

Water Services Entities Bill

Government Bill

Explanatory note

General policy statement

This Bill is a stand-alone Bill that establishes 4 publicly-owned water services entities that will provide safe, reliable, and efficient water services in place of local authorities. The Bill contains the ownership, governance, and accountability arrangements relating to those entities, and provides for transitional arrangements during an establishment period. The entities will commence delivery of services on 1 July 2024.

Introduction

New Zealand faces a significant infrastructure challenge in relation to the drinking water, wastewater, and stormwater services that are currently delivered by territorial authorities. Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services.

The investment needed over the next 30 to 40 years to maintain and upgrade New Zealand's water infrastructure to a standard required to address the infrastructure challenge is unaffordable for most communities under the current arrangements.

By providing for the establishment of 4 water services delivery entities, this Bill paves the way for improved, effective, and efficient management of water services delivery and infrastructure so that New Zealanders will have access to safe, reliable and affordable drinking water, and wastewater and stormwater services that meet their environmental and cultural expectations.

Relationship to other proposed legislation

This Bill is just 1 component of a comprehensive package to reform water services that are currently provided by local authorities. The Bill will need to be followed by further legislation to provide for—

- additional, detailed implementation arrangements for the entities and service delivery, including provisions relating to the transfer of assets, liabilities, and other matters from local authorities to new water services entities:
- specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements:
- economic regulation and consumer protection regimes relating to the new water services system:
- any changes to Treaty settlement legislation that are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities:
- detailed changes to the Local Government Act 2002, the Water Services Act 2021, and other legislation to transfer service delivery arrangements to the new water services entities.

Legal form and ownership by territorial authorities

Water services entities are a new public service delivery model. Each entity will be a body corporate, and will be co-owned by the territorial authorities in its service area in shares to provide a tangible expression of ownership that is recognisable by communities and territorial authorities.

The Bill defines the service area for each entity through reference to territorial authority districts, or parts of districts. The service area of the Southern Water Services Entity is the takiwā of Ngāi Tahu, as described in section 5 of Te Runanga o Ngai Tahu Act 1996.

Function, objectives, and operating principles

The function of a water services entity will be to provide safe, reliable, and efficient drinking water, wastewater, and stormwater services in its area. The objectives of an entity will be to—

- deliver water services and related infrastructure in an efficient and financially sustainable manner:
- protect and promote public health and the environment:
- support and enable housing and urban development:
- operate in accordance with best commercial and business practices:
- act in the best interests of present and future consumers and communities:
- deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

The operating principles of a water services entity will be—

- developing and sharing capability and technical expertise with other water services entities and across the water services sector:
- being innovative in the design and delivery of water services and infrastructure:
- being open and transparent, including in relation to calculation and setting of prices, determining levels of service delivery to consumers and communities, and reporting on performance:
- partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can give effect to Te Mana o te Wai, and understand, support, and enable the exercise of mātauranga, tikanga, and kai-tiakitanga:
- giving effect to Treaty settlement obligations, to the extent that the obligations apply to the duties and functions of an entity:
- partnering and engaging early and meaningfully with territorial authorities and their communities:
- co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

Governance arrangements

Water services entities will have a 2-tier governance arrangement comprising—

- a regional representative group, which provides joint oversight of an entity by an equal number of representatives of the territorial authority owners and mana whenua from within the entity's service area; and
- corporate governance by an independent, competency-based, professional board.

Appointments to, and removals from, the board will be made by a board appointment committee that is part of the regional representative group. The board appointment committee is also responsible for preparing and maintaining an appointment and remuneration policy for the board. Board members are accountable to the regional representative group when performing their duties as members.

A water services entity may also have regional advisory panels if it chooses, based on a geographic area in the entity's service area. The role of a regional advisory panel is to provide advice to the regional representative group about how to perform or exercise its duties, functions, and powers.

Constitution

Each water services entity's constitution will set out—

- the composition and internal procedures of its regional representative group, including how it will perform or exercise its functions, duties, and powers:

- the composition and internal procedures of any regional advisory panel, and how it will perform its advisory role to a regional representative group:
- the composition and internal procedures of its board, including how it will perform or exercise its duties, functions, and powers:
- funding and remuneration arrangements for an entity's regional representative group and any regional advisory panels:
- procedures for dispute resolution, and reviewing, amending or replacing the constitution.

A constitution may contain provisions that are not inconsistent with the Act or any other legislation. The constitution of a water services entity has no effect to the extent that it contravenes, or is inconsistent with, the Act or any other legislation.

The first constitution for each water services entity will be set out in regulations after the Minister responsible for the administration of the Act (the **Minister**) engages with the entity's territorial authority owners and mana whenua in its service area.

Conflict of interest

The Bill contains provisions on conflicts of interest. The provisions apply to members of the board, regional representatives, and regional advisory panel members. The provisions include—

- a requirement to keep an interest register:
- the obligation of board members, regional representatives, and regional advisory panel members to disclose relevant interests:
- the consequences of being interested, such as the exclusion of a board member, regional representative, or regional advisory panel member who is interested from participating in decision making relating to the interest.

Statement of strategic and performance expectations

The regional representative group must issue a statement of strategic and performance expectations, covering a 3-year period. The purpose of a statement of strategic and performance expectations is to—

- state the regional representative group's objectives and priorities for the entity:
- inform and guide the decisions of the board.

The regional representative group must annually review its statement of strategic and performance expectations and, following a review, issue a new statement if it chooses.

The board of a water services entity must give effect to the statement of strategic and performance expectations.

Reporting and accountability

The Bill requires the board to prepare and adopt—

- a statement of intent—

- in which the strategic elements must be approved by the entity’s regional representative group; and
- setting out the forecast service performance and budget of the entity:
- an annual report setting out the entity’s actual performance and audited financial statements:
- an asset management plan and funding and pricing plan, which will cover a 10-year period:
- an infrastructure strategy, covering a 30-year period.

Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai

All persons performing or exercising duties, functions, or powers under the legislation—

- must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers.

A water services entity is therefore required to give effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity. This is consistent with the approach across all legislation relating to water services, including the Taumata Arowai—the Water Services Regulator Act 2020, and on those who perform or exercise functions, powers, and duties under the Water Services Act 2021.

Mana whenua whose rohe or takiwā includes a freshwater body in the service area of an entity can make a Te Mana o te Wai statement for water services. The board must respond to the statement within 2 years, and the response must include a plan for how the entity intends to perform its duty to give effect to Te Mana o te Wai.

Relationship to Treaty settlements

To ensure that Treaty settlements are enduring, the Bill provides that,—

- where there is inconsistency between the legislation and a Treaty settlement obligation, the Treaty settlement obligation prevails:
- an operating principle of entities is to give effect to Treaty settlement obligations, to the extent that the obligations apply to the duties and functions of an entity.

Consumer and community engagement

A water services entity must—

- establish 1 or more consumer forums to help gather consumer views and understand consumer needs, expectations, and service requirements:
- prepare an annual consumer stocktake:
- engage with its consumers and communities on its asset management plan, funding and pricing plan, and infrastructure strategy.

In performing those functions, a water services entity must be guided and informed by the following consumer engagement principles:

- communication to consumers should be clear and appropriate, and recognise the different communication needs of consumers:
- the entity should be openly available for consumer feedback and seek a diversity of consumer voices:
- the entity should clearly identify and explain the role of consumers in the engagement process:
- the entity should consider the changing needs of consumers over time, and ensure that engagement will be effective in the future:
- the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to consumers.

Safeguards against privatisation

The Bill sets out strong safeguards against privatisation or loss of control of water services and significant infrastructure. In particular, the Bill provides for—

- collective territorial authority ownership of entities to ensure appropriate oversight and influence on behalf of the communities:
- joint oversight of entities by mana whenua:
- clear legislative protections against loss of ownership or control based on provisions in the Local Government Act 2002, which are that an entity must not use water services assets as security for any purpose, divest its ownership in a water service, or sell or lose control of significant infrastructure.

For a divestment proposal to proceed, the Bill provides that it must receive—

- unanimous support from its territorial authority owners; and
- support from at least 75% of an entity's regional representative group; and
- support from at least 75% of the votes cast by electors in its service area in a poll.

Independence of water services entities

The Bill provides that the Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity or a board member or employee of a water services entity—

- in relation to the performance or exercise of a duty, function, or power under this Act; or
- to require a particular act or result.

The Bill provides for the financial independence of water services entities. A territorial authority owner, a regional representative group, or a regional representative,—

- has no right, title, or interest in the assets, security, debts, or liabilities of a water services entity:

- must not receive any equity return from a water services entity:
- must not give a water services entity any financial support or capital:
- must not lend money or provide credit to a water services entity:
- must not give any guarantee, indemnity, or security in relation to a water services entity.

Government policy statement

The Bill enables the Minister to make a Government policy statement setting out the Government's overall direction and priorities for water services, to inform and guide agencies involved in, and the activities necessary and desirable for, water services. A water services entity must give effect to the statement when performing its functions.

Crown monitoring and intervention

The Bill enables the Minister to appoint a department as a Crown monitor. The role of the monitor is to—

- act as a steward to provide oversight to the water services system from a whole-of-government perspective:
- tender advice to Ministers, and assist the Minister to carry out the Minister's role under the legislation.

The Bill contains a Crown intervention framework, providing the Minister with powers of intervention based on a graduated risk regime, including—

- circumstances where there is a significant or persistent failure by a water services entity to perform 1 or more of its functions or give effect to a Government policy statement:
- a water services entity's failure to demonstrate prudent financial management:
- a state of emergency.

The Minister's powers of intervention are based on existing powers in the Local Government Act 2002 and include the appointment of a Crown review team, a Crown observer, or, as a last resort, a Crown manager.

Transition and establishment arrangements

Schedule 1 of the Bill contains the transition and establishment arrangements, including—

- establishment entities, which will make the preparatory arrangements for full operation:
- the statutory oversight powers of the national transition unit (a business unit based in the Department of Internal Affairs) for the transition period:
- transitional provisions relating to employment of the water services workforce, including employment security by transferring existing employment positions to the relevant water services entity on terms that are no less favourable than existing terms.

Omnibus Bill

The Bill is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=136>

Regulatory impact statement

The Department of Internal Affairs produced a regulatory impact statement on 30 June 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.dia.govt.nz/three-waters-reform-programme-cabinet-decisions-and-reform-proposals#cabinet-papers-and-minutes>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for when the Bill comes into force. Regulation-making powers, transitional provisions, and other specified provisions of the Bill relating to the establishment of water services entities come into force on the day after Royal assent. The rest of the Bill comes into force by Order in Council no later than 1 July 2024.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill. The purpose is to—

- establish 4 water services entities to provide water services in New Zealand;
- provide for their objectives, functions, service delivery areas, and governance arrangements.

Clause 4 requires all persons performing or exercising duties, functions, or powers under the Bill—

- to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers.

Clause 5 sets out ways in which the Bill recognises and respects the Crown's responsibility to give effect to te Tiriti o Waitangi/the Treaty of Waitangi.

Clause 6 defines terms that are used in the Bill.

Clause 7 and *Schedule 1* provide transitional, savings, and related provisions, including provisions that provide for—

- the establishment functions and objectives of water services entities:
- the establishment boards of water services entities to be appointed by the Minister:
- the appointment of an establishment chief executive for each water services entity:
- the reporting obligations of the water services entities during the establishment period:
- transitional provisions relating to the employment of employees of local government organisations who primarily undertake functions that are to be transferred from the local government organisations to the water services entities.

Clause 8 states that the Bill binds the Crown.

Clause 9 provides that if there is an inconsistency between a provision of the Bill and a Treaty settlement obligation, the Treaty settlement obligation prevails.

Part 2

Water services entities

Part 2 sets out key matters relating to the governance of water services entities, including—

- the objectives, functions, and operating principles of the water services entities:
- the Minister's role:
- the establishment and role of the regional representative group of each water services entity:
- the board of each water services entity and its members:
- provision for the appointment of a Crown monitor of a water services entity.

A significant number of provisions in *Part 2* are substantially similar to provisions in the Crown Entities Act 2004. However, a water services entity is not a Crown entity under that Act and the board of a water services entity is accountable to the regional representative group of the entity.

Subpart 1—Establishment of water services entities

Clause 10 provides for the establishment of a water services entity for each of the 4 service areas described in *Parts 1 to 4 of Schedule 2*.

Clause 11 sets out the objectives of the water services entities. These include—

- delivering water services and related infrastructure in an efficient and financially sustainable manner:
- protecting and promoting public health and the environment:
- supporting and enabling housing and urban development:
- operating in accordance with best commercial and business practices:
- giving effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity:
- delivering water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

Clause 12 sets out the functions of the water services entities. The general function of each water services entity is to provide safe, reliable, and efficient water services in its service area. The specific functions of the water services entities will be set out in a subsequent Bill.

Clause 13 sets out the operating principles of the water services entities. The operating principles of a water services entity are as follows:

- developing and sharing capability and technical expertise with other water services entities and across the water services sector:
- being innovative in the design and delivery of water services and infrastructure:
- being open and transparent, including in relation to calculation and setting of prices, determining levels of service delivery to consumers and communities, and reporting on performance:
- partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can give effect to Te Mana o te Wai, and understand, support and enable the exercise of mātauranga, tikanga, and kai-tiakitanga:
- giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of an entity:
- partnering and engaging early and meaningfully with territorial authorities and their communities:
- co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

Clause 14 requires a water services entity to provide—

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

mana whenua, for remuneration, expenses, or costs, in accordance with *clause 114(1)*; and

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

Clauses 15 to 19 set out the status of water services entities and their core powers. In summary,—

- a water services entity is a body corporate (a separate legal entity):
- a water services entity may do anything authorised by legislation. It also may do anything that a natural person of full age and capacity may do (for example, enter into contracts). However, the entity may act only for the purpose of performing its functions.

Clause 15 also provides that a water services entity is co-owned by the territorial authorities in its service area, and in shares allocated and reallocated under *clause 16*, but that it is not a company for the purposes of the Companies Act 1993, or a council organisation, council-controlled organisation, or local government organisation for the purposes of the Local Government Act 2002. *Clause 166* also provides that territorial authority owners do not have any beneficial entitlement to, or beneficial interest in, the security of a water services entity.

Clause 16 ensures that shares in a water services entity are, on each relevant date, allocated or reallocated to each territorial authority owner based on the population of its district or part district. *Clause 16* also defines the terms population and relevant date and requires every allocation or reallocation of shares to be notified and publicised.

Subpart 2—Validity of acts

Subpart 2 provides that—

- an act of a water services entity is invalid if it is an act that is contrary to an Act or is an act that is done otherwise than for the purpose of performing the entity's functions. However, in most cases this does not prevent a person (A) who is dealing with the entity from enforcing a transaction if the entity is doing a thing that a natural person of full age and capacity could do (for example, entering into a contract):
- it is irrelevant to the validity of an act that the act is not in the best interests of the entity:
- the entity may not assert against A that a person held out by the entity to be a board member, an employee, or an agent has not been duly appointed or does not have the authority that a person appointed to that position customarily has.

Subpart 3—Minister’s role

Subpart 3 sets out the Minister’s role in relation to the water services entities. In summary, the Minister’s role is to oversee and manage the Crown’s interests in, and relationship with, the water services entities, and—

- to issue a Government policy statement on water services:
- to appoint a Crown review team, Crown observer, or Crown manager:
- to perform or exercise any other duties, functions, or powers the Minister has, in respect of the entities, under legislation.

Subpart 4—Regional representative groups

Establishment, role, and decision making of regional representative group

Clauses 27 and 28 provide for—

- the establishment of a regional representative group for each water services entity:
- the regional representative group to consist of no fewer than 12, and no more than 14, regional representatives, and an equal number of territorial authority representatives and mana whenua representatives:
- the role of each regional representative group in appointing and removing board members and participating in the setting of the relevant entity’s strategic direction and performance expectations, as well as performing or exercising any other duties, functions, or powers it has under legislation.

Clause 29 provides for a collective duty of the regional representative group.

Clause 30 requires decisions made by a regional representative group of a water services entity to be made—

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

Clause 31 allows a regional representative group to regulate its own procedure for a matter if this Bill and the constitution do not specify a procedure for the matter.

Appointment of regional representatives

Clauses 32 to 37 provide—

- for territorial authority representatives to be appointed to each entity’s regional representative group by the territorial authority owners of the entity:
- for mana whenua representatives to be appointed to each entity’s regional representative group by mana whenua of the rohe within the service area of the entity:
- for requirements before appointment as a regional representative.

The specific composition and appointment processes of each regional representative group will be provided for in the constitution (*see clause 91*).

Board appointment committee

Clauses 38 to 40 require each regional representative group to appoint a board appointment committee. The main functions of the board appointment committee are to appoint and remove board members and prepare and maintain an appointment and remuneration policy for the board.

Chairperson and deputy chairperson

Clause 41 provides that each regional representative group must elect or appoint, in accordance with the constitution,—

- 1 of its regional representatives as chairperson of the group; and
- 1 of its regional representatives as deputy chairperson of the group.

However, *clause 41* does not apply if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons, in accordance with *clause 42*.

Clause 42 ensures that the constitution may provide that a regional representative group must elect or appoint, in accordance with the constitution,—

- 2 of its regional representatives as co-chairpersons of the group; and
- 2 of its regional representatives as deputy co-chairpersons of the group.

If the constitution provides for, and requires, a regional representative group to elect or appoint co-chairpersons and deputy co-chairpersons of the group,—

- 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's territorial authority representatives; and
- one co-chairperson, and one deputy co-chairperson, must be elected or appointed by the group's mana whenua representatives; and
- references in legislation, other than *clause 42*, to the group's chairperson are taken to be references to both of its co-chairpersons; and
- references in legislation, other than *clause 42*, to the group's deputy chairperson are taken to be references to both of its deputy co-chairpersons.

Disputes

Clause 43 provides a process by which disputes are to be resolved if regional representatives disagree on a matter that they are required under the Bill to work together on, jointly develop, or agree.

Official information

Clause 44 applies Part 7 of the Local Government Official Information and Meetings Act 1987 to each regional representative group.

Subpart 5—Regional advisory panels

Establishment, role, and decision making of regional advisory panels

Clauses 45 and 46 provide for—

- the constitution of a water services entity to establish 1 or more regional advisory panels:
- each regional advisory panel to include an equal number of territorial authority panel members and mana whenua panel members:
- the role of each regional advisory panel to be providing advice to a regional representative group about the group’s performance or exercise of its duties, functions, or powers (*see clause 28*) in respect of, or otherwise affecting, a particular geographic area—
 - in the service area of the water services entity; and
 - for which the panel is responsible under the constitution (*see clause 91(f)(ii)*).

Clause 47 provides for a collective duty of a regional advisory group.

Clause 48 requires decisions made by a regional advisory panel to be made—

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

Clause 49 allows a regional advisory panel to regulate its own procedure for a matter if this Bill and the constitution do not specify a procedure for the matter.

Appointment of regional advisory panel members

Clauses 50 to 52 provide—

- for territorial authority panel members to be appointed to a regional advisory panel by the territorial authority owners of the entity;
- for mana whenua panel members to be appointed to a regional advisory panel by mana whenua of the rohe or takiwā within the service area of the entity;
- for requirements before appointment as a regional advisory panel member.

The specific composition of, and appointment processes for, each regional advisory panel will be provided for in the constitution (*see clause 91(f)*).

Chairperson and deputy chairperson

Clause 53 provides that each regional advisory panel must elect or appoint, in accordance with the constitution,—

- 1 of its regional advisory panel members as chairperson of the panel; and

- 1 of its regional advisory panel members as deputy chairperson of the panel.

However, *clause 53* does not apply if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons, in accordance with *clause 54*.

Clause 54 ensures that the constitution may provide that a regional advisory panel must elect or appoint, in accordance with the constitution,—

- 2 of its regional advisory panel members as co-chairpersons of the panel; and
- 2 of its regional advisory panel members as deputy co-chairpersons of the panel.

If the constitution provides for, and requires, a regional advisory panel to elect or appoint co-chairpersons and deputy co-chairpersons of the panel,—

- 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel's territorial authority panel members; and
- 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel's mana whenua panel members; and
- references in legislation, other than *clause 54*, to the panel's chairperson are taken to be references to both of its co-chairpersons; and
- references in legislation, other than *clause 54*, to the panel's deputy chairperson are taken to be references to both of its deputy co-chairpersons.

Official information

Clause 55 applies Part 7 of the Local Government Official Information and Meetings Act 1987 to a regional advisory panel for the regional representative group of a water services entity.

Subpart 6—Boards of water services entities

Role, membership, and accountability

Clauses 56 to 59 provide for—

- the board to be the governing body of the water services entity;
- the board to consist of no fewer than 6, and no more than 10, members;
- the board to have a chairperson and a deputy chairperson appointed by the regional representative group, or by its board appointment committee, in accordance with the constitution;
- board members to be accountable to the regional representative group.

Obligation to hold specified meetings in public

Clause 60 requires the board to hold at least 2 board meetings during each financial year that are open to the public.

Official information

Clause 61 applies Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 to each water services entity.

Appointment, removal, and conditions of board members

Clauses 62 to 72 provide—

- for board members to be appointed by the board appointment committee of the regional representative group:
- that the board appointment committee may only recommend a person who, in the committee's opinion, has the appropriate knowledge, skills, and experience to assist the entity to achieve its objectives and perform its functions:
- for board members to hold office for up to 5 years and that board members may be reappointed:
- for the board appointment committee to remove a board member from office at any time for just cause:
- for when board members cease to hold office.

Collective duties of board

Clauses 73 and 74 set out the collective duties of the board. The collective duties of the board of a water services entity are to—

- ensure that the entity acts consistently with its objectives, functions, operating principles, and current statement of intent:
- ensure that the entity maintains systems and processes to ensure that, for the purposes of carrying out its functions, it has the capacity and capability to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and engage with, and understand perspectives of, mana whenua:
- maintain systems and processes for the continuing education of all board members to enable them to gain knowledge of, and experience and expertise in relation to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Individual duties of board members

Clauses 75 to 79 impose individual duties on board members, including duties—

- not to contravene, or cause the contravention of, or agree to the entity contravening, relevant legislation:
- to act with honesty and integrity:
- to act in good faith and not at the expense of the entity's interests:
- to act with reasonable care, diligence, and skill:
- to comply with requirements relating to the disclosure of information.

Effect of non-compliance with duties

Clause 80 and 81 provide that—

- the collective duties of the board are owed to the regional representative group:
- an individual board member is not liable for a breach of a collective duty. However, the board member may be removed from office in certain circumstances (for example, if they failed to take all reasonable steps to prevent the breach).

Clauses 82 and 83 provide that—

- the individual duties of the board members are owed to the regional representative group and the relevant water services entity:
- if a board member breaches an individual duty, the member may be removed from office and the entity may bring an action against them. A board member is otherwise not liable for a breach of an individual duty.

Clause 84 enables the Minister or a regional representative to apply to a court for an order restraining the board or a board member from contravening a statutory requirement.

Delegation

Clauses 85 to 88 allow the board of a water services entity to delegate any of the functions or powers of the entity or the board, either generally or specifically, to certain persons (for example, to the chief executive or another employee of the entity).

Board procedure

Clause 89 allows the board to regulate its own procedure for a matter if this Bill and the constitution do not specify a procedure for the matter.

Subpart 7—Constitutions of water services entities

Clause 90 requires each water services entity to have a constitution.

Clauses 91 to 93 provide for the required and permitted content and effect of the constitution. The constitution must provide for the following matters:

- the composition of the regional representative group, including—
 - whether the group consists of 12 or 14 regional representatives:
 - procedures for appointing territorial authority representatives and mana whenua representatives:
 - the composition of, and procedures for, committees of the regional representative group (including the board appointment committee):
 - the process for removing regional representatives from the regional representative group:
- procedures for the regional representative group, including—
 - how the group will perform or exercise its functions, powers, and duties:

- arrangements and requirements for meetings of the group and of committees (including the board appointment committee) of the group:
- procedures and time frames for making decisions by consensus:
- the composition of a regional advisory panel, including—
 - the particular geographical area for which the panel is responsible:
 - procedures for appointing territorial authority panel members and mana whenua panel members:
 - the composition of, and procedures for, committees of the regional advisory group:
 - the process for removing regional advisory panel members from the regional advisory panel:
- procedures for a regional advisory panel, including—
 - how the panel will perform or exercise its functions, powers, and duties:
 - arrangements and requirements for meetings of the panel, and committees of the panel:
 - procedures and time frames for making decisions by consensus:
- procedures for the entity to perform its duty under *clause 114(1)* to provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for specified remuneration, expenses, or costs:
- the composition of the board, including the procedures for the appointment of board members by the board appointment committee:
- procedures for the board, including—
 - arrangements and requirements for meetings of the board:
 - decision-making procedures, including any requirements relating to voting or consensus decision-making:
- procedures for dispute resolution:
- procedures for reviewing, amending, or replacing the constitution (*see clauses 95 and 96*).

Clause 94 provides that the first constitution of a water services entity is the model constitution for the entity set out in regulations. *Clause 94* also ensures that, when that model constitution is first amended or replaced under *clause 95 or 96*,—

- that model constitution as so amended or replaced must set out all provisions of the entity’s constitution (including any unchanged from that model constitution); and
- the regulations setting out the model constitution, for the entity, are revoked.

Clauses 95 and 96 set out the process for amending or replacing the constitution of a water services entity. A proposed amendment to the entity’s constitution or a pro-

posed new constitution for the entity must be approved by the Minister before it is effective. The constitution as amended or replaced under *clause 95 or 96* is secondary legislation. The maker must publish it in accordance with the Legislation (Publication) Regulations 2021.

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

Qualifications

Clause 97 provides for the qualifications of regional representatives, regional advisory panel members, and board members.

Reliance on information and advice

Clause 98 allows regional representatives, regional advisory panel members, and board members to rely on information and advice given by certain persons. They must still act in good faith, make proper inquiries, and have no knowledge that the reliance is unwarranted.

Conflict of interest disclosure rules

Clauses 99 to 112 set out rules that require each of the following to disclose the interest concerned:

- a board member who is interested in a matter relating to a water services entity:
- a regional representative who is interested in a matter relating to a regional representative group:
- a regional advisory panel member who is interested in a matter relating to the panel.

The interests include, for example, where the board member, regional representative, or regional advisory panel member may derive a financial benefit from a matter or has a financial interest in a person to whom the matter relates. In summary,—

- the nature and extent of the interest must be disclosed in an interests register as soon as practicable after the board member, regional representative, or regional advisory panel member (as applicable) becomes aware that they are interested:
- a board member must not vote or take part in any discussion or decision about the matter or otherwise participate in any activity of the entity that relates to the matter (unless the chairperson or a deputy chairperson of the board gives permission to act):
- a regional representative must not vote or take part in any discussion or decision about the matter or otherwise participate in any activity of the regional representative group that relates to the matter (unless the chairperson or deputy chairperson of the group gives permission to act or, if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons, permission

is given in accordance with a procedure specified for the purpose in the constitution):

- a regional advisory panel member must not vote or take part in any discussion or decision about the matter or otherwise participate in any activity of the regional advisory panel that relates to the matter (unless the chairperson or deputy chairperson of the panel gives permission to act or, if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons, permission is given in accordance with a procedure specified for the purpose in the constitution):
- the entity may avoid certain acts done in breach of the rules. However, the entity may not avoid an act if the entity receives fair value:
- the rights of certain innocent third parties are protected if the entity avoids a matter.

Vacancies in membership

Clause 113 provides that the powers and functions of a water services entity, its regional representative group, or a regional advisory panel for that group are not affected by specified vacancies in their membership.

Duties to provide funding and information

Clause 114(1) imposes a duty on a water services entity to provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the remuneration, expenses, or costs specified in *clause 91(j)*. *Clause 91(j)* requires the entity's constitution to provide for procedures for the entity to perform that duty.

Clause 114(2) requires a water services entity to provide information that the entity holds if that information is required—

- by the entity's regional representative group or a regional advisory panel for that group; and
- to help the group or panel perform or exercise its duties, functions, or powers.

But personal information within the meaning of the Privacy Act 2020 may be provided under *clause 114(2)* only in accordance with that Act.

Part 3

Operation of water services entities

Independence of water services entities

Clause 115 provides that the Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity, a board member, or an employee of a water services entity—

- in relation to the performance or exercise of a duty, function, or power under the Bill; or
- to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.

Clause 115 applies to all Government policy statements and statements of strategic and performance expectations issued under the Bill.

Clause 115 also prevents a constitution of a water services entity from conferring a power of direction contrary to that clause.

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

Clause 116 requires a water services entity to continue to provide water services and maintain its capacity to meet its obligations under the Bill. The obligation on water services entities under this clause is substantially similar to the obligation on local government organisations under section 130 of the Local Government Act 2002.

Contracting out of water services

Clauses 117 and 118 provide for the circumstances in which a water services entity may, despite *clause 116*, enter into—

- a contract for an aspect of the operation of all or part of a water service;
- a joint arrangement with 1 or more other water services entities or other bodies for the purposes of providing water services.

Employees of water services entities

Clause 119 provides for the employment of the chief executive of each water services entity. The chief executive of a water services entity is appointed by the board of the entity.

Clause 120 requires each water services entity to operate a personnel policy that complies with the principle of being a good employer.

Protections from liability

Clause 121 defines terms used in the provisions relating to protections from liability.

Clause 122 protects board members and employees from the liabilities of a water services entity.

Clause 123 provides that—

- a board member of a water services entity is immune from civil liability, in respect of an excluded act or omission, to the entity or any other person unless it is also a breach of an individual duty (*see clauses 75 to 79*);
- an employee is immune from civil liability to any person in respect of an excluded act or omission.

Clause 123(3) provides that the protections do not prevent a court from making certain orders or affect any right to apply for judicial review.

Clauses 124 to 126 provide that a water services entity may only indemnify or effect insurance for a board member or employee in respect of acts or omissions for which the person is protected from liability.

Dealings with third parties

Clause 127 provides for how a water services entity may enter into contracts or other enforceable obligations.

Clause 128 identifies a water services entity's head office as its address for service in New Zealand.

Part 4

Financial and accountability matters

Subpart 1—Government policy statement on water services

Subpart 1 provides for a Government policy statement on water services. The purpose of a Government policy statement is to—

- state the Government's overall direction and priorities for water services;
- inform and guide agencies involved in, and the activities necessary or desirable for, water services.

Clause 131 requires the Minister, when preparing or reviewing a Government policy statement, to—

- be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and
- consult—
 - the water services entities; and
 - the regional representative group of each water services entity; and
 - Taumata Arowai—the Water Services Regulator; and
 - other persons, and representative groups of persons, who have an interest in water services in New Zealand.

Clause 132 provides that a water services entity must give effect to the Government policy statement when performing its functions.

Clause 133 provides for the process for amending a Government policy statement.

Clause 134 requires the Minister to present a copy of a Government policy statement to the House of Representatives as soon as practicable after issuing it and requires.

Clause 134(2) requires the department to publish the statement on its website.

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

Subpart 2 provides for a statement of strategic and performance expectations to be issued by the regional representative group. The purpose of a statement of strategic and performance expectations for a water services entity is to—

- state the regional representative group’s objectives and priorities for water services in the entity’s service area; and
- inform and guide the decisions and actions of the board of the entity.

Clause 137 provides that the board of a water services entity must give effect to the statement of strategic and performance expectations for the entity when performing its functions.

Clause 138 requires the board of an entity to publish the regional representative group’s statement of strategic and performance expectations on the entity’s website.

Clause 139 requires an entity’s regional representative group to annually review the performance of the entity’s board in giving effect to the statement of strategic and performance expectations.

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

Subpart 3 provides for mana whenua whose rohe or takiwā includes a freshwater body in a water services entity’s service area to be able to provide the entity with Te Mana o te Wai statements for water services. A Te Mana o te Wai statement for water services may—

- be provided by an individual iwi or hapū, or by a group of iwi or hapū;
- relate to 1 freshwater body, or to multiple freshwater bodies.

A water services entity must respond to a Te Mana o te Wai statement for water services. The entity must also include in its response a plan that sets out how the entity intends (consistent with *clause 4(1)(b)*) to give effect to Te Mana o te Wai, to the extent that it applies to the entity’s duties, functions, and powers, in response to the statement.

Clause 142 requires the board of a water services entity to publish its response to a Te Mana o te Wai statement for water services as soon as practicable after issuing the response and, in any event, within 2 years after receiving the statement to which the response relates.

Subpart 4—Reporting obligations

Planning: statement of intent

Clauses 143 to 146 require the board of a water services entity to annually provide a statement of intent for the entity. The purpose of a water services entity’s statement of intent is to promote the public accountability of the entity by setting out the entity’s

strategic intentions and providing a base against which the water services entity's actual performance can later be assessed.

Planning: asset management plan

Clauses 147 to 149 require the board of an entity to provide an asset management plan to the entity's regional representative group at least once in every 3-year period. The asset management plan must cover a period of not less than 10 consecutive financial years.

Planning: funding and pricing plan

Clauses 150 to 152 require the board of an entity to provide a funding and pricing plan to the entity's regional representative group at least once in every 3-year period. The funding and pricing plan must cover a period of not less than 10 consecutive financial years and include a financial strategy for the years covered by the plan.

Planning: infrastructure strategy

Clauses 153 to 155 require the board of an entity to provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period. In summary, the strategy must cover a period of at least 30 consecutive financial years and identify—

- significant infrastructure issues for the water services entity over the period covered by the strategy;
- the main options for managing those issues and the implications of those options.

Reporting: annual report

Clauses 156 to 164 require a water services entity to provide an annual report to the entity's regional representative group after each financial year. An entity must publish a copy as soon as practicable after it has been provided to the regional representative group and, in any event, no later than 20 working days after receiving the audit report provided by the Auditor-General under *clause 161*.

Subpart 5—Other provisions for financial management and independence

Bank accounts

Clause 165 provides for requirements relating to the bank accounts of water services entities.

Financial independence

Clause 166 provides that a territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative—

- has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (and the constitution cannot confer any such right, title, or interest — *see also clauses 15(3) and 93(2)(c)*); and
- must not receive any equity return, directly or indirectly, from a water services entity; and
- must not give a water services entity any financial support or capital; and
- must not lend money or provide credit to a water services entity; and
- must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by a water services entity.

However, under *clause 166(2)*, nothing in *clause 166(1) or (3)* limits or affects—

- the allocation or reallocation of shares under *clauses 15(2) and 16*; or
- the holding of those shares by the relevant territorial authority owner; or
- voting under *Schedule 4* on a divestment proposal.

Subpart 6—Accounting records

Clause 167 requires the board of a water services entity to ensure that proper accounting records are kept.

Subpart 7—Borrowing

Clause 168 permits a water services entity to borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.

Part 5 Monitoring

Subpart 1—Monitor

Appointment and role of monitor

Clause 169 provides for the Minister to appoint a department as the monitor for the purposes of the Bill. The monitor's role is to assist the Minister to carry out their role (*see clause 26*) and to perform and exercise certain functions and powers, including administering appropriations and legislation and tendering advice to ministers.

Monitor's information-gathering power

Clauses 170 to 173 provide for—

- the monitor's power to request information from a water services entity:
- good reasons for an entity to refuse to provide information requested:
- civil proceedings relating to non-compliance with an information request.

Subpart 2—Minister’s powers to intervene

Subpart 2 provides for the power of the Minister to appoint a Crown review team, a Crown observer, or a Crown manager (a **ministerial body**).

Clause 174 defines problem, for the purposes of the Minister’s powers to intervene, as a matter, circumstance, or failure that has actual or probable adverse consequences for consumers or communities in a water services entity’s service area and includes—

- a matter or circumstance relating to the management or governance of the entity that detracts from, or is likely to detract from, its ability to give effect to its purpose:
- a significant or persistent failure by the entity to perform 1 or more of its functions or duties under the Bill or to give effect to a Government policy statement:
- the consequences of a state of emergency:
- a failure by the entity to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealing.

Crown review team

Clauses 175 and 176 provide for the power to appoint a Crown review team. In summary, the Minister may appoint a Crown review team if—

- the water services entity, without good reason, has not provided the information requested by the monitor by the stated or agreed date:
- the Minister believes on reasonable grounds that a problem relating to the water services entity may exist and the water services entity is unable or unwilling to effectively address the problem or another ministerial body has recommended the appointment:
- the Minister has received a written request to do so from the water services entity or the entity’s regional representative group.

Crown observer

Clauses 177 and 178 provide for the power to appoint a Crown observer. In summary, the Minister may appoint a Crown observer in relation to a water services entity on the entity’s request or if the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—

- the appointment of a Crown observer is necessary to enable, or better enable, the Minister to effectively address the problem; or
- the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity’s progress in addressing the problem; or
- another ministerial body has recommended the appointment.

Crown manager

Clauses 179 and 180 provide for the power to appoint a Crown manager. The Minister may appoint a Crown manager in relation to a water services entity on the entity's request or if the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—

- the nature and extent of the problem is such that the entity is unlikely to effectively address the problem without the appointment of a Crown manager; or
- the entity has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or
- another ministerial body has recommended the appointment.

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

Subpart 3 provides for general provisions relating to the appointment of a ministerial body, including—

- notification and publication requirements:
- requirements for reports produced by ministerial bodies:
- remuneration and expenses of ministerial appointees:
- recovery from the relevant water services entity of expenses incurred for the appointment of a ministerial appointee:
- protection from liability for members of a Crown review team, a Crown observer, or a Crown manager.

Part 6

Miscellaneous provisions

Subpart 1—Reviews

Clause 195 requires the Minister, in the relevant period, to commission a review of the need for, and operation and effectiveness of, the governance and accountability arrangements under the Act. The relevant period starts on the fifth anniversary, and ends on the sixth anniversary, of the establishment date (as defined in *clause 1(1) of Schedule 1*). This interim review must include consideration of stated matters. Before commissioning the review required by *clause 195*, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit.

Clause 196 requires the Minister, in the relevant period, to commission a review of the need for, and operation and effectiveness of, water services legislation. The relevant period starts on the ninth anniversary, and ends on the tenth anniversary, of the establishment date (as defined in *clause 1(1) of Schedule 1*). This comprehensive review must include consideration of stated matters. Before commissioning the

review required by *clause 196*, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit.

Clause 197 requires that a review required by the subpart be done by the following reviewer:

- the monitor, if the monitor is asked by the Minister to do the review;
- in any other case, a review panel commissioned by or on behalf of the Minister.

Clause 198 enables the reviewer, by notice in writing, to require a water services entity or other relevant person to provide the reviewer with information the reviewer thinks necessary to do the review. The entity or other relevant person must provide the requested information by the reasonable date that the reviewer has specified for that purpose in the notice. *Clauses 171 to 173* apply, with all necessary modifications, to a request under *clause 198*.

Clause 199 requires—

- the reviewer to prepare a report on a review required by the subpart;
- the report to include at least certain stated contents;
- the reviewer to ensure that the people and organisations that the reviewer thinks appropriate are consulted during the preparation of the report about the matters to be considered in the report;
- the reviewer, after completing the report, to promptly present the report to the Minister;
- the Minister, after receiving the report, to promptly present a copy to the House of Representatives.

Clause 200 repeals the subpart on the 15th anniversary of the establishment date.

Subpart 2—Rights or interests in water preserved

Clause 201(1) provides that the purpose of *clause 201* is to achieve both of the following outcomes:

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

Clause 201(2) provides that no legislation in or made under the Act—

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

Clause 201(3) provides that nothing in *clause 201* affects, or affects the lawfulness or validity of the performance or exercise by any person of, any duty, function, or power under the Act.

Subpart 3—Engagement

Clause 202 provides for engagement requirements relating to—

- the preparation of a water services entity’s response to Te Mana o te Wai statements:
- the development of a model constitution:
- the preparation of asset management plans, funding and pricing plans, and infrastructure strategies.

Clauses 203 to 205 provide for engagement requirements relating to consumers, including requirements for the chief executive of a water services entity to—

- establish 1 or more consumer forums:
- annually prepare a consumer engagement stocktake.

Subpart 4—Regulations

Clause 206 provides for the power to make regulations, including to provide for—

- a model constitution for each water services entity that will be the first constitution of the entity under *clause 94*:
- financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy:
- additional transitional and savings provisions concerning the coming into force of the Bill, including transitional reporting obligations that apply to local government organisations and water services entities.

Subpart 5—Amendments to other Acts

Subpart 3 provides for amendments to other Acts.

Schedules

Schedule 1 provides for transitional and savings provisions (*see clause 7*).

Schedule 2 describes the service area of each water services entity.

Schedule 3 provides for the process each water services entity must follow when preparing a statement of intent, asset management plan, funding and pricing plan, or infrastructure strategy.

Schedule 4 provides for the process that a water services entity must follow for a divestment proposal. A divestment proposal is permitted by *clause 116(2)(b) or (c)(i)* if it is done in accordance with *Schedule 4*. A divestment proposal means a proposal for a water services entity to do specified things in breach of *clause 116(1)* (which

requires the entity to continue to provide water services and maintain its capacity to perform or exercise its duties, functions, or powers under the Bill). The specified things are as follows:

- divest its ownership or other interest in a water service:
- lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area (if, in doing so, the entity does not retain its capacity to perform or exercise its duties, functions, or powers—*see clause 116(2)(c)(ii)*).

A divestment proposal may be implemented only if—

- a regional representative group resolves to refer a divestment proposal to territorial authority owners by a vote of no less than 75% of the regional representatives present and voting:
- territorial authority owners resolve unanimously to refer the proposal to a poll:
- at least 75% of the votes cast in the poll are in favour of the proposal.

Hon Nanaia Mahuta

Water Services Entities Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) The following provisions come into force on the day after the date of Royal assent: 5
- (a) **sections 3, 5(a), (b), (c), and (f), and 6 to 9** (preliminary provisions):
 - (b) **subparts 1 to 3, 6, and 8 of Part 2** (which relate to the establishment of water services entities and the roles of the Minister, Crown monitor, and board): 10
 - (c) **sections 119 and 120** (which relate to the employment of the chief executive and other employees):

- (d) **sections 147 to 152** (which relate to requirement to prepare and adopt an asset management plan and a funding and pricing plan):
 - (e) **section 206** (which contains regulation-making powers):
 - (f) **section 214** (which authorises local authorities, during a transition period, to defer reviews of water services bylaws): 5
 - (g) **Schedule 1** (which contains transitional, savings, and related provisions).
- (2) The rest of this Act comes into force—
- (a) on a date set by the Governor-General by Order in Council; or
 - (b) to the extent not brought into force earlier, on **1 July 2024**. 10
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

Preliminary provisions

- 3 Purpose** 15
- The purpose of this Act is to—
- (a) establish 4 water services entities to provide water services in New Zealand; and
 - (b) provide for their objectives, functions, service delivery areas, and governance arrangements. 20
- 4 Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai**
- (1) All persons performing or exercising duties, functions, or powers under this Act—
- (a) must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and 25
 - (b) must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers.
- (2) **Subsection (1)(a)** is not limited by **subsection (1)(b)** or **section 5**.
- (3) This section is subject to **section 9** (Treaty settlement obligations prevail).
- 5 Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi** 30
- In order to recognise and respect the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, this Act provides,—
- (a) in **section 4(1)(a)**, that all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi: 35

- (b) in **section 4(1)(b)**, that all persons performing or exercising duties, functions, or powers under this Act must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers:
- (c) in **section 13**, that the operating principles of a water services entity include— 5
- (i) partnering and engaging early and meaningfully with Māori; and
 - (ii) giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of the entity:
- (d) in **section 27**, that there must be mana whenua representation on each entity’s regional representative group: 10
- (e) in **sections 38 and 57**, that the board appointment committee of each regional representative group and the board of each entity must include members who, collectively, have knowledge and expertise in relation to— 15
- (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori:
- (f) in **section 74**, that the board of each water services entity must—
- (i) ensure that the water services entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, it has the capacity and capability to— 20
 - (A) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (B) engage with, and understand perspectives of, mana whenua; 25
 - and
 - (ii) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi: 30
- (g) in **section 141**, that the board of each water services entity must respond to Te Mana o te Wai statements for water services issued to the entity by mana whenua.
- 6 Interpretation** 35
- In this Act, unless the context otherwise requires,—
- board** means members of the board of a water services entity who number not less than the required quorum acting together as a board
- board appointment committee** means a committee of a regional representative group appointed under **section 38**

board member—

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

chairperson,—

5

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

10

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

15

committee means,—

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

20

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

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

25

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

30

deputy chairperson,—

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

35

- drinking water** has the meaning set out in section 6 of the Water Services Act 2021
- employee**, in relation to a water services entity,—
- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under **section 119**; and 5
 - (b) for the purposes of **sections 122 to 126**, has the meaning set out in **section 121**
- financial year** means the 12 months ending on the close of 30 June 2022
- funding and pricing plan** means the funding and pricing plan prepared by the board under **section 150** 10
- generally accepted accounting practice** has the meaning set out in section 8 of the Financial Reporting Act 2013
- Government policy statement** means a Government policy statement on water services issued by the Minister under **section 129**
- local authority** has the meaning set out in section 5 of the Local Government Act 2002 15
- mana whenua**, for an identified area, means the iwi or hapū holding and exercising, in accordance with tikanga, authority or other customary rights or interests in that area
- mana whenua panel member** means a mana whenua panel member appointed to a regional advisory panel (*see* **section 51**) 20
- mana whenua representative** means a mana whenua representative appointed to a regional representative group under **section 33**
- Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act 25
- ministerial appointee** means a person appointed under **subpart 2 of Part 5** as a member of a Crown review team, as a Crown observer, or as a Crown manager
- ministerial body** means a Crown review team, a Crown observer, or a Crown manager appointed under **subpart 2 of Part 5** 30
- monitor** means the department appointed under **section 169**
- natural person act** has the meaning set out in **section 25**
- regional advisory panel** means, in relation to a water services entity, a regional advisory panel established by the constitution 35
- regional advisory panel member** means—
- (a) a territorial authority panel member; or
 - (b) a mana whenua panel member

- regional representative** means a territorial authority representative or mana whenua representative
- regional representative group** means, in relation to a water services entity, the regional representative group established for the entity under **section 27**
- regulations** means regulations made under **section 206** 5
- service area** means, in relation to a water services entity, the area identified in **Schedule 2** as the service area of the entity
- Te Mana o te Wai** has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement 10
- Te Mana o te Wai statement for water services** means a statement provided by mana whenua to a water services entity under **section 140**
- territorial authority** has the meaning set out in section 5 of the Local Government Act 2002 15
- territorial authority owners** means, in relation to a water services entity, the territorial authorities listed in the part of **Schedule 2** that relates to the entity
- territorial authority panel member** means a territorial authority panel member appointed to a regional advisory panel (*see section 50*)
- territorial authority representative** means a territorial authority representative appointed to a regional representative group under **section 32** 20
- Treaty of Waitangi claim** means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether that claim was submitted or not to the Waitangi Tribunal
- Treaty settlement Act** means— 25
- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and
 - (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act 30
- Treaty settlement deed** means a deed or other agreement—
- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown and by representatives of a claimant group; and
 - (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement 35
- Treaty settlement obligations** means obligations under any of the following:
- (a) Treaty settlement Acts:
 - (b) Treaty settlement deeds

	water services means services relating to water supply, wastewater, and storm-water	
	water services entity or entity means a water services entity established under section 10	
	water supply includes—	5
	(a) drinking water supply as defined in section 9 of the Water Services Act 2021; and	
	(b) firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017.	
7	Transitional, savings, and related provisions	10
	The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.	
8	Act binds the Crown	
	This Act binds the Crown.	
9	Treaty settlement obligations prevail	15
	If a provision of this Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.	
Part 2		
Water services entities		
	Subpart 1—Establishment of water services entities	20
10	Water services entities established	
	This section establishes the water services entities named in Parts 1 to 4 of Schedule 2 .	
11	Objectives of water services entities	
	The objectives of each water services entity are to—	25
	(a) deliver water services and related infrastructure in an efficient and financially sustainable manner:	
	(b) protect and promote public health and the environment:	
	(c) support and enable housing and urban development:	
	(d) operate in accordance with best commercial and business practices:	30
	(e) act in the best interests of present and future consumers and communities:	

- (f) deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards.

Compare: 2020 No 52 s 8

12 Functions of water services entities

The functions of each water services entity are— 5

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

13 Operating principles

The operating principles of a water services entity for the purposes of **section 73** are— 10

- (a) developing and sharing capability and technical expertise with other water services entities and throughout the water services sector; and
 (b) being innovative in the design and delivery of water services and water services infrastructure; and 15
 (c) being open and transparent, including in relation to—
 (i) the calculation and setting of prices; and
 (ii) determining levels of service delivery to communities and consumers; and
 (iii) reporting on the performance of the water services entity; and 20
 (d) partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can—
 (i) give effect to Te Mana o te Wai; and
 (ii) understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and 25
 (e) giving effect to Treaty settlement obligations to the extent that the obligations apply to the duties and functions of the entity; and
 (f) partnering and engaging early and meaningfully with territorial authorities and their communities; and
 (g) co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector. 30

14 Duties to provide funding and information

A water services entity must provide—

- (a) funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for remuneration, expenses, or costs, in accordance with **section 114(1)**; and 35

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

15 Status of water services entities

Body corporate and separate legal entity

- (1) A water services entity— 5
- (a) is a body corporate; and
- (b) is accordingly a legal entity separate from the entity's board members, the entity's employees, the Crown, the entity's regional representative group, and the entity's territorial authority owners; and
- (c) continues in existence until it is dissolved by an Act. 10

Co-owned in shares by territorial authority owners

- (2) A water services entity is co-owned—
- (a) by the territorial authorities in its service area; and
- (b) in shares allocated and reallocated under **section 16**.
- (3) Shares allocated or reallocated to, and held by, a territorial authority owner cannot, for any reason, be sold, or otherwise transferred (*see also section 166*). 15

- (4) **Subsection (3)** overrides any legislation to the contrary.

Not company, council organisation, council-controlled organisation, etc

- (5) Despite **subsections (1) to (4)**, a water services entity is not— 20
- (a) a company as defined in section 2(1) of the Companies Act 1993; or
- (b) a council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or
- (c) a local government organisation as defined in section 124 of the Local Government Act 2002. 25

Compare: 2004 No 115 s 15

16 Shares in water services entities

- (1) Shares in a water services entity are, on each relevant date, allocated or reallocated to each territorial authority owner based on the population of its district or part district. 30
- (2) The allocation or reallocation is as follows:
- (a) if that population is not more than 50,000 people, 1 share:
- (b) if that population is more than 50,000 people,—
- (i) 1 share for every 50,000 people in that district or part district; and
- (ii) 1 share for a group of fewer than 50,000 people, additional to those 1 or more multiples of 50,000 people, in that district or part district. 35

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

19 Acts must be for purpose of functions

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

Compare: 2004 No 115 s 18

Subpart 2—Validity of acts 5

20 Acts in breach of statute are invalid

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

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

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

Compare: 2004 No 115 s 19

21 Some natural person acts protected

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

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

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

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

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

Compare: 2004 No 115 s 20

22 Limits on protection of natural person acts

Section 21 does not limit—

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

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

Compare: 2004 No 115 s 21

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

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

Compare: 2004 No 115 s 22

24 Dealings between water services entities and other persons

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

Compare: 2004 No 115 s 23

25 Interpretation for sections 15 to 24

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

- (a) to do an act; and

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

Compare: 2004 No 115 s 24

Subpart 3—Minister’s role

26 Minister’s role

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

Subpart 4—Regional representative groups

Establishment, role, and decision making of regional representative group

27 Establishment and membership of regional representative group

- (1) This section establishes a regional representative group for each water services entity. 5
- (2) Each regional representative group consists of no fewer than 12, and no more than 14, regional representatives (*see* **section 91(a)(i)** and the constitution).
- (3) Each entity's regional representative group must include an equal number of—
 - (a) territorial authority representatives; and
 - (b) mana whenua representatives. 10

28 Role of regional representative group

The role of a water services entity's regional representative group is—

- (a) appointing and removing the entity's board members under this Part; and
- (b) participating in the process of setting the entity's strategic direction and performance expectations under **subpart 4 of Part 4**; and 15
- (c) reviewing the performance of the entity under **section 139**; and
- (d) approving the appointment and remuneration policy prepared by its board appointment committee under **section 40**; and
- (e) performing or exercising any other duties, functions, or powers it has under legislation. 20

29 Collective duty of regional representative group

The regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation—

- (a) wholly or mostly for the benefit of all communities in the entity's service area; and 25
- (b) taking into account the diversity of the communities, and the diversity of the communities' interests, in that area; and
- (c) taking into account the interests of future as well as current communities in that area.

Compare: 2002 No 84 s 14 30

30 Decision making by regional representative group

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

- (a) by consensus if consensus can be reached by regional representatives taking all reasonably practicable steps to reach consensus in accordance 35

with a procedure, and within a time frame, specified in the constitution; and

- (b) in any other case, by 75% of the regional representatives present and voting.

31 Group may regulate its own procedure if none specified 5

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

Appointment of regional representatives

32 Method of appointing territorial authority representatives to regional representative group 10

- (1) The territorial authority owners of a water services entity must appoint territorial authority representatives to the regional representative group of the water services entity in accordance with **section 27(2) and (3)** and the constitution.
- (2) The territorial authority owners must appoint only persons who are— 15
- (a) elected members or chief executives of a territorial authority owner of the water services entity; or
- (b) senior managers of a territorial authority owner that, in the collective opinion of the territorial authority owners, have the appropriate knowledge, skills, and experience to assist the regional representative group in performing its role (*see* **section 28**). 20

33 Method of appointing mana whenua representatives to regional representative group

Mana whenua whose rohe or takiwā is within the service area of a water services entity must appoint mana whenua representatives to the regional representative group of the water services entity in accordance with **section 27(2) and (3)** and the constitution. 25

34 Requirements before appointment as regional representative

- (1) Before a person is appointed as a regional representative, the person must— 30
- (a) consent in writing to the appointment; and
- (b) certify that they are not disqualified from being a regional representative (*see* **section 97**); and
- (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity. 35
- (2) A disclosure under **subsection (1)(c)** must be made,—

- (a) in the case of a proposed appointment as a territorial authority representative, to the entity's territorial authority owners:
- (b) in the case of a proposed appointment as a mana whenua representative, to the mana whenua whose rohe or takiwā is within the entity's service area. 5
- (3) As soon as practicable after becoming aware of a failure to comply with **subsection (1)(c)**, the regional representative group must notify the monitor.
Compare: 2004 No 115 s 31
- 35 Validity of regional representatives' acts** 10
- The acts of a person as a regional representative, chairperson, or deputy chairperson of the regional representative group are valid even though—
- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a regional representative; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended. 15
- Compare: 2004 No 115 s 34
- 36 Validity of appointments**
- (1) The appointment of a person as a regional representative, chairperson, or deputy chairperson of a regional representative group is not invalid only because a defect existed in the appointment of the person. 20
- (2) This section does not apply to a defect in the qualifications for appointment of a regional representative, chairperson, or deputy chairperson (if any).
Compare: 2004 No 115 s 35(1), (2)(a)
- 37 Resignation of regional representatives**
- (1) A territorial authority representative may resign from office by written notice to the entity's territorial authority owners signed by the territorial authority representative. 25
- (2) A mana whenua representative may resign from office by written notice to the mana whenua whose rohe or takiwā is within the entity's service area signed by the mana whenua representative. 30
- (3) A resignation under **subsection (1) or (2)** is effective—
- (a) on receipt of the notice by the territorial owners or mana whenua (as applicable); or
- (b) at any later time specified in the notice. 35
- Compare: 2004 No 115 s 44

Board appointment committee

- 38 Regional representative group must appoint board appointment committee**
- (1) Each regional representative group must appoint a board appointment committee. 5
- (2) The regional representative group must appoint members to the board appointment committee who, collectively, have knowledge of, and experience and expertise in relation to,—
- (a) performance monitoring and governance; and
 - (b) network infrastructure industries; and 10
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.
- (3) The regional representative group must not appoint a person as a member of the board appointment committee unless,—
- (a) before appointment, the person discloses to the regional representative group the details of any interest the person may have if they were a member of that committee; and 15
 - (b) the person is a regional representative.
- 39 Functions of board appointment committee**
- The functions of the board appointment committee are— 20
- (a) to appoint and remove members of the board of a water services entity; and
 - (b) to prepare and maintain an appointment and remuneration policy for the board; and
 - (c) to perform or exercise any of the regional representative group’s functions and powers that are delegated to the committee in relation to appointing and removing board members. 25
- 40 Board appointment committee must prepare board appointment and remuneration policy**
- (1) The board appointment committee must prepare and maintain an appointment and remuneration policy that provides for— 30
- (a) the collective or individual experience, qualifications, skills, or expertise required of members of the water services entity’s board in addition to those required by **section 63(2)**; and
 - (b) a remuneration and expenses framework for members of the entity’s board. 35
- (2) The regional representative group must—

- (a) review the policy prepared by the board appointment committee; and
- (b) if satisfied with the policy, approve it.

Chairperson and deputy chairperson

41 Appointment of chairperson and deputy chairperson

- (1) Each regional representative group must elect or appoint, in accordance with the constitution (*see section 91(a)(x)*),— 5
 - (a) 1 of its regional representatives as chairperson of the group; and
 - (b) 1 of its regional representatives as deputy chairperson of the group.
- (2) However, this section does not apply if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, in accordance with **section 42.** 10

42 Co-chairpersons and deputy co-chairpersons

- (1) The constitution may provide that a regional representative group must elect or appoint, in accordance with the constitution (*see section 91(a)(x)*),— 15
 - (a) 2 of its regional representatives as co-chairpersons of the group; and
 - (b) 2 of its regional representatives as deputy co-chairpersons of the group.
- (2) If the constitution provides for, and requires, a regional representative group to elect or appoint co-chairpersons and deputy co-chairpersons of the group,— 20
 - (a) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's territorial authority representatives; and
 - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's mana whenua representatives; and
 - (c) references in legislation, other than this section, to the group's chairperson are taken to be references to both of its co-chairpersons; and
 - (d) references in legislation, other than this section, to the group's deputy chairperson are taken to be references to both of its deputy co-chairpersons. 25

Disputes

43 Disputes between regional representatives

- (1) This section applies if a dispute arises between regional representatives on a matter that they are required under this Act to work together on, jointly develop, or agree. 30
- (2) The regional representatives—
 - (a) may by agreement undertake a binding process of dispute resolution; but
 - (b) if they do not reach agreement on a binding process, must undertake a non-binding process of dispute resolution. 35

- (3) Whether the regional representatives choose a binding process or a non-binding process, each regional representative must—
- (a) jointly appoint an arbitrator or a mediator; and
 - (b) meet that regional representative's own costs of the process (so they are not met by the represented territorial authority or mana whenua). 5
- (4) If the dispute remains unresolved after a non-binding process has been undertaken, the regional representatives may individually or jointly seek the assistance of the Minister.
- (5) The Minister, with a view to assisting the regional representatives to resolve the dispute, may— 10
- (a) appoint, and meet the costs of, a Crown facilitator:
 - (b) direct the regional representatives to use a particular alternative dispute resolution process for that purpose.

Compare: 1991 No 69 s 58S

Official information 15

44 Application of Local Government Official Information and Meetings Act 1987 to regional representative group

- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the regional representative group of a water services entity.
- (2) This section does not limit— 20
- (a) **section 55** (which relates to the application of Part 7 of that Act to a regional advisory panel for the group); or
 - (b) **section 61** (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

Subpart 5—Regional advisory panels 25

Establishment, role, and decision making of regional advisory panels

45 Establishment and membership of regional advisory panels

- (1) The constitution of a water services entity may establish 1 or more regional advisory panels.
- (2) Each regional advisory panel must include an equal number of— 30
- (a) territorial authority panel members; and
 - (b) mana whenua panel members.

46 Role of regional advisory panel

The role of a regional advisory panel is to provide advice to a regional representative group about that group's performance or exercise of its duties, func- 35

tions, or powers (*see* **section 28**) in respect of, or otherwise affecting, a particular geographic area—

- (a) in the service area of the water services entity; and
- (b) for which the panel is responsible under the constitution (*see* **section 91(f)(ii)**).

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47 **Collective duty of regional advisory panel**

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

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

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Compare: 2002 No 84 s 14

48 **Decision making by regional advisory panel**

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

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

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

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

Appointment of regional advisory panel members

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50 **Method of appointing territorial authority panel members**

The territorial authority owners of a water services entity may appoint territorial authority panel members to a regional advisory panel in accordance with **section 45(2)** and the constitution.

51 Method of appointing mana whenua panel members

Mana whenua whose rohe or takiwā is within the service area of a water services entity may appoint mana whenua representatives to a regional advisory panel in accordance with **section 45(2)** and the constitution.

52 Requirements before appointment as regional advisory panel member 5

- (1) Before a person is appointed as a regional advisory panel member, the person must—
- (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a regional representative (*see* **section 97**); and 10
 - (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity.
- (2) A disclosure under **subsection (1)(c)** must be made,—
- (a) in the case of a proposed appointment as a territorial authority panel member, to the entity’s territorial authority owners; 15
 - (b) in the case of a proposed appointment as a mana whenua panel member, to the mana whenua whose rohe or takiwā is within the entity’s service area.
- (3) As soon as practicable after becoming aware of a failure to comply with **subsection (1)(c)**, the regional advisory panel must notify the monitor. 20

Compare: 2004 No 115 s 31

*Chairperson and deputy chairperson***53 Appointment of chairperson and deputy chairperson**

- (1) Each regional advisory panel must elect or appoint, in accordance with the constitution (*see* **section 91(f)(x)**),— 25
- (a) 1 of its regional advisory panel members as chairperson of the panel; and
 - (b) 1 of its regional advisory panel members as deputy chairperson of the panel.
- (2) However, this section does not apply if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons, in accordance with **section 54**. 30

54 Co-chairpersons and deputy co-chairpersons

- (1) The constitution may provide that a regional advisory panel must elect or appoint, in accordance with the constitution (*see* **section 91(f)(x)**),— 35
- (a) 2 of its regional advisory panel members as co-chairpersons of the panel; and

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

Official information

55 Application of Local Government Official Information and Meetings Act 1987 to regional representative panel 15

- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to a regional advisory panel for the regional representative group of a water services entity.
- (2) This section does not limit— 20
- (a) **section 44** (which relates to the application of Part 7 of that Act to the regional representative group); or
- (b) **section 61** (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

Subpart 6—Boards of water services entities 25

Role, membership, and accountability

56 Board’s role

- (1) The board is the governing body of a water services entity, with the authority, in the entity’s name, to exercise the powers and perform the functions of the entity. 30
- (2) All decisions relating to the operation of a water services entity must be made by, or under the authority of, the board in accordance with this Act.

Compare: 2004 No 115 s 25

57 Membership of board

- (1) The board of a water services entity consists of no fewer than 6, and no more than 10, members. 35

- (2) The board appointment committee must appoint board members who, collectively, have knowledge of, and experience and expertise in relation to,—
- (a) performance monitoring and governance; and
 - (b) network infrastructure industries; and
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and 5
 - (d) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.

58 Chairperson and deputy chairperson

The board of a water services entity must have a chairperson and a deputy chairperson appointed by the regional representative group, or by its board appointment committee, in accordance with the constitution. 10

59 Accountability of board members to regional representative group

- (1) Board members must comply with—
- (a) the board’s collective duties (*see sections 73 and 74*); and
 - (b) their individual duties as board members (*see sections 75 to 79*).
- (2) Board members of an entity are accountable to the entity’s regional representative group for performing their duties as board members. 15

Compare: 2004 No 115 s 26

Obligation to hold specified meetings in public

60 Board must hold 2 public meetings each financial year

- (1) The board of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **public board meetings**). 20
- (2) At least 1 of the public board meetings must be held after 1 July each year for the purpose of considering the entity’s performance under its statement of intent in the previous financial year. 25
- (3) The board must—
- (a) give public notice of the details of the public meeting at least 1 month before the meeting; and
 - (b) allocate a reasonable amount of time for members of the public attending a public board meeting to address the board in relation to the subject matter of the meeting. 30
- (4) To the extent consistent with the requirements of this section, a public board meeting is subject to the rules and requirements that normally apply to the meetings of the board.
- (5) This section prevails in the event of any conflict between this section and the rules and requirements that normally apply to meetings of the board. 35

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

- (1) Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a water services entity as if the entity were a local authority. 5
- (2) This section does not limit—
- (a) **section 44** (which relates to the application of Part 7 of that Act to the entity's regional representative group); or
- (b) **section 55** (which relates to the application of Part 7 of that Act to a regional advisory panel for that regional representative group). 10

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

- (1) Board members are appointed by a board appointment committee.
- (2) The appointment must be made by written notice to the board member (with a copy to the water services entity). 15
- (3) The notice must—
- (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the board member receives the notice; and
- (b) state the term of the appointment. 20
- Compare: 2004 No 115 s 28(2)

63 Criteria for appointments by board appointment committee

- (1) A board appointment committee must appoint board members under **section 62** in accordance with the criteria for board members and the process for appointment under this Act (including the appointment and remuneration policy (if any) approved by the regional representative group under **section 40**). 25
- (2) The board appointment committee may only appoint a person who, in the committee's opinion, has the appropriate knowledge, skills, and experience to assist the water services entity to achieve its objectives and perform its functions.
- (3) In making an appointment, the board appointment committee must take into account the desirability of promoting diversity in the membership of the board. 30
- Compare: 2004 No 115 s 29

64 Requirements before appointment as board member

- (1) Before a person is appointed as a board member of a water services entity, the person must—
- (a) consent in writing to the appointment; and 35

- (b) certify that they are not disqualified from being a board member (*see section 97*); and
- (c) disclose to the chairperson of the entity's regional representative group the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the entity. 5
- (2) The board of a water services entity must notify the chairperson of the entity's regional representative group of a failure to comply with **subsection (1)(c)** as soon as practicable after becoming aware of the failure. 10
- Compare: 2004 No 115 s 31
- 65 Term of office of board members**
- (1) A board member holds office for 5 years or any shorter period stated in the notice of appointment.
- (2) A board member may be reappointed.
- (3) A board member continues in office despite the expiry of their term of office until— 15
- (a) the board member is reappointed; or
- (b) the board member's successor is appointed; or
- (c) the board appointment committee informs the board member by written notice (with a copy to the water services entity) that the board member is not to be reappointed and no successor is to be appointed at that time. 20
- (4) This section is subject to **section 72**.
- Compare: 2004 No 115 s 32
- 66 Validity of board members' acts**
- The acts of a person as a member, chairperson, or deputy chairperson of the board are valid even if— 25
- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a board member; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended. 30
- Compare: 2004 No 115 s 34
- 67 Validity of appointments of board members**
- (1) The appointment of a person as a member, chairperson, or deputy chairperson of the board is not invalid only because a defect existed in the appointment of the person. 35
- (2) This section does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson (if any).
- Compare: 2004 No 115 s 35(1) and (2)(a)

68 Removal of board members

- (1) The board appointment committee may, at any time for just cause, remove a board member from office.
- (2) The removal must be made by written notice to the board member (with a copy to the water services entity). 5
- (3) The notice must state—
- (a) the date on which the removal takes effect which must not be earlier than the date on which the board member receives the notice; and
 - (b) the reasons for the removal.
- (4) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach). 10
- Compare: 2004 No 115 ss 37, 39(1)–(3), 40

69 Process for removal

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

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

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

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70 No compensation for board member's loss of office

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

Compare: 2004 No 115 s 43

71 Resignation of board members

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- (1) A board member may resign from office by giving written notice to the board appointment committee (with a copy to the water services entity) signed by the board member.
- (2) The resignation is effective on receipt of the notice by the board appointment committee or at any later time specified in the notice. 30

Compare: 2004 No 115 s 44

72 Board members ceasing to hold office

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

- (a) resigns in accordance with **section 71**; or
- (b) is removed from office in accordance with **section 68**; or 35
- (c) becomes disqualified from being a member under **section 97(2)**.

Compare: 2004 No 115 s 45

Collective duties of board

- 73 Board must act consistently with objectives, functions, operating principles, and statement of intent** 5
- The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent.
- Compare: 2004 No 115 s 49
- 74 Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi**
- The board of a water services entity must—
- (a) ensure that the entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, the entity has the capacity and capability to— 10
 - (i) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) engage with, and understand perspectives of, mana whenua; and 15
 - (b) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Individual duties of board members

- 75 Duty of board members to comply with relevant legislation** 20
- A board member of a water services entity must not contravene, or cause the contravention of, or agree to the entity contravening, this Act or the Water Services Act 2021.
- Compare: 2004 No 115 s 53
- 76 Duty of board members to act with honesty and integrity** 25
- A board member of a water services entity must, when acting as a board member, act with honesty and integrity.
- Compare: 2004 No 115 s 54
- 77 Duty of board members to act in good faith and not at expense of water services entity's interests** 30
- A board member of a water services entity must, when acting as a board member, act in good faith and not pursue their own interests at the expense of the entity's interests.
- Compare: 2004 No 115 s 55

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

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

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

Compare: 2004 No 115 s 56

79 Duty not to disclose information

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

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

Compare: 2004 No 115 s 57(1)

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

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

Compare: 2004 No 115 s 58(1)–(4), (7)

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

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

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

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

Delegation

85 Board’s ability to delegate

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

86 Powers of delegate 20

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

Compare: 2004 No 115 s 74

87 Effect of delegation on water services entity or board

No delegation in accordance with this Act—

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

Compare: 2004 No 115 s 75 10

88 Revocations of delegations

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

Compare: 2004 No 115 s 76

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

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

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

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

91 What constitution must contain

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

Composition of regional representative group

- (a) the composition of the regional representative group, including— 30
 - (i) whether the group consists of 12 or 14 regional representatives (*see section 27(2) and (3)*); and
 - (ii) the procedures for the appointment of territorial authority representatives to the group (*see section 32*); and

- (iii) the procedures for the appointment of mana whenua representatives to the group (*see* **section 33**); and
 - (iv) the requirements before appointment to the group, including disclosure of interests (*see* **section 34**); and
 - (v) the procedures for the appointment of regional representatives to the board appointment committee (*see* **section 38**); and 5
 - (vi) the composition of any other committees; and
 - (vii) the term of office of regional representatives; and
 - (viii) how a person ceases to be a regional representative; and
 - (ix) the process and grounds for removing regional representatives; and 10
 - (x) how the group's chairperson and deputy chairperson are elected or appointed or, if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, how they are elected or appointed (*see* **sections 41 and 42**): 15
- Procedures for regional representative group*
- (b) how the group will perform or exercise its functions, powers, and duties:
 - (c) arrangements and requirements for meetings of the group and of committees (including the board appointment committee) of the group, including— 20
 - (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and
 - (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and 25
 - (vi) the quorum and procedure for meetings, including decision-making procedures:
 - (d) if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see* **section 42**),— 30
 - (i) the procedure, for a regional representative to disclose details of an interest, required for the purposes of **section 102(4)(c)**:
 - (ii) the procedure, for the board to notify a failure by a board member to comply with **section 101 or 105(1)**, and the acts affected, required for the purposes of **section 106(1)(b)**: 35
 - (iii) the procedure, for giving a permission for 1 or more regional representatives, or regional representatives with a specified class of

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

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

Composition of board

- (k) the composition of the board, including—
- (i) the procedures for the appointment of board members by the board appointment committee (*see sections 62 and 63*); and
 - (ii) the requirements before appointment to the board, including disclosure of interests (*see section 64*); and 5
 - (iii) the term of office of board members (*see section 65*); and
 - (iv) how a person ceases to be a board member (*see section 72*); and
 - (v) how the chairperson and deputy chairperson of the board will be appointed and their term of office: 10

Procedures for board

- (l) the procedures for the board, including—
- (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and 15
 - (iv) the manner of calling meetings; and
 - (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
 - (vi) the quorum and procedure for meetings: 20
- (m) decision-making procedures, including any requirements relating to voting or consensus decision-making:

Procedures for dispute resolution

- (n) procedures for dispute resolution (in addition to those in **section 43(4) and (5)**), including procedures for resolving— 25
- (i) disputes within a regional representative group (that is, between regional representatives); and
 - (ii) disputes between the regional representative group and the board; and
 - (iii) disputes between parties that are able to appoint regional representatives and that are disputes about appointment processes: 30

Procedures for reviewing, amending, or replacing the constitution

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

92 Constitution may contain other matters not inconsistent with Act 35

- (1) The constitution of a water services entity may provide for any other matters that are not inconsistent with this Act or any other legislation.

- (2) In particular, the constitution may provide for—
- (a) collective or individual experience, expertise, qualifications, or skills required of a regional representative group, its committees, or its regional representatives (in addition to those required by **section 38(2)** for members of a board appointment committee): 5
 - (b) collective or individual experience, expertise, qualifications, or skills required of any regional advisory panel, its committees, or its members:
 - (c) collective experience, qualifications, skills or expertise required of the board (in addition to those required by **section 57(2)** for board members): 10
 - (d) additional reporting and monitoring requirements imposed on the board by the regional representative group, over and above requirements in the statement of strategic and performance expectations, statement of intent, annual report, asset management plan, funding and pricing plan, and infrastructure strategy: 15
 - (e) reviews, done by the regional representative group, of the board’s performance, including the intervals between those reviews.
- (3) **Subsection (2)** does not limit **subsection (1)**.

93 Effect of constitution

- (1) A constitution of a water services entity has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other legislation. 20
- (2) The constitution cannot—
- (a) delegate or transfer duties, functions, or powers imposed or conferred by this Act:
 - (b) confer decision-making rights weighted by shares held by a territorial authority owner for any matter: 25
 - (c) confer on a territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative any right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (*see also sections 15(3) and 166(1)(a)*): 30
 - (d) confer a power of direction contrary to **section 115**.
- (3) The constitution is binding, in accordance with its terms, as between—
- (a) the regional representative group, its regional representatives, and its committees; and 35
 - (b) the regional representative group, and the territorial authority owners and mana whenua who, under this Act (*see sections 32 and 33*) and the constitution, appoint and remove regional representatives; and
 - (c) any regional advisory panel, its members, and its committees; and

- (d) the board, its members, and its committees.
- (4) **Subsection (2)** is subject to the rest of this Act (for example, to the board’s ability under **sections 85 to 88** to delegate the functions or powers of the entity or the board).
- 94 First constitution of water services entity** 5
- (1) The first constitution of a water services entity is the model constitution for the entity set out in regulations.
- (2) But, when that model constitution is first amended or replaced under **section 95 or 96**,—
- (a) that model constitution as so amended or replaced must set out all provisions of the entity’s constitution (including any unchanged from that model constitution); and 10
- (b) the regulations setting out the model constitution for the entity are revoked.
- 95 Process for amending or replacing constitution** 15
- (1) A regional representative group may propose to amend the water services entity’s constitution or adopt a new constitution for the entity in the manner provided in this section.
- (2) A proposed amendment to the entity’s constitution or a proposed new constitution for the entity must be approved by the Minister before it is effective. 20
- (3) A draft constitution, or a proposed amendment to the entity’s constitution, must be—
- (a) in writing; and
- (b) approved at a general meeting of the group by a resolution passed by a 75% majority of all of the group’s regional representatives; and 25
- (c) otherwise proposed in accordance with the constitution.
- (4) The regional representative group must ensure that written notice of the draft constitution or proposed amendment is provided to the Minister.
- (5) If the Minister approves the amendment or proposed new constitution, the amendment or replacement constitution is effective— 30
- (a) on the day immediately after the date of that approval; or
- (b) on a later date that is specified in the amendment or replacement, and that is in accordance with the terms of the resolution of the group under **subsection (3)(b)**.
- (6) A proposed amendment to the entity’s constitution or a proposed new constitution for the entity has no effect if rejected by the Minister. 35
- (7) The constitution as amended or replaced under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

- (8) For that Act, the regional representative group is, despite the Minister's approval, taken to be the maker of the constitution.
- (9) This section does not apply to an amendment of a type described in **section 96(1)**.
- 96 Minor or technical amendments** 5
- (1) A regional representative group may, in the manner provided by the constitution, amend the water services entity's constitution under this section if the amendment—
- (a) has no more than a minor effect; or
- (b) corrects errors or makes similar technical alterations. 10
- (2) The regional representative group must, in accordance with the constitution, ensure that written notice of the amendment is sent to the monitor.
- (3) If no objection from the monitor is received within 20 working days after the date on which the notice is served (or any longer period specified in the entity's constitution), the regional representative group may make the amendment. 15
- (4) If the group makes the amendment, the amendment is effective—
- (a) on the day immediately after the date on which the group makes the amendment; or
- (b) on a later date that is specified in the amendment.
- (5) The constitution as amended under this section is secondary legislation (*see* 20 Part 3 of the Legislation Act 2019 for publication requirements).

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

Qualifications

- 97 Qualifications of regional representatives, regional advisory panel members, and board members** 25
- (1) A natural person who is not disqualified by this section may be a regional representative, a regional advisory panel member, or a board member of a water services entity.
- (2) The following persons are disqualified from being a regional representative, regional advisory panel member, or a board member: 30
- (a) a person who is an undischarged bankrupt:
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993: 35

- (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988:
- (d) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's— 5
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare:
- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person: 10
- (f) a member of Parliament. 15
- (3) The following persons are also disqualified from being a board member:
 - (a) a regional representative:
 - (b) a regional advisory panel member:
 - (c) a member— 20
 - (i) of a territorial authority; and
 - (ii) elected under section 19B or 19C of the Local Electoral Act 2001.

Compare: 2004 No 115 s 30

Reliance on information and advice

- 98 When regional representatives, regional advisory panel members, and board members may rely on certain information and advice** 25
- (1) A regional representative, regional advisory panel member, or board member, of a water services entity may, when acting as a regional representative, regional advisory panel member, or board member, rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons: 30
 - (a) an employee of a water services entity whom the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned:
 - (b) a professional adviser or expert in relation to matters that the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be within the person's professional or expert competence: 35

- (c) any other regional representative, regional advisory panel member, or board member or a committee on which the regional representative, regional advisory panel member, or board member did not serve in relation to matters within the designated authority of the regional representative, regional advisory panel member, board member, or committee (as applicable). 5
- (2) This section applies to a regional representative, regional advisory panel member, or board member only if they—
- (a) act in good faith; and
- (b) make proper inquiry if the need for inquiry is indicated by the circumstances; and 10
- (c) have no knowledge that the reliance is unwarranted.

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

Conflict of interest disclosure rules

99 Water services entity must keep interest registers for entity, regional representative group, and regional advisory panel 15

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

- (a) interests of board members:
- (b) interests of regional representatives: 20
- (c) interests of regional advisory panel members.

100 When person is interested

- (1) A person is **interested** in a matter if the person—
- (a) may derive a financial benefit from the matter; or
- (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or 25
- (c) may have a financial interest in a person to whom the matter relates; or
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
- (e) is otherwise directly or indirectly interested in the matter. 30
- (2) However, a person is not interested in a matter—
- (a) because the person receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or
- (b) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under this Act or another Act; or 35

- (c) only because they have past or current involvement in the relevant sector, industry, or practice.
- (3) In this section, **matter** means,—
- (a) in relation to a board member,—
- (i) a water services entity’s performance of its functions or exercise of its powers; or 5
- (ii) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the entity:
- (b) in relation to a regional representative,—
- (i) a regional representative group’s performance of its functions or exercise of its powers; or 10
- (ii) a board appointment committee’s performance of its functions or exercise of its powers:
- (c) in relation to a regional advisory panel member, a regional advisory panel’s performance of its functions or exercise of its powers. 15

Compare: 2004 No 115 s 62

101 Obligation of board member to disclose interest

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

Compare: 2004 No 115 ss 63, 64

102 Obligation of regional representative to disclose interest

- (1) A regional representative who is interested in a matter relating to an entity’s regional representative group must disclose details of the interest in accordance

with **subsection (4)** as soon as practicable after the member becomes aware that they are interested.

- (2) A general notice of an interest in a matter relating to a regional representative group, or in a matter that may in future relate to the group, that is disclosed in accordance with **subsection (4)** is a standing disclosure of that interest for the purposes of this section. 5
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A regional representative must disclose details of an interest in the interests register kept by the water services entity, and— 10
 - (a) to the chairperson of the regional representative group or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the group; or
 - (b) to the monitor, if there is neither a chairperson nor a deputy chairperson of the regional representative group, or if both the chairperson and the deputy chairperson of the group are unavailable or interested; or 15
 - (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see sections 42 and 91(d)*). 20

Compare: 2004 No 115 ss 63, 64 20

103 Obligation of regional advisory panel member to disclose interest

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

- (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the panel to have co-chairpersons and deputy co-chairpersons (*see sections 54 and 91(h)*).

Compare: 2004 No 115 ss 63, 64

104 What must be disclosed 5

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

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified). 10

Compare: 2004 No 115 s 65

105 Consequences of being interested in matter

Board member

- (1) A board member who is interested in a matter relating to a water services entity— 15
- (a) must not vote or take part in any discussion or decision of the board or otherwise participate in any activity of the entity that relates to the matter; and
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and 20
- (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a discussion or decision relating to the matter occurs or is made.

Regional representative

- (2) A regional representative who is interested in a matter relating to a regional representative group— 25
- (a) must not vote or take part in any discussion or decision of the group or otherwise participate in any activity of the group that relates to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the group during which a discussion or decision relating to the matter occurs or is made. 30

Regional advisory panel member

- (3) A regional advisory panel member who is interested in a matter relating to a regional advisory panel— 35
- (a) must not vote or take part in any discussion or decision of the panel or otherwise participate in any activity of the panel that relates to the matter; and

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

Compare: 2004 No 115 s 66

106 Consequences of failing to disclose interest 5

Board

- (1) As soon as practicable after becoming aware of a failure by a board member to comply with **section 101 or 105(1)**, the board must notify the failure and the acts affected—
- (a) to the chairperson of the regional representative group (if the constitution does not provide for the group to have co-chairpersons and deputy co-chairpersons); or 10
- (b) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see sections 42 and 91(d)*). 15

Regional representative group

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

Regional advisory panel

- (3) The regional advisory panel must notify the monitor of a failure by a regional advisory panel member to comply with **section 103 or 105(3)**, and the acts affected, as soon as practicable after becoming aware of the failure. 20

Validity of act or matter

- (4) A failure to comply with **section 101, 102, 103, or 105** does not affect the validity of an act or a matter. 25
- (5) However, **subsection (4)** does not limit the right of any person to apply, in accordance with law, for judicial review.

Compare: 2004 No 115 s 67

107 Permission to act despite being interested in matter 30

Board

- (1) The chairperson of the board may, by prior written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by **section 105** if the chairperson is satisfied that it is in the public interest to do so. 35
- (2) The deputy chairperson (if any) of the board may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.

Regional representative group

- (3) The chairperson of a regional representative group may, by prior written notice to the regional representative group, permit 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by **section 105** if the co-chairperson is satisfied that it is in the public interest to do so. 5
- (4) The deputy chairperson of a regional representative group may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (5) Despite **subsections (3) and (4)**, if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see section 42*), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see section 91(d)*). 10

Regional advisory panel

- (6) The chairperson of a regional advisory panel may, by prior written notice to the regional advisory panel, permit 1 or more regional advisory panel members, or regional advisory panel members with a specified class of interest, to do anything otherwise prohibited by **section 105** if the co-chairperson is satisfied that it is in the public interest to do so. 15
- (7) The deputy chairperson of a regional advisory panel may give a permission if there is no chairperson, or if the chairperson is unavailable or interested. 20
- (8) Despite **subsections (6) and (7)**, if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons (*see section 53*), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see section 91(h)*). 25

Permission

- (9) A permission may state conditions that the board member, regional representative, or regional advisory panel member must comply with.
- (10) A permission may be amended or revoked in the same way as it may be given.

Compare: 2004 No 115 s 68(1)–(5)

108 Permission must be disclosed in annual report 30

The water services entity must disclose an interest to which a permission under **section 107** relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

Compare: 2004 No 115 s 68(6)

35

109 Entity may avoid certain acts done in breach of conflict of interest rules

- (1) A water services entity may avoid a natural person act done by the entity in respect of which a board member was in breach of **section 105**.
- (2) However, the act of a board member—

- (a) may be avoided only within 3 months of the affected act being notified—
- (i) to the chairperson of the regional representative group, under **section 101(a)**; or
 - (ii) under **section 106(1)(b)**, and in accordance with the procedure specified, for the purposes of **section 106(1)(b)**, in the constitution; and
- (b) cannot be avoided if the entity receives fair value in respect of the act.
- (3) An act in which a board member is interested can be avoided on the ground of the board member's interest only in accordance with this section. 10
- Compare: 2004 No 115 s 69

110 What is fair value

- (1) A water services entity is presumed to receive fair value in respect of an act that is done by the entity in the ordinary course of its business and on usual terms and conditions. 15
- (2) Whether a water services entity receives fair value in respect of an act must be determined on the basis of the information known to the entity and to the interested board member at the time the act is done.
- Compare: 2004 No 115 s 70

111 Onus of proving fair value 20

- (1) A person who is seeking to prevent an act from being avoided, and who knew, or ought reasonably to have known, of the board member's interest at the time the act was done, has the onus of establishing fair value.
- (2) In any other case, a water services entity has the onus of establishing that it did not receive fair value. 25
- Compare: 2004 No 115 s 71

112 Effect of avoidance on third parties

- The avoidance of an act under **section 109** does not affect the title or interest of a person to or in property that the person has acquired if the property was acquired— 30
- (a) from a person other than the water services entity; and
 - (b) for valuable consideration; and
 - (c) without knowledge of the circumstances of the act under which the person referred to in **paragraph (a)** acquired the property from the entity.
- Compare: 2004 No 115 s 72 35

Vacancies in membership

- 113 Vacancies in membership of board, regional representative group, or regional advisory panel**
- (1) The powers and functions of a water services entity are not affected by any vacancy in the membership of— 5
- (a) its board; or
 - (b) its regional representative group; or
 - (c) a regional advisory panel for that group.
- (2) The powers and functions of a water services entity’s regional representative group are not affected by any vacancy in the membership of— 10
- (a) the entity’s board; or
 - (b) the regional representative group; or
 - (c) a regional advisory panel for that group.
- (3) The powers and functions of a regional advisory panel for the regional representative group of a water services entity are not affected by any vacancy in the membership of— 15
- (a) the regional advisory panel; or
 - (b) the regional representative group; or
 - (c) the entity’s board.
- Compare: 2004 No 115 s 77 20

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

- (1) A water services entity must provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the remuneration, expenses, or costs specified in **section 91(j)**. 25

Duty to provide information

- (2) A water services entity must provide information that the entity holds if that information is required— 30
- (a) by the entity’s regional representative group or a regional advisory panel for that group; and
 - (b) to help the group or panel perform or exercise its duties, functions, or powers.
- (3) But personal information within the meaning of the Privacy Act 2020 may be provided under **subsection (2)** only in accordance with that Act. 35

Part 3 Operation of water services entities

Independence of water services entities

115 **Safeguarding independence of water services entities**

- (1) The Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity or a board member or an employee of a water services entity— 5
- (a) in relation to the performance or exercise of a duty, function, or power under this Act; or
- (b) to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons. 10
- (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act.
- (3) This section also prevents a constitution of a water services entity from conferring a power of direction that would contravene this section. 15

Compare: 2004 No 115 s 113

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

- #### 116 **Obligation to maintain water services** 20
- (1) A water services entity must continue to provide water services and maintain its capacity to perform or exercise its duties, functions, or powers under this Act.
- (2) In order to perform or exercise its duties, functions, or powers under this Act, a water services entity must not do any of the following: 25
- (a) use water services assets as security for any purpose:
- (b) divest its ownership or other interest in a water service except in accordance with **Schedule 4**:
- (c) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area except— 30
- (i) in accordance with **Schedule 4**; or
- (ii) if, in doing so, the entity retains its capacity to perform or exercise its duties, functions, or powers.
- (3) In this section,—
- significant infrastructure** means any of the following: 35
- (a) water services assets that—

- (i) are owned and operated by a water services entity for the purpose of delivering water services to consumers or communities in any part of the entity's service area; and
- (ii) a water services entity needs to retain to—
 - (A) maintain its capacity to achieve its objectives; or 5
 - (B) perform or exercise its duties, functions, or powers; or
 - (C) promote an outcome that the entity has identified as important to the current or future well-being of consumers or communities in the entity's service area; and
- (b) infrastructure that is identified by the water services entity as being material to its operations and that is included in the entity's current statement of intent 10

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

Compare: 2002 No 84 s 130(2), (3)(a), (b), (c) 15

Contracting out of water services

117 Contracts relating to provision of water services

- (1) Despite **section 116**, a water services entity may enter into a contract for any aspect of the operation of all or part of water services for a term not longer than 35 years. 20
- (2) If a water services entity enters into a contract under **subsection (1)**, it must—
 - (a) continue to be legally responsible for providing the water services; and
 - (b) maintain ownership of the infrastructure and assets relating to the water services; and 25
 - (c) retain control over—
 - (i) the pricing of water services; and
 - (ii) developing policy related to the delivery of water services.
- (3) This section does not prevent a water services entity from entering into a contract with 1 or more other water services entities if the purpose of the contract relates solely to water services. 30

Compare: 2002 No 84, s 136

118 Joint arrangements for purpose of providing water services

- (1) **Section 116** does not prevent a water services entity from entering into, for the purpose of providing water services, a joint arrangement or joint water services entity arrangement for a term not longer than 35 years (except a concession or other franchise agreement relating to the provision of the water services or any aspect of the water services). 35

- (2) Before a water services entity enters into a joint arrangement or joint water services entity arrangement, it must have consulted in accordance with the procedures set out in Part 6 of the Local Government Act 2002 as if it were a local authority.
- (3) If a water services entity enters into a joint arrangement under **subsection (1)**, it must— 5
- (a) continue to be legally responsible for providing the water services; and
 - (b) retain control over—
 - (i) the pricing of water services; and
 - (ii) developing policy related to water services; and 10
 - (c) after the end of the joint arrangement, retain ownership of all the infrastructure associated with the water services, whether or not the infrastructure was—
 - (i) provided by the water services entity at the beginning of the joint arrangement; or 15
 - (ii) developed or purchased during the joint arrangement; and
 - (d) not sell or transfer ownership of any existing infrastructure associated with the water services, unless the water services entity reasonably believes that the sale is—
 - (i) incidental to the joint arrangement; and 20
 - (ii) desirable for the success of the joint arrangement.
- (4) In this section,—
- concession or other franchise agreement** means an agreement under which a person other than a water services entity is entitled to receive a payment from any person other than the water services entity for the supply of the water services 25
- joint arrangement** means an arrangement entered into by 1 or more water services entities with 1 or more bodies that are not water services entities for the purpose of providing water services or any aspect of a water service
- joint water services entity arrangement** means an arrangement entered into by 2 or more water services entities for the purpose of providing water services or any aspect of a water service. 30

Compare: 2002 No 84 ss 136, 137

Employees of water services entities

- 119 Employment of chief executive** 35
- (1) A chief executive of a water services entity is appointed by the entity's board.
 - (2) The terms and conditions of employment of a chief executive must be agreed between the board and the chief executive.

- (3) When considering the terms and conditions of a chief executive, the board must have regard to all of the following (among any other relevant factors):
- (a) the legal, commercial, and operational context of the entity;
 - (b) the person’s knowledge, skills, experience, and performance;
 - (c) the public interest in prudent stewardship of public resources: 5
 - (d) relevant market information.
- (4) A failure to comply with this section does not invalidate the acts of a chief executive of a water services entity.
Compare: 2004 No 115 s 117
- 120 Water services entity to be good employer 10**
- (1) A water services entity must, if it employs employees,—
- (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) make the policy (including the equal employment opportunities programme) available to its employees; and 15
 - (c) ensure its compliance with the policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy that contains provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring— 20
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and 25
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the entity; and
 - (e) opportunities for enhancing the abilities of individual employees; and 30
 - (f) recognition of the aims and aspirations, employment requirements, and cultural differences of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers that cause or 35

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

Compare: 2004 No 115 s 118

Protections from liability

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

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

- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of a water services entity in writing by a person acting under the entity's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of a water services entity in writing or orally by a person acting under the entity's express or implied authority. 5
- (5) This section applies to a contract or other obligation—
- (a) whether or not that obligation was entered into in New Zealand; and
- (b) whether or not the law governing that obligation is the law of New Zealand. 10

Compare: 2004 No 115 s 127

128 Address for service

The address for service in respect of a water services entity is the address of the head office of the entity.

Compare: 2004 No 115 s 130

15

Part 4

Financial and accountability matters

Subpart 1—Government policy statement on water services

129 Minister may issue Government policy statement on water services

- (1) The Minister may issue a Government policy statement on water services. 20
- (2) The Minister must review a Government policy statement no later than 3 years after the date on which it is issued and subsequently at intervals of no more than 3 years after the most recent review.
- (3) A Government policy statement may be issued under **subsection (1)** if—
- (a) the Government policy statement is consistent with the objectives of water services entities under **section 11**; and 25
- (b) the Minister has complied with **section 131(b)**.
- (4) A Government policy statement issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2019 No 50 s 22

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130 Purpose and content of Government policy statement

- (1) The purpose of a Government policy statement is to—
- (a) state the Government's overall direction and priorities for water services; and
- (b) inform and guide agencies involved in, and the activities necessary or desirable for, water services. 35

- (2) A Government policy statement must include the following:
- (a) the Government’s overall direction for water services, which must include a multi-decade outlook:
 - (b) the Government’s priorities for water services:
 - (c) how the Government expects other agencies to support that direction and those priorities: 5
 - (d) the Government’s expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai:
 - (e) how the Government expects water services entities to take into account the well-being of communities. 10
- (3) A Government policy statement may also include—
- (a) the Government’s expectations in relation to the contribution of water services entities to the outcomes sought by the Government in the following areas:
 - (i) public health: 15
 - (ii) the environment:
 - (iii) housing and urban development:
 - (iv) climate change mitigation and adaptation:
 - (v) water security:
 - (vi) resilience to natural hazards: 20
 - (b) any other matters the Minister considers relevant.

Compare: 2019 No 50 s 23

131 Preparation or review of Government policy statement

When preparing or reviewing a Government policy statement, the Minister must— 25

- (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and
- (b) consult—
 - (i) the water services entities; and
 - (ii) the regional representative group of each water services entity; 30
and
 - (iii) Taumata Arowai—the Water Services Regulator; and
 - (iv) other persons, and representative groups of persons, who have an interest in water services in New Zealand.

Compare: 2019 No 50 s 24

35

- 132 Water services entities to give effect to Government policy statement**
 A water services entity must give effect to any Government policy statement when performing its functions.
 Compare: 2019 No 50 s 26
- 133 Amending Government policy statement** 5
 (1) The Minister may amend a Government policy statement at any time.
 (2) **Sections 131 and 134** (which relate to the preparation and availability of a Government policy statement)—
 (a) apply with the necessary modifications to an amendment to the Government policy statement; but 10
 (b) do not apply if the amendment to the Government policy statement is not significant.
 Compare: 2019 No 50 s 29
- 134 Obligation to publish and present Government policy statement**
 (1) As soon as practicable after issuing a Government policy statement, the Minister must— 15
 (a) present a copy to the House of Representatives; and
 (b) arrange for a copy to be given to each water services entity.
 (2) The department must make the Government policy statement publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible. 20
 Compare: 2019 No 50 s 28
- Subpart 2—Regional representative group’s
 statement of strategic and performance expectations 25
- 135 Regional representative group must issue and review, and may replace, statement of strategic and performance expectations**
 (1) The regional representative group of a water services entity must issue a statement of strategic and performance expectations for the entity.
 (2) The regional representative group must, at least once during every year after the year in which a statement of strategic and performance expectations is issued, review the statement. 30
 (3) The regional representative group may, following a review, issue a new statement of strategic and performance expectations that replaces the statement of strategic and performance expectations that was reviewed, in which case, the reviewed statement expires when it is replaced. 35

- (4) A statement of strategic and performance expectations must relate to at least 3 financial years.

136 Purpose and content of statement of strategic and performance expectations

- (1) The purpose of a statement of strategic and performance expectations for a water services entity is to— 5
- (a) state the regional representative group’s objectives and priorities for water services in the entity’s service area; and
 - (b) inform and guide the decisions and actions of the board of the entity.
- (2) A statement of strategic and performance expectations for a water services entity must— 10
- (a) include the following matters:
 - (i) the regional representative group’s expectations and strategic priorities for the entity:
 - (ii) the outcomes the group expects to be achieved through the delivery of water services by the entity: 15
 - (iii) how the group expects the water services entity to meet its objectives, perform or exercise its duties, functions and powers, and comply with its operating principles:
 - (iv) how the group expects the water services entity to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity’s duties, functions, and powers; and 20
 - (b) require the entity to give effect to the objective under **section 11(a)** of delivering water services and related infrastructure in an efficient and financially sustainable manner. 25
- (3) A matter under **subsection (2)(a)** must not be inconsistent with the direction and priorities for water services in the Government policy statement (if any) issued under **section 129**.

137 Water services entity to give effect to statement of strategic and performance expectations 30

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

Compare: 2019 No 50 s 26

138 Obligation to publish statement of strategic and performance expectations

- (1) The regional representative group of a water services entity must provide a copy of a statement of strategic and performance expectations to the board of the entity as soon as practicable after issuing it. 35

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

139 Obligation of regional representative group to review board performance 5

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

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

140 Mana whenua may provide Te Mana o te Wai statements for water services 10

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

- (2) A Te Mana o te Wai statement for water services provided under **subsection (1)** may— 15

- (a) be provided by an individual iwi or hapū, or by a group of iwi or hapū;
(b) relate to 1 freshwater body, or to multiple freshwater bodies.

- (3) Mana whenua who have provided a Te Mana o te Wai statement for water services under **subsection (1)**— 20

- (a) may review the statement at any time; and
(b) following a review, may provide a new statement that replaces the statement that was reviewed, in which case, the reviewed statement expires when it is replaced.

- (4) A statement provided under **subsection (1) or (3)(b)** expires after 10 years. 25

141 Water services entity must respond to Te Mana o te Wai statement for water services

- (1) As soon as practicable after receiving a Te Mana o te Wai statement for water services under **section 140**, the board of a water services entity must—

- (a) acknowledge receipt of the statement; and 30
(b) engage with the mana whenua who provided the statement in accordance with **section 202** in relation to the preparation of a response to the Te Mana o te Wai statement for water services.

- (2) A response to a Te Mana o te Wai statement for water services must include a plan that sets out how the water services entity intends (consistent with, and without limiting, **section 4(1)(b)**) to give effect to Te Mana o te Wai, to the extent that it applies to the entity's duties, functions, and powers. 35

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

The board of a water services entity must make its response to a Te Mana o te Wai statement for water services publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible— 5

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

Subpart 4—Reporting obligations 10*Planning: statement of intent***143 Purpose of statement of intent**

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

- (a) setting out the entity's strategic intentions; and 15
- (b) providing a base against which the water services entity's actual performance can later be assessed.

Compare: 2004 No 115 s 138

144 Board must prepare statement of intent

- (1) The board of a water services entity must provide to the regional representative group a statement of intent that complies with this section and **section 145**. 20
- (2) The board must provide a statement of intent annually.
- (3) A statement of intent must—
 - (a) relate to at least the following 3 financial years; and
 - (b) be prepared in accordance with **Part 1 of Schedule 3**. 25

145 Content of statement of intent*Strategic elements*

- (1) A statement of intent for a water services entity must, for the period to which it relates, set out—
 - (a) how the entity intends to meet its objectives, perform or exercise its duties, functions, and powers, and comply with its operating principles; and 30
 - (b) the outcomes the board expects to achieve through the delivery of water services; and
 - (c) how the entity intends to give effect to— 35

- (i) the expectations, strategic priorities, and outcomes outlined in the statement of strategic and performance expectations for the entity; and
 - (ii) the direction and priorities in the Government policy statement.
- Operational elements* 5
- (2) A statement of intent for a water services entity must, for the period to which it relates, set out—
- (a) the nature and scope of the activities the entity proposes to undertake; and
 - (b) significant work that the entity proposes to undertake; and 10
 - (c) any actions the entity intends to take (consistent with its plan under **section 141(2)**) relating to water services as part of its response to a Te Mana o te Wai statement for water services; and
 - (d) how the entity proposes to approach consumer and community engagement; and 15
 - (e) a forecast statement of service delivery performance for water supply, wastewater, and stormwater services, including non-financial performance measures and targets about the quality of the services to be delivered.
- Financial elements* 20
- (3) A statement of intent must also include—
- (a) the forecast financial statements for each financial year in the period to which the statement of intent relates; and
 - (b) the financial statements for the financial year immediately preceding the period to which the statement of intent relates; and 25
 - (c) a forecast of expenditure to be applied to—
 - (i) meet additional demand for water supply, wastewater, and stormwater services; and
 - (ii) improve the level of the service delivery performance; and
 - (iii) replace existing assets. 30
- (4) For the purposes of this section, budgeted expenditure applied for 2 or all of the purposes in **subsection (3)** may be treated as if it were applied solely in relation to the primary purpose of the expenditure.
- 146 Board must publish statement of intent**
- The board of a water services entity must, as soon as practicable after providing a statement of intent to the entity’s regional representative group, make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 35

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

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

148 Content of asset management plan

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

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

149 Obligation to publish asset management plan

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

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

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

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

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

151 Content of funding and pricing plan

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

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

152 Obligation to publish funding and pricing plan

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

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

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

Planning: infrastructure strategy

- 153 Board must prepare and adopt infrastructure strategy** 5
- (1) The board of a water services entity must provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period.
- (2) The strategy must—
- (a) cover a period of at least 30 consecutive financial years; and
- (b) comply with **section 154**; and 10
- (c) be prepared in accordance with **Part 4 of Schedule 3**.
- 154 Content of infrastructure strategy**
- (1) An infrastructure strategy must identify—
- (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and 15
- (b) the main options for managing those issues and the implications of those options.
- (2) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends to operate, maintain, and renew its existing infrastructure assets and provide for new infrastructure over the period covered by the strategy. 20
- (3) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends (consistent with, and without limiting, **section 4(1)(b)**) to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity's duties, functions, and powers. 25
- Compare: 2002 No 84 s 101B
- 155 Obligation to publish infrastructure strategy**
- The chief executive of a water services entity must, as soon as practicable after an infrastructure strategy is provided to the entity's regional representative group,— 30
- (a) make the strategy publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and
- (b) prepare and publish a report on how consumer and community input into, and feedback on, the strategy was considered and incorporated into the strategy. 35

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

- (1) A water services entity must,—
- (a) as soon as practicable after the end of each financial year, prepare a report on the affairs of the water services entity; and 5
 - (b) provide the report to its regional representative group no later than 15 working days after receiving the audit report provided under **section 161**.
- (2) A water services entity must publish a copy of its annual report on an Internet site maintained by, or on behalf of, the entity— 10
- (a) as soon as practicable after it has been provided to the regional representative group; and
 - (b) in any event, no later than 20 working days after receiving the audit report.
- Compare: 2004 No 115 s 150(1) 15

157 Form and content of annual report

- (1) An annual report of a water services entity must contain the following information and reports in respect of the financial year to which it relates:
- (a) information on operations that complies with **subsection (2)**;
 - (b) a statement of service delivery performance in accordance with **section 158**: 20
 - (c) the annual financial statements for the entity in accordance with **section 159**;
 - (d) a statement of responsibility in accordance with **section 160**;
 - (e) an audit report in accordance with **section 161**: 25
 - (f) information on compliance with its obligation to be a good employer, including its equal employment opportunities programme (*see section 120*):
 - (g) information required by **section 162** (which relates to payments in respect of board members, chief executives, and employees during that financial year): 30
 - (h) information on responses the board has made to Te Mana o te Wai statements for water services during that financial year (*see section 141*):
 - (i) information on any action that the entity has taken (consistent with its plan under **section 141(2)**) as part of its response to a Te Mana o te Wai statement for water services (*see section 141*): 35
 - (j) information required by **section 21(3)** (which relates to the enforcement of certain natural person transactions):

- (k) information required by **section 108** (which relates to permission to act despite being interested in a matter):
 - (l) any matters that relate to or affect the entity's operations that the entity is otherwise required, or has undertaken, or wishes to report on in its annual report. 5
- (2) The annual report must provide the information that is necessary to enable an informed assessment to be made of the entity's operations for that financial year, including an assessment of the entity's progress in relation to its strategic intentions as set out in the most recent statement of intent, asset management plan, and funding and pricing plan. 10
- Compare: 2004 No 115 s 151(1)(a)–(e), (g)–(k), (2)

158 Form and content of statement of service delivery performance

- (1) A statement of service delivery performance must, in relation to a water services entity and a financial year, contain the following information:
- (a) a comparison of the actual performance achieved with the forecast statement of service delivery performance in the statement of intent (*see section 145(2)(e)*): 15
 - (b) whether any intended changes to the level of service delivery have been achieved:
 - (c) the reasons for any significant variation between the level of service delivery achieved and the intended level of service delivery: 20
 - (d) the actual revenue, operating expenditure, and capital expenditure for water supply, wastewater, and stormwater services, compared to the revenue, operating expenditure, and capital expenditure budgeted for those services in the statement of intent. 25
- (2) For the purposes of **subsection (1)(d)**, the statement must separately provide for actual and budgeted expenditure applied to—
- (a) meet additional demand for the water supply, wastewater, and stormwater services:
 - (b) improve the level of service delivery performance: 30
 - (c) replace existing assets.
- (3) For the purposes of this section, actual or budgeted expenditure for 2 or all of the purposes in **subsection (2)** may be treated as if it were made solely in relation to the primary purpose of the expenditure. 35
- Compare: 2004 No 115 s 153

159 Annual financial statements

- (1) As soon as practicable after the end of each financial year, a water services entity must prepare financial statements in relation to the entity for that financial year.

- (2) The financial statements must—
- (a) include any information or explanations needed to fairly reflect the financial operations and financial position; and
 - (b) include the forecast financial statements prepared at the start of the financial year for comparison with the actual financial statements. 5

Compare: 2004 No 115 s 154

160 Statement of responsibility

The statement of responsibility must—

- (a) contain a statement of the signatories' responsibility for the preparation of the financial statements and statement of performance and for the judgments in them; and 10
- (b) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and
- (c) contain a statement that, in the opinion of the signatories, the financial statements and statement of performance for the financial year fairly reflect the financial position and operations of the water services entity; and 15
- (d) be dated and signed—
 - (i) by 2 board members on behalf of the board; and 20
 - (ii) by the chief executive.

Compare: 2004 No 115 s 155

161 Audit report

- (1) A water services entity must forward to the Auditor-General—
 - (a) the entity's annual financial statements and statement of service delivery performance; and 25
 - (b) any other information that the Auditor-General has agreed, or is required, to audit.
- (2) The Auditor-General must—
 - (a) audit the statements and information referred to in **subsection (1)**; and 30
 - (b) provide an audit report on those statements and that information to the water services entity.

Compare: 2004 No 115 s 156(1), (2)

162 Disclosure of payments in respect of board members and employees

- (1) The annual report must include, in respect of the water services entity,— 35

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- (a) a report on the remuneration that, in the financial year to which the report relates, was received by, or was payable to, each of the chief executive and each board member of the water services entity; and
- (b) a report on the number of employees who were employed by the entity— 5
- (i) on the last day of the financial year to which the report relates; and
- (ii) on the last day of the immediately preceding financial year; and
- (c) the amount of any severance payments made in the financial year to any person who vacated office as the chief executive; and 10
- (d) the number of employees of the entity to whom, in the financial year, severance payments were made and the amount of each severance payment (if any); and
- (e) the details of any indemnity provided by the entity during the financial year to the chief executive, any board member, or any employee; and 15
- (f) the details of any insurance cover effected by the entity during the financial year in respect of the liability or the costs of the chief executive, any board member, or any employee.
- (2) The report under **subsection (1)(a)** must include, in relation to the chief executive and each board member, the total annual remuneration (including the value of any non-financial benefits) that was paid to the person, or was payable to the person, in their capacity as a chief executive or as a board member of the entity during the financial year. 20
- (3) The report must state, as at the last day of the financial year,—
- (a) the number of full-time employees; and 25
- (b) the full-time equivalent number of all other employees; and
- (c) the number of employees receiving total annual remuneration of less than \$100,000; and
- (d) the number of employees receiving total annual remuneration of \$100,000 or more, expressed in bands of \$10,000. 30
- (4) If the number of employees in any band to which **subsection (3)(d)** applies is 5 or fewer, the number for that band must be combined with the next-highest band and the statement in the report in relation to that subsection must be adjusted accordingly.
- (5) In this section,— 35
- board member, chief executive, and employee** include a person who was a board member, the chief executive, or an employee at any time after the commencement of this section but who is no longer a board member, the chief executive, or an employee

severance payment means any consideration that a water services entity has agreed to provide to an employee in respect of that employee's agreement to the termination of their employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to—

- (a) any final payment of salary; or 5
- (b) any holiday pay; or
- (c) any superannuation contributions

total annual remuneration, in relation to an employee, a board member, or the chief executive of a water services entity, includes the value of any non-financial benefit that, during the year, was paid to the employee, board member, or chief executive, or was payable to the employee, board member, or chief executive, by the water services entity. 10

Compare: 2004 No 115 s 152; 2002 No 84 Schedule 10, cls 32, 32A, 33

163 Information to be prepared in accordance with generally accepted accounting practice 15

All information that is required by any provision of this subpart to be included in a statement of intent, a funding and pricing plan, an asset management plan, an infrastructure strategy, or an annual report must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards. 20

Compare: 2002 No 84 s 111

164 Insurance of assets

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

- (a) the total value of all assets of the water services entity that are covered by insurance contracts and the maximum amount to which they are insured; and 25
- (b) the total value of all assets of the water services entity that are covered by financial risk sharing arrangements and the maximum amount available to the water services entity under those arrangements; and 30
- (c) the total value of all assets of the water services entity that are self-insured and the value of any fund maintained by the water services entity for that purpose.

Compare: 2002 No 84 Schedule 10 cl 31A

Subpart 5—Other provisions for financial management and independence

Bank accounts

165 Bank accounts of water services entities

- (1) A water services entity must ensure that all money received by the entity is paid, as soon as practicable after it is received, into 1 or more bank accounts that are established, maintained, and operated by the entity at 1 or more of the following: 5
- (a) a registered bank or registered building society that satisfies a relevant credit-rating test specified in a notice in the *Gazette* published by the Minister of Finance; or 10
 - (b) a registered bank or registered building society that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or
 - (c) a bank outside New Zealand that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or 15
 - (d) a bank outside New Zealand if the conditions specified in **subsection (2)** are met.
- (2) The conditions referred to in **subsection (1)(d)** are as follows:
- (a) the water services entity must be authorised to establish, maintain, and operate 1 or more bank accounts at 1 or more banks outside New Zealand— 20
 - (i) by the Minister of Finance in writing; or
 - (ii) by a notice in the *Gazette* published by the Minister of Finance; and 25
 - (b) the bank account or bank accounts must be of a type approved—
 - (i) by the Minister of Finance in writing; or
 - (ii) by a notice in the *Gazette* published by the Minister of Finance.
- (3) A water services entity must establish, maintain, and operate a bank account referred to in **subsection (2)** subject to— 30
- (a) any conditions specified in a notice published in the *Gazette* by the Minister of Finance; and
 - (b) any conditions of the authorisation or approval given by the Minister of Finance.
- (4) A water services entity must ensure that it does not establish, maintain, or operate a bank account other than as provided for in **subsection (1)**. 35

- (5) All money in a bank account at a registered bank or a registered building society must be denominated in New Zealand dollars unless the Minister of Finance allows otherwise.
- (6) A water services entity must properly authorise the withdrawal or payment of money from a bank account of the entity. 5
- (7) There is a period of grace if a bank account ceases to qualify under **subsection (1)** and,—
- (a) during that period, the water services entity may continue to pay money into the bank account; but
- (b) by the end of the period, the water services entity must have closed the account and paid all the money in the account into another bank account that qualifies under **subsection (1)**. 10
- (8) The period of grace ends on the earlier of—
- (a) the date that is 2 months after the bank account ceases to qualify under **subsection (1)**; and 15
- (b) the date that is specified by the Minister of Finance and notified to the water services entity.

Compare: 2004 No 115 s 158

Financial independence

- 166 Financial independence** 20
- (1) A territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative—
- (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (and the constitution cannot confer any such right, title, or interest — *see also sections 15(3) and 93(2)(c)*); and 25
- (b) must not receive any equity return, directly or indirectly, from a water services entity; and
- (c) must not give a water services entity any financial support or capital; and 30
- (d) must not lend money or provide credit to a water services entity; and
- (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by a water services entity.
- (2) However, nothing in **subsection (1) or (3)** limits or affects—
- (a) the allocation or reallocation of shares under **sections 15(2) and 16**; 35
or
- (b) the holding of those shares by the relevant territorial authority owner; or
- (c) voting under **Schedule 4** on a divestment proposal.

(3) In this section,—

equity return means—

- (a) profits of the entity; or
- (b) distributions from the entity; or
- (c) any benefit derived, directly or indirectly, from a water services entity 5
that represents, is calculated by reference to, or is determined by,—
 - (i) a share in or proportion of the entity’s capital; or
 - (ii) the entity’s surplus or residual economic value (after satisfying
prior contractual claims); or
 - (iii) the entity’s profitability or any other indicator of its success 10

give financial support or capital does not include to sell or supply goods or services on credit—

- (a) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
- (b) on terms and conditions generally available to other parties of equivalent 15
creditworthiness

lend money or provide credit—

- (a) includes, without limiting the generality of that expression,—
 - (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and 20
 - (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and
 - (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
 - (iv) to subscribe for any debt securities or uncalled capital; but 25
- (b) does not include to sell or supply goods or services on credit—
 - (i) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
 - (ii) on terms and conditions generally available to other parties of 30
equivalent creditworthiness

security has the meaning set out in section 6 of the Financial Markets Conduct Act 2013.

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

Subpart 6—Accounting records

167 Board must ensure that proper accounting records are kept

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

Compare: 2004 No 115 s 168

Subpart 7—Borrowing 15

168 Borrowing in foreign currency

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

Part 5 Monitoring 20

Subpart 1—Monitor

Appointment and role of monitor

169 Appointment and role of monitor

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

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

Monitor’s information-gathering power

170 Monitor’s power to request information

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

171 Good reason for refusing to supply requested information 15

- (1) A request for information made under **section 170** may be refused if—
 - (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or
 - (b) the supply of the information would limit the ability of the water services entity, or of any of its employees or board members, to perform or exercise duties, functions, or powers under this Act in relation to a particular matter. 20
 - (2) A reason in **subsection (1)(a)** applies only if it is not outweighed by the monitor’s need to have the information in order to perform its duties and functions under this Act. 25
 - (3) The information cannot be withheld other than for the reasons in **subsection (1)**, and cannot be withheld at all if it could not properly be withheld under the Official Information Act 1982.
- Compare: 2004 No 115 s 134

172 Civil proceedings relating to non-compliance with information request 30

- (1) The monitor may apply to the High Court for an order if a person does not comply with **section 170**.
- (2) If the court is satisfied that the person has not complied with **section 170**, the court may make either or both of the following:
 - (a) an order directing the person to comply with **section 170**: 35
 - (b) an order imposing a civil pecuniary penalty not exceeding \$50,000.

- (3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that it considers appropriate in the circumstances, including an order directing the person to pay to the monitor the reasonable costs of the proceedings.

Compare: 2021 No 36 s 143

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173 Content of notice

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

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

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Subpart 2—Minister’s powers to intervene

174 Meaning of problem for purposes of subpart

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

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

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*Crown review team***175 Minister may appoint Crown review team**

- (1) The Minister may appoint a Crown review team to perform functions under this section if—
- (a) the water services entity has received a notice under **section 170** and, without good reason, has not provided the information required by the notice by the stated or agreed date; or 5
 - (b) the Minister believes on reasonable grounds that a problem relating to the water services entity may exist and—
 - (i) the water services entity is unable or unwilling to effectively address the problem; or 10
 - (ii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
 - (c) the Minister has received a written request to do so from the water services entity or the entity's regional representative group. 15
- (2) Before appointing a Crown review team, the Minister must give notice of the proposed appointment in accordance with **section 185**.
- (3) Before the Crown review team begins its review, the Minister must give notice of the appointment in accordance with **section 186**.
- (4) A Crown review team must, to the extent authorised by its terms of reference,— 20
- (a) investigate and report on the nature and extent of the problem or failure to provide information; and
 - (b) make recommendations to the water services entity and the Minister on how the water services entity could address the problem (if any); and 25
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - (d) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished. 30
- (5) To the extent authorised by its terms of reference, a Crown review team may also investigate, and report on, any related matter recommended by a ministerial body currently or previously appointed in relation to the water services entity. 35
- (6) A water services entity must—
- (a) co-operate with a Crown review team so that it may comply with its terms of reference; and

- (b) comply with any reasonable request of the Crown review team to provide any relevant information that the water services entity holds.
- (7) A Crown review team must produce a final report that complies with **section 188** as soon as practicable after completing a review. 5
Compare: 2002 No 84 s 258
- 176 Appointment of Crown review team**
- (1) A Crown review team comprises 1 or more members.
- (2) If a Crown review team comprises 2 or more members, the Minister must appoint 1 member as the chairperson.
- (3) The Minister must appoint each member by notice in writing. 10
- (4) Each notice of appointment must include—
- (a) the terms of reference of the Crown review team, including—
- (i) an outline of the reason it has been appointed to perform functions under **section 175**; and
- (ii) the extent of its authority; and 15
- (b) the start and end dates of each member’s appointment; and
- (c) the start and end dates of the review period.
- Compare: 2002 No 84 s 258A

Crown observer

- 177 Minister may appoint Crown observer** 20
- (1) The Minister may appoint a Crown observer to perform functions under this section if—
- (a) the Minister believes, on reasonable grounds, that a problem relating to a water services entity exists and—
- (i) the appointment of a Crown observer is necessary to enable, or better enable, the water services entity to effectively address the problem; or 25
- (ii) the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity’s progress in addressing the problem; or 30
- (iii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
- (b) the Minister has received a written request to do so from the water services entity or the entity’s regional representative group.
- (2) Before appointing a Crown observer, the Minister must give notice of the proposed appointment in accordance with **section 185**. 35

- (3) Before the Crown observer begins their observation period, the Minister must give notice of the appointment in accordance with **section 186**.
- (4) A Crown observer must, to the extent authorised by the Crown observer's terms of reference,—
- (a) assist the water services entity to address the problem; and 5
 - (b) monitor the water services entity's progress in relation to the problem; and
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and 10
 - (d) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished; and
 - (e) assist the water services entity with, and monitor progress on, any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity. 15
- (5) A water services entity must—
- (a) co-operate with a Crown observer so that it may comply with its terms of reference; and
 - (b) comply with any reasonable request of the Crown observer to provide any relevant information that the water services entity holds. 20
- (6) A Crown observer must produce a final report that complies with **section 188** as soon as practicable after its observation period ends.

Compare: 2002 No 84 s 258B

178 Appointment of Crown observer 25

- (1) The Minister must appoint a Crown observer by notice in writing.
- (2) Each notice of appointment must include—
- (a) the terms of reference of the Crown observer, including—
 - (i) an outline of the problem that the Crown observer has been appointed to observe; and 30
 - (ii) the extent of the Crown observer's authority; and
 - (b) the start and end dates of the Crown observer's appointment; and
 - (c) the start and end dates of the observation period.

Compare: 2002 No 84 s 258C

*Crown manager***179 Minister may appoint Crown manager**

- (1) The Minister may appoint a Crown manager to perform functions under this section if—
- (a) the Minister believes, on reasonable grounds, that a problem relating to the water services entity exists and—
 - (i) the nature and extent of the problem is such that the water services entity is unlikely to effectively address the problem without the appointment of a Crown manager; or
 - (ii) the water services entity has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or
 - (iii) a ministerial body currently or previously appointed in relation to the water services entity has recommended the appointment; or
 - (b) the Minister has received a written request to do so from the water services entity or the entity's regional representative group.
- (2) Before appointing a Crown manager, the Minister must give a notice of the proposed appointment in accordance with **section 185**.
- (3) Before the Crown manager begins their management period, the Minister must give notice of the appointment in accordance with **section 186**.
- (4) A Crown manager must, to the extent authorised by their terms of reference,—
- (a) direct the water services entity, or the board of the water services entity, to act to address the problem; and
 - (b) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and
 - (c) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished; and
 - (d) direct the water services entity on any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity.
- (5) A Crown manager may work together with, or apart from, the board of a water services entity.
- (6) A water services entity must—
- (a) co-operate with a Crown manager so that it may comply with its terms of reference; and
 - (b) comply with the directions of a Crown manager; and

- (c) comply with any reasonable request of a Crown manager to provide any relevant information that the water services entity holds.
- (7) A Crown manager must produce a final report that complies with **section 188** as soon as practicable after their management period ends.
Compare: 2002 No 84 s 258D 5
- 180 Appointment of Crown manager**
- (1) The Minister must appoint a Crown manager by notice in writing.
- (2) Each notice of appointment must include—
- (a) the terms of reference of the Crown manager, including—
- (i) an outline of the problem it has been appointed to manage; and 10
- (ii) the extent of the Crown manager’s authority; and
- (b) the start and end dates of the Crown manager’s appointment; and
- (c) the start and dates of the management period.
Compare: 2002 No 84 s 258E
- Subpart 3—General provisions applying to
Minister’s powers to intervene** 15
- 181 Application**
- This subpart applies in relation to any appointment the Minister makes under **subpart 2**.
- 182 Minister may consult** 20
- The Minister may consult any person, organisation, or group—
- (a) when determining what action, if any, to take under **subpart 2**;
- (b) when appointing a ministerial body;
- (c) when formulating the terms of reference for a ministerial body.
Compare: 2002 No 84 s 258N 25
- 183 Minister must publish list of matters**
- (1) The Minister must publish a list of matters relevant to determining what action, if any, the Minister will take under **subpart 2**.
- (2) Without limiting **subsection (1)**, the list must include the following matters:
- (a) guiding principles that the Minister is likely to adopt when making decisions under this Part: 30
- (b) matters or circumstances relating to the management or governance of a water services entity that the Minister considers are likely to detract from the ability of the entity to give effect to its objectives or undertake its functions: 35

- (c) the types and sources of information that the Minister is likely to consider when making decisions under this Part.
- (3) The Minister must review the list no later than 5 years after the date on which it is published and subsequently at intervals of no more than 5 years after the most recent review. 5
- (4) The Minister must republish the list after each review.
- (5) Before publishing or republishing a list, the Minister—
- (a) must consult Local Government New Zealand; and
- (b) may consult any other person, organisation, or group.
- (6) In this section, **publish** and **republish** mean to publish in the *Gazette* and on an Internet site maintained by, or on behalf of, the monitor. 10

Compare: 2002 No 84 s 258O

184 Minister must have regard to published list

- (1) The Minister must, when determining what action, if any, to take under **subpart 2**, have regard to the list published under **section 183**. 15
- (2) However, the Minister may act under **subpart 2** and appoint a ministerial body in relation to a water services entity even if the problem in relation to the water services entity does not relate to a matter on the list.

Compare: 2002 No 84 s 258P

185 Notice of proposed appointment of ministerial body 20

- (1) Before appointing a ministerial body to perform functions under this subpart in relation to a water services entity, the Minister must—
- (a) give the entity and the entity's regional representative group notice that the Minister intends to make the appointment; and
- (b) state— 25
- (i) the reasons for the proposed appointment; and
- (ii) the proposed terms of reference; and
- (c) give the entity an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, which must be no earlier than 10 working days after the date on which the Minister gives the notice to the entity: 30
- (i) that the reasons for the Minister to make the appointment do not exist;
- (ii) that the water services entity is acting effectively to address the problem (if any) or the reasons for the proposed appointment: 35
- (iii) that, for any other reason, the Minister should not make the appointment;
- (iv) that the Minister should appoint a different ministerial body.

- (2) The Minister must notify a water services entity, in writing, if the Minister decides not to appoint a ministerial body.
- (3) This section does not apply if—
- (a) the water services entity has requested the Minister to make the appointment; or 5
 - (b) the problem in relation to which the Minister intends to make the appointment relates to the consequences of a state of emergency and the Minister believes, on reasonable grounds, that the public health or safety of the people within the water services entity's service area is, or is likely to be, endangered. 10

Compare: 2002 No 84 s 258Q

186 Notice of appointment of ministerial body

- (1) A notice of appointment of a ministerial body under **section 175(3), 177(3), or 179(3)** must—
- (a) be in writing; and 15
 - (b) be given as soon as is reasonably practicable after the Minister makes the appointment; and
 - (c) be sent to the relevant water services entity and the entity's regional representative group; and
 - (d) be published in the *Gazette*; and 20
 - (e) be publicly notified.
- (2) A notice of appointment must include—
- (a) a statement that the Minister has appointed a ministerial body in relation to the relevant water services entity; and
 - (b) the type of ministerial body appointed; and 25
 - (c) the terms of reference; and
 - (d) the start and end dates of the ministerial body's appointment; and
 - (e) the name of each member of the ministerial body; and
 - (f) if applicable, the name of the chairperson of the ministerial body.
- (3) The Minister must notify any change in the membership of a ministerial body by notice in the *Gazette*. 30
- (4) In this section, **publicly notify** means to publish—
- (a) a notice on an Internet site maintained by, or on behalf of, the monitor; and
 - (b) any other notice that the Minister thinks desirable in the circumstances. 35

Compare: 2002 No 84 ss 258S, 258T

187 Information to Minister

A ministerial body must inform the Minister about—

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

Compare: 2020 No 47 s 128(1)

5

188 Final report of ministerial body

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

- (a) a narrative description of the activities of the ministerial body in relation to its terms of reference; and 10
- (b) in respect of the problem in relation to which the ministerial body was appointed, an assessment of progress in addressing the problem; and
- (c) any final recommendations of the ministerial body to the Minister, the water services entity, or both; and
- (d) without limiting **paragraph (c)**, any final recommendations of the ministerial body to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and 15
- (e) any other matter required by the ministerial body's terms of reference. 20

- (2) The Minister must, as soon as practicable,—

- (a) give a copy of the report to the relevant water services entity and the entity's regional representative group; and
- (b) make the report publicly available, excluding any information that it is necessary to withhold for any of the reasons stated in section 6 or 7 of the Local Government Official Information and Meetings Act 1987. 25

Compare: 2002 No 84 s 258U

189 Remuneration and expenses of ministerial appointees

- (1) A ministerial appointee is entitled—

- (a) to receive remuneration for services as a member of a ministerial body as determined by the Minister in accordance with the fees framework; and 30
- (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in providing the services as a member in accordance with the fees framework. 35

- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 2002 No 84 s 258V

190 Recovery of expenses from water services entity 5

- (1) A water services entity owes, as a debt to the Crown, any expenses that the Crown incurs for the appointment of a Crown manager in relation to the entity, including the payment of remuneration and expenses to the Crown manager.
- (2) Any expenses that the Crown incurs for the appointment of a Crown observer or a Crown review team in relation to a water services entity, including the payment of remuneration and expenses to the Crown observer or any member of the Crown review team, may be recovered by the Crown from the entity if—
- (a) the Minister decides that it is reasonable to do so in the circumstances; and
- (b) the terms of reference authorise the recovery. 15

Compare: 2002 No 84 s 258W

191 Minister may terminate appointment of ministerial body or ministerial appointee

- (1) The Minister may terminate the appointment of a ministerial body or ministerial appointee at any time by notice in writing. 20
- (2) The Minister must give notice of the termination of a ministerial body—
- (a) in writing to the water services entity and the entity's regional representative group; and
- (b) by notice in the *Gazette*; and
- (c) by public notice. 25
- (3) The Minister must give notice of the termination of the appointment of a ministerial appointee in writing to the appointee, the water services entity, and the entity's regional representative group.
- (4) No compensation is payable to a ministerial appointee as a result of the appointee's termination. 30

Compare: 2002 No 84 s 258X

192 Protection from liability for ministerial appointees

- (1) A ministerial appointee is not liable for any act done or omitted to be done by the appointee in good faith in the performance or intended performance of the appointee's functions, responsibilities, and duties, or the exercise of the appointee's powers as a ministerial appointee. 35

- (2) The protection from liability in **subsection (1)** includes protection in relation to acts done or omitted to be done by a Crown manager when directing a water services entity to act.
Compare: 2002 No 84 s 258Y
- 193 Disclosure of information held by water services entity** 5
- (1) For the purposes of this Part, information held by a water services entity may be disclosed to the Minister or a ministerial body despite anything to the contrary in the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987, or the Privacy Act 2020.
- (2) However, the Minister, the ministerial body, or a ministerial appointee must not publish or disclose the information to any other person except in accordance with those Acts. 10
Compare: 2002 No 84 s 258Z
- 194 Decisions and directions of Crown manager remain in force**
- On and from the expiry of the term of a Crown manager appointed in relation to a water services entity,— 15
- (a) a direction given to the water services entity by the Crown manager ceases to have effect; and
- (b) despite **paragraph (a)**, any decision made by the water services entity giving effect to the direction continues in force unless and until the board of the entity revokes or amends the decision. 20
Compare: 2002 No 84 s 258ZA(1), (2), (3)

Part 6

Miscellaneous provisions

- Subpart 1—Reviews 25
- 195 Interim review of governance and accountability arrangements under Act**
- (1) The Minister must, in the relevant period, commission a review of the need for, and the operation and effectiveness of, the governance and accountability arrangements under this Act.
- (2) The relevant period starts on the fifth anniversary, and ends on the sixth anniversary, of the establishment date (as defined in **clause 1(1) of Schedule 1**). 30
- (3) The interim review required by this section must include consideration of the following matters:
- (a) governance structures, and related roles and responsibilities, under this Act: 35
- (b) interaction of each water services entity’s regional representative group with the following:

- | | | |
|-------|--|----|
| (i) | the entity's board: | |
| (ii) | territorial authority owners: | |
| (iii) | mana whenua in the entity's service area: | |
| (iv) | communities in the entity's service area: | |
| (c) | interaction of each water services entity with the following: | 5 |
| (i) | territorial authority owners: | |
| (ii) | mana whenua in the entity's service area: | |
| (iii) | communities in the entity's service area: | |
| (d) | each water services entity's— | |
| (i) | relationships with financiers; and | 10 |
| (ii) | financing arrangements: | |
| (e) | accountability, strategic direction, or planning or reporting mechanisms, including each— | |
| (i) | Government policy statement: | |
| (ii) | regional representative group's statement of strategic and performance expectations: | 15 |
| (iii) | Te Mana o te Wai statement for water services: | |
| (iv) | statement of intent: | |
| (v) | other planning or reporting document under this Act: | |
| (f) | each water services entity's constitution, including amendments to it, or its replacement: | 20 |
| (g) | any other relevant matters identified by the Minister. | |
| (4) | Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit. | 25 |

196 Comprehensive review of water services legislation

- | | | |
|-----|--|----|
| (1) | The Minister must, in the relevant period, commission a review of the need for, and operation and effectiveness of, water services legislation. | |
| (2) | The relevant period starts on the ninth anniversary, and ends on the tenth anniversary, of the establishment date (as defined in clause 1(1) of Schedule 1). | 30 |
| (3) | The comprehensive review required by this section must include consideration of the following: | |
| (a) | legislation in or made under this Act, plus each water services entity's constitution: | 35 |
| (b) | legislation in or made under Taumata Arowai—the Water Services Regulator Act 2020: | |

-
- (c) legislation in or made under the Water Services Act 2021:
- (d) legislation about economic regulation of, or consumer protection in respect of, water services:
- (e) interaction of relevant regulators and relevant regulatory systems:
- (f) oversight, monitoring, and stewardship arrangements: 5
- (g) any other relevant matters identified by the Minister.
- (4) Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit. 10
- 197 Reviewer**
- A review required by this subpart must be done by the following reviewer:
- (a) the monitor, if the monitor is asked by the Minister to do the review:
- (b) in any other case, a review panel commissioned by or on behalf of the Minister. 15
- 198 Reviewer’s power to request information**
- (1) The reviewer may, by notice in writing, require a water services entity, or other relevant person, to provide the reviewer with information the reviewer thinks necessary to do the review.
- (2) The entity or other relevant person must provide the requested information by the reasonable date that the reviewer has specified for that purpose in the notice. 20
- (3) **Sections 171 to 173** apply, with all necessary modifications, to a request under this section.
- 199 Report** 25
- (1) The reviewer must prepare a report on a review required by this subpart.
- (2) The report must include at least the following contents:
- (a) any terms of reference, consistent with **section 195 or 196**:
- (b) the process that was followed:
- (c) the issues that were examined: 30
- (d) the key findings:
- (e) any recommendations arising out of the review, including—
- (i) whether any amendments to any of the legislation reviewed are necessary or desirable:
- (ii) any other matters that the reviewer recommends be considered by the Minister. 35

- (3) The reviewer must ensure that the people and organisations that the reviewer thinks appropriate are consulted, during the preparation of the report, about the matters to be considered in the report.
- (4) The reviewer must, after completing the report, promptly present the report to the Minister. 5
- (5) The Minister must, after receiving the report, promptly present a copy to the House of Representatives.

200 Repeal of this subpart

This subpart is repealed on the 15th anniversary of the establishment date (as defined in **clause 1(1) of Schedule 1**). 10

Subpart 2—Rights or interests in water preserved

201 Rights or interests in water preserved

Purpose

- (1) The purpose of this section is to achieve both of the following outcomes:
- (a) any rights or interests in water are preserved, consistent with assurances given by the Crown to the Supreme Court in 2012, and recorded in *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145]; 15
- (b) this Act, and duties, functions, and powers under this Act, operate effectively. 20

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

- (2) No legislation in or made under this Act—
- (a) creates or transfers any proprietary right or interest in water;
- (b) extinguishes or limits any customary right or interest (for example, one founded on, or arising from, aboriginal title or customary law) any iwi or hapū may have in water. 25

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

- (3) Nothing in this section affects, or affects the lawfulness or validity of the performance or exercise by any person of, any duty, function, or power under this Act. 30

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

Subpart 3—Engagement

202 Engagement requirements

- (1) This section applies to engagement that a water services entity must undertake in accordance with any of the following provisions: 35

- (a) **section 141(1)(b)** (relating to the preparation of a response to a Te Mana o te Wai statement for water services):
- (b) **section 206(1)(a)** (relating to the making of regulations to provide for a model constitution):
- (c) **clauses 7, 14, and 19 of Schedule 3** (relating to asset management plans, funding and pricing plans, and infrastructure strategies). 5
- (2) Engagement requires that a water services entity do either or both of the following before deciding on a matter:
 - (a) consult on a proposal:
 - (b) seek input during the formulation of a proposal, or feedback on a proposal, on an iterative basis. 10
- (3) Input or feedback may be sought via hui or meetings, social media, or any other forum that the water services entity thinks appropriate.
- (4) In undertaking an approach to engagement on a matter, a water services entity— 15
 - (a) must consider the purpose of the engagement; and
 - (b) must consider the needs of the particular person or persons with whom the water services entity is engaging; and
 - (c) must allow adequate time for engagement to occur and for territorial authority owners, and for consumers and communities, to respond; and 20
 - (d) may consider the relevance and sufficiency of any earlier engagement.

Compare: 2020 No 42 s 22

Consumer engagement

203 Consumer forum

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

- (4) The chief executive of the entity must provide a guidance document to each consumer forum established under this section that provides for the composition and procedures of the forum, including—
- (a) the intervals between meetings; and
 - (b) the number of members that may be on the forum; and 5
 - (c) the method of selecting forum members; and
 - (d) any additional purposes to those set out in **subsection (2)**; and
 - (e) the roles and responsibilities of forum members; and
 - (f) the term of membership of the forum; and
 - (g) any other matters not inconsistent with the purpose of a consumer forum 10 under this section.
- (5) The chief executive must ensure that each consumer forum established has a guidance document.

204 Consumer engagement stocktake

- (1) The chief executive of a water services entity must prepare a consumer engagement stocktake annually. 15
- (2) The purpose of a consumer engagement stocktake is to—
- (a) capture consumer and community feedback on, and satisfaction with, how the entity is performing; and
 - (b) set out how the water services entity will respond to consumer and community needs and address consumer and community concerns. 20
- (3) The chief executive must make the consumer engagement stocktake publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 25

205 Principles of engagement

In performing its functions under **sections 147 to 155** and **204**, a water services entity must be guided and informed by the following principles:

- (a) the entity's communication to consumers should be clear and appropriate and recognise the different communication needs of consumers: 30
- (b) the entity should be openly available for consumer feedback and seek a diversity of consumer voices:
- (c) the entity should clearly identify and explain the role of consumers in the engagement process:
- (d) the entity should consider the changing needs of consumers over time, 35 and ensure that engagement will be effective in the future:

- (e) the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to its consumers.

Subpart 4—Regulations

- 206 Regulations** 5
- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) providing for a model constitution for the purposes of **section 94**:
- (b) providing for financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy that are consistent with generally accepted accounting practice: 10
- (c) providing for transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in **Schedule 1**, including transitional reporting obligations to apply to local government organisations or water services entities: 15
- (d) changing the name of a water services entity by amending or replacing the references to that entity in **Schedule 2**:
- (e) providing for anything this Act says may or must be provided for by regulations: 20
- (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) The Minister must, before recommending the making of regulations under **subsection (1)(a)** in relation to a water services entity, engage with the territorial authority owners of the entity and mana whenua of the service area. 25
- (3) Regulations made under **subsection (1)(b)** may include requirements relating to—
- (a) the type of information that must be provided; and
- (b) the frequency of the reporting. 30
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Subpart 5—Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

- 207 Principal Act** 35
- Sections 208 and 209** amend the Goods and Services Tax Act 1985.

- 208 Section 2 amended (Interpretation)**
 In section 2(1), insert in its appropriate alphabetical order:
water services entity means a water services entity as defined in **section 6** of the Water Services Entities Act **2022**
- 209 Section 6 amended (Meaning of term taxable activity)** 5
 In section 6(1)(b), replace “or any local authority or”, with “, local authority, water services entity, or”.
- Amendments to Income Tax Act 2007*
- 210 Principal Act**
Sections 211 and 212 amend the Income Tax Act 2007. 10
- 211 New section CW 38C inserted (Water services entities)**
 After section CW 38B, insert:
- CW 38C Water services entities**
- Exempt income: sinking funds*
- (1) An amount of income derived from sinking funds relating to the debt of a water services entity is exempt income. 15
- Exempt income: other income*
- (2) Any other amount of income derived by a water services entity is exempt income.
- Exclusion: amounts received in trust* 20
- (3) **Subsection (2)** does not apply to an amount of income that a water services entity derives as a trustee.
- 212 Section YA 1 amended (Definitions)**
 In section YA 1, insert in its appropriate alphabetical order:
water services entity means a water services entity as defined in **section 6** of the Water Services Entities Act **2022** 25
- Amendment to Local Government Act 2002*
- 213 Principal Act**
Section 214 amends the Local Government Act 2002.
- 214 New section 159A inserted and repealed (Review of water services bylaws may be deferred during transition period)** 30
- (1) After section 159, insert:

159A Review of water services bylaws may be deferred during transition period

- (1) The local authority may decide to defer a review required by section 158(1) or (2) or 159 if all the following requirements are met:
- (a) the review relates only to a water services bylaw:
 - (b) for that bylaw, the 5-year period in section 158(1) or (2)(b) or, as the case requires, the 10-year period in section 159 ends in the transition period: 5
 - (c) the local authority makes the decision in the transition period:
 - (d) the local authority gives prompt public notice of the deferral:
 - (e) that public notice identifies clearly the bylaw. 10
- (2) A deferral under **subsection (1)** has the results specified in **subsections (3) to (5)**.
- (3) The review is required only if the bylaw is not revoked in the transition period.
- (4) The review, if required, is required no later than the second anniversary of the establishment date. 15
- (5) For the purposes of section 160A, the last date on which the bylaw should have been reviewed under section 158 or 159 must be taken to be the second anniversary of the establishment date.
- (6) **Subsections (2) to (5)** apply despite sections 158, 159, and 160A.
- (7) In this section,— 20
- bylaw**, without limiting the generality of that term as defined in section 5(1), includes—
- (a) a set of bylaws; and
 - (b) an individual bylaw in a set of bylaws; and
 - (c) a provision within an individual bylaw 25
- establishment date** has the meaning in **clause 1(1) of Schedule 1** of the Water Services Entities Act **2022**
- transition period** means the period—
- (a) starting on the day after the date of Royal assent of the Water Services Entities Act **2022**; and 30
 - (b) ending at the close of the day before the establishment date
- water services bylaw** means a bylaw that relates to all or any of the following:
- (a) water supply (as defined in **section 6** of the Water Services Entities Act **2022**):
 - (b) wastewater: 35
 - (c) stormwater.
- (2) Repeal **section 159A** on **1 July 2028**.

*Amendment to Local Government Official Information and Meetings Act 1987***215 Principal Act**

Section 216 amends the Local Government Official Information and Meetings Act 1987.

216 Schedule 2 amended

5

In Schedule 2, Part 1, insert in its appropriate alphabetical order:
Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2022**

*Amendment to Ombudsmen Act 1975***217 Principal Act**

10

Section 218 amends the Ombudsmen Act 1975.

218 Schedule 1 amended

In Schedule 1, Part 3, insert in its appropriate alphabetical order:
Regional representative groups established under **subpart 4 of Part 2** of the Water Services Entities Act **2022**

15

*Amendment to Public Audit Act 2001***219 Principal Act**

Section 220 amends the Public Audit Act 2001.

220 Schedule 1 amended

In Schedule 1, insert in its appropriate alphabetical order:
Water services entities established under **section 10** of the Water Services Entities Act **2022**

20

*Amendment to Public Records Act 2005***221 Principal Act**

Section 222 amends the Public Records Act 2005.

25

222 Section 4 amended (Interpretation)

In section 4, definition of **local authority**, after paragraph (b), insert:

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

Schedule 1
Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

1 Interpretation

- (1) In this Part, unless the context otherwise requires,—
- assets, liabilities, and other matters**, of a local government organisation, include, without limitation, the organisation’s—
- (a) assets (for example, infrastructure assets):
 - (b) contracts, engagements, or information:
 - (c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):
 - (d) eligibility for benefits, entitlements, interests, rights, powers, or privileges:
 - (e) duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):
 - (f) ineligibility for benefits, entitlements, interests, rights, powers, or privileges
- decision** has the meaning set out in **clause 21**
- establishment chief executive** means a chief executive—
- (a) of a water services entity; and
 - (b) appointed under **clause 4**

establishment date means the earlier of—

- (a) a date appointed by the Governor-General by Order in Council; and
- (b) **1 July 2024**

establishment period means the period—

- (a) commencing on the day after the date on which the Act receives the Royal assent; and 5
- (b) ending on the establishment date

existing employer has the meaning set out in **clause 15**

infrastructure assets includes—

- (a) existing or proposed assets to be used to provide services by, or on behalf of, the water services entity in relation to water services; and 10
- (b) any other assets that the water services entity wishes to include in the strategy

local government organisation has the same meaning as in section 124 of the Local Government Act 2002 15

water services reform means—

- (a) the establishment of water services entities to deliver water services in accordance with this Act; and
 - (b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities. 20
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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

2 **Establishment functions and objectives of water services entities** 25

During the establishment period,—

- (a) **section 11** must be read as if—
 - (i) the objective set out **paragraph (a)** of that section were to ensure that, by the establishment date, the water services entity will deliver water services and related infrastructure in an efficient and financially sustainable manner; and 30
 - (ii) the objective set out **paragraph (f)** of that section were to ensure that, by the establishment date, the water services entity will deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards; and 35

- (b) **section 12** must be read as if the function described in **paragraph (a)** of that section were to ensure that, by the establishment date, the water services entity will have sufficient capacity and capability to provide safe, reliable, and efficient water services in its area.
- 3 Establishment board of water services entity** 5
- During the establishment period, **subparts 6 and 8 of Part 2** of this Act apply with the following modifications:
- (a) **section 57(1)** must be read as if it required the board to consist of no fewer than 3, and no more than 6, members; and
- (b) all references to the constitution (for example, in **section 58**) do not apply (because only after that period will a model constitution for the purposes of **section 94** be provided for by regulations made under **section 206(1)(a)**); and 10
- (c) **section 60** (board must hold 2 public meetings each financial year) does not apply; and 15
- (d) all references to the regional representative group and the board appointment committee of the regional representative group in **subpart 6 of Part 2** of this Act must be read as if they were references to the Minister; and
- (e) **subpart 8 of Part 2** of this Act applies only in relation to board members, and all references in that subpart to the regional representative group and the board appointment committee of the regional representative group in relation to an obligation of the board or members of the board must be read as if they were references to the Minister; and 20
- (f) **section 65** must be read as if it provided that a member of the board of a water services entity holds office for the establishment period or for any shorter period stated in the notice of appointment. 25
- 4 Appointment of establishment chief executive**
- (1) The chief executive of the department must appoint an establishment chief executive to each water services entity during the establishment period. 30
- (2) An establishment chief executive is appointed for a term that—
- (a) commences in accordance with the terms and conditions agreed under **subclause (3)**; and
- (b) ends at the close of the day that is 24 months after the establishment date unless earlier terminated in accordance with **subclause (5)**. 35
- (3) The terms and conditions of employment of an establishment chief executive must be determined by agreement between the chief executive of the department and the establishment chief executive.

- (4) When considering the terms and conditions of an establishment chief executive, the chief executive of the department must have regard to the matters listed in **section 119(3)(a) to (d)**.
- (5) The board of a water services entity may remove the establishment chief executive of the entity from office at any time on or after the establishment date. 5
- (6) This clause—
- (a) applies instead of **section 119(1) to (3)** during the establishment period; and
- (b) continues to apply until the earlier of the following: 10
- (i) the date that is 24 months after the establishment date; and
- (ii) the time of the removal or resignation, after the establishment date, of a chief executive appointed under this clause.
- 5 Establishment chief executive must prepare allocation schedule**
- (1) During the establishment period, the establishment chief executive of a water services entity must prepare, and may update, an allocation schedule for the entity. 15
- (2) A local government organisation must, under **clause 11(1) and (2)(b)**, cooperate with a relevant water services entity to facilitate the water services reform and, in particular, must comply with any reasonable request by the entity for information that— 20
- (a) the organisation holds; and
- (b) is or may be necessary or desirable for preparing the allocation schedule for the entity.
- (3) The allocation schedule for a water services entity must— 25
- (a) specify assets, liabilities, and other matters that relate wholly to the provision of water services by relevant local government organisations:
- (b) specify assets, liabilities, and other matters that relate— 30
- (i) partly to the provision of water services by relevant local government organisations; and
- (ii) partly to the provision of other services by relevant local government organisations.
- (4) The allocation schedule for a water services entity may also specify assets, liabilities, and other matters (whether specified in **subclause (3)(a) and (b)** or otherwise) that— 35
- (a) relate wholly to 1 or more relevant local government organisations; and
- (b) in the opinion of the establishment chief executive of the entity, should not transfer to the entity.

- (5) The allocation schedule for a water services entity must be not inconsistent with a plan approved under **clause 7(1)** (*see clause 7(3)(a) and (b)*).

6 Role of Minister during establishment period

- (1) During the establishment period, in addition to the Minister's role under **section 26**, the Minister has the additional role of overseeing the establishment of the water services entities. 5
- (2) The Minister's additional role includes functions and powers to appoint and remove members of the board of each water services entity under this schedule.

Subpart 2—Transitional arrangements relating to reporting obligations

7 Chief executive of department may approve establishment water services plan 10

- (1) The chief executive of the department may prepare and approve an establishment water services plan for a water services entity.
- (2) The chief executive of the department must, before approving a plan under **subclause (1)**, consult with the relevant water services entity. 15
- (3) A plan approved under **subclause (1)** for a water services entity must include—
- (a) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the entity; and 20
 - (b) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the entity; and
 - (c) the reporting requirements for the quarterly reports to be provided to the chief executive of the department under **clause 9** of this schedule.
- (4) The plan may include any other matters the Minister considers relevant. 25

8 Transitional requirements for asset management plan and funding and pricing plan during establishment period

During the establishment period, **sections 147 to 152** (relating to the requirements to prepare an asset management plan and a funding and pricing plan) apply with the following modifications: 30

- (a) references to the regional representative group must be read as references to the chief executive of the department:
- (b) **sections 147(2)(c), 149(b), 150(2)(c), and 152(b)** (which relate to engagement with consumers and the regional representative group) do not apply. 35

9 Quarterly reports

- (1) The board of a water services entity must, during the establishment period, provide a quarterly report to the chief executive of the department.
- (2) The report must include any information required by an establishment water services plan approved under **clause 7** of this schedule. 5

10 First annual report of water services entity

- (1) An entity established during the last 4 months of a financial year—
 - (a) is not required to provide an annual report for that financial year; but
 - (b) must, after the end of the entity's first full financial year, provide an annual report that covers the period from the date on which the entity is established until the end of the entity's first full financial year. 10
- (2) The annual report referred to in **subclause (1)(b)** must contain the information required to be included in the entity's annual report, except that the information must be in respect of the period referred to in that subclause.

11 Duty of local government organisations to co-operate with department and water services entities 15

- (1) During the establishment period, a local government organisation must co-operate with the department and any relevant water services entity to facilitate the water services reform.
- (2) Without limiting **subclause (1)**, a local government organisation must— 20
 - (a) comply with any reasonable request by the chief executive of the department or the water services entity for employees of the local government organisation to be seconded to the water services entity; and
 - (b) comply with any reasonable request by the chief executive of the department or the water services entity for information that the local government organisation holds (for example, information of the kind specified in **clause 5(2)**). 25
- (3) The obligation to comply with a request under **subclause (2)(b)** includes a requirement to comply with any reasonable request to— 30
 - (a) collate information; or
 - (b) provide information in a particular format; or
 - (c) disclose current pricing information or indicative water charges on invoices during the establishment period.
- (4) A local government organisation may only provide personal information under **subclause (2)(b)** if the information relates to employment matters. 35
- (5) In this clause, **relevant water services entity** means the water services entity whose service area includes the district or region that the local government organisation services.

12 Duty of water services entity to co-operate

- (1) During the establishment period, a water services entity must co-operate with the department to facilitate the water services reform.
- (2) Without limiting **subclause (1)**, a water services entity must comply with any reasonable request by the chief executive of the department for information that the water services entity holds that is relevant to the water services reform. 5

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

- (1) The chief executive of the department may issue a non-compliance direction to a local government organisation if they fail to comply with **clause 11** or any disclosure requirements required by regulations made under **section 206(1)(b)**. 10
- (2) The non-compliance direction must—
- (a) identify the local government organisation to which it relates; and
 - (b) specify the non-compliance (for example, non-compliance with **clause 11** in respect of a request for information of the kind specified in **clause 5(2)**); and 15
 - (c) specify the action required to comply with the non-compliance direction.
- (3) The chief executive of the department may apply to the District Court for an order to compel a local government organisation to comply with a non-compliance direction. 20
- (4) The District Court may make an order to compel a local government organisation to comply with a non-compliance direction if satisfied that the local government organisation has failed to comply with the non-compliance direction.
- (5) The chief executive of the department may withdraw a non-compliance direction issued under this clause at any time. 25
- (6) An order of the District Court to compel a local government organisation to comply with a non-compliance direction under **subclause (4)** ceases to apply if the non-compliance order is withdrawn.

14 Relationship of this Part with Local Government Act 2002

The following provisions of the Local Government Act 2002 do not apply to any actions taken by a local government organisation in order to comply with this schedule or facilitate the water services reform: 30

- (a) section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan):
- (b) section 97 (which requires certain decisions to be taken only if provided for in a long-term plan): 35
- (c) section 130(3) (relating to certain obligations to maintain water services).

Subpart 3—Transitional provisions relating to employment

Review of employment positions

- 15 Review of employment positions by chief executive of department during establishment period**
- (1) The chief executive of the department must, during the establishment period,— 5
- (a) review the positions of persons employed by existing employers; and
- (b) determine, in relation to each employee, whether the employee—
- (i) primarily undertakes functions that will be transferred to a water services entity; and
- (ii) has a senior management role. 10
- (2) The chief executive of the department must, before the establishment date, notify in writing each employee and their existing employer of the determination made in relation to the employee under **subclause (1)(b)**.
- (3) In this subpart, **existing employer**, in relation to a water services entity, means a local government organisation that— 15
- (a) provides water services in the service area of the water services entity before the establishment date; and
- (b) employs employees.
- 16 Obligation to offer certain employees position that involves same or similar duties and responsibilities** 20
- (1) The chief executive of a water services entity must offer an employee of an existing employer an employment position if the chief executive of the department determines under **clause 15** that—
- (a) the employee primarily undertakes functions that will be transferred to the water services entity; and 25
- (b) the employee does not have a senior management role.
- (2) The terms and conditions of the position offered under **subclause (1)** must—
- (a) involve the same or similar duties and responsibilities; and
- (b) include core terms that are no less favourable than the core terms that applied immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and 30
- (c) be in substantially the same general locality or a locality within reasonable commuting distance from the employee’s location of work immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and 35

- (d) involve the same or similar hours and days of work to those worked by the employee immediately before the notification by the chief executive of the department of the determination under **clause 15(1)(b)**; and
- (e) recognise the employee's employment with the existing employer as if it were continuous service with the water services entity. 5
- (3) In **subclause (2)**, **core terms** includes the employee's salary, leave entitlements, and any entitlement to redundancy compensation.
- (4) The chief executive of the relevant water services entity must, before the establishment date, notify each employee who is being offered a position with the water services entity— 10
- (a) that the employee is being offered a position with the same or similar duties and responsibilities with the water services entity; and
- (b) of the terms and conditions of employment of the position being offered; and
- (c) of the date by which the employee is to notify the chief executive as to whether the employee accepts or declines the offer. 15
- (5) Nothing in this clause—
- (a) imposes any obligation on an employee of an existing employer to accept an offer under this schedule; or
- (b) prevents the chief executive of the department from offering a position to any other employee of the existing employer on any terms and conditions the chief executive considers appropriate. 20
- 17 Transfer of employment positions**
- (1) An employee who accepts an offer of employment made under **clause 16(4)** becomes an employee of the water services entity, on and from the establishment date, on the terms and conditions offered under that subclause. 25
- (2) The terms and conditions of employment continue to apply in relation to the employee until—
- (a) the terms and conditions are varied— 30
- (i) by agreement between the employee and the relevant water services entity; or
- (ii) in accordance with the employee's terms and conditions of employment; or
- (iii) because of the application of section 61(1)(b) of the Employment Relations Act 2000; or 35
- (b) the employee accepts a subsequent position with the water services entity or the employee resigns or has their employment terminated.
- (3) To avoid doubt, **subclause (2)** applies,—

- (a) in the case of an employee bound by an applicable collective agreement, subject to section 61(1)(b) of the Employment Relations Act 2000 and, without limiting this paragraph, subject to an applicable collective agreement that comes into force on the establishment date; and
- (b) in the case of an employee not bound by an applicable collective agreement, subject to any variation in terms and conditions of employment agreed to before the establishment date but to come into force on that date. 5
- (4) This clause applies only if the employee continues to be an employee of the existing employer at the close of the day before the establishment date. 10
- Compare: 2010 No 37 s 101

18 Employees not entitled to redundancy or other compensation just because position or employer ceases to exist

- (1) This clause applies to an employee of an existing employer who—
- (a) is notified of an offer in accordance with **clause 16(4)**; or 15
- (b) otherwise accepts a position with the water services entity.
- (2) An employee to whom this clause applies is not entitled to receive any payment or any other benefit (**compensation**) for any of the following reasons:
- (a) the position held by the employee with an existing employer ceases to exist: 20
- (b) the employee ceases to be an employee of an existing employer:
- (c) the employee's employer ceases to exist.

Compare: 2010 No 37 s 103

Collective bargaining and collective agreements

- 19 Collective bargaining before establishment date for new collective agreement to come into force on that date** 25
- (1) **Subclause (2)** applies if an employee whose position is subject to review under **clause 15** is a member of a union that enters into bargaining for a collective agreement to come into force on the establishment date.
- (2) For the purposes of the bargaining during the establishment period,— 30
- (a) the employees are to be treated as if they were employees of the water services entity; and
- (b) section 41 of the Employment Relations Act 2000 does not apply in relation to the bargaining; and
- (c) the other provisions of the Employment Relations Act 2000 apply 35 according to any necessary modifications.
- (3) For the purposes of ratifying a collective agreement, a person is to be treated as an employee of the entity only if—

- (a) the person—
- (i) has accepted an offer of a position; or
 - (ii) has neither accepted nor declined an offer notified under **clause 16**; or
 - (iii) has not received notice of an offer under **clause 16**; and 5
- (b) the following work comes within the coverage clause in the collective agreement:
- (i) work to be done by the person for the water services entity (if **paragraph (a)(i)** applies):
 - (ii) work done by the person for their existing employer (if **paragraph (a)(ii) or (iii)** applies). 10
- (4) A person ceases to be an employee for the purposes of this clause if—
- (a) the person declines an offer of a position with the water services entity; or
 - (b) the person is notified that their employment is to be terminated on and from the establishment date; or 15
 - (c) the person's employment is terminated before that date or the person resigns before that date.
- Compare: 2010 No 37 s 111
- 20 Application of existing collective agreements on and from establishment date 20**
- (1) **Subclause (2)** applies if—
- (a) an employee of an existing employer—
 - (i) has received and accepted an offer of employment with a water services entity; or 25
 - (ii) has received notification of an offer under **clause 16(4)** and neither accepted nor declined the offer; or
 - (iii) has not been notified in accordance with **clause 16(4)** as to whether they are being offered a position with a water services entity or their employment with an existing employer is to be terminated; and 30
 - (b) the employees are bound by a collective agreement under the Employment Relations Act 2000 in relation to their employment with their existing employer; and
 - (c) the collective agreement does not expire until after the establishment date. 35
- (2) On and from the establishment date,—

- (a) the collective agreement is to be treated as a separate collective agreement in relation to the water services entity; and
- (b) the water services entity is to be treated as a party to the collective agreement in place of the previous employer; and
- (c) the collective agreement continues to apply to and bind only the employees referred to in **subclause (1)** to the extent that the nature of the work they undertake for the water services entity comes within the coverage clause of the collective agreement. 5
- (3) **Subclause (2)** applies only if the collective agreement is not replaced on the establishment date by a collective agreement in accordance with **clause 19**. 10
- (4) A union that is a party to a separate collective agreement under this clause may, by notice in writing to the relevant water services entity, specify a date on which the agreement is to expire, being a date that is earlier than a date on which the agreement would otherwise expire under section 52(3) of the Employment Relations Act 2000. 15
- Compare: 2010 No 37 s 112

Subpart 4—Oversight powers of department

21 Decisions subject to department's oversight powers

In this subpart, **decision**—

- (a) means a decision that— 20
- (i) relates to the provision of water services; or
- (ii) may affect the provision of water services; and
- (b) includes a decision—
- (i) by a local authority to adopt or amend a long-term council community plan or to adopt an annual plan: 25
- (ii) by a local authority to adopt a policy required by the Local Government Act 2002:
- (iii) by a local authority that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy or plan adopted by the local authority under the Local Government Act 2002: 30
- (iv) by a local authority to purchase or dispose of assets other than in accordance with its long-term council community plan:
- (v) by any local government organisation to purchase or dispose of an asset, if the purchase or disposal of the asset will have a material impact on the capacity to provide water services or on the financial well-being of the organisation: 35

- (vi) by any local government organisation to enter into any contract (other than an employment agreement)—
 - (A) that imposes, or will continue to impose, any obligation on the local authority after a date determined by the chief executive of the department for the purposes of this paragraph: 5
 - (B) for which the consideration is, or is equivalent to or more than, an amount set by the chief executive of the department for the purposes of this paragraph:
- (vii) by any local government organisation to borrow money for a period that extends beyond a date set by the chief executive of the department for the purposes of this paragraph. 10

Compare: 2009 No 13 s 31(4), (5)

22 Review of local government organisation decisions and meeting agendas during establishment period 15

- (1) During the establishment period, each local government organisation must provide the department with information about an intended decision.
- (2) The chief executive of the department may review any decision made by, or on behalf of, a local government organisation during the establishment period.
- (3) Despite **subclause (2)**, the department must not review a decision under this clause that it has confirmed under **clause 24(2)(a)**. 20
- (4) The department must, without delay, notify a local government organisation if it—
 - (a) reviews a decision of the organisation under **subclause (2)**; and
 - (b) considers, on reasonable grounds, that the decision is a decision to which **clause 23** applies. 25

Compare: 2009 No 13 s 20

23 Decision making during establishment period

- (1) The chief executive of a local government organisation must ensure that, before implementing a decision to which this clause applies, the department has confirmed the decision in writing. 30
- (2) A decision to which this clause applies is void and of no effect until it is confirmed by the chief executive of the department.
- (3) This clause applies to a decision of a local government organisation that is made during the establishment period and that may, directly or because of its consequences,— 35
 - (a) significantly prejudice the water services reform; or
 - (b) significantly constrain the powers or capacity of the water services entities following the water services reform; or

- (c) have a significant negative impact on the assets, liabilities, or other matters that are transferred to the water services entities as a result of the water services reform.

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

- 24 Confirmation of decisions of local government organisations** 5
- (1) This clause applies to the department if a local government organisation seeks confirmation of a decision to which **clause 23** applies.
- (2) The department must, as soon as practicable and in writing,—
- (a) confirm the decision; or
- (b) decline to confirm the decision and give reasons for doing so (with reference to the matters in **clause 23(3)**); or 10
- (c) if it considers that it has insufficient information to make a decision, request further information from the chief executive and then act under **paragraph (a) or (b)**, as applicable.
- (3) The chief executive of the department may decline to confirm a decision if they determine that 1 or more of the following criteria are met: 15
- (a) the decision will significantly prejudice the water services reform:
- (b) the decision will significantly constrain the powers or capacity of a water services entity following the water services reform:
- (c) the decision will have a significant negative impact on the assets, liabilities, or other matters that are transferred to a water services entity as a result of the water services reform. 20

Compare: 2009 No 13 s 21

Subpart 5—Transitional tax relief, and recovery of costs

- 25 Transitional tax relief** 25
- No water services entity or local government organisation will have any tax liability under the Income Tax 2007 or the Goods and Services Act 1985 arising from the vesting of assets, liabilities, or other matters in, or the transfer of employees from a local government organisation to, a water services entity.
- 26 Crown expenses and capital expenditure recoverable from water services entity** 30
- (1) This clause applies to any expenses or capital expenditure incurred by the Crown—
- (a) before, on, or after the commencement of this clause; and
- (b) before the establishment date; and 35
- (c) in relation to establishing a water services entity.
- (2) The expenses or capital expenditure must be reimbursed—

- (a) by the water services entity to the Crown; and
- (b) on the terms and conditions agreed between—
 - (i) the Minister; and
 - (ii) the Minister of Finance.
- (3) The terms and conditions may, for example, specify, or specify classes, descriptions, or kinds of, all or any of the expenses or capital expenditure. 5
- (4) The duty to reimburse the expenses or capital expenditure is not the Crown lending money for the purposes of the Public Finance Act 1989.

Compare: 1989 No 44 ss 4, 65K, 65L, 65O, 65P, 65Q; 2009 No 13 s 23

Schedule 2

Water services entities and their service areas

s 10

Part 1

Northern Water Services Entity 5

The Northern Water Services Entity's service area includes the districts of the following territorial authorities:

- Auckland Council:
- Far North District Council:
- Kaipara District Council: 10
- Whangārei District Council.

Part 2

Western-Central Water Services Entity

The Western-Central Water Services Entity's service area includes the districts of the following territorial authorities: 15

- Hamilton City Council:
- Hauraki District Council:
- Kawerau District Council:
- Matamata-Piako District Council:
- New Plymouth District Council: 20
- Ōpōtiki District Council:
- Ōtorohanga District Council:
- Rangitikei District Council:
- Rotorua District Council:
- Ruapehu District Council: 25
- South Taranaki District Council:
- South Waikato District Council:
- Stratford District Council:
- Taupō District Council:
- Tauranga City Council: 30
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:

- Waitomo District Council:
- Western Bay of Plenty District Council:
- Whakatane District Council:
- Whanganui District Council.

Part 3

5

Eastern-Central Water Services Entity

The Eastern-Central Water Services Entity's service area includes the districts of the following territorial authorities:

- Carterton District Council:
- Central Hawke's Bay District Council: 10
- Chatham Islands Council:
- Gisborne District Council:
- Hastings District Council:
- Horowhenua District Council:
- Hutt City Council: 15
- Kapiti Coast District Council:
- Manawatu District Council:
- Marlborough District Council (excluding those parts included in the service area of the Southern Water Services Entity under **Part 4** of this schedule):
- Masterton District Council: 20
- Napier District Council:
- Nelson City Council:
- Palmerston North City Council:
- Porirua City Council:
- South Wairarapa District Council: 25
- Tararua District Council:
- Tasman District Council (excluding those parts included in the service area of the Southern Water Services Entity under **Part 4** of this schedule):
- Upper Hutt City Council:
- Wairoa District Council: 30
- Wellington City Council.

Part 4

Southern Water Services Entity

The service area of the Southern Water Services Entity is the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996, and including—

- the districts of the following territorial authorities: 5
 - Ashburton District Council:
 - Buller District Council:
 - Central Otago District Council:
 - Christchurch City Council:
 - Clutha District Council: 10
 - Dunedin City Council:
 - Gore District Council:
 - Grey District Council:
 - Hurunui District Council:
 - Invercargill City Council: 15
 - Kaikoura District Council:
 - Mackenzie District Council:
 - Queenstown-Lakes District Council:
 - Selwyn District Council:
 - Southland District Council: 20
 - Timaru District Council:
 - Waimakariri District Council:
 - Waimate District Council:
 - Waitaki District Council:
 - Westland District Council; and 25
- the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996:
 - Marlborough District Council:
 - Tasman District Council. 30

Schedule 3 Preparation of planning documents

ss 144, 147, 150, 153, 202

Part 1

Preparation of statement of intent 5

1 Draft statement of intent

- (1) The board of a water services entity must deliver a draft statement of intent to the entity's regional representative group.
- (2) The draft statement of intent must be delivered on or before 1 March in the year preceding the start of the period to which the draft statement of intent relates. 10

Compare: 2002 No 84 Schedule 8 cl 1

2 Strategic elements must be approved by regional representative group

- (1) The strategic elements (*see* **section 145(1)**) must, before being set out in the final statement of intent, be— 15
 - (a) set out in the draft statement; and
 - (b) approved by the water services entity's regional representative group.
- (2) The group may approve those elements with, or without, changes agreed with the entity's board.

3 Board must also consider group's comments on operational and financial elements 20

The board of a water services entity must consider any comments made—

- (a) on the operational and financial elements (*see* **section 145(2) and (3)**) of the draft statement of intent; and
- (b) by the regional representative group; and 25
- (c) at least 2 months before the start of the period to which the draft statement relates.

Compare: 2002 No 84 Schedule 8 cl 2

4 Final statement of intent

The board of a water services entity must deliver the final statement of intent to the entity's regional representative group before the start of the period to which it relates. 30

Compare: 2002 No 84 Schedule 8 cl 3

- 5 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice to the board, extend a deadline specified in **clause 1(2), 3, or 4** for a period or periods not exceeding in total 1 calendar month.
- Compare: 2002 No 84 Schedule 8 cl 4 5
- 6 Modifications of statement of intent**
- The board of a water services entity may, by written notice to the regional representative group, modify a statement of intent at any time if the board has first—
- (a) given written notice to the regional representative group of the proposed modification; and 10
- (b) considered any comments made on the proposed modification by the regional representative group within—
- (i) 1 month after the date on which the board gave the notice under **paragraph (a)**; or 15
- (ii) any shorter period that the regional representative group may agree.
- Compare: 2002 No 84 Schedule 8 cl 5

Part 2

Preparation of asset management plan 20

- 7 Engagement on asset management plan proposals**
- The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an asset management plan in accordance with **section 202**.
- 8 Draft asset management plan 25**
- (1) The board of a water services entity must deliver a draft asset management plan to the entity's regional representative group.
- (2) The draft asset management plan should include—
- (a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and 30
- (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (3) The draft asset management plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates. 35
- Compare: 2002 No 84 Schedule 8 cl 1

- 9 Consideration of regional representative group comments**
- The board of a water services entity must consider any comments on the draft asset management plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates. 5
- Compare: 2002 No 84 Schedule 8 cl 2
- 10 Final asset management plan**
- (1) The board of a water services entity must deliver the final asset management plan to the regional representative group of the entity before the commencement of the financial year to which it relates. 10
- (2) The final asset management plan must include the board's responses to the comments considered under **clause 9**.
- Compare: 2002 No 84 Schedule 8 cl 3
- 11 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 8(3), 9, or 10(1)** for a period or periods not exceeding in total 1 calendar month. 15
- Compare: 2002 No 84 Schedule 8 cl 4
- 12 Modifications of asset management plan**
- The board of a water services entity may, by written notice, modify an asset management plan at any time if the board has first— 20
- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within— 25
- (i) 1 month after the date on which the notice under paragraph (a) was given; or
- (ii) any shorter period that the regional representative group of the entity may agree.
- Compare: 2002 No 84 Schedule 8 cl 5 30

Part 3

Preparation of funding and pricing plan

- 13 Engagement on funding and pricing plan proposals**
- The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt a funding and pricing plan in accordance with **section 202**. 35

14 Draft funding and pricing plan

- (1) The board of a water services entity must deliver a draft funding and pricing plan to the entity's regional representative group.
- (2) The draft funding and pricing plan should include—
- (a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and 5
 - (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (3) The draft funding and pricing plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates. 10

15 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft funding and pricing plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates. 15

Compare: 2002 No 84 Schedule 8 cl 2

16 Final funding and pricing plan

- (1) The board of a water services entity must deliver the final funding and pricing plan to the regional representative group of the entity before the commencement of the financial year to which it relates. 20
- (2) The final funding and pricing plan must include the board's responses to the comments considered under **clause 15** of this schedule.

Compare: 2002 No 84 Schedule 8 cl 3

17 Regional representative group may extend deadlines by up to 1 month 25

The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 14(3), 15, or 16(1)** for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

18 Modifications of funding and pricing plan 30

The board of a water services entity may, by written notice, modify a funding and pricing plan at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within— 35
 - (i) 1 month after the date on which the notice under **paragraph (a)** was given; or

- (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 4

Preparation of infrastructure strategy

5

19 Engagement on infrastructure strategy proposals

The board must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an infrastructure strategy in accordance with **section 202**.

20 Draft infrastructure strategy

10

- (1) The board of a water services entity must deliver a draft infrastructure strategy to the entity's regional representative group.

- (2) The draft infrastructure strategy should include—

(a) the results of any engagement with territorial authority owners, and with consumers and communities, under **section 202**; and

15

(b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.

- (3) The draft infrastructure strategy must be delivered on or before 1 March in the year preceding the financial year to which the draft infrastructure strategy relates.

20

Compare: 2002 No 84 Schedule 8 cl 1

21 Consideration of regional representative group comments

The board of a water services entity must consider any comments on the draft infrastructure strategy that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.

25

Compare: 2002 No 84 Schedule 8 cl 2

22 Final infrastructure strategy

- (1) The board of a water services entity must deliver the final infrastructure strategy to the regional representative group of the entity before the commencement of the financial year to which it relates.

30

- (2) The final infrastructure strategy must include the board's responses to the comments considered under **clause 21**.

Compare: 2002 No 84 Schedule 8 cl 3

-
- 23 Regional representative group may extend deadlines by up to 1 month**
- The regional representative group of a water services entity may, by written notice, extend a deadline specified in **clause 20(3), 21, or 22(1)** for a period or periods not exceeding in total 1 calendar month.
- Compare: 2002 No 84 Schedule 8 cl 4 5
- 24 Modifications of infrastructure strategy**
- The board may, by written notice, modify an infrastructure strategy at any time if the board has first—
- (a) given written notice to the regional representative group of the entity of the proposed modification; and 10
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—
- (i) 1 month after the date on which the notice under **paragraph (a)** was given; or
- (ii) any shorter period that the regional representative group of the entity may agree. 15
- Compare: 2002 No 84 Schedule 8 cl 5

Schedule 4

Divestment proposals

s 116

1 Interpretation

In this schedule, unless the context otherwise requires,— 5

affected elector means—

- (a) a person who is a residential elector (within the meaning of section 23 of the Local Electoral Act 2001), if the address in respect of which the person is registered is in an affected area:
- (b) a person who is a ratepayer elector (within the meaning of section 24 of the Local Electoral Act 2001), if the person is qualified as a ratepayer elector in respect of a rating unit in an affected area 10

divestment proposal means a proposal (*see* **section 116(2)(b) or (c)(i)**) for a water services entity to do all or any of the following in breach of **section 116(1)** but in accordance with this schedule: 15

- (a) divest its ownership or other interest in a water service:
- (b) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area (if, in doing so, the entity does not retain its capacity to perform or exercise its duties, functions, or powers—*see* **section 116(2)(c)(ii)**) 20

Local Government Commission or **Commission** means the Local Government Commission continued under section 28 of the Local Government Act 2002

public notice, in relation to a notice of a divestment proposal given by the Local Government Commission,— 25

- (a) means a notice published—
 - (i) in 1 or more newspapers circulating in the affected area; and
 - (ii) on an Internet site maintained by, or on behalf of, the Commission; and
- (b) includes any other notice that the Commission thinks desirable in the circumstances. 30

Part 1

Divestment proposal

2 Water services entity must refer proposal to regional representative group

- (1) A divestment proposal may be made— 35
 - (a) on the water services entity's own initiative; or

- (b) by any other person.
- (2) A proposal made under **subclause (1)(b)** must be made in writing to the water services entity.
- (3) A water services entity must forward any proposal made under **subclause (1)(a) or (b)** to the regional representative group. 5
- 3 Regional representative group may, after consultation, resolve by 75% majority to refer proposal to territorial authority owners**
- (1) A regional representative group forwarded a divestment proposal under **clause 2** may resolve to refer the divestment proposal to the territorial authority owners. 10
- (2) Before voting on whether to refer the proposal to a poll, the regional representative group must consult—
- (a) all of the territorial authority owners of the water services entity; and
- (b) mana whenua of rohe or takiwā within the area of the water services entity; and 15
- (c) the Minister.
- (3) The resolution fails unless supported by a vote of not less than 75% of the regional representatives present and voting.
- (4) A regional representative group that resolves to refer a divestment proposal to territorial authority owners under this clause must notify those owners of the resolution. 20
- 4 Territorial authority owners may resolve unanimously to refer proposal to poll**
- (1) After receiving notification of a resolution under **clause 3**, the territorial authority owners may resolve to refer a divestment proposal to a poll. 25
- (2) The resolution fails unless supported by a unanimous vote of all the territorial authority owners (instead of only all those present and voting).
- (3) Territorial authority owners that resolve to refer a divestment proposal to a poll under this clause must notify the Commission of the resolution.
- 5 Notification of divestment proposal** 30
- (1) As soon as practicable after receiving notification of a resolution under **clause 4**, the Commission must—
- (a) give public notice of the proposal and, in the notice, specify where copies of the proposal may be inspected; and
- (b) provide a balanced assessment of the proposal to persons, bodies, and groups that the Commission identifies as having an interest in the proposal; and 35

- (c) take any other action that it considers necessary to inform persons, bodies, and groups that the Commission identifies as having an interest in the proposal.
- (2) The costs incurred by the Commission under **subclause (1)** are to be apportioned among the affected water services entities according to the number of affected electors on the electoral rolls of the territorial authority owners of the water services entity in the manner set out in regulations. 5
- Compare: 2002 No 84 Schedule 3 cl 13(1)

Part 2 Poll

10

6 Poll to be held

- (1) A poll of electors on the proposal must be held in the service area.
- (2) Except as otherwise provided in this Part, a poll under this clause must be held under the Local Electoral Act 2001 and the provisions of that Act apply, with any necessary modifications, to the conduct of the poll. 15
- (3) The Local Government Commission must ensure that 1 electoral officer is designated to conduct the poll and to declare the official result of the poll under **clause 8**.
- (4) The costs of the poll are to be apportioned among the affected water services entities on the basis of the number of affected electors on the electoral rolls of the water services entity. 20
- Compare: 2002 No 84 Schedule 3 cl 26

7 Timing of poll

- (1) A poll required by **clause 6** must be held on a date determined by the Local Government Commission in accordance with this clause. 25
- (2) In determining the date on which a poll is to be held, the Commission must consult the electoral officer required to conduct the poll.
- (3) The Commission must, as soon as practicable after complying with **subclause (2)**, give written notice of the date determined under **subclause (1)** to the Secretary, to the chief executive of each affected water services entity, and to the electoral officer required to conduct the poll. 30
- (4) The electoral officer who receives written notification under **subclause (3)** must, within 7 days after receiving the notification, give public notice of—
- (a) the poll; and
- (b) the place or places at which the divestment proposal and the explanatory statement may be inspected. 35
- (5) The date determined under **subclause (1)** for the conduct of the poll must,—

- (a) if written notice under **subclause (3)** is to be given on or after 28 September and before 21 November in any year, be a day no earlier than 17 February and no later than 24 February in the following year; and
- (b) if written notice under **subclause (3)** is to be given on or after 21 November and before 16 December in any year, be a day no earlier than 14 March and no later than 21 March in the following year; and 5
- (c) if written notice under **subclause (3)** is to be given on or after 16 December in any year and before 13 January in the following year, be a day no earlier than 11 April and no later than 18 April in that following year; and 10
- (d) in any other case, be a day no later than 89 days after the day on which written notice under **subclause (3)** is given to the electoral officer.

Compare: 2002 No 84 Schedule 3 cl 26

8 Official result of poll

The electoral officer must,— 15

- (a) when declaring the official result of the poll under section 86 of the Local Electoral Act 2001, include a statement of—
- (i) the total number of electors on the roll or rolls compiled for the purpose of the poll; and
- (ii) the total number of valid votes cast: 20
- (b) as soon as practicable after declaring the result, notify the chief executive of the department, the chief executive of the water services entity and each territorial authority in the service area, and the Local Government Commission of the result:
- (c) if 75% of votes are in favour of the proposal, notify the Minister of the result. 25

Compare: 2002 No 84 Schedule 3 cl 27

9 Effect of poll

A divestment proposal must not be implemented unless 75% of the votes cast in the poll are in favour of the proposal. 30

Part 3 Advertising of poll

10 Interpretation

In this subpart, unless the context otherwise requires,—
advertising means advertising in any medium 35

publish, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—
 - (i) displaying in any medium:
 - (ii) distributing by any means: 5
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical:
 - (vii) broadcasting by any means: 10
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public:
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but 15
- (b) excludes addressing 1 or more persons face to face

specified period means the period commencing on the day after the date on which public notice of the proposal is first given under **clause 5** and ending with the close of the day on which the poll is held.

Compare: 2002 No 84 Schedule 3 cl 29 20

11 Advertising in relation to polls

- (1) A local authority or water services entity affected by a divestment proposal may not, at any time in a specified period, do anything (including publishing any advertising) that—
 - (a) involves the expenditure of the authority's or the entity's money or use of the authority's or the entity's resources; and 25
 - (b) promotes or opposes the implementation of the divestment proposal or a provision of the divestment proposal.
- (2) This clause does not apply to—
 - (a) any investigations or research undertaken by, or on behalf of, the water services entity or local authority that relate to the divestment proposal or its effects; or 30
 - (b) the making of submissions or other representations to the Commission by the water services entity or local authority; or
 - (c) the publication of any news or comment relating to the divestment proposal or the poll in any medium by any person other than the water services entity or local authority; or 35

- (d) anything done by a water services entity or local authority to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987.

Compare: 2002 No 84 Schedule 3 cl 30

12 Provision of referential information 5

- (1) **Clause 11** does not preclude a local authority affected by a divestment proposal from publishing material that—
- (a) does not expressly or impliedly promote or oppose the divestment proposal; but
- (b) contains factual or referential material presented— 10
- (i) in a balanced way; and
- (ii) to assist electors considering voting in a poll to make a better-informed decision.
- (2) A local authority or water services entity may (but does not have to) seek a ruling from the Local Government Commission that material proposed to be published by the authority or the entity under **subclause (1)** complies with that subclause. 15
- (3) If the Local Government Commission provides a ruling that the material complies with **subclause (1)**, then publication of the material by the local authority or water services entity is to be treated as published in accordance with **subclause (1)**. 20

Compare: 2002 No 84 Schedule 3 cl 31

13 Authorisation of advertising

- (1) A person may not publish advertising that promotes or opposes the implementation of the divestment proposal, or a provision of the divestment proposal, unless the advertising contains a statement setting out the name and address of the person who initiated or instigated the publication of the advertising. 25
- (2) In **subclause (1)**, **address** means,—
- (a) in relation to an individual,— 30
- (i) the full street address of the place where the individual usually lives; or
- (ii) the full street address of any other place where the individual can usually be contacted between the hours of 9 am and 5 pm on any working day:
- (b) in relation to a body corporate or unincorporated,— 35
- (i) the full street address of the body's main place of business; or
- (ii) the full street address of the body's head office.

*Offences***14 Offence for publishing advertising in breach of clause 13**

- (1) A person commits an offence if the person intentionally fails or refuses to comply with **clause 13(1)**.
- (2) A person who commits an offence against **subclause (1)** is liable on conviction to a fine not exceeding \$20,000. 5