

Water Services Entities Amendment Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

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

Some of us do not agree with the amendments proposed or the rationale provided for those proposed amendments. We have provided more detail about our differing views later in this commentary.

Introduction

In December 2022, the Water Services Entities Act 2022 was passed, legally establishing four water services entities (WSEs). These would assume responsibility for delivering New Zealand's water services beginning 1 July 2024. The Act specified the purpose and objectives of the entities, their governance and accountability arrangements, ownership model and legal form, and obligations to Te Tiriti o Waitangi and Te Mana o te Wai.

This bill would amend the Act. The amendments would give effect to the Government's announcements in April and May 2023, refocusing the reform of water services. The Act is one of several pieces of legislation¹ that aim to improve water services regulation and infrastructure to ensure that New Zealanders have access to safe, reliable, and affordable water services.

¹ In addition to the Water Services Entities Act 2022, the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill have been considered by the Finance and Expenditure Committee, which has reported back to the House.

The bill is an omnibus bill and would amend a range of legislation, in addition to the Act. The bill would amend the number of WSEs provided for by the Act, disestablishing the 4 WSEs and replacing them with 10. It introduces staggered establishment arrangements for the new entities. The bill amends representation on the WSEs' regional representative groups, so that every territorial authority is represented. Once established, the WSEs would be responsible for delivering water services, in place of local authorities.

The bill amends transitional arrangements for the WSEs, including the responsibilities of local authorities for planning, reporting, and rating during the establishment period of a WSE. It also provides for some additional arrangements to support staff retention to WSEs. The bill would provide for a new mechanism called community priority statements that would enable community groups to indicate their views and priorities concerning a water body of interest. Community priority statements would be provided to a WSE's regional representative group.

The bill would introduce other mechanisms including:

- a locally-led merger process to enable WSEs to merge if their regional representative groups agreed to do so
- a Water Services Entities Funding Agency
- shared services arrangements, which entities may be directed to implement or which they may enter into voluntarily.

If enacted, the bill would become the final piece of legislation aimed at reforming the delivery of New Zealand's water services.

Truncated process

We note that the time frame allowed for public submissions and select committee scrutiny was extremely short. The bill was referred to us on Thursday 23 June 2023, with a report-back date of Thursday 27 July 2023. Many submitters commented on the bill's short report-back date and the limited amount of time for people to prepare written and oral submissions. Some of us consider that the truncated period for consideration hindered our ability to effectively scrutinise the bill.

Legislative scrutiny

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

Proposed amendments

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

Definitions

We received several submissions that expressed confusion about the definition of “water body” in relation to community priority statements. Clause 16 of the bill provides for community priority statements to be made about a water body in the service area of a WSE. The statements could be made by any persons with an interest in how water services are provided in that service area.

We consider that providing definitions for “water body” and “water” in the bill would make it clearer how provisions relating to community priority statements are intended to apply. These statements are intended to be made in relation to any body of water—whether freshwater, seawater, or other—that the activities of a WSE might affect. We note that this would reflect similar arrangements for Te Mana o te Wai statements, which can be made by mana whenua whose rohe or takiwā includes a water body in the service area, or whose interests in the service area are recognised in a Treaty settlement Act.

Section 6 of the Water Services Entities Act 2022 states that the definition of “Te Mana o te Wai” applies to “water”, as defined in section 2(1) of the Resource Management Act 1991 (RMA). Te Mana o te Wai refers to the vital importance of water. The RMA provides a definition for “water” that does not include “water in any form while in any pipe, tank or cistern”. Some submitters told us that it would not be appropriate for water services legislation to determine whether water has mana depending on whether it is piped. We agree that Te Mana o te Wai should apply to all types of water. Therefore, we recommend inserting clause 4B to include definitions of “water” and “water body” in section 6 of the Act, and to amend the definition of “Te Mana o te Wai” to refer to these definitions so that it applies to water as defined by our recommended terms.

Establishment dates of water service entities

Clause 5 of the bill would insert new section 6A into the Act. It would provide that the Northland and Auckland Water Services Entity’s operational establishment date is 1 July 2024. The bill would not set operational establishment dates for the remaining entities, but rather would enable them to be set by Order in Council at the start of a financial quarter from 1 July 2024 to 1 July 2026. Several submitters were concerned about the range of possible operational establishment dates that the bill allows to be set for most WSEs. They noted that territorial authorities would have to plan, finance, and provide water services until a date that is not yet set by an Order. Although we acknowledge that a range of dates provides flexibility for the operational establishment of WSEs, we share submitters’ concerns. We consider that it is important for councils to have more certainty about operational establishment dates, given the pressures they face in continuing to provide water services.

To give effect to these considerations, we recommend:

- amending proposed new section 6A(5) to require that, once an establishment date has been set by Order in Council, this power can only be re-exercised in

situations where it would take effect before the previous establishment date and is recommended due to exceptional circumstances

- inserting new section 6A(5A) to require that Orders in Council made under new section 6A, setting WSEs' establishment dates, must be made within 6 months from the commencement of that new section
- introducing new section 6A(5B) to require that, before recommending an Order in Council be made, the Minister must engage with territorial authority owners and mana whenua, in accordance with section 206 of the Act.

Section 206 of the Act relates to engagement and requires that a WSE or the Minister consult or seek input or feedback on a proposal.

Requirement for the Minister to report on engagement regarding the establishment of WSEs

We note that the engagement requirements in section 206 of the Act do not set out how a WSE or the Minister should respond to input or feedback received through consultation. We recommend adding clause 21A to insert new section 206A. Our proposed section 206A would require the WSE or the Minister to prepare a report on how input and feedback was considered and incorporated into the specified document. It would also require the report to be published on an internet site maintained by, or on behalf of, the WSE, in a readily accessible format.

Terms of office for establishment boards and chief executives

Schedule 1 of the Act contains transitional arrangements, transferring the provision of water services from territorial authorities to WSEs. As introduced, clause 25 would insert new subpart 1A into Schedule 1 of the Act to disestablish the existing four WSEs.

Clause 3(f) of Schedule 1 sets out that board members of WSEs hold their positions for the establishment period or for any shorter period stated in the notice of appointment. In contrast, clause 4(3) of Schedule 1 provides that establishment chief executives are appointed for a term that ends up until 24 months after the establishment date, unless that term is earlier terminated.

We consider that the approach for appointing establishment boards should be similar to the process for appointing establishment chief executives. We recommend amending clause 3 of Schedule 1 to provide that the term of office for a member of a board appointed by the Minister during the establishment period would end 24 months after the establishment date, unless terminated earlier. This would provide a default of continuity in the board from the establishment date to the WSE providing services.

Clause 25(4) of the bill would replace clause 4 of Schedule 1 of the Act to provide that the establishment chief executive would be appointed by the establishment board. There would be an exception for the establishment chief executive of the Northern WSE (the former entity that was established by the Water Services Entities Act 2022) who would be appointed as the establishment chief executive of the new Northland and Auckland WSE.

We consider that the existing approach in clause 4(3) of Schedule 1, as described above, should be reinstated. We recommend inserting new clause 4(2A) into Schedule 1 to do this. This would provide a default scenario where there is continuity for the chief executive from establishment of the WSE through to the provision of water services.

Local engagement in water services entities

The bill would introduce a number of amendments relating to local representation and engagement in the provision of water services. We consider it important to maintain local voice in providing water services. Many submitters commented on the limited time provided for consultation with affected groups during the process of legislating for water services reform. We consider it important to ensure that local communities are actively involved throughout the reform and transition phases. We suggest various amendments to improve these mechanisms for local engagement, as outlined below.

Membership of regional representative groups

Clause 10 would amend section 27 of the Act which relates to the establishment and membership of a regional representative group (RRG) for WSEs. RRGs are responsible for setting out their relevant entity's strategic direction and performance expectations. They comprise an equal number of territorial authority and mana whenua representatives.²

The bill would require every RRG to include a representative from each territorial authority owner in the entity's service area. There would be no maximum number of representatives in an RRG. We note that the Finance and Expenditure Committee, during its consideration of the Water Services Entities Bill, considered what the number of regional representatives should be on an RRG. In its report, the committee acknowledged the importance of increasing local voice and representation and recommended that there should be no limit to the number of members on each RRG.

We consider that the drafting of clause 10 is not necessarily clear that each entity's regional representative group must include a representative from each territorial authority owner in the entity's service area. For clarity, we recommend amending clause 10 to replace the word "a" with "at least 1".

Composition of regional representative groups

Clause 24 would repeal section 210(3) and (4) of the Water Services Entities Act 2022 to remove the requirement that each RRG consist of no less than 12 and no more than 18 members.

The membership of each WSE's RRG would be provided for in the constitution of each entity. We consider that the first constitution for the Northland and Auckland WSE should provide that its RRG has the following composition:

² As required by section 27(3) of the Water Services Entities Act 2022.

- four Auckland Council representatives
- four mana whenua representatives of Tāmaki Makaurau
- one representative each from Far North District Council, Kaipara District Council, and Whangārei District Council
- three mana whenua representatives of Te Tai Tokerau.

We recommend that clause 24 be amended to replace section 210(3) to provide that the first constitution of the Northland and Auckland WSE be set out in regulation with its RRG to have the above composition. We consider that this would provide certainty to territorial authority owners and mana whenua representatives in relation to the Northland and Auckland WSE’s RRG.

We also recommend replacing section 210(4) to provide that later modifications to this constitution could be made, if desired. We note that section 210 is transitional, and the composition of the WSEs can be changed in amendments to, or replacements of, the model constitution. We were advised that the Northland and Auckland WSE’s model constitution will provide an example for other entities’ constitutions.

Eligibility to make community priority statements

We consider that the bill is not clear about who is eligible to submit a community priority statement. We note that groups who are not based in a WSE’s service area may still have an interest in a water body in that area. This could include unincorporated bodies, or national organisations, whose purpose is or includes a matter related to a water body in that area. We think that such groups should be able to provide a community priority statement.

Accordingly, we recommend amending clause 16 to insert new section 145AB. This would set out the meaning of an “eligible person” as a person who:

- has a connection with the entity’s service area; and
- has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both.

Our proposed amendment would also insert section 145AB(2) to make it clear that an unincorporated body is only an eligible person if both the following apply:

- their main place of activities is in the WSE’s service area
- has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both.

Our proposed amendment would also insert section 145AB(2) to make it clear that an unincorporated body is only an eligible person if both the following apply:

- their main place of activities is in the WSE’s service area
- their purpose is, or includes, for any reason, any matter related to a water body in the WSE’s service area.

Regional representative groups setting and notifying deadlines for community priority statements

The bill as introduced provides that community priority statements could be made at any time. We realise that considering these statements may entail the use of significant administrative and financial resources. However, we acknowledge the need for communities to express their views on water services.

We consider that a balance could be achieved by giving RRGs the power to set a deadline for receipt of community priority statements. We therefore recommend inserting section 145AC to let RRGs determine a submission period for community groups, including publicly notifying a deadline for statements.

We also recommend amending section 145B to make clear that statements must be made in accordance with any deadline set and notified by the entity's RRG. Also, if made after any current deadline, they must be considered to be received before the next current deadline.

Māori representation in consumer forum engagement

Section 207 of the Act, which relates to consumer engagement forums, states that forums must achieve "equitable and reasonable representation" of various communities in their service area. Although modelled on the composition of RRGs and of regional advisory panels, which require mana whenua representation, consumer forums are not required to have mana whenua representatives. We consider that consumer forums should also have mandated mana whenua representation.

We recommend amending clause 22 to amend section 207(4) so that it requires a WSE's chief executive to ensure that its consumer forums achieve equitable and reasonable representation of metropolitan, provincial, and rural communities, and mana whenua, in its service area.

Shared services arrangements

Clause 7 would amend section 13 of the Act, relating to the functions of WSEs. As introduced, the amendment would make it a function of WSEs to be able to enter into shared service arrangements. We were advised that enabling shared services arrangements would make the 10-entity model more efficient. For example, in areas such as procurement, it would be useful to share resourcing capabilities between entities to reduce pressures on smaller entities.

We propose various amendments to improve the workability of shared services arrangements, and discuss some of them below.

Ministerial direction

Clause 15 would insert new subpart 2A of Part 4, which would enable the Minister to direct WSEs to comply with requirements for shared services and other stated purposes set out in the bill. Most submitters were supportive of WSEs being able to be required to share services provided to WSEs. This was particularly so for smaller

councils which consider it an opportunity to recapture benefits of cost efficiency, some of which they would have lost during the move from 4 WSEs to 10.

In contrast, some submitters expressed concern about clause 15 as introduced. In particular, they noted that the provision could give the Minister too much power over WSEs. We agree that the ministerial powers enabled by this clause are quite broad. However, we consider that ministerial powers to direct shared service arrangements are an important part of the wider reform, because of their potential to enable more cost-efficient arrangements. For example, a Minister could direct larger entities to enter into agreements with smaller entities, which the larger entity might otherwise not have done, as there might be no significant benefits for them.

We recommend narrowing the Minister's powers in clause 15, new section 137A by making clear that this section would only apply to directions for shared services provided to WSEs. In addition, we also recommend inserting into section 137A:

- subsection (2A), stating that a direction must not be inconsistent with the operating principles of WSEs set out in section 14 of the Act
- subsection (2B) requiring that a direction for shared services arrangements that directs WSEs about how to give effect to the direction may only be made before 1 July 2026.

We note that restricting directions for shared services of that kind beyond this date would provide additional assurance that the Minister could not interfere with how the entity gives effect to a direction. We recommend adding clause 25(9) to insert clause 8A(4) into Schedule 1. This would set out that a direction made under that clause and approved by the Minister before an entity's establishment period would expire and be revoked on 1 July 2027.

We also recommend amending section 137B to insert subsection (1A). This would require the Minister to consider input or feedback from stakeholders relating to the proposed direction. We believe this would provide further safeguards ensuring that directions are made in good faith. We note that this would not affect the amendments we recommend to section 206, as discussed previously in this commentary.

We do not consider it necessary to further specify the types of shared service arrangements that may or may not be directed and entered into, other than specifying a direction's purposes and activities. We expect the purposes for which a direction may be given, and activities covered, as specified under section 137A(1) and (3) as amended, to be interpreted appropriately and in good faith in giving directions to WSEs that they share services provided to them.

We also recommend changes to clause 8A of Schedule 1 of the Act to make it clear that a shared services direction under section 137A:

- may be given by being approved by the Minister before or during a WSE's establishment period
- may come into force at the start of, or otherwise during, that period.

Purpose of locally-led mergers

In the bill as introduced, WSEs would be able to merge. Schedule 2 of the bill would insert new Schedule 2A into the Act, providing for a request for, preparation of, and implementation of a merger proposal. A merger proposal must be made to the relevant entity's RRG.

We think Schedule 2A does not provide sufficient guidance to support a locally-led merger process as the bill intends. Several submitters commented that mergers would reduce local input. We consider it important to maintain local involvement in the decision-making process of a merger proposal. We wish to ensure that decisions regarding merger proposals are well informed.

Therefore, we recommend inserting clause 1AA into new Schedule 2A to specify that the purpose of the WSE's merger provisions is to achieve the Act's purpose by enabling mergers that "improve water services governance".

We also recommend inserting clause 1AB to enable entities to merge only if every entity in the merger shares some of its boundary with that of at least one other entity in the merger. For the purpose of new clause 1AB, a WSE's boundary is the boundary of the area identified in Schedule 2 as the service area of the WSE. We note that territorial authorities that extend across water bodies would comply with the requirements for shared boundaries.

Decision-making on merger proposal

Clause 13 of new Schedule 2A relates to decision-making on merger proposals. As introduced, clause 13(3)(b) would set a threshold that at least 50 percent of RRG representatives present and voting must agree to implement a merger. We consider that the threshold proposed is not high enough to represent a majority. We note that section 30 of the Water Services Entities Act 2022 requires decisions made by an RRG to be agreed by 75 percent of the regional representatives present and voting. We recommend replacing clause 13(3) so that a 75 percent majority of representatives present and voting would always be required, as already provided for in section 30 of the Act.

Criteria or guidance for merger

We are concerned that the bill offers no guidance on factors that WSEs may wish to consider when deciding whether to merge. We note that a merger would raise significant policy considerations and could have financial implications for the amount that consumers pay for water services.

We consider that the bill should provide a list of factors that an RRG must consider when deciding whether a merger proposal should be implemented. We recommend inserting clause 13A into new Schedule 2A to list the factors that an RRG must have regard to when making such a decision.

Effect of mergers and disestablishment of water services entities

Clause 21 of Schedule 2A provides that a merger implementation plan would be given effect by an Order in Council, made on the recommendation of the Minister. An

Order in Council made to give effect to a merger implementation plan would also dis-establish the WSEs that are part of the merger.

We think that the bill should require an Order in Council that gives effect to a merger implementation plan to include stated matters related to the merger (for example, amendments to section 3(2)(a) to reflect the total number of entities after the merger). This would ensure that the stated aspects of the merger are given effect to and have a statutory basis reflected in the Act or the Order.

We recommend inserting clause 21A into proposed Schedule 2A to specifically state what transitional provisions about the effect of a merger are brought into operation by implementing Orders in Council made under clause 21.

We also recommend inserting clause 21B to provide that the disestablishment of a WSE would not by itself affect any of the following matters:

- any decision made, or anything done or omitted to be done by a disestablished entity in performing or exercising its functions, powers, or duties under any legislation
- any proceedings commenced against a disestablished entity
- any other matter or thing arising out of a disestablished entity's exercise or performance of its functions, powers, or duties under any legislation.

Any designations, permits, or consents made or issued by a merging WSE would continue in force and be deemed to have been made by the new entity.

Employment transfer arrangements

Retention payments for the workforce

The bill as introduced would not amend existing staff transfer provisions outlined in Schedule 1 of the Act. We consider that the bill should address the pressures on employees during the transition period to the new WSEs.

Several submitters were concerned that the bill proposes amendments that would create uncertainty, disruption, and distraction for council staff due to the extended establishment period and uncertainty of individual entity establishment dates. We consider that staff retention affects determining when an entity will be established. We consider that providing retention payments to incentivise staff to continue to remain in their positions while local government organisations continue to provide water services over the extended establishment period, before transferring to their new positions in their local WSE, would be a useful tool to include in the legislation. We note that retention payments are commonly used in both the private and public sector to improve employee loyalty, or retain highly trained staff.

Therefore, we recommend inserting the following clauses into Schedule 1 of the Act as inserted by clause 25(14C) to support staff retention:

- new clause 27A(2) to make clear that a WSE, on or after its establishment, may make a one-time payment to an employee who has accepted an offer of employment from the chief executive of a WSE

- new clause 27A(3) to state that any retention payment made under the previous subclause may be made subject to lawful conditions.

Transitional arrangements

Section 22 of the Act requires chief executives to review employment positions during the establishment period of a WSE. Clause 23 requires chief executives to offer employees a position if their role primarily relates to or supports the delivery of water services.

We note that the change to WSE establishment processes proposed by the bill would create an anomaly whereby Watercare³ employees who live in the Waikato District and provide services to Waikato District Council would not transfer into the Waikato WSE. This is because the Northland and Auckland WSE would be established on 1 July 2024 and the existing provisions in the Act require the job offer to be made by this date. The bill proposes that the Waikato WSE be established later in the establishment window, so it would not exist on 1 July 2024.

To address this anomaly, we recommend inserting clause 23(1B) into Schedule 1 of the Act, as added by clause 25(14B) to enable the chief executive of the Department of Internal Affairs to approve an offer of employment made by an entity to employees of another entity.

Collective bargaining

The bill as introduced does not contain any provisions relating to collective bargaining. Schedule 1 of the Act sets out arrangements for collective bargaining over the transition period. However, we note that the amendments to entity establishment in the bill mean the transitional collective bargaining arrangements must be updated to reflect the longer transition period, where entities are legally established in a staggered fashion, rather than all on the same day.

Many submitters expressed concern about workers' rights, and stressed that multi-party collective bargaining should be allowed to take place before the establishment of the WSEs. Some submitters felt that employees under legislated job pathways could be disadvantaged if an entity transitioned at a later date. We consider it important that the bill provide for collective bargaining of employment agreements.

We recommend inserting clause 27C into Schedule 1 of the Act to:

- provide that a bargaining agent appointed by DIA's chief executive under clause 27C may represent a WSE by carrying out bargaining on behalf of the entity initiated by one or more unions under clause 28
- make clear that the bargaining agent may, without limitation, enter into a collective employment agreement on behalf of the entity in or after that collective bargaining

³ Watercare Services Limited provides water and wastewater services to the Auckland region.

- provide that any employment agreement negotiated and entered into by a bargaining agent who is representing a WSE would bind the represented entity on and after its establishment date but not stop that entity from varying or renegotiating the agreement
- make clear that this could cover multi-employer collective employment agreements across WSEs.

We propose that this clause would apply to a WSE:

- that has not yet been transitionally established under new section 11
- whose establishment chief executive has not been appointed
- whose chief executive has not been appointed.

However, after the appointment of an establishment chief executive of a WSE takes effect, a bargaining agent appointed under clause 27C may continue to represent that entity under clause 27C only if, and only to the extent that, the bargaining agent has a written authorisation to do so, provided by the establishment chief executive.

Ministerial direction for shared services in relation to employment relations

Clause 15 would insert section 137A(3) into the Act setting out what shared services could be directed by the Minister. Activities that could be covered by a direction include debt funding and management, information and communication technology, procurement and supply chain management, risk management and insurance, and workforce development and management. We consider that the Minister's ability to direct shared services should specifically apply in regards to employment relations.

Therefore, we recommend amending subsection (3)(e), to replace the term "management" with "employment relations".

Development contributions

Clause 35 would amend Schedule 1AA of the Local Government Act 2022. New clause 39 of Schedule 1AA relates to development contributions which are charged by councils to cover the cost of services and infrastructure for new developments. The Water Services Legislation Bill proposes that councils could apply these charges to any development needing consent before the establishment date. This bill proposes that development contributions would apply to territorial authorities in the service area of a WSE.

We recommend amending clause 29 of Schedule 1AA, to be inserted by clause 35(8), to clarify that development contributions may be made in relation to water services infrastructure.

National Party differing view

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

This bill was introduced shortly after the Government announced their three waters back down and is now quickly being rushed through the House before the end of this Parliament. For almost three years, the Labour Government presented their four-entity model as the only viable option to fix the universally recognised deficiencies with the status quo of water services delivery. According to them, only that model would present a solution, and all others should be disregarded. Ironically, this insistence was immediately abandoned once the tide of public opinion became evident, and this bill was introduced, fundamentally reshaping many of the aspects of the reform that the Government had previously considered “bottom lines”. Unfortunately, the core of the reform agenda remains and is still opposed by Kiwis, and because of this, National will not support it.

Councils own their water assets on behalf of their ratepayers, who have paid for them over generations and deserve a say in their operation. Maintaining council ownership of water assets must be the bottom line in any reform. Still, this bill strengthens these reforms’ commitment to strip local communities of local control and ownership of their water assets. The change this bill proposes, which takes the number of mega-entities from 4 to 10, is insufficient to ensure that the assets remain in local hands. The feedback from councils around the structure is that the number of entities is materially less important than the governance and ownership structure beneath them. Still, this aspect is unchanged in the transition between 4 and 10 entities.

National is pleased to see a commitment to ensure each council in the service area of an entity will have at least one seat on representation boards. This has long been something National has argued for, and a Supplementary Order Paper that would have done precisely this was rejected by Labour as part of the consideration of the Water Services Entities Bill when it passed through the House in 2022. We are glad to see the Government adopt National’s position on this.

Many submitters also raised concerns regarding the process for Te Mana o te Wai statements. National acknowledges the Māori interest in water; however, there is a significant difference between the recognition of that right, the Te Mana o te Wai framework, and the specific Te Mana o te Wai statements proposed in this bill. National does not support the framework for issuing statements specifically, as we do not feel this is the appropriate way to recognise the Māori interest in water and is unnecessarily divisive and unworkable.

The Minister for Local Government made commitments as part of his changes to three waters to expand the ability to make submissions to water services entities to other interested parties, the result of which is this bill’s “community priority statements”. These statements are significantly weaker than Te Mana o te Wai statements, which “must be considered” by Water Services Entities, as opposed to community priority statements, which “may be considered”. This apparent discrepancy between these two types of statements makes one significantly less influential than the other, defeating the purpose of expanding statements in the first place. As part of the consideration of the Water Services Entities Bill in 2022, National proposed a Supplementary Order Paper that would have expanded the groups of individuals who can submit

Te Mana o te Wai statements to include community groups and other interested parties. This would have represented a far more equitable way to ensure community voices are heard. While we were initially happy to see a potential expansion of Te Mana o te Wai to capture all individuals interested in water, we are disappointed that this has yet to occur meaningfully.

Many councils also raised concerns about the entity borders, particularly at the top of the South Island. Entities boundaries, as currently drawn, place some communities in entities different than ones where their council has representation. Officials have explained that this inconsistency between local government and WSE's boundaries is due to different iwi boundaries. While National acknowledges the Māori interest in water, we believe that borders should be consistent with local council boundaries.

Direct contact with a person's council regarding water services is crucial for individuals and communities. The ability to communicate directly ensures that ratepayers can voice their concerns, report issues, and seek prompt resolutions. When people face problems with their water supply or quality, having a clear line of communication with the council empowers them to take proactive measures. Moreover, direct contact enables a sense of accountability from the council's end, ensuring that they are responsive and attentive to the community's needs. This accountability is further strengthened when ratepayers know exactly who to approach, making it easier to address specific issues.

Conversely, when individuals are unclear about whom to contact or who is accountable for water services, it can lead to delays in resolving problems. This lack of clarity may deter people from reporting issues altogether, leading to potential health hazards, environmental concerns, and financial burdens for the community. Thus, facilitating transparent and direct communication with the council is vital to safeguarding the well-being and interests of residents while fostering a sense of trust and cooperation between the authorities and the public they serve. This is significantly more difficult when there are inconsistencies between local government and WSE's boundaries.

This is one example of where the extremely short select committee consideration of this bill was problematic. Issues around boundaries require a high level of consideration and attention to detail that the process allowed by the Government could not accommodate. This bill was read a first time on 22 June, with a report-back date of 27 July, giving the committee barely a month to consider it and submitters even less time to prepare their submissions. Many submitters, especially councils, highlighted this need for more time to prepare submissions. Even councils who supported the reforms, in general, expressed their concern this shortened process made it very difficult for them to properly consider the bill and how these changes would affect their communities. This includes councils still focused on the aftermath of severe weather events earlier this year.

Granting local councils and communities adequate time to consider changes that impact them and make submissions is crucial for fostering democratic principles, ensuring transparency, and promoting informed decision-making. When proposed changes or policies affect a community, it is essential to allow sufficient time for all

stakeholders to be informed, assess the potential implications, and provide valuable input. Doing so enables a broader and more diverse range of perspectives to be considered, leading to better-informed and well-rounded decisions.

The significance of this time allocation becomes evident when we examine the adverse consequences of shortening the process. First and foremost, curtailing the time for deliberation deprives residents and local councils of the opportunity to thoroughly understand the proposed changes, their consequences, and possible alternatives. Rushed decision-making will lead to uninformed choices that may not align with the needs and values of the community, potentially resulting in discontent, mistrust, and negative outcomes for residents.

Additionally, shortening the submission process hinders the ability of community members to engage and provide valuable feedback. Public participation is a fundamental aspect of democracy, and when this opportunity is limited, it diminishes the sense of ownership and inclusivity in the decision-making process.

Councils could not effectively consult with their ratepayers or undertake significant technical analysis for this bill. For previous bills in the three waters reform, which were considered over a more extended period, the technical and detailed feedback provided by submitters was valuable to the process. This was not able to occur for this bill.

Another result of the shortened time for consideration is a lack of clarity in certain areas. In particular, the levels of ministerial direction available and the function of some of the new elements of these reforms, such as the proposed financing agency.

It remains to be seen what ability the Minister will have to influence these entities, particularly concerning operations and future mergers. As we have expressed in the previous bill, we believe the communities on the ground and the ratepayers represented by councils will have minimal impact on the operation and management of their water, and this is even more concerning when the Minister may have more power over these aspects. The existence of a funding agency, which is entirely new to this reform, remains unclear in its function. Such an entity will, if it is created, deal with billions of dollars in borrowing between multiple complicated entities. The lack of detail or plans for this entity is highly problematic and would have been clearer had the committee been afforded the time to consider it properly.

The defence offered by the Government for this is that the bill makes only minor changes, and while this is true for some aspects, like governance, it is not true for many others. The Government expects us to simultaneously accept that this bill is minor and does not warrant a complete select committee process, but also that they have listened to the public and fundamentally reshaped their reforms. The National Party is highly concerned about the level of scrutiny this bill has received and the lack of ability for the public to have input on it.

The opinion of the National Party is that this bill is being pushed through with this timeframe exclusively to ensure it is passed by the end of this parliamentary term while the Labour Party still has a majority. As a result, yet another bill is reported

back to the House with minor amendments and a process that has prevented proper public scrutiny.

Despite the Government's insistence, there are other ways forward with the issues in water services delivery. Instead of adjusting the number of broken mega-entities, this bill should be focused on doing local water well. Proper, desperately needed reforms should focus on enshrining the things that work in the status quo, such as the strong local voice and ability to tailor services to the local context. Reforms should focus on making changes only where they enhance service delivery, like giving councils additional financing tools for managing their water and supporting their service delivery with strong and pragmatic regulations for consumer protection and water quality.

National will repeal the Water Services Entities Act that this bill amends within 100 days, if elected. We will restore local control of water and support councils to deliver water services with strict rules for assets and water quality and give them the tools to reach financial sustainability. This can all be done with local ownership as a bottom line.

ACT New Zealand differing view

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

The cost of provisioning three waters infrastructure under current funding and financing models is a barrier to land development and has increased the cost of a section far beyond increases in the cost of construction. This has led to a decrease in housing affordability compared to incomes, and a lack of land provisioned for urban development.

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

The current system is not up to scratch, but the Government's three waters reforms are not the answer. Communities and councils have roundly rejected the Government's three waters reform agenda again as shown by the responses to this latest bill that had over 96 percent of submitters against the reform.

Problems with this bill

This bill is the latest in a series which seeks to reform the way water infrastructure is delivered and operated. However, this bill has had a matter of weeks for the committee to receive submissions when best practice acknowledges this should be much longer and consider the implications of changes proposed. ACT does not believe that adequate consideration has been afforded to this bill.

Despite the limited time frame to consider the bill, the Labour majority insisted on inserting clauses which would require the Department of Internal Affairs to appoint a representative to engage in collective bargaining with unions on future employees' terms and conditions, and should they not agree—included a new ministerial power that could direct them to do so. These entities might not yet be established and not

had an opportunity to determine their strategy and objectives, yet they would still be bound to engage staff in roles and at salaries and wages which may not be appropriate for the scale, size, and location of an entity. ACT opposes this change, which was not supported by any policy or regulatory impact assessment and should be completely removed from the bill.

The bill proposes to amend the original Act passed only 8 months ago, which established four water entities against much community opposition. ACT believes that the development, transition, and implementation costs of the reforms are excessive, and that the reform objectives could have been achieved at much lower financial cost.

By setting clear regulatory directions for local government and providing for additional funding through innovative infrastructure delivery models such as those allowed for under the Infrastructure Funding and Financing Act, the reform objectives could be delivered in a more practical and less divisive way.

The key proposal of this bill is that rather than 4 Water Service Entities there should now be 10. The Minister and officials accept that is less efficient and does not achieve the economic benefits that four entities were expected to, as economies of scale are reduced. Many of the policy changes were described by officials as a means to “claw back efficiencies”.

Although this undermines the intent of the policy to which the original Act gives effect—to make water services more affordable over time—the Minister claims this is an acceptable and necessary cost. ACT does not agree that the cost is warranted in order to give local councils, who own the existing assets, a greater level of influence and control over the new entities their assets will be transferred to.

ACT believes there are other ways to make sure that councils retain control over their existing assets—don’t take them in the first place.

However, because the Act which this bill amends already confiscates the assets, ACT would instead seek to improve this bill in the following ways:

- only council representatives should have voting rights on regional representative groups (RRGs)
- allocate councils representation on each entity RRG in accordance with their population, and in line with provisions of the original Act which provide for councils to have one share per 50,000 residents
- drop the 50/50 iwi Māori co-governance requirement for RRGs.

ACT proposes that iwi Māori should continue to have representation on RRGs but that be limited to giving advice on matters where Treaty settlements identify a specific duty or obligation in an entity’s service area.

ACT does not agree that Māori have special rights and interests in three waters assets built after 1840 over and above those as ratepayers within their respective communities of interest. These communities are already represented by elected members of local councils in each city, district, and region, and Māori voters have suffrage equal to any other voter in local government elections.

The former Minister of Local Government Nanaia Mahuta, the original sponsor of the three waters reforms, confirmed that ACT's approach is correct.

In reply to a written question from ACT:

7396 (2022). Simon Court to the Minister of Local Government (16 Mar 2022): Does the Minister Believe that Māori have rights and interests in Three Waters assets built after 1840, and if so, why?

Hon Nanaia Mahuta (Minister of Local Government) replied: To my knowledge Māori have not expressed rights and interests in three waters assets over and above those as ratepayers within their respective communities of interest.

The bill proposes a new Water Services Funding Agency to raise debt to fund water infrastructure, and which will be more highly leveraged at least 4 to 6 times, and potentially 6 to 9 times revenue. The committee heard that this comes with a much higher risk than current council debt and will incur higher interest costs and a lower credit rating than councils typically have now.

ACT agrees that councils and their council controlled organisations should have access to a much wider range of funding and financing options, beyond that provided for in the Act and the amendments proposed in this bill. Where it is necessary to achieve balance sheet separation to allow for higher ratios of debt to revenue than allowed by the current Local Government Funding Agency limit of 2.8 times, then councils should be encouraged to use other methods to raise debt for new assets and upgrades to existing networks, such as special purpose vehicles allowed under the Infrastructure Funding and Financing Act (IFFA).

Many submitters noted the intent of the community priority statements was positive but in practice was likely to add limited value, and would not materially improve community voice, compared to the weight that Te Mana o Te Wai statements made by Māori would have under this legislation. We agree and is another example of additional and unnecessary red-tape.

The boundaries of some entities have not taken account of the local government boundaries and the wishes of some councils to join different entities. For example, the Nelson Marlborough Tasman entity excludes Seddon and Murchison which are in that regional council area, because the Minister and officials believe the Government should accept that the need to observe the Ngāi Tahu takiwā boundary takes precedence over the need to provide local control over water service.

The delayed time frame for implementation is now 1 July 2026 with the exception of the Northern entity taking Northland and Auckland council's assets. This is two years later than the original date of 1 July 2024 which creates uncertainty and risk for local councils. The committee heard that councils are very concerned that during this time frame they will need to undertake upgrades and provide for new infrastructure, taking on debt and incurring costs which they are uncertain can be recovered.

Whangarei District Council advised the committee they would also suffer a credit downgrade and would be materially worse off because of having their assets transfer-

red to the Northern Entity. This will affect their ability to borrow to fund community assets and increase rates and other costs to ratepayers.

The Government proposed “Better off/No Worse off” funding in the original scope of the reform in 2021 to cover councils’ stranded overheads and other costs not able to be recovered as a result of transferring assets to an entity.

The committee heard from officials that the funding offer has since been withdrawn by the Government in order to cover the extended cost of the transition. Officials estimated the reforms will now cost up to \$3 billion, an increase of around \$1 billion over original estimates.

The committee heard that the additional costs include paying salaries for three chief executives recruited to the original four entities who remain in the employment of the Department of Internal Affairs despite not necessarily having future employment in any of the entities.

That is an outrageous waste of taxpayer funds and shows complete disrespect to councils which have relied on promises from senior Labour Government Ministers when forming their view on the reform proposals, and when engaging with their communities on the costs and benefits.

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

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

ACT opposes this bill, and should we be a part of a future Government we will seek to repeal it and replace Labour’s reform with ACT’s alternative.

ACT’s alternative three waters plan

ACT’s water infrastructure plan would:

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

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

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

Appendix

Committee process

The Water Services Entities Amendment Bill was referred to the committee on 22 June 2023. We invited the Minister for Local Government to provide an initial briefing on the bill. They did so on 3 July 2023, and again on 10 July 2023.

We called for submissions on the bill with a closing date of 5 July 2023. We received and considered submissions from 1,997 interested groups and individuals. We heard oral evidence from 58 submitters, comprising 30 organisations and 28 individuals, at hearings via videoconference.

We received advice on the bill from Te Tari Taiwhenua—Department of Internal Affairs, and our independent adviser, Amelia East. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 5, 8, and 15, and Schedule 2 of the bill; and section 3 of the Act.

Committee membership

Ian McKelvie (Chairperson)

Hon David Bennett

Rachel Boyack

Naisi Chen

Jamie Strange

Glen Bennett, Tāmati Coffey, Simon Court, Liz Craig, Shanan Halbert, Soraya Peke-Mason, Ibrahim Omer, Dan Rosewarne, Hon Eugenie Sage, Lemauga Lydia Sosene, Hon Phil Twyford, Simon Watts, Helen White, Vanushi Walters, and Hon Poto Williams also participated in our consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Kieran McAnulty

Water Services Entities Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Water Services Entities Amendment Act **2023**.
- 2 Commencement**
This Act comes into force on the day after the date of Royal assent. 5

Part 1
Amendments to Water Services Entities Act 2022

Principal Act

- 3 Principal Act**
This Part amends the Water Services Entities Act 2022. 10

Principal Act's commencement

- 4 Section 2 amended (Commencement)**
 - (1) Before section 2(1), insert:

15 December 2022

- (2) Replace section 2(2) and (3) with:

*Commencement of **Water Services Entities Amendment Act 2023***

- (1A) The following provisions come into force on the day after the date of Royal assent of the **Water Services Entities Amendment Act 2023**:

(a) section 27 (establishment and membership of regional representative group):

(b) section 93 (what constitution must contain) so far as it relates to regulations made under section 210(1)(a):

(c) section 97 (process for amending or replacing constitution) so far as it relates to regulations made under section 210(1)(a):

(d) **section 117(4)** (directions for shared services ~~and other stated purposes~~ not subject to section 117):

(da) sections 123 to 128 (protections from liability):

(db) section 129 (method of contracting):

(e) **section 131(2A)** (directions for shared services ~~and other stated purposes~~):

(f) **subpart 2A of Part 4** (directions for shared services ~~and other stated purposes~~):

(g) section 206 (engagement requirements).

1 July 2024

- (2) The rest of this Act comes into force on **1 July 2024**.

Principal Act's purpose

4A Section 3 amended (Purpose)

- (1) In section 3(2)(a), replace “4” with “10”.

- (2) After section 3(2)(a), insert:

(aa) ensuring that this Act applies to a water services entity, and its service area, only on and after that entity's operational establishment date (see **section 6A**):

- (3) In section 3(2)(b), after “their governance, reporting, and accountability arrangements”, insert “(for example, shared services arrangements, community priority statements, a funding agency, and protected transactions)”.

- (4) After section 3(2)(d), insert:

(da) providing a locally led process enabling them to merge if their regional representative groups decide to do so (see **section 19A**):

Interpretation**4B Section 6 amended (Interpretation)**

(1) In section 6, definition of **Te Mana o te Wai**, paragraph (b), replace “section 2(1) of the Resource Management Act 1991” with “this section”.

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

5

water—

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

(b) includes water in any form while in any pipe, tank, or cistern

water body—

10

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

(b) includes water—

(i) in, or in any part of, a river, lake, stream, pond, wetland, or aquifer; and

15

(ii) that is located within the coastal marine area (as that term is defined in that section 2(1))

Principal Act's application to water services entity

5 New section 6A inserted (Act applies to water services entity, and its service area, only on and after that entity's establishment date)

20

After section 6, insert:

6A Act applies to water services entity, and its service area, only on and after that entity's establishment date

General rule

(1) This Act, and secondary legislation made under this Act, apply to a water services entity, and its service area, only on and after that entity's establishment date.

25

(2) Before the entity's establishment date, local government organisations provide water services in their districts (to the extent that they are part of the entity's service area) under the law in force immediately before **1 July 2024**.

30

Exception

(3) However, **subsections (1) and (2)** do not affect or limit the operation, during a water service's entity's establishment period, of the following:

(a) this section:

(b) Schedule 1 of this Act:

35

(c) Schedule 1AA of the Local Government Act 2002:

- (d) Schedule 1AA of the Local Government (Rating) Act 2002:
- (e) Schedule 1 of the Local Government (Financial Reporting and Prudence) Regulations 2014.
- Establishment date*
- (3A) The Northland and Auckland Water Services Entity's **establishment date** is 1 July 2024. 5
- ~~(4) Any other water services entity's **establishment date** is the earlier of —~~
- ~~(a) an establishment date for the entity that is set by an Order in Council made under this section, and that is one of the following dates:~~
- ~~(i) 1 July 2024:~~ 10
- ~~(ii) 1 October 2024:~~
- ~~(iii) 1 January 2025:~~
- ~~(iv) 1 April 2025:~~
- ~~(v) 1 July 2025:~~
- ~~(vi) 1 October 2025:~~ 15
- ~~(vii) 1 January 2026:~~
- ~~(viii) 1 April 2026:~~
- ~~(b) 1 July 2026.~~
- (4) Any other water services entity's **establishment date** is an establishment date for the entity that is set by an Order in Council made under this section on the recommendation of the Minister, and that is one of the following dates: 20
- (a) 1 July 2024:
- (b) 1 October 2024:
- (c) 1 January 2025:
- (d) 1 April 2025: 25
- (e) 1 July 2025:
- (f) 1 October 2025:
- (g) 1 January 2026:
- (h) 1 April 2026:
- (i) 1 July 2026. 30
- Order in Council setting establishment date*
- (5) The power under this section to set an establishment date for an entity is capable of being exercised more than once to amend, revoke, or replace an Order in Council made in a previous exercise of the power, but only so long as each re-exercise of the power ~~takes effect before the previous establishment date.~~ 35
- (a) takes effect before the previous establishment date; and

- (b) is recommended due to exceptional circumstances (for example, an emergency) arising only after the previous exercise of the power.
- (5A) Within 6 months of this section's commencement, the Minister must recommend, and the Governor-General in Council must make, 1 or more Orders in Council— 5
- (a) made under this section; and
- (b) setting establishment dates for all the water services entities whose establishment dates are to be set by Order in Council.
- (5B) Before recommending an Order in Council setting a water services entity's establishment date, the Minister must engage in accordance with section 206 with territorial authority owners and mana whenua in the entity's service area. 10
- (6) An Order in Council made under this section may contain, or be amended so that it contains, establishment dates for all or any of the water services entities whose establishment dates are set by Order in Council.
- (7) An Order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- Merger of water services entities*
- (8) However, for a water services entity whose establishment is provided for by an Order in Council made under **clause 21(1) of Schedule 2A** (Order in Council to give effect to requested merger),— 20
- (a) the rest of this Act, and secondary legislation made under the rest of this Act, applies to that water services entity, and its service area, only on and after the date on which the provisions of that order establishing that water services entity have effect; and
- (b) **subsections (1) to (7)**, and the transitional provisions specified in **subsection (3)(b) to (e)**, of this section do not apply to the entity. 25
- (9) However, **subsection (8)** does not limit the application of **section 19A** and **Schedule 2A** to a water services entity—
- (a) that is proposed to be part of a requested merger; and
- (b) to which **section 19A** and **Schedule 2A** apply under **subsection (1)**. 30

Water services entities and their service areas

6 Section 11 replaced (Water services entities established)

Replace section 11 with:

11 Water services entities established

Entities established

- (1) This section (as inserted by the **Water Services Entities Amendment Act 2023**) establishes the water services entities named in **Parts 1 to 10 of Schedule 2**. 35

When each water services entity established

- (2) Each water services entity is established on the date on which the appointment of the entity's establishment board under clause 3 of Schedule 1 takes effect.

When new entity resulting from merger established

- (3) However, a water services entity whose establishment is provided for by an Order in Council made under **clause 21(1) of Schedule 2A** (Order in Council to give effect to requested merger) is established when the provisions of that order establishing that water services entity have effect.

Changing entity's name, mergers, and local government reorganisation

- (4) This section does not limit—
- (a) section 210(1)(d) of this Act; or
 - (b) **clause 21(1) of Schedule 2A** of this Act; or
 - (c) section 25(4) of the Local Government Act 2002.

Functions of water services entities

7 Section 13 amended (Functions of water services entities) 15

After section 13(a), insert:

- (aa) to enter into shared services arrangements related to all or any ~~matters~~ activities specified in **section 137A(3)** (for example, related to debt funding and management), whether or not those shared services arrangements are required to give effect to a direction given under **section 137A**; and

Water services entities and their service areas, establishment date

8 Section 16 amended (Shares in water services entities)

- (1) In section 16(3), definition of **relevant date**, paragraph (a), replace “the establishment date (as defined in clause 1 of Schedule 1)” with “**1 July 2026**”. 25
- (2) In section 16(3), definition of **relevant date**, paragraph (b)(i), replace “the establishment date (as so defined)” with “**1 July 2026**”.
- (3) In section 16(3), definition of **relevant date**, paragraphs (c)(i) and (d), replace “Parts 1 to 4 of Schedule 2” with “**Parts 1 to 10 of Schedule 2**”.
- (4) In section 16(3), definition of **relevant date**, after paragraph (c), insert: 30
- (ca) a date on which a merger proposal (see **section 19A**) that affects the water services entities named in **Parts 1 to 10 of Schedule 2**, or their service areas, or both, takes effect; or

*Merger of water services entities***9 New subpart 1A of Part 2 inserted**

After section 19, insert:

Subpart 1A—Merger of water services entities

19A Merger of water services entities

5

Water services entities may merge in accordance with **Schedule 2A**.

*Regional representative group membership***10 Section 27 amended (Establishment and membership of regional representative group)**

(1) Replace section 27(2) with: 10

(2) Each regional representative group consists of the number of regional representatives that is provided for in the constitution (*see* section 93(a)(i)).

(2) After section 27(3), insert:

(4) Each entity's regional representative group must include at least 1 representative from each territorial authority owner in the entity's service area. 15

11 Section 93 amended (What constitution must contain)

In section 93(a)(i), replace “and (3)” with “to **(4)**”.

12 ~~Section 97 amended (Process for amending or replacing constitution)~~

~~In section 97(10), delete “(see section 210(4))”.~~

~~Directions for shared services and other stated purposes~~ 20**13 Section 117 amended (Safeguarding independence of water services entities)**

Replace section 117(4) with:

(4) However, nothing in this section affects the following:

(a) the giving of a direction under **section 137A** (directions for shared services ~~and other stated purposes~~): 25

(b) the performance or exercise of a territorial authority's regulatory duties, functions, or powers under legislation other than this Act.

*Directions for shared services ~~and other stated purposes~~,
community priority statements for water services, and Water Services Entities
Funding Agency*

- 14 Section 131 amended (Outline of Part (financial and accountability matters))** 5
- (1) After section 131(2), insert:
- Directions for shared services ~~and other stated purposes~~*
- (2A) **Subpart 2A** is about directions ~~for stated purposes (which include, without limitation, directions~~ to require entities to share services provided to those entities). 10
- (2) After section 131(4), insert:
- Community priority statements for water services*
- (4A) **Subpart 4A** is about a community priority statement for water services made—
- (a) about a water body in the service area of a water services entity; and 15
- ~~(b) by a person—~~
- ~~(i) whose ordinary place of residence, or registered office or main place of business, is in that service area; and~~
- ~~(ii) who has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both; and~~ 20
- (b) by an eligible person (see **section 145AB**); and
- (c) to the entity's regional representative group; and
- (ca) by any current deadline for community priority statements that has been set by the group and notified to the public (see **section 145AC**); and 25
- (d) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.
- (3) Replace section 131(9) and the heading above section 131(9) with:
- Funding Agency and protected transactions* 30
- (9) **Subpart 9** contains provisions related to the Water Services Entities Funding Agency.
- (10) **Subpart 10** contains provisions related to protected transactions.
- Status of outline*
- (11) This outline is only a guide to this Part's general scheme and effect. 35

*Directions for shared services ~~and other stated purposes~~***15 New subpart 2A of Part 4 inserted**

After section 137, insert:

Subpart 2A—Directions for shared services ~~and other stated purposes~~**137A Directions for shared services ~~and other stated purposes~~**

5

Purposes for which direction may be given

- (1) The Minister may direct water services entities to comply with specified requirements to share services provided to those entities and that are requirements for all or any of the following purposes:

- (a) to improve (directly or indirectly) the provision of water services: 10
- ~~(b) to require entities to share services provided to those entities;~~
- (c) to develop expertise and capability:
- (d) to ensure business continuity:
- (e) to manage risks to the water services entities' financial position, the Government's financial position, or both. 15

Entities to which direction may be given

- (2) The direction may be given only to 2 or more entities each of which is—
- (a) a water services entity; or
 - (b) a subsidiary of a water services entity.

Requirements for ~~shared services~~ direction 20

- (2A)** The direction must not be inconsistent with the operating principles of water services entities set out in section 14.

- (2B)** The direction may direct 2 or more entities to which it may be given about how to give effect to it, but only in respect of any 1 or more specified periods—

- (a) after it comes into force; and 25
- (b) before 1 July 2026.

- (3) ~~A direction to require entities to share services provided to those entities (whether or not the direction is also for 1 or more, or all, other purposes specified in **subsection (1)**).~~ The direction must be limited to all or any of the following activities: 30

- (a) debt funding and management (for example, through the Water Services Entities Funding Agency):
- (b) information and communication technology, and digital infrastructure procurement and management:
- (c) other procurement, and supply chain management: 35
- (d) risk management and insurance:

(e)	workforce development and management <u>employment relations</u> .	
(4)	However, a direction to which subsection (3)(a) applies may only be given (despite subsection (1)) jointly by the Minister and the Minister of Finance.	
(4A)	<u>A direction given under this section must include the reasons why it is given and a statement of its purposes.</u>	5
	<i>Commencement</i>	
(5)	A direction given under this section comes into force on the commencement date stated in it (which must be not earlier than the day after the date on which it is given).	
	<i>Direction is secondary legislation</i>	10
(6)	Directions <u>given</u> under this section are secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
	Compare: 2004 No 115 s 107	
	137B Process for giving directions under section 137A	
	<i>Engagement</i>	15
(1)	The Minister must, before giving a direction under section 137A , engage in accordance with section 206 in relation to the proposed direction with—	
(a)	the water services entities; and	
(b)	the regional representative group of each water services entity; and	
(c)	Taumata Arowai—the Water Services Regulator; and	20
(d)	the Commission; and	
(e)	other persons, and representative groups of persons, who have an interest in water services in New Zealand.	
(1A)	<u>The Minister must, in giving a direction under section 137A, consider—</u>	
(a)	<u>the input or feedback provided through the engagement in accordance with section 206 in relation to the proposed direction; and</u>	25
(b)	<u>whether and how the proposed direction should respond to any issues or concerns raised by that input or feedback.</u>	
(1B)	<u>Subsection (1A) does not limit or affect section 206A.</u>	
	<i>Notification</i>	30
(2)	The Minister must, as soon as practicable after giving a direction under section 137A , notify the entities to which the direction will apply that the direction—	
(a)	has been given; and	
(b)	will come into force on the commencement date stated in it.	35

Shared services directions related to debt finding and management

- (3) However, for a direction to which **section 137A(3)(a)** applies, references in this section to the Minister are to be treated as references to the Minister acting jointly with the Minister of Finance (and section 206, as applied by this section, applies accordingly).

5

Exception for amendments or replacements with limited effect

- (4) **Subsections (1) and (2)** do not apply to any amendment or replacement of the direction (*see* section 48 of the Legislation Act 2019) if that amendment or replacement has only a minor effect and does not adversely and substantially affect the interests of any person.

10

Compare: 2004 No 115 s 108

137C Obligation to give effect to direction

- (1) This section applies to an entity to which a direction under **section 137A** is given, but only while the direction is in force.
- (2) The entity must give effect to the direction when performing its functions.

15

Compare: 2004 No 115 s 110

137D Certain arrangements or agreements exempt from specified sections of Commerce Act 1986

Any arrangement or agreement is exempt from sections 27, 30, 30C, 36, and 36A of the Commerce Act 1986 if the arrangement or agreement is—

20

- (a) entered into by parties that are or include 1 or more entities to which a direction under **section 137A** is given; and
- (b) entered into by those 1 or more entities in order to give effect to the direction when performing their functions (in accordance with **section 137C**).

25

*Community priority statements for water services***16 New subpart 4A of Part 4 inserted**

After section 145, insert:

Subpart 4A—Community priority statements for water services**145A Making of statement**

30

A community priority statement for water services may be made—

- (a) about a water body in the service area of a water services entity; and
- ~~(b) by a person—~~
- ~~(i) whose ordinary place of residence, or registered office or main place of business, is in that service area; and~~

35

- (ii) ~~who has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both; and~~
- (b) by a person who is an eligible person (see **section 145AB**); and
- (c) to the entity's regional representative group; and
- (ca) by any current deadline for community priority statements that has been set by the group and notified to the public (see **section 145AC**); and
- (d) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

145AB Who is eligible person

Meaning of eligible person

- (1) An **eligible person**, for the purposes of **section 145A(1)(b)**, means a person who—

- (a) has a connection with the entity's service area (see **subsection (2)**); and
- (b) has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both.

When person has connection with entity's service area

- (2) A person **has a connection with the entity's service area** for the purposes of **subsection (1)(a)** only if the person is—

- (a) an individual who ordinarily resides in that service area; or
- (b) a corporation sole or a body corporate (including, without limitation, a local authority that is a body corporate with perpetual succession under section 12(1) of the Local Government Act 2002) whose registered office, or whose main place of activities, is in that service area; or
- (c) an unincorporated body, or any other person of any kind,—
 - (i) whose main place of activities is in that service area; and
 - (ii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area; or
- (d) a corporation sole, a body corporate, any unincorporated body, or any other person of any kind,—
 - (i) whose registered office, or whose main place of activities, is not in that service area; and
 - (ii) who is a regional, national, or international organisation, of any kind, that carries out all or any of its activities in any place or places in New Zealand; and

- (iii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area.

145AC Regional representative group may set, and notify publicly, current deadline for statements

- (1) A water services entity's regional representative group may set, and notify publicly, a current deadline for community priority statements. 5
- (2) In setting a current deadline for community priority statements, the group must consider when it may next have regard to those statements (see **section 145C(3) and (4)**)—
- (a) in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139; and 10
- (b) as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5.
- (3) A current deadline for community priority statements is notified publicly for the purposes of this section if the deadline is published— 15
- (a) on an Internet site maintained by, or on behalf of, the entity; and
- (b) in any other ways that the group thinks are reasonable in the circumstances.

145B Other requirements for making statement

- (1) A community priority statement for water services must be made in writing. 20
- (2) A community priority statement for water services must state—
- (a) the person's interest in how water services are provided in the entity's service area, or in how other activities of the entity do or could affect or relate to the water body, or in both; and
- (b) the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body. 25
- (3) A community priority statement must be made by any current deadline for community priority statements that has been set by the regional representative group and notified to the public (see **section 145AC**). 30
- (4) However, a community priority statement made after any current deadline of that kind must be treated as having been received before the next current deadline of that kind (if any).

145C What regional representative group must or may do in response to statement

- (1) This section applies to a water services entity's regional representative group to which a community priority statement for water services is made. 35

- (2) The group must forward the statement to a consumer forum established by the water services entity under section 207.
- (3) The group may consider the statement in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139.
- (4) The group may consider the statement as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5. 5

Water Services Entities Funding Agency and protected transactions

17 New subparts 9 and 10 of Part 4 inserted

After section 173, insert: 10

Subpart 9—Water Services Entities Funding Agency

Preliminary provisions

173A Purpose

- (1) The purpose of this subpart is to facilitate the operation of the Funding Agency.
- (2) To achieve that purpose, this subpart— 15
 - (a) exempts the Funding Agency from certain regulatory or taxation criteria that would otherwise apply to it; and
 - (b) applies to the Funding Agency certain regulatory or taxation criteria that would otherwise not apply to it; and
 - (c) authorises water services entities to deal with the Funding Agency in a manner in which they would otherwise not be authorised to do so; and 20
 - (d) authorises or requires water services entities, in certain situations, to act in a manner in which they would otherwise not be authorised or required to act.

Compare: 2011 No 77 s 3 25

173B Definitions

In this subpart, unless the context otherwise requires,—

borrowing has the same meaning as in **section 173K**

Funding Agency means a limited liability company—

- (a) registered under Part 2 of the Companies Act 1993; and 30
- (b) approved for the purposes of this subpart by the Minister by notice in the *Gazette*

incidental arrangement has the same meaning as in **section 173K**

loan has the same meaning as in **section 173K**

Minister has the meaning given by section 2(1) of the Public Finance Act 1989 35

protected transaction has the same meaning as in **section 173K**.

Compare: 2011 No 77 s 4

173C Application

This subpart applies to the Funding Agency only while the Funding Agency is a subsidiary of 1 or more water services entities.

5

Compare: 2011 No 77 s 5

Application of Non-bank Deposit Takers Act 2013

173D Funding Agency not non-bank deposit taker

The Funding Agency is not an NBDT (a non-bank deposit taker) for the purposes of the Non-bank Deposit Takers Act 2013.

10

Compare: 2011 No 77 s 7

Application of Financial Markets Conduct Act 2013

173E Financial Markets Conduct Act 2013 applies to Funding Agency as if it were local authority

The Financial Markets Conduct Act 2013 applies to the Funding Agency as if it were a local authority.

15

Compare: 2011 No 77 s 8

Prohibitions and restrictions relating to subsidiaries

173F Exemptions from prohibitions and restrictions applying to subsidiaries

- (1) This section applies to a water services entity only while the Funding Agency is a subsidiary of 1 or more water services entities (*see section 173C*). 20
- (2) A water services entity may give a guarantee, an indemnity, or a security in respect of the performance of any obligation by the Funding Agency.
- (3) A water services entity may lend money, or provide any other financial accommodation, to the Funding Agency on terms and conditions that are more favourable to the Funding Agency than those that would apply if the water services entity were borrowing the money or obtaining the financial accommodation. 25
- (4) **Subsection (5)** applies if the water services entity gives a guarantee, an indemnity, or a security, or lends money or provides any other financial accommodation, under **subsection (2) or (3)** while the Funding Agency is a subsidiary of a water services entity and, subsequently, the Funding Agency ceases to be a subsidiary of a water services entity. 30
- (5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obligations and rights of the water services entity in respect of the guarantee, indemnity, security, loan, or other 35

financial accommodation continue to apply, despite the Funding Agency no longer being a subsidiary of a water services entity.

Compare: 2011 No 77 s 9

Additional requirements for water services entity's funding and pricing plan

173G Additional requirements to be specified in water services entity's funding and pricing plan 5

- (1) This section applies to a water services entity if it has prepared and provided to its regional representative group a funding and pricing plan and it gives a guarantee in relation to either or both of the following:

- (a) any indebtedness of the Funding Agency: 10
(b) another water services entity's indebtedness to the Funding Agency.

- (2) The water services entity must specify in its funding and pricing plan its policy on the giving of any securities that secure obligations under the guarantee.

Compare: 2011 No 77 s 10

Protected transactions 15

173H Certain kinds of arrangements and transactions to be treated as protected transactions

- (1) This section applies to arrangements of any of the following kinds:

- (a) a guarantee by a water services entity of any indebtedness owed by another water services entity to the Funding Agency: 20
(b) a guarantee by a water services entity of any indebtedness of the Funding Agency:
(c) a commitment by a water services entity to contribute equity to the Funding Agency:
(d) a commitment by a water services entity to lend money to the Funding Agency. 25

- (2) Those arrangements are to be treated as protected transactions for the purposes of **sections 173L to 173O**.

- (3) This section does not limit the generality of **sections 173L to 173O**.

Compare: 2011 No 77 s 12 30

Crown relationship with Funding Agency

173I Crown may lend money to Funding Agency

- (1) The Minister, on behalf of the Crown, may lend money to the Funding Agency if—

- (a) the Minister considers that it is necessary or expedient in the public interest to do so; and 35

(b)	the money is lent on commercial terms.	
(2)	The Minister may lend money under subsection (1) without further appropriation than this section.	
	Compare: 2011 No 77 s 15(1)	
173J	No Crown guarantee for debts of Funding Agency	5
(1)	No debt of the Funding Agency is guaranteed by the Crown.	
(2)	If the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown.	
(3)	However, subsections (1) and (2) do not apply if the Crown is liable (for example, the Crown is liable to pay a debt) under a guarantee or an indemnity given by the Minister, on behalf of the Crown, under section 65ZD of the Public Finance Act 1989.	10
	Compare: 2011 No 77 s 16(1), (2)	
	Subpart 10—Protected transactions	15
173K	Definitions	
	In this subpart, unless the context otherwise requires,—	
	borrowing—	
(a)	means the incurring by any means of debt to raise money; and	
(b)	includes the incurring of debt—	20
	(i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or	
	(ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or	25
	(iii) by the use, for any purpose, of funds received or invested by a water services entity for any other purpose if the water services entity has resolved to repay, with or without interest, the funds used; but	30
(c)	does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if—	
	(i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or	35

(ii) the goods or services are obtained in the ordinary course of the water services entity's performance of its lawful responsibilities, on terms and conditions available generally to parties of equivalent creditworthiness, for amounts not exceeding in aggregate an amount—

5

(A) determined by resolution of the water services entity as not being so significant as to require specific authorisation; or

(B) recorded for the purposes of this subparagraph in the then current borrowing management policy of the water services entity

10

charge includes a mortgage, a floating charge, and any other non-possessory security interest deliberately created by the water services entity concerned

incidental arrangement means—

(a) a contract or an arrangement for the management, reduction, sharing, limiting, assumption, offset, or hedging of financial risks and liabilities in relation to any investment or investments or any loan or loans or other incidental arrangement, whether or not that contract or arrangement involves—

15

(i) the expenditure, borrowing, or lending of money; or

(ii) a water services entity undertaking to make payments in exchange for another person undertaking to make payments to the water services entity; or

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(iii) the creation or acquisition or disposal of any property or right; or

(b) a contract or an arrangement with any bank, financial institution, or other person providing for any person to act as underwriter, broker, indemnifier, guarantor, accommodation party, manager, dealer, trustee, registrar, or paying, fiscal, or other agent for, or in connection with, any loan or investment; or

25

(c) the creation of a charge

loan includes the amounts raised or indebtedness incurred, as the context may require, as a result of borrowing

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protected transaction means (subject to **section 173H**, which requires specified arrangements to be treated as protected transactions for the purposes of **sections 173L to 173O**) all or any of the following:

(a) any deed, agreement, right, or obligation constituting, relating to, or for the purpose of any borrowing or incidental arrangement:

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(b) any charge, guarantee, or security for the payment of any amount (including any loan) payable in relation to, or for the purpose of any borrowing or incidental arrangement:

- (c) any conveyance or transfer of any property in relation to, or for the purpose of any borrowing or incidental arrangement.

Compare: 2002 No 84 s 112

173L Protected transactions

- (1) Every protected transaction entered into, or purportedly entered into, by or on behalf of a water services entity is valid and enforceable despite—
 - (a) the water services entity failing to comply with any provision of this Act in any respect; or
 - (b) the entry into, or performance of, the protected transaction being outside the capacity, rights, or powers of the water services entity; or
 - (c) a person held out by the water services entity as being a member of the establishment board, member of the board, or an employee, agent, or attorney, of the water services entity—
 - (i) not having been validly appointed as such; or
 - (ii) not having the authority to exercise any power or to do anything either that the person is held out as having or that a person appointed to such a position would customarily have; or
 - (d) a document issued, or purporting to be issued, on behalf of the water services entity by a person with actual or customary authority, or held out as having such authority, to issue the document not being valid or not being genuine.
- (2) However, nothing in this subpart overrides section 118 (obligation to maintain water services).

Compare: 2002 No 84 s 117

173M Certificate of compliance

- (1) This section applies to a certificate—
 - (a) signed, or purporting to be signed, by the chief executive of a water services entity; and
 - (b) to the effect that the water services entity has complied with this Act in connection with a protected transaction.
- (2) The certificate is conclusive proof for all purposes that the water services entity has so complied.

Compare: 2002 No 84 s 118

173N Good faith in relation to protected transactions

- (1) **Sections 173L and 173M** apply in relation to a protected transaction even though a person of the kind referred to in **section 173L(1)(c) or (d) or 173M** acts fraudulently or forges a document that appears to have been signed on behalf of the water services entity, unless any person dealing with the water

services entity in relation to the protected transaction or a person who had acquired property, rights, or interests from the water services entity acts in bad faith.

- (2) A person may not rely on **section 173L or 173M** in relation to a protected transaction if that person has dealt in bad faith with a water services entity in relation to the protected transaction. 5
- (3) For the purpose of **subsections (1) and (2)**,—
- (a) a person is not regarded as acting in bad faith by reason only of the fact that, in relation to any protected transaction, the person knew or ought to have known of the existence of any of the states of affairs referred to in **paragraphs (a) to (d) of section 173L(1)**; and 10
- (b) a person must be presumed to have acted in good faith unless the contrary is proved. 15

Compare: 2002 No 84 s 119

173O Savings provision in respect of power of court 15

Nothing in **sections 173K to 173N** affects the ability of any person to obtain from a court any remedy that has the effect of preventing or restraining temporarily or permanently a water services entity from doing any act or thing in the future (other than an act or a thing necessary for the performance of a protected transaction that has already been entered into). 20

Compare: 2002 No 84 s 120

Establishment date

18 Section 200 amended (Interim review of governance and accountability arrangements under Act)

In section 200(2), replace “the establishment date (as defined in clause 1 of Schedule 1)” with “**1 July 2026**”. 25

19 Section 201 amended (Comprehensive review of water services legislation)

In section 201(2), replace “the establishment date (as defined in clause 1 of Schedule 1)” with “**1 July 2026**”.

20 Section 205 amended (Repeal of this subpart) 30

In section 205, replace “the establishment date (as defined in clause 1 of Schedule 1)” with “**1 July 2026**”.

Directions for shared services ~~and other stated purposes~~

21 Section 206 amended (Engagement requirements)

(1AA) Before section 206(1)(a), insert: 35

(aaa)	section 6A(5B) (relating to setting by Order in Council establishment dates under section 6A for 1 or more water services entities):	
(1)	After section 206(1)(b), insert:	
(ba)	section 137B(1) (relating to giving a direction under section 137A for shared services or for another stated purpose):	5
(2)	After section 206(1)(d), insert:	
(da)	clause 12 of Schedule 2A (relating to whether a finalised merger proposal should be implemented):	
21A	<u>New section 206A</u>	
	After section 206, insert:	10
206A	<u>Report on engagement</u>	
(1)	<u>This section applies when a water services entity or the Minister is undertaking engagement in accordance with a provision referred to in section 206(1).</u>	
(2)	<u>The water services entity or the Minister must, as soon as practicable after finalising any relevant statement, response, plan, strategy, or secondary legislation (specified document),—</u>	15
(a)	<u>prepare a report on how input into, and feedback on, the specified document was considered and incorporated into the specified document; and</u>	
(b)	<u>publish the report on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.</u>	20
	<i>Community priority statements for water services</i>	
22	Section 207 amended (Consumer forum)	
(1)	After section 207(2)(c), insert:	
(ca)	assist the entity's regional representative group and, through that group, the entity, to understand views and priorities—	25
(i)	about 1 or more water bodies in the entity's service area; and	
(ii)	stated in 1 or more community priority statements for water services (<i>see</i> subpart 4A of Part 4); and	
(2)	<u>In section 207(4), after “and rural communities”, insert “, and mana whenua.”.</u>	
23	Section 208 amended (Consumer engagement stocktake)	30
	After section 208(2)(b), insert:	
(c)	to set out how the entity will respond to views and priorities—	
(i)	about 1 or more water bodies in the entity's service area; and	
(ii)	stated in 1 or more community priority statements for water services (<i>see</i> subpart 4A of Part 4).	35

*Regional representative group membership***24 Section 210 amended (Regulations)**

~~Repeal~~ Replace section 210(3) and (4) with:

(3) Regulations made under subsection (1)(a) in relation to the Northland and Auckland Water Services Entity must, despite **sections 27(2) and (4)** and 93(a)(i), provide that the entity's regional representative group consists of only the following regional representatives:

(a) 4 Auckland Council representatives:

(b) 4 *mana whenua* representatives appointed in respect of Tāmaki Makaurau (and that area, in this paragraph, means the district of the territorial authority in **paragraph (a)**):

(c) 1 representative each from Far North District Council, Kaipara District Council, and Whangarei District Council:

(d) 3 *mana whenua* representatives appointed in respect of Te Tai Tokerau (and that area, in this paragraph, means the districts of the territorial authorities in **paragraph (c)**).

(4) However, **subsection (3)** does not limit **sections 27(2) and (4)** and 93(a)(i) when the entity's model constitution is amended or replaced under section 97.

*Transitional, savings, and related provisions***25 Schedule 1 amended***Establishment date and establishment period*

(1) In Schedule 1, clause 1, replace the definitions of establishment date and establishment period with:

establishment date, for a water services entity, means the entity's establishment date under **section 6A(3A) or (4)**

establishment period, for a water services entity, means the period—

(a) starting on the date on which the entity is established under **section 11** (as inserted by the **Water Services Entities Amendment Act 2023**); and

(b) ending on the entity's establishment date (as defined in this clause)

Disestablishment of former entities

(2) In Schedule 1, Part 1, before subpart 1, insert:

Subpart 1A—Disestablishment of former entities

1A Disestablishment of former entities*Disestablishment*

- (1) This clause disestablishes the 4 water services entities established on 15 December 2022 by section 11 of this Act as enacted. 5

Effect on former entity's establishment chief executive

- (2) After the disestablishment of an entity mentioned in **subclause (1)**, its establishment chief executive appointed under clause 4(4) of this schedule (in this Act as enacted)—

- (a) no longer holds that position; but 10
- (b) continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive. 15

References to water services entities established under section 11 of this Act

- (3) After the commencement of this clause, references in other legislation to water services entities under section 11 of this Act are, unless the context otherwise requires, references to water services entities under **section 11** of this Act (as inserted by the **Water Services Entities Amendment Act 2023**). 20

- (4) **Subclause (3)** applies even if the other legislation was enacted before the commencement of the **Water Services Entities Amendment Act 2023**.

Establishment board

- (3) In Schedule 1, after clause 3(d), insert:

- (da) the Minister must, after the commencement of this paragraph and before **1 July 2026**, and subject to **paragraph (dc)**, appoint an establishment board for each water services entity; and 25

- (db) the Minister's appointment under **paragraph (da)** of the entity's establishment board—

- (i) may take effect before or on the entity's establishment date; but 30
 - (ii) must take effect on or after **1 July 2024** and before or on **1 July 2026**; and

- (dc) any establishment board appointed, before this paragraph's commencement, for the Northern Water Services Entity (as established on 15 December 2022 by section 11 of this Act as enacted) is, after that commencement, taken to have been appointed on that commencement, under **paragraph (da)**, and on equivalent terms and conditions, as the establishment board for the Northland and Auckland Water Services 35

Entity (as established under **section 11** of this Act (as inserted by the **Water Services Entities Amendment Act 2023**)):

(3A) In Schedule 1, replace clause 3(f) with:

- (f) section 67 must be read as if it provided that a member of the board of a water services entity appointed by the Minister during the establishment period holds office until the second anniversary of the establishment date unless earlier ceasing to hold office under section 74, for example, because of being removed from office under section 70 by—
- (i) the Minister (see paragraph (d) of this clause), during the establishment period; or
- (ii) the board appointment committee, on or after the entity's establishment date.

Establishment chief executives

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

4 Appointment of establishment chief executive

General

- (1) The establishment board of a water services entity must appoint an establishment chief executive of the entity.
- (2) The appointment required by **subclause (1)**—
- (a) must be made in the entity's establishment period; and
- (b) must take effect in the entity's establishment period; and
- (c) is subject to section 121.

(2A) The establishment chief executive is appointed for a term of office that ends at the close of the day that is 24 months after the entity's establishment date, unless the entity's establishment chief executive's term of office is earlier terminated by—

- (a) the entity's establishment board, during the entity's establishment period; or
- (b) the entity's board, on or after the entity's establishment date.

(3) **Subclauses (1) and to (2A)** are subject to **subclauses (4) and (5)**.

Exception: Northland and Auckland Water Services Entity

(4) The Northland and Auckland Water Services Entity's establishment chief executive is the person who, immediately before the commencement of this clause, held under clause 4 of this schedule (in this Act as enacted) the position of the Northern Water Services Entity's establishment chief executive.

(5) **Subclause (4)** does not—

- (a) prevent that person from ceasing to hold the position of Northland and Auckland Water Services Entity's establishment chief executive; or

- (b) affect or limit **clause 1A(2)(b)** (under which that person continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted)), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive. 5

Allocation schedule

- (5) In Schedule 1, heading to clause 5, replace “**chief executive**” with “**board**”.
- (6) In Schedule 1, clause 5(1) and (4)(b), replace “chief executive” with “board”.
- (7) In Schedule 1, clause 6(1) and (2), replace “chief executive” with “board”. 10
- (8) In Schedule 1, clause 6(3), definition of **should-not-transfer part**, paragraph (b), replace “chief executive” with “board”.

Directions for shared services ~~and other stated purposes~~

- (9) In Schedule 1, after clause 8, insert:

8A Directions for shared services ~~and other stated purposes~~ 15

- (1) A direction under **section 137A** may be given by being approved by the Minister before or during a water services entity’s establishment period, and may come into force at the start of, or otherwise during, that period, if it is or is to be given to entities that are or include (or, when established under **section 11** or by the water services entity, will be) either or both of— 20
- (a) the water services entity;
- (b) a subsidiary of the water services entity.
- (2) A direction to which this clause applies—
- (a) must be ~~given~~ copied to the establishment board of the water services entity as soon as is practicable after whichever is the later of the time that the direction is approved by the Minister and the time that the entity is established under **section 11**; and 25
- (b) is subject to **sections 117(4), 137A to 137D, ~~and 206(1)(ba) and 206A.~~**
- (3) However, for a direction that is to be approved by the Minister before or during a water services entity’s establishment period, **section 137B(1)** only requires engagement in accordance with section 206 with— 30
- (a) the establishment boards of the water services entities, but only if those boards have been appointed under **clause 3(da)**; and
- (b) Taumata Arowai—the Water Services Regulator; and 35
- (c) the Commission.
- (4) A direction to which this clause applies that is approved by the Minister before a water services entity’s establishment period expires and is revoked on **1 July 2027.**

Establishment water services plan

- (10) In Schedule 1, repeal clause 9(3).

Commission's functions and powers in establishment period

- (11) In Schedule 1, clause 13(3), before “the entity”, insert “the establishment board of”.

5

Quarterly reports

- (12) In Schedule 1, after clause 14(2), insert:

- (3) Nothing in this clause requires a quarterly report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.

10

- (13) In Schedule 1, after clause 15(2), insert:

- (2A) Nothing in this clause requires an establishment period annual report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.

~~*Establishment date*~~ *First infrastructure strategy, and first consumer engagement stocktake, of water services entity*

15

- (14) In Schedule 1, clause 16, replace “within 3 years after the establishment date” with “on a date that is 1 July ~~2026~~, 1 July 2027, or 1 July 2028 in any of the 3 years that start on the entity's establishment date”.

- (14A) In Schedule 1, after clause 16, insert:

20

16A First consumer engagement stocktake of water services entity

- (1) This clause applies if a water services entity's establishment date is 1 January 2025 or 1 January 2026.

- (2) A consumer stocktake is not required under section 208 for the entity's first financial year.

25

Obligation to offer employees position if role primarily relates to, or primarily supports, delivery of water services

- (14B) In Schedule 1, before clause 23(2), insert:

- (1B) The chief executive of a water services entity may, with the prior written approval of the chief executive of the department, offer an employment position under subclause (1) to an employee of another water services entity, if the employee works at all or any times in the service area of the entity with which the position will be offered.

30

- (1C) This clause, and clauses 24 to 30, apply to an employee of another water services entity offered under **subclause (1B)** an employment position under subclause (1) as if—

35

- (a) a reference to an existing employer (as that term is defined in clause 22) includes a reference to that other water services entity; and

	(b) <u>a reference to any kind of employment agreement includes a reference to that employee's employment agreement with that other water services entity.</u>	
(1D)	<u>Sections 19 to 25 of the Employment Relations Act 2000 apply to the workplace of an employee who is or may be offered an employment position under subclause (1).</u>	5
	<u><i>Staff retention payment and references in conditions on visas granted under Immigration Act 2009</i></u>	
(14C)	<u>In Schedule 1, after clause 27, insert:</u>	
27A	<u>Staff retention payment</u>	10
(1)	<u>This clause applies to an employee who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).</u>	
(2)	<u>The water services entity may, on or after its establishment date, make a payment to the employee for the purpose of facilitating staff retention.</u>	
(3)	<u>The payment may be made subject to lawful conditions to help achieve that purpose.</u>	15
(4)	<u>This clause does not limit a water services entity's ability to—</u>	
(a)	<u>initiate, enter into, and carry out bargaining for, or vary or renegotiate, an employment agreement; or</u>	
(b)	<u>provide payments, or other benefits of any kind, to employees.</u>	20
27B	<u>References in conditions on visas granted under Immigration Act 2009</u>	
(1)	<u>This clause applies to a reference to a local authority in a condition imposed on a visa granted under the Immigration Act 2009 to a person who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).</u>	25
(2)	<u>On and after the entity's establishment date, the reference must be read as a reference to the entity.</u>	
(14D)	<u>In Schedule 1, before clause 28, insert:</u>	
27C	<u>Collective bargaining on behalf of water services entity with no establishment chief executive or chief executive</u>	30
(1)	<u>This clause applies to a water services entity—</u>	
(a)	<u>that has not yet, or has, been established under section 11; and</u>	
(b)	<u>whose establishment chief executive has not been appointed (<i>see also</i> clause 4); and</u>	
(c)	<u>whose chief executive has not been appointed.</u>	35

- (2) The chief executive of the department may appoint in writing a person (a **bargaining agent**) to represent the entity by carrying out, on behalf of the entity, collective bargaining—
- (a) under Part 5 of the Employment Relations Act 2000; and
 - (b) with 1 or more unions; and
 - (c) initiated by 1 or more unions under clause 28.
- (3) The bargaining agent may, in or after the collective bargaining, enter into a collective employment agreement—
- (a) on behalf of the entity (and, if applicable, on behalf of any 1 or more other entities also represented under this clause by the bargaining agent (see **subclause (8)**)); and
 - (b) the parties to which may include 1 or more other entities represented under this clause by 1 or more other bargaining agents.
- (4) **Subclause (3) does not limit the generality of subclause (2).**
- (5) Nothing in this clause applies to any terms or conditions of employment of—
- (a) an establishment chief executive of a water services entity; or
 - (b) a chief executive of a water services entity.
- (6) After the appointment of an establishment chief executive of a water services entity takes effect, a bargaining agent appointed under this clause may continue to represent that entity under this clause only if, and only to the extent that, the bargaining agent has a written authorisation to do so given by the establishment chief executive.
- (7) Any employment agreement negotiated and entered into by a bargaining agent who is representing a water services entity under this clause—
- (a) binds a represented water services entity on and after its establishment date; but
 - (b) does not prevent the parties from varying or renegotiating the agreement, under this Act and the general law relating to employment relations.
- (8) A bargaining agent may under this clause be appointed for, and represent, 2 or more water services entities, if the requirements of this clause are met for each entity.

Decision making during establishment period

- (14E) In Schedule 1, before clause 31, insert:

30A Clauses 31 to 33 apply only for 2-year period

- (1) This clause applies to powers or functions conferred, or duties imposed, by clauses 31 to 33.
- (2) Those powers or functions may be exercised, and those duties may be carried out, only for the period that—

- (a) starts on **1 July 2024**; and
- (b) ends on **1 July 2026**.
- (3) This clause does not limit any duty to carry out, on or after **1 July 2026**, those duties to be carried out during that 2-year period.
- (14F) In Schedule 1,— 5
- (a) the heading to clause 31, replace “**establishment**” with “**2-year**”; and
- (b) clause 31(1), replace “establishment period” with “2-year period specified in **clause 30A(2)**”; and
- (c) clause 31(2), replace “the establishment period” with “that 2-year period”. 10
- (14G) In Schedule 1,—
- (a) the heading to clause 32, replace “**establishment**” with “**2-year**”; and
- (b) clause 32(3), replace “establishment period” with “2-year period specified in **clause 30A(2)**”; and
- (15) In Schedule 1, clause 32(3)(b) and (c), replace “the water services entities” 15
with “a water services entity”.
- (16) In Schedule 1, after clause 33(3), insert:
- (4) However, if the decision is to adopt or amend a plan or policy under, or 20
required by, the Local Government Act 2002, the department may—
- (a) confirm under subclause (2)(a) the decision, to the extent that it is to
adopt or amend 1 or more parts of the plan or policy; and
- (b) decline to confirm under subclauses (2)(b) and (3) the decision, or
require further information under subclause (2)(c) and then act under
subclause (2)(a) or (b) in respect of the decision, to the extent that it is to
adopt or amend 1 or more other parts of the plan or policy. 25

Payment provisions

- (17) In Schedule 1, ~~Part 1, repeal subpart 6.~~ replace clause 36(2)(c) with:
- (c) made under that package’s “no worse off” component; and

Water services entities and their service areas

- 26 **Schedule 2 replaced** 30
- Replace Schedule 2 with the **Schedule 2** set out in **Schedule 1** of this Act.

Merger of water services entities

- 27 **New Schedule 2A inserted**
- After **Schedule 2**, insert the **Schedule 2A** set out in **Schedule 2** of this Act.

Part 2

Amendments to other legislation

Subpart 1—Amendment to Financial Markets Conduct Act 2013

28 Principal Act

This subpart amends the Financial Markets Conduct Act 2013. 5

29 Section 6 amended (Interpretation)

In section 6(1), definition of **local authority**, after “*see also* section 8 of the Local Government Borrowing Act 2011”, insert “and **section 173E** of the Water Services Entities Act 2022”.

Subpart 2—Amendment to Goods and Services Tax Act 1985 10

30 Principal Act

This subpart amends the Goods and Services Tax Act 1985.

31 Section 78I ~~repealed~~-amended (Support package payment made by water services entity to be zero-rated)

~~Repeal section 78I.~~ Replace section 78I(2)(c) with: 15

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

Subpart 3—Amendment to Income Tax Act 2007

32 Principal Act

This subpart amends the Income Tax Act 2007.

33 Section YA 1 amended (Definitions) 20

In section YA 1, definition of **local authority**, after paragraph (b)(ix), insert:

(ixa) the Funding Agency as defined in **section 173B** of the Water Services Entities Act 2022 while it is a subsidiary of 1 or more water services entities (as defined in section 6 of that Act):

Subpart 4—Amendments to Local Government Act 2002 25

34 Principal Act

This subpart amends the Local Government Act 2002.

35 Schedule 1AA amended

Deferring review of water services bylaws during transition period

- (1) In Schedule 1AA, clause 24, replace the definitions of **establishment date** and **transition period** with: 30

- transition period** means the period—
- (a) starting on 15 December 2022; and
 - (b) ending on **1 July 2026**
- (1A) In Schedule 1AA, clause 24, insert in their appropriate alphabetical order:
- water services infrastructure** has the same meaning as in section 6 of the Water Services Entities Act 2022
- water services reform** means—
- (a) the establishment of water services entities to deliver water services in accordance with the Water Services Entities Act 2022; and
 - (b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.
- (2) In Schedule 1AA, clause 25(4) and (5), replace “the second anniversary of the establishment date” with “**1 July 2028**”.
- Duty to identify before 1 January 2024 specified water services bylaws*
- (3) In Schedule 1AA, repeal clause 26.
- Long-term planning if water services entity’s establishment date is 1 July 2024*
- (4) In Schedule 1AA, replace the cross-heading above clause 27 with “*Long-term planning if water services entity’s establishment date is 1 July 2024*”.
- (5) In Schedule 1AA, heading to clause 27, after “**period**”, insert “**if, and only to extent that, territorial authority’s district is in service area of water services entity with establishment date of 1 July 2024**”.
- (6) In Schedule 1AA, before clause 27(1), insert:
- (1AA) This clause applies—
- (a) only if a territorial authority’s district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) of 1 July 2024; and
 - (b) only to the extent that the content mentioned in subclause (2) relates to water services in that entity’s service area.
- (7) In Schedule 1AA, clause 27(2), after “the establishment period”, insert “(as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022) of the water services entity specified in **subclause (1AA)**”.
- Planning or reporting documents if water services entity’s establishment date is 1 October 2024 to 1 July 2026*
- (8) In Schedule 1AA, after clause 27, insert:

Planning or reporting documents if water services entity's establishment date is 1 October 2024 to 1 July 2026

- 28 Content relating to water services in planning or reporting documents if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 October 2024 to 1 July 2026** 5
- Application*
- (1) **Clauses 29 to 37** apply—
- (a) only if a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) on or after 1 October 2024 and before or on 1 July 2026; and 10
- (b) only to the extent that the water services content of the documents mentioned in **subclause (2)** relates to water services in that entity's service area. 15
- Modified planning or reporting obligations*
- (2) **Clauses 29 to 37** specify the territorial authority's modified obligations under Part 6 of this Act to prepare, consult on, adopt, amend, or replace planning or reporting documents relating to water services for the 2024/25 and 2025/26 financial years. 20
- (3) Those obligations are modified because the Water Services Entities Act 2022 requires territorial authority responsibilities relating to water services to be transferred to water services entities during those financial years.
- Local government organisations' responsibility for providing water services*
- (4) Before the entity's establishment date, a local government organisation provides water services in its district (to the extent that it is part of the entity's service area) under the law in force immediately before **1 July 2024** (see **section 6A(2)** of the Water Services Entities Act 2022). 25
- (5) On and after that date, a local government organisation ceases to provide water services in its district (to the extent that it is part of the entity's service area). 30
- (6) In preparing a long-term plan or annual plan in accordance with **clauses 29 to 37**, a local authority must plan to at least maintain the ~~existing~~ levels of service for water services that were planned to be provided by that local authority in the 2023/24 financial year.
- (7) **Clauses 29 to 37** apply, without limitation, even if— 35
- (a) different parts of a territorial authority's district are included in the service areas of different water services entities; and
- (b) those water services entities have different establishment dates.

	<i>Meaning of water services</i>	
(8)	In this clause and clauses 29 to 37 , water services includes, without limitation, the following activities:	
	(a) water supply:	
	(b) sewerage and the treatment and disposal of sewage:	5
	(c) stormwater drainage.	
(9)	Under clause 2(2)(a) to (c) of Schedule 10 (long-term plans, annual plans, and annual reports), each of those activities is a group of activities in Schedule 10.	
29	Decision-making and consultation	
(1)	This clause applies to conduct by or on behalf of a local authority if that conduct is—	10
	(a) required under the Water Services Entities Act 2022; or	
	(b) required to give effect to the water services reform.	
(2)	The conduct is not subject to sections 76 to 82 of this Act.	
30	Significance and engagement policy	15
(1)	This clause applies to a significance and engagement policy—	
	(a) under section 76AA; and	
	(b) adopted by a local authority.	
(2)	The local authority may amend the policy, to the extent the local authority considers necessary or desirable as a consequence of the water services reform, without having to consult under section 76AA(5).	20
31	Long-term plan to take effect for all or any of 2024/2034, and related documents	
(1)	A long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/2034 financial years (a specified long-term plan), and associated material or documentation (including a consultation document), must explain to communities the following matters:	25
	(a) water services are to be transferred from the local authority to a water services entity during the 2024/25 and 2025/26 financial years:	
	(b) the implications of, and any significant risks associated with, the transfer (including financial implications and risks):	30
	(c) how the council is planning to deal with the implications of, and any significant risks associated with, the transfer (including financial implications and risks).	
(2)	In particular, section 93(7)(b) and clause 17(c)(ii) of Schedule 10 do not require a local authority to estimate the potential effects on the financial estimates provided of any uncertainty relating to the water services reform.	35

- (3) A consultation document that is prepared under sections 93A to 93C in relation to a specified long-term plan must include a statement to the effect that—
- (a) the Water Services Entities Act 2022 requires the transfer of water services to a water services entity; and
 - (b) that transfer is therefore not a matter for consultation by the local authority. 5
- (4) If the transfer of water services from a local authority to a water services entity occurs on or after 1 October 2024 and before or on 1 July 2026, requirements under sections 93(5), 93D, and 94(2) relating to amendments to a specified long-term plan do not apply to matters related to that transfer. 10
- (5) In particular, a local authority may (despite sections 76 to 82A) amend its specified long-term plan without consultation in relation to matters related to that transfer.
- 32 Requirements under clauses of Part 1 of Schedule 10**
- (1) The information specified in the following clauses of Part 1 of Schedule 10 must cover, with respect to water services, only the first 2 financial years of a long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/34 financial years: 15
- (a) clause 3 (capital expenditure for groups of activities):
 - (b) clause 4 (statement of intended levels of service provision), except that no information with respect to water services is required under clause 4(a) of Schedule 10: 20
 - (c) clause 5 (funding impact statement for groups of activities):
 - (d) clause 12 (forecast financial statements):
 - (e) clause 15 (funding impact statements). 25
- (2) However, **subclause (1)** requires that information for the 2025/26 financial year only if a local authority will be providing water services for all or any of that year.
- 33 Annual plan**
- (1) An annual plan (under section 95) must include information about water services for the 2024/25 or 2025/26 financial year even if during that year a local authority may or does cease to provide water services in its district (to the extent that it is part of the entity's service area). 30
- (2) However, **subclause (1)** does not apply to the 2025/26 financial year, if a local authority's responsibilities for water services will be or are transferred to a water services entity before that year starts. 35
- (3) Section 95(2) does not apply to a local authority if the only significant or material differences relate to a change in the timing of the implementation of water services reform, or the application of the Water Services Entities Act

2022, from the time frames anticipated in a long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/34 financial years.

34 Certain decisions to be taken only if provided for in long-term plan

- (1) This clause applies to conduct by or on behalf of a local authority that is required—
 - (a) under the Water Services Entities Act 2022; or
 - (b) to give effect to the water services reform.
- (2) The conduct is not subject to any requirements in section 97.

35 Annual report

- (1) An annual report (under section 98) must include information about water services for the 2024/25 or 2025/26 financial year even if during that year a local authority may or does cease to provide water services in its district (to the extent that it is part of the entity's service area).
- (2) However, a local authority must include in the annual report the information required by clauses 23, 24, 25, and 26 of Schedule 10 only—
 - (a) from the start of a financial year mentioned in **subclause (1)**; and
 - (b) until the local authority ceases to provide water services.

36 Balanced budget requirement

- (1) This clause applies to a loss—
 - (a) of a local authority; and
 - (b) arising from the transfer of assets and liabilities from the local authority to a water services entity.
- (2) The loss must be disregarded in determining whether the local authority complies with section 100(1).

37 Infrastructure strategy

- (1) This clause applies to a local authority's infrastructure strategy (under section 101B) prepared and adopted as part of a long-term plan (under section 93 and Part 1 of Schedule 10) of the local authority to take effect for all or any of the 2024/34 financial years.
- (2) The local authority is not required to include information about water services in the infrastructure strategy.

*Budget, and unapplied rates revenue, for water services***38 Budget, and unapplied rates revenue, for water services***Application*

- (1) This clause applies if—
- (a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) in a financial year; and
 - (b) the territorial authority is, under **section 6A(2)** of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year.

Annual plan budget and funding impact statement

- (2) The territorial authority must provide in its annual plan budget and funding impact statement for water services to be provided by the territorial authority in that district for all of that financial year.

Transfer of unapplied rates revenue

- (3) As soon as is reasonably practicable after the establishment date, the territorial authority must transfer to the water services entity any unapplied rates revenue that has been collected for the financial year and in accordance with **clause 4** of Schedule 1AA of the Local Government (Rating) Act 2002.

Wellington Regional Council

- ~~(4) This clause applies to Wellington Regional Council as if it were a territorial authority.~~

(4) This clause—

- (a) applies to Wellington Regional Council as if it were a territorial authority; and
- (b) requires that council to transfer to the Wellington Water Services Entity any unapplied charges paid to that council by constituent local authorities for the financial year for water supplied to those authorities under the Wellington Regional Water Board Act 1972.

Related provision

- (5) See also **clause 4** of Schedule 1AA of the Local Government (Rating) Act 2002.

39 Development contributions and financial contributions relating to water services infrastructure*Application*

- (1) This clause applies if—

- (a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) in a financial year; and
- (b) the territorial authority is, under **section 6A(2)** of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year.

Development contributions and financial contributions

- (2) The territorial authority may, until that establishment date,—
 - (a) include, in a development contributions policy of the territorial authority ~~adopted under section 102(1) on development contributions~~ (for example, in a schedule of that policy), requirements relating to development contributions or financial contributions and water services infrastructure:
 - (ab) identify, in a development contributions policy, capital expenditure for the purposes of calculating development contributions or financial contributions in respect of, or in respect of groups of, water services infrastructure assets—
 - (i) not provided for in the authority's long-term plan; and
 - (ii) expected to be constructed by that entity on or after that establishment date:
 - (b) require, under a ~~policy on~~ development contributions policy ~~adopted under section 102(1)~~ (for example, under a schedule of that policy), development contributions or financial contributions for the water services infrastructure the territorial authority has been planning to provide;
 - (c) require development contributions or financial contributions for capital expenditure relating to water services infrastructure that may or will be incurred in future (even if, and to the extent that, that capital expenditure will be incurred after that establishment date);
 - (d) include, in a schedule (of assets for which development contributions will be used) required under section 201A, water services infrastructure assets to be constructed by that entity wholly or partly on or after that establishment date.

Reviewing ~~policies on~~ development contributions policies

- (3) Section 106(6) does not apply to the parts of a development contributions policy of the territorial authority ~~on development contributions~~ that relate to water services infrastructure.

Effect on other provisions of this Act about development contributions or financial contributions

- (4) Other provisions of this Act about development contributions or financial contributions must be read as modified as necessary to give effect to this clause.

Definitions

(5) In this clause,—

development contributions has, as provided in the definition of that term in section 5(1) of this Act, the meaning set out in section 197(2) of this Act

development contributions policy, for a territorial authority, means a policy—

(a) on development contributions or financial contributions; and

(b) adopted by the territorial authority under section 102 of this Act

financial contributions has the meaning given to it by section 108(9) of the Resource Management Act 1991.

*Chatham Islands Council***40 Chatham Islands Council not subject to specified clauses**

None of the following clauses of this schedule apply to the Chatham Islands Council:

(a) clause 25 (review under section 158 or 159 of water services bylaws may be deferred during transition period):

(b) clause 27 (long-term planning to exclude water services during establishment period if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 July 2024):

(c) **clauses 28 to 37** (content relating to water services in planning or reporting if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 October 2024 to 1 July 2026):

(d) **clause 38** (budget, and unapplied rates revenue, for water services):

(e) **clause 39** (development contributions and financial contributions relating to water services infrastructure).

Subpart 5—Amendments to Local Government (Rating) Act 2002**36 Principal Act**

This subpart amends the Local Government (Rating) Act 2002.

37 Schedule 1AA amended

In Schedule 1AA, after clause 3, insert:

Part 2

Provisions relating to Water Services Entities Amendment Act 2023

4 Rates for water services

Application

- (1) This clause applies if— 5
- (a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) in a financial year; and
 - (b) the territorial authority is, under **section 6A(2)** of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year. 10

Rates

- (2) The territorial authority must assess, set, and collect rates, and recover unpaid rates (subject to any remission, postponement, or writing off of rates), for water services to be provided by the territorial authority in that district for all of that financial year. 15

Related provision

- (3) See also **clause 38** of Schedule 1AA of the Local Government Act 2002.

5 Section 21 modified (Certain rates must not exceed 30% of total rates revenue) 20

Local authorities to which clause applies

- (1) This clause applies to a local authority that—
- (a) will provide water services after 1 July 2024; and
 - (b) will cease to provide water services before or on 1 July 2026.
- (2) This clause does not apply to a local authority that is— 25
- (a) a local authority whose district is wholly or partly in the service area of a water services entity with an establishment date (under **section 6A(3A) or (4)** of the Water Services Entities Act 2022) of 1 July 2024; or
 - (b) the Chatham Islands Council. 30

Modification

- (3) The local authority may, after the commencement of this clause and despite section 21(1), seek rates revenue in the 2024/25, 2025/26, or 2026/27 financial year from section 21(2) rates that exceeds 30% of the total revenue from all rates sought by the local authority for that year. 30
- (4) However, a local authority may rely on **subclause (3)** in a financial year only if the proportion of its rates income from section 21(2) rates in that financial 35

year does not exceed the proportion of its rates income from section 21(2) rates in the last year in which it provided water services.

- (5) For the purposes of **subclause (4)**, the proportion of the local authority's rates income from section 21(2) rates in that financial year must be calculated as if—

- (a) the local authority were seeking in that financial year the same proportion of section 21(3) rates as it sought in the last year in which it provided water services; and
- (b) the local authority's rates income from all rates in that financial year included the same proportion of section 21(3) rates as it sought in the last year in which it provided water services.

Example

The effect of the limit in **subclause (4)** is illustrated in the following example.

Equation item (Rates)	Section	Last year	Financial year	Proportion
A = Uniform annual general charges (excluding water supply or sewage disposal rates)	21(2)(a)	1,000	1,000	10.10%
B = Uniform targeted rates (excluding water supply or sewage disposal rates)	21(2)(b)	1,950	1,950	19.60%
C = Uniform targeted rates for water supply or sewage disposal	21(3)	2,000	[2,000]	[20.10]%
D = All other rates		5,000	5,000	50.25%
E = Total rates	21(1)	9,950	7,950	100.00%
Percentage of total revenue from all rates				
(A + B) / E <= 30%		29.6%	37.1%	

Definitions

- (6) In this clause,—
- section 21(2) rates** means the rates described in section 21(2), other than section 21(3) rates
- section 21(3) rates** means targeted rates that are set solely for water supply or sewage disposal.

Chatham Islands Council

6 Chatham Islands Council not subject to specified clauses

The following clauses of this schedule do not apply to the Chatham Islands Council:

- (a) **clause 4** (rates for water services);
- (b) **clause 5** (section 21 modified (certain rates must not exceed 30% of total rates revenue)).

Subpart 6—Amendments to Local Government
(Financial Reporting and Prudence) Regulations 2014

38 Principal regulations

This subpart amends the Local Government (Financial Reporting and Prudence) Regulations 2014.

5

39 Schedule 1 amended

- (1) In Schedule 1, before clause 1, insert:

Part 1
Provisions relating to these regulations as made

- (2) In Schedule 1, after clause 3, insert:

10

Part 2
Provisions relating to Water Services Entities Act 2022

4 Information about core assets to be disclosed in financial statements in annual report

- (1) This clause applies to the disclosures of information required by regulation 6(3) in respect of the assets referred to in regulation 6(2)(a) to (c). 15
- (2) Those disclosures must be included in a local authority's annual report if the local authority continues to own the assets concerned for the full financial year covered by that report.
- (3) Those disclosures need not be included in a local authority's annual report for the financial year in which the assets concerned are transferred to a water services entity, if those assets are transferred at any time other than on the last day of that financial year. 20

5 Funding impact statements

- (1) This clause applies to a local authority affected by the transfer of water services to a water services entity. 25
- (2) The local authority is not required to disclose the costs and revenues associated with that transfer in a funding impact statement prepared under these regulations (*see* regulation 7(1) to (5)).

6 Balanced budget benchmark

30

For the purposes of regulation 19, revenue and operating expenses exclude any amount (for example, any amount of revenue) relating to the transfer of assets, liabilities, or other matters from a local authority to a water services entity. —

(a) of assets, liabilities, or other matters; and

	(b) <u>from a local authority to a water services entity; and</u>	
	(c) <u>for the purposes of establishing a water services entity.</u>	
7	<u>Chatham Islands Council not subject to specified clauses</u>	
	<u>The following clauses of this schedule do not apply to the Chatham Islands Council:</u>	5
	(a) <u>clause 4</u> (information about core assets to be disclosed in financial statements in annual report):	
	(b) <u>clause 5</u> (funding impact statements):	
	(c) <u>clause 6</u> (balanced budget benchmark).	
40	Schedule 4 amended	10
	In Schedule 4, after Note 3(2), insert:	
	(3) However, the balanced budget benchmark (<i>see</i> regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).	
41	Schedule 5 amended	15
	In Schedule 5, before the heading “ Essential services benchmark ”, insert:	
	However, the balanced budget benchmark (<i>see</i> regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).	
42	Schedule 6 amended	20
	In Schedule 6, before the heading “ Essential services benchmark ”, insert:	
	However, the balanced budget benchmark (<i>see</i> regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).	
	<u>Subpart 6A—Amendments to Taumata Arowai—the Water Services Regulator Act 2020</u>	25
42A	<u>Principal Act</u>	
	<u>This subpart amends the Taumata Arowai—the Water Services Regulator Act 2020.</u>	
42B	<u>Section 4 amended (Interpretation)</u>	30
	(1) <u>In section 4, definition of Te Mana o te Wai, paragraph (b), replace “section 2(1) of the Resource Management Act 1991” with “this section”.</u>	
	(2) <u>In section 4, insert in its appropriate alphabetical order:</u>	

water—

- (a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but**
- (b) includes water in any form while in any pipe, tank, or cistern**

Subpart 7—Amendments to Water Services Act 2021

5

43 Principal Act

This subpart amends the Water Services Act 2021.

43A Section 5 amended (Interpretation)

In section 5, insert in its appropriate alphabetical order:

water—

10

- (a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but**
- (b) includes water in any form while in any pipe, tank, or cistern**

43B Section 14 amended (Te Mana o te Wai: meaning, application, effect)

In section 14(1)(b), replace “section 2(1) of the Resource Management Act 1991” with “section 5 of this Act”.

15

44 Section 201 amended (Levy)

- (1) In section 201(2A), replace “the establishment period (as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022)” with “the period starting on 1 July 2024 and ending on **1 July 2026**”.
- (2) In section 201(2B), replace “the establishment date (as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022)” with “**1 July 2026**”.

20

Schedule 1
New Schedule 2 of Water Services Entities Act 2022

s 26

Schedule 2
Water services entities and their service areas

5

s 11

Part 1
Northland and Auckland Water Services Entity

The Northland and Auckland Water Services Entity's service area is the districts of the following territorial authorities:

10

- Far North District Council:
- Kaipara District Council:
- Whangarei District Council:
- Auckland Council.

Part 2
Waikato Water Services Entity

15

The Waikato Water Services Entity's service area is the districts of the following territorial authorities:

- Hamilton City Council:
- Hauraki District Council:
- Matamata-Piako District Council:
- Ōtorohanga District Council:
- South Waikato District Council:
- Taupo District Council:
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:
- Waitomo District Council.

20

25

Part 3
Bay of Plenty Water Services Entity

30

The Bay of Plenty Water Services Entity's service area is the districts of the following territorial authorities:

- Rotorua District Council:
- Kawerau District Council:
- Ōpōtiki District Council:
- Tauranga City Council:
- Western Bay of Plenty District Council: 5
- Whakatane District Council.

Part 4

Taranaki Water Services Entity

The Taranaki Water Services Entity's service area is the districts of the following territorial authorities: 10

- New Plymouth District Council:
- South Taranaki District Council:
- Stratford District Council.

Part 5

Manawatū-Whanganui Water Services Entity

The Manawatū-Whanganui Water Services Entity's service area is the districts of the following territorial authorities: 15

- Ruapehu District Council:
- Whanganui District Council:
- Rangitikei District Council: 20
- Manawatu District Council:
- Palmerston North City Council:
- Tararua District Council:
- Horowhenua District Council.

Part 6

Gisborne and Hawke's Bay Water Services Entity

The Gisborne and Hawke's Bay Water Services Entity's service area is the districts of the following territorial authorities: 25

- Gisborne District Council:
- Wairoa District Council: 30
- Central Hawke's Bay District Council:
- Hastings District Council:
- Napier City Council.

Part 7

Wellington Water Services Entity

The Wellington Water Services Entity's service area is the districts of the following territorial authorities:

- Wellington City Council: 5
- Porirua City Council:
- Kapiti Coast District Council:
- South Wairarapa District Council:
- Carterton District Council:
- Masterton District Council: 10
- Hutt City Council:
- Upper Hutt City Council.

Part 8

Nelson, Tasman, and Marlborough Water Services Entity

The Nelson, Tasman, and Marlborough Water Services Entity's service area is the districts of the following territorial authorities: 15

- Tasman District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under **Part 9** of this schedule):
- Nelson City Council: 20
- Marlborough District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under **Part 9** of this schedule).

Part 9

Canterbury and the West Coast Water Services Entity

The Canterbury and the West Coast Water Services Entity's service area is the following: 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: 30
 - Tasman District Council:
 - Marlborough District Council; and
- the districts of the following territorial authorities:
 - Buller District Council:
 - Grey District Council: 35

- Westland District Council:
- Kaikoura District Council:
- Hurunui District Council:
- Waimakariri District Council:
- Christchurch City Council: 5
- Selwyn District Council:
- Ashburton District Council:
- Timaru District Council:
- Waimate District Council:
- Mackenzie District Council: 10
- Waitaki District Council.

Part 10

Otago and Southland Water Services Entity

The Otago and Southland Water Services Entity's service area is the districts of the following territorial authorities: 15

- Dunedin City Council:
- Clutha District Council:
- Central Otago District Council:
- Queenstown-Lakes District Council:
- Gore District Council: 20
- Southland District Council:
- Invercargill City Council.

Schedule 2
New Schedule 2A of Water Services Entities Act 2022

s 27

Schedule 2A
Merger of water services entities

5

s 19A

Purpose of merger provisions

1AA Purpose of water services entities merger provisions

The purpose of the water services entities merger provisions of this Act is to help achieve this Act's purpose (see section 3) by enabling mergers that improve water services governance.

10

Requirement for shared boundaries

1AB Entities cannot merge unless they have some shared boundaries

(1) Water services entities cannot merge unless, before their merger, every entity in the merger shares some of its boundary with that of at least 1 other entity in the merger.

15

(2) For the purposes of this clause, a water services entity's boundary is the boundary of the area identified in **Schedule 2** as the service area of the entity.

(3) No provision of this schedule permits a merger proposal contrary to this clause.

Request for merger proposal

20

1 Request to water services entity's regional representative group

A request for a merger proposal may be made to a water services entity's regional representative group.

2 Who may make request

The request may only be made by all or any of the following:

25

- (a) the entity's board:
- (b) a territorial authority owner:
- (c) a mana whenua representative on the regional representative group:
- (d) a consumer forum established by the entity:
- (e) a Crown observer, Crown review team, or Crown manager appointed under subpart 2 of Part 5 of this Act, if that observer, team, or manager considers a merger is necessary or desirable to address a problem within the meaning of that term in section 179 of this Act.

30

3 Requirements for request

- (1) The request must be made in writing.
- (2) The request must include the following information:
 - (a) the name of each person who made the request:
 - (b) the name of each other water services entity that is proposed to be part of the requested merger, and an explanation of how it complies with **clause 1AB**:
 - (c) an explanation of why the merger is being requested.

5

4 What group must do after receiving request

Promptly after receiving a request, the regional representative group must— 10

- (a) notify the entity's board and territorial authority owners that the group has received a request for a merger proposal; and
- (b) publish a notice that the group has received a request for a merger proposal, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and 15
- (c) engage with the boards and regional representative groups of every water services entity about the request for a merger proposal; and
- (d) consider any feedback received, and make any changes to the request for a merger proposal that the group considers necessary; and
- (e) make (in accordance with section 30) a decision of the group about whether the entity's board should prepare a merger proposal. 20

5 Group's decision on request, and group's reasons, must be notified

- (1) The regional representative group must notify the group's decision on a request, together with the group's reasons for that decision, to—
 - (a) the entity's board and territorial authority owners; and 25
 - (b) the monitor; and
 - (c) the person or people who made the request.
- (2) The regional representative group must also notify publicly the group's decision on a request, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 30

*Preparation of merger proposal***6 When entity's board must prepare merger proposal**

- (1) This clause applies if a regional representative group's decision under **clause 4(e)** is that the entity's board should prepare a merger proposal. 35
- (2) The entity's board must prepare a merger proposal.

7 Contents of merger proposal

The merger proposal must include the following information:

- (a) information about the underlying problem or opportunity that the merger is proposed to address, supported by available evidence:
- (b) information about all other practical options to address the problem or opportunity the merger is proposed to address: 5
- (c) information about the costs and benefits associated with the proposed merger:
- (d) information about all material impacts and risks relating to the proposed merger, including possible unintended consequences: 10
- (e) a recommendation about whether to proceed with the merger proposal.

8 Engagement

In preparing the merger proposal, the board must engage with any water services entity that is proposed to be part of the requested merger.

9 Collaboration and information reasonably required

If a water services entity is proposed to be part of the requested merger, the entity's board and chief executive must—

- (a) work collaboratively on preparing the merger proposal with the board that is preparing the merger proposal; and
- (b) provide any information that is reasonably requested by that board to help that board to prepare the merger proposal. 20

10 Further requirements for preparing merger proposal

In preparing the merger proposal, the board must—

- (a) provide a draft merger proposal to—
 - (i) the monitor: 25
 - (ii) Taumata Arowai—the Water Services Regulator:
 - (iii) the Commission:
 - (iv) any water services entity that is proposed to be part of the requested merger:
- (b) consider any feedback received, and make any changes to the draft merger proposal that the board considers necessary: 30
- (c) finalise the merger proposal:
- (d) notify the finalised merger proposal publicly, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible: 35
- (e) provide the finalised merger proposal to—

- (i) the monitor:
- (ii) Taumata Arowai—the Water Services Regulator:
- (iii) the Commission:
- (iv) the entity’s regional representative group:
- (v) the entity’s territorial authority owners: 5
- (vi) any water services entity that is proposed to be part of the requested merger.

Engagement and decision on merger proposal

11 Application to water services entity’s regional representative group

Clauses 12 to 14 apply to a water services entity’s regional representative group if a finalised merger proposal is provided to that group and to that entity under **clause 10(e)(iv) and (vi)**. 10

12 Engagement on merger proposal

- (1) The group must engage in accordance with sections 206 and 209 with interested persons in the entity’s service area in relation to whether the finalised merger proposal should be implemented. 15
- (2) Sections 206 and 209 apply, for the purposes of this clause, as if the group were the entity.

13 Decision on merger proposal

- (1) After complying with **clause 12**, the group must (in accordance with section 30) decide whether the proposal should be implemented. 20
- ~~(2) However, if a Crown observer, Crown review team, or Crown manager made the request for a merger proposal, then—~~
 - ~~(a) **subclause (3)** applies; and~~
 - ~~(b) **subclause (3)** overrides **subclause (1)** and section 30.~~ 25
- ~~(3) If this subclause applies (see **subclause (2)**), then the group’s decision on whether the proposal should be implemented must be made—~~
 - ~~(a) by consensus if consensus can be reached by regional representatives taking all reasonably practicable steps to reach consensus in accordance with a procedure, and within a time frame, specified in the constitution; and~~ 30
 - ~~(b) in any other case, by 50% or more of the regional representatives present and voting.~~
- (2) In deciding under this clause whether the proposal should be implemented, the group must have regard to the factors in **clause 13A**. 35

13A Factors group must have regard to when deciding whether proposal should be implemented

In deciding under **clause 13** whether the proposal should be implemented, the group must have regard to—

- (a) the purpose of a water services entities merger set out in **clause 1AA**; 5
- and
- (b) the implications of any changes to governance arrangements that might result from the proposed merger; and
- (c) any problem identified by any Crown observer, Crown review team, or Crown manager who made the request for a merger; and 10
- (d) any other problems, and any opportunities, to be addressed by the proposed merger; and
- (e) the costs and benefits associated with the proposed merger; and
- (f) the views expressed in engagement by consumers and communities about the proposed merger; and 15
- (g) any other factor relevant to the purpose set out in **clause 1AA**.

14 Group's decision, and group's reasons, must be notified

- (1) The group must notify the group's decision on a merger proposal, together with the group's reasons for that decision, to—
 - (a) the entity's board and territorial authority owners; and 20
 - (b) the monitor.
- (2) The group must also notify publicly the group's decision on a merger proposal, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible. 25

Implementation of merger

15 Implementation of merger

A finalised merger proposal is to be implemented only if every regional representative group to which **clauses 12 to 14** apply in relation to that proposal decides to implement the merger proposal. 30

16 Merger implementation board and apportionment of costs

If a finalised merger proposal is to be implemented, the board of every water services entity that is proposed to be part of the requested merger must—

- (a) appoint a merger implementation board with at least 2 members from the board of each such entity, together with an independent chairperson; and 35
- (b) agree how to apportion the costs associated with the merger (including any costs associated with the merger implementation board).

- 17 Functions of merger implementation board**
- The merger implementation board has the following functions:
- (a) to prepare a merger implementation plan:
 - (b) to oversee and manage the process for establishing the new entity:
 - (c) to perform any other functions agreed by the board of every water services entity that is proposed to be part of the requested merger. 5
- 18 Merger implementation plan**
- A merger implementation plan must include—
- (a) the anticipated date on which the new entity will be established:
 - (b) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the new entity: 10
 - (c) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the new entity:
 - (d) the processes, and required timing, for preparing and adopting for the new entity the following: 15
 - (i) an initial asset management plan:
 - (ii) an initial funding and pricing plan:
 - (iii) an initial infrastructure strategy:
 - (iv) a constitution: 20
 - (v) relationship agreements:
 - (e) the processes, policies, and timing for the reconciliation of the finances of the entities to be merged:
 - (f) identification of any risks relating to the merger, and of how those risks will be mitigated: 25
 - (g) the processes, policies, and guidance for communication about the merger process:
 - (h) any other matters that the merger implementation board considers relevant.
- 19 Boards of entities proposed to be part of requested merger must give effect to plan** 30
- (1) This clause applies to—
 - (a) the boards of the water services entities proposed to be part of the requested merger; and
 - (b) the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board). 35
 - (2) Those boards must give effect to that plan.

20	Quarterly progress report to boards of entities proposed to be part of requested merger	
(1)	The merger implementation board must provide a quarterly progress report to the board of each entity proposed to be part of the requested merger.	
(2)	The report must include any information required for the report by the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board).	5
21	Order in Council to give effect to requested merger	
(1)	A merger implementation plan—	
(a)	is given effect to by Order in Council made on the recommendation of the Minister; and	10
(b)	has effect on and after the date or dates specified for that purpose by that Order in Council (as required by subclause 4(a)).	
(2)	The merger implementation board may recommend to the Minister that the requested merger be given effect to by Order in Council.	15
(3)	After receiving a recommendation under subclause (2) , the Minister must recommend the making of an Order in Council under subclause (1) unless the Minister is satisfied, on reasonable grounds, that the process followed to result in the recommendation under subclause (2) was not in accordance with this Act and the merger implementation plan.	20
(4)	An Order in Council made under subclause (1) —	
(a)	must specify the date or dates on which its provisions come into effect (and the specified date or dates must not be before 1 July 2026); and	
(b)	must provide for—	
(i)	the establishment of the new water services entity (including, without limitation, the appointment of the establishment board for that entity); and	25
(ii)	the disestablishment of the water services entities to be merged; and	
(c)	must amend Schedule 2 to reflect—	30
(i)	the name and service area of the new water services entity that is established; and	
(ii)	the disestablishment of the water services entities to be merged; and	
<u>(ca)</u>	<u>must amend section 3(2)(a) to reflect the total number of water services entities after the merger; and</u>	35
<u>(cb)</u>	<u>must specify how shares in the new water services entity are to be allocated to each territorial authority owner based on the population of its district or part district (see also section 16); and</u>	

- (d) may suspend any statutory requirement that an affected water services entity would otherwise be subject to if the merger would make compliance with the statutory requirement unnecessary or inappropriate; and
- (e) brings into operation the provisions in **clauses 21A to 30.**
- (5) An Order in Council giving effect to a merger implementation plan is not invalid merely because it is inconsistent with the provisions of the merger implementation plan if the inconsistency relates to—
- (a) corrections of clerical, grammatical, or typographical errors; or
- (b) the inclusion of provisions that are necessary to give legal effect to the merger implementation plan; or
- (c) the omission of explanatory material or other material that is not necessary to give legal effect to the merger implementation plan; or
- (d) matters of a format or referential nature that do not alter the substance or effect of the merger implementation plan.
- (6) An order made under **subclause (1)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 2002 No 84 s 25

Effect of merger and disestablishment

21A Effect of merger

When this clause applies

- (1) This clause applies on and after the commencement of the provisions of an Order in Council made under **clause 21(1)** establishing the new water services entity and disestablishing the water services entities to be merged.

Assets

- (2) All assets, liabilities, and other matters of the disestablished entities vest in the new entity.
- (3) The **assets, liabilities, and other matters** of a disestablished entity, in **subclause (2)**, include, without limitation, that entity's—
- (a) assets (for example, infrastructure assets):
- (b) contracts, engagements, or information:
- (c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, moneys payable and, in relation to any moneys payable, proceedings, statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)):
- (d) other property (which, in this paragraph, means—

	(i) <u>any other thing that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; or</u>	
	(ii) <u>any estate or interest in any thing specified in subparagraph (i):</u>	5
	(e) <u>eligibility for benefits, entitlements, interests, rights, powers, or privileges:</u>	
	(f) <u>duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):</u>	
	(g) <u>ineligibility for benefits, entitlements, interests, rights, powers, or privileges.</u>	10
	<i><u>Information and documents</u></i>	
	(4) <u>All information and documents held by the disestablished entities are held by the new entity.</u>	
	(5) <u>Any transfer of information or documents under subclause (4) is not a breach of the following information privacy principles (or IPPs) under the Privacy Act 2020:</u>	15
	(a) <u>IPP 8 (accuracy, etc, of personal information to be checked before use or disclosure):</u>	
	(b) <u>IPP 11 (limits on disclosure of personal information).</u>	20
	<i><u>Employees</u></i>	
	(6) <u>Other than the chief executives of the disestablished entities, every employee of a disestablished entity becomes an employee of the new entity.</u>	
	<i><u>Acts or omissions</u></i>	
	(7) <u>Anything done, or omitted to be done, or that is to be done, by or in relation to a disestablished entity is treated as having been done, or having been omitted to be done, or to be done, by or in relation to the new entity.</u>	25
	<i><u>Proceedings, inquiries, and investigations</u></i>	
	(8) <u>Proceedings, inquiries, and investigations under any legislation that may be commenced, continued, or enforced by or against a disestablished entity (including as an interested party or intervenor) or in relation to a disestablished entity may instead be commenced, continued, or enforced by or against the new entity without amendment to the proceedings.</u>	30
	<i><u>Matters or things disestablished entity could have done or completed</u></i>	
	(9) <u>A matter or thing that could, but for the entity's disestablishment, have been done or completed by a disestablished entity may be done or completed by the new entity.</u>	35

Relationship agreements and service level agreements

- (10) Relationship agreements and service level agreements of the disestablished entity transfer to the new entity.

21B Effect of disestablishment of entity

- (1) The disestablishment of a water services entity under an Order in Council made under **clause 21(1)** does not by itself affect any of the following matters: 5
- (a) any decision made, or anything done or omitted to be done, by the entity in performing or exercising its functions, powers, or duties under any legislation:
 - (b) any proceedings commenced against the entity (*see also* clause 21A(8)): 10
 - (c) any other matter or thing arising out of a disestablished entity's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any legislation.
- (2) Any designations, permits, or consents made or issued by a water services entity, and in force immediately before the disestablishment of that water services entity under an Order in Council made under **clause 21(1)**,— 15
- (a) continue in force after that disestablishment; and
 - (b) are taken, after that disestablishment, to have been made or issued by the new water services entity established by that Order in Council; and
 - (c) may be amended, revoked, or replaced by that new water services entity accordingly. 20

*Secondary legislation***22 Temporary saving for secondary legislation made by disestablished entities**

- (1) This clause applies to secondary legislation—
- (a) made under this Act by a water services entity disestablished by an Order in Council made under **clause 21(1)**; and
 - (b) in force (in all, or relevant, parts of the service area of the disestablished entity) immediately before that entity was disestablished.
- (2) The secondary legislation continues in force (in all, or relevant, parts of the service area of the disestablished entity), and must be treated as if it were made by the new water services entity established by that Order in Council, until the earlier of the following:
- (a) the date on which corresponding secondary legislation made by that new water services entity takes effect:
 - (b) the date that is the fifth anniversary of the date on which that new water services entity was established. 35

(3)	During the period that the secondary legislation remains in force <u>(in all, or relevant, parts of the service area of the disestablished entity)</u> , the secondary legislation—	
(a)	may be amended by that new water services entity under the relevant empowering provision (if any) in this Act; and	5
(b)	may be enforced by that new water services entity in the same way as if all references in the secondary legislation to a water services entity disestablished by that Order in Council were references to that new water services entity.	
	<i>Treaty settlement obligations</i>	10
23	Treaty settlement obligations	
(1)	This clause applies to a person who performs or exercises a duty, function, or power under this schedule.	
(2)	The person must, in performing or exercising the duty, function, or power, uphold the integrity, intent, and effect of Treaty settlement obligations.	15
(3)	This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this schedule.	
	<i>Agreements with mana whenua</i>	
24	New entity to be responsible for existing agreements, etc, with mana whenua	20
(1)	This clause applies to any agreement, arrangement, or understanding—	
(a)	between a water services entity disestablished by an Order in Council made under clause 21(1) and mana whenua; and	
(b)	entered into before the disestablishment of that water services entity; and	
(c)	in force immediately before the disestablishment of that water services entity.	25
(2)	The water services entity established by that Order in Council is, on and after the date on which it is established, to be treated as being responsible for performing or exercising any functions, duties, or powers relating to water services that are set out in the agreement, arrangement, or understanding in place of the disestablished water services entity (for example, in place of the disestablished water services entity, and as a party to the agreement, arrangement, or understanding).	30
	<i>Te Mana o te Wai statements</i>	
25	Te Mana o te Wai statements	35
(1)	This clause applies to a Te Mana o te Wai statement—	

	(a)	provided under section 143 to a water services entity that has been disestablished by an Order in Council made under clause 21(1) ; and	
	(b)	in force immediately before the disestablishment of that water services entity.	
	(2)	The Te Mana o te Wai statement is taken to have been provided to the water services entity established by that Order in Council.	5
26		Responses to Te Mana o te Wai statements	
	(1)	This clause applies to a response to a Te Mana o te Wai statement made under section 145 by a board of a water services entity that has been disestablished by an Order in Council made under clause 21(1) .	10
	(2)	After the establishment of the water services entity established by that Order in Council, the response is taken to have been provided by the board of that entity.	
		<i>Statement of intent</i>	
27		First statement of intent of new entity	
		The board of a water services entity established by an Order in Council made under clause 21(1) must comply with section 148 (statement of intent)—	15
	(a)	as soon as is reasonably practicable after the water services entity is established; and	
	(b)	by preparing a statement of intent that relates to a period that includes the rest of the financial year in which the entity is established; and	20
	(c)	as if the statement of intent were being prepared before the start of the period to which the draft statement relates.	
		<i>Annual reports</i>	
28		First annual report of new entity	
	(1)	A water services entity established by an Order in Council made under clause 21(1) must provide a first annual report for the period—	25
	(a)	starting on the date on which the water services entity is established; and	
	(b)	ending at the end of the financial year in which the water services entity is established.	
	(2)	A report required by this clause must be prepared in accordance with sections 160 to 168, which apply with all necessary modifications.	30
29		Final annual reports of disestablished entities	
	(1)	A water services entity disestablished by an Order in Council made under clause 21(1) must provide a final annual report for the period—	
	(a)	starting at the start of the financial year in which the entity is disestablished; and	35

- (b) ending on the date on which the Order in Council establishes the new water services entity.
- (2) A report required by this clause must be—
 - (a) prepared in accordance with sections 160 to 168, which apply with all necessary modifications; and
 - (b) provided in the 4 months starting on the date on which the entity is dis-established.

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Application of other transitional provisions

30 Application of other transitional provisions

The following do not apply to a water services entity established by an Order in Council made under **clause 21(1)**:

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- (a) Schedule 1 of this Act:
- (b) Schedule 1AA of the Local Government Act 2002.

Legislative history

16 June 2023
22 June 2023

Introduction (Bill 262–1)
First reading and referral to Governance and Administration Committee