointment to the vacant office was made.	25
(6)	Despite subclause (5) , the Minister may cancel the vacancy by notice in the <i>Gazette</i> if, in doing so, the remaining total membership of the governing body will not breach the requirements of section 11(1) .	
3	Temporary members	30
(1)	The Minister may, at the request of the Transition Agency, appoint 1 or more persons to be temporary members for the purposes of any function of the Transition Agency.	

- (2) An appointment may be made under **subclause (1)** even though there may already be 5 members of the governing body.
- (3) A person appointed under **subclause (1)** is to be treated for all purposes as a member of the Transition Agency, and no acts done by the Transition Agency while a person is so acting are to be questioned in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased. 5
- (4) The Minister must notify an appointment made under **subclause (1)** in the *Gazette* as soon as practicable after making it. 10

4 Duties of members

A member, when exercising powers or performing duties as a member, must act—

- (a) in good faith; and 15
- (b) with reasonable care, diligence, and skill; and
- (c) with honesty and integrity.

5 Vacancy does not affect powers and functions of Transition Agency

The powers and functions of the Transition Agency are not affected by any vacancy in the membership. 20

Meetings of members

6 Meetings

- (1) Meetings of the Transition Agency are to be held at the times and places that the Transition Agency or its chairperson appoints. 25
- (2) At every meeting of the Transition Agency the quorum is—
- (a) half the members, if the number of members (including vacancies) is even; or
- (b) a majority of members, if the number of members (including vacancies) is odd. 30
- (3) However, in no case may the quorum be less than 2 members.

Schedule	Local Government (Auckland Reorganisation) Bill	
7	Chairperson to preside	
(1)	The chairperson must preside at all meetings of the Transition Agency at which he or she is present.	
(2)	The members present must appoint 1 of their number (not being a temporary member) to be the chairperson for the meeting if—	5
	(a) the chairperson is not present; or	
	(b) there is no chairperson.	
(3)	The appointed person has and may exercise all the powers and perform all the functions and duties of the chairperson for the purposes of the meeting.	10
8	Voting	
(1)	A matter to be decided by the Transition Agency must be decided by a majority of the votes cast.	
(2)	The presiding member has—	15
	(a) a deliberative vote; and	
	(b) a casting vote if there are more than 2 members voting and there is an equality of votes.	
9	Resolution assented to by all members	
(1)	A resolution in writing signed or assented to by letter, fax, or electronic message by all members is as valid and effectual as if it had been passed at a meeting of the Transition Agency duly called and constituted.	20
(2)	The resolution may consist of several documents in the same form, each signed or appearing to have been sent by 1 or more members.	25
10	Methods of holding meetings	
	A meeting of the Transition Agency may be held either—	
	(a) by a number of the members constituting a quorum assembling together at the place, date, and time appointed for the meeting; or	30
	(b) by means of audio, or audio and visual, or electronic communication by which all members participating and constituting a quorum can simultaneously communicate with each other throughout the meeting.	35

Conflicts of interest

11 Obligation to disclose interest

- (1) A member who (otherwise than as a member) is interested, directly or indirectly, in a matter must disclose the nature of the interest in accordance with **clause 12** as soon as practicable after he or she knows the relevant facts. 5
- (2) In this clause and **clauses 12 to 15**, a member is **interested in a matter** if—
- (a) the matter is of the following type:
- (i) the Transition Agency performing a function or duty or exercising a power: 10
- (ii) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Transition Agency; and
- (b) the member— 15
- (i) is a party to, or will or may derive a material financial benefit from, a decision or action of the Transition Agency in relation to the matter; or
- (ii) has a material financial interest in any agency or other party that will or may be materially affected by a decision or action of the Transition Agency in relation to the matter; or 20
- (iii) is a person who will or may be materially affected by a decision or action of the Transition Agency in relation to the matter; or 25
- (iv) is a director, an officer, a member, or a trustee of another party who will or may be materially affected by a decision or action of the Transition Agency in relation to the matter; or
- (v) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may be materially affected by, a decision or action of the Transition Agency in relation to the matter; or 30
- (vi) is, will be, or may be otherwise materially affected by a decision or action of the Transition Agency in relation to the matter. 35

12 Disclosure of interest

- (1) A member must, immediately after becoming aware of his or her interest in a matter before (or proposed to be before) the Transition Agency, give written notice of—
- (a) the nature and monetary value of the member’s interest, 5
if the monetary value can be quantified; or
 - (b) the nature and extent of the member’s interest, if the
monetary value cannot be quantified.
- (2) The notice must be given to—
- (a) the chairperson of the Transition Agency (unless there 10
is no chairperson or the chairperson is unavailable or
interested in the matter); and
 - (b) the chief executive of the Transition Agency, who must
enter the contents of the notice in the interests register.
- (3) For the purposes of **subclause (1)**, a general notice to the 15
effect that a member is a shareholder, a director, an officer, a
member, or a trustee of a named company or organisation or
other person and is to be regarded as interested in any matter
that will or may, after the date of the notice, materially affect
the company, organisation, or person, is a sufficient disclosure 20
of interest in relation to the matter.

13 Consequences of disclosure

A member who discloses an interest in a matter under **clause 12**—

- (a) must not take part in any deliberation or decision of the 25
Transition Agency relating to the matter; and
- (b) is to be disregarded for the purposes of—
 - (i) determining (under **clause 6(2) and (3)**) the 30
quorum, for the part of the meeting during which
a deliberation or decision relating to the matter
occurs or is made; and
 - (ii) forming a quorum, for the part of the meeting
during which a deliberation or decision relating
to the matter occurs or is made.

14 Effect of non-compliance with clause 12 or 13

- (1) The validity of any decision or action by the Transition Agency is not affected by the fact that a member fails to comply with the requirements of **clause 12 or 13**.
- (2) However, the chief executive of the Transition Agency must, 5
as soon as practicable after he or she becomes aware of any breach of **clause 12 or 13**, advise the Minister in writing of the circumstances of the breach.

15 Reporting of actual and potential conflicts

Each report to the Minister under **section 13(1)(c)(i)** must 10
include details of—

- (a) the notices, if any, received under **clause 12(2)(b)** by the chief executive since the previous report to the Minister made under that section; and
- (b) the forthcoming matters, if any, likely to be dealt with 15
by the Transition Agency in which members are, or are expected to be, interested.

Procedure generally

16 Procedure generally

Except as otherwise provided in this Act, the Transition 20
Agency may regulate its own procedure.