

Monday, 5 September 2022

Water Services Entities Bill Oral Submission

Finance and Expenditure Committee, New Zealand Parliament

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1. Errors and inconsistencies

(found in the Bill, the explanatory note (EN) and other DIA government documents)

Concern 1: ‘Water services entities are a new public service delivery model’ (EN: p.2).

The four BC entities, called water services entities, do not form part of the public service. See definition in the Public Service Act 2020, s 10. The Bill notes in s 15 that it is a legal entity, separate from the Crown (see s 15 (1)(b)) and separate from local government s 15 (5)(c). The explanatory note is incorrect, water services entities do not form part of the public service.

Public Service Act 2020

10 Public service defined

In this Act, the **public service**—

- (a) means public service agencies, which are—
 - (i) departments:
 - (ii) departmental agencies:
 - (iii) interdepartmental executive boards:
 - (iv) interdepartmental ventures; and
- (b) includes Crown agents for the purposes of this subpart and [subpart 4](#) of this Part.

Water Services Entities Bill

15 Status of water services entities

Body corporate and separate legal entity

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

Co-owned in shares by territorial authority owners

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

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

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

Compare: 2004 No 115 s 15

Errors and inconsistencies (cont.)



Water Services Entities Bill – ownership and protections against privatisation

The Water Services Entities Bill ensures that the new water service entities will provide safe, affordable and sustainable water services for their communities, and that they will continue to be publicly-owned.

The Bill sets out the **ownership, governance, accountability arrangements** relating to these entities and includes essential provisions for ongoing public ownership and engagement, and **safeguards against future privatisation**. The Bill also provides for **transitional arrangements** relating to the establishment of the new entities.

This factsheet is an overview of the ownership arrangements and protections against future privatisation set out in this Bill to support submissions on these aspects during select committee.

Ownership

Under this legislation territorial authorities within an entity boundary will collectively own the water service entity on behalf of the communities they serve.

This council ownership will be through a **shareholding structure**. Each territorial authority will be given one share in the water services entities per 50,000 people in its district (rounded up).

Territorial authorities will be the only shareholders in these entities. These shares cannot be sold or otherwise transferred; and do not come with a financial benefit or liability.

This shareholding is designed as a protection against privatisation as all territorial authorities will hold shares. While larger councils will have a greater number of shares (based on population), this does not come with additional influence over the entities. For example, each shareholder would only have one vote in any privatisation proposal, regardless of the numbers of shares they hold.

The water services entities will own and operate three waters infrastructure and services.

The Three Waters reforms will not, through this Bill or any other Bill in this suite of legislation, transfer privately-owned water supplies to the new water services entities.

Safeguards against privatisation

The new water services entities will exist to ensure safe, affordable, resilient and environmentally responsible supplies of water services for their communities; rather than to turn a profit.

Continued public ownership of these water services is a bottom line for the Government. Safeguards against future privatisation are written into this legislation to maintain ongoing public ownership of the new water services entities.

This includes the public shareholding structure that makes community ownership clear, with shares held by councils on behalf of their communities. This share-holding model will help protect against privatisation, as **all shareholders would have to unanimously agree to any privatisation proposal**.

Following this, communities will be the ultimate guardians of public ownership through a provision for a public referendum with any future proposal for privatisation requiring **75 per cent of votes in favour** to carry it.



Water Services Entities Bill – governance, accountability and consumer engagement

The Water Services Entities Bill is the first step in a suite of legislation enact the three waters reforms.

The Bill sets out the **ownership, governance, accountability arrangements** relating to these water services entities and includes essential provisions for ongoing public ownership and engagement, and **safeguards against future privatisation**.

This factsheet provides an overview of the governance and accountability arrangements set out in this Bill.

Governance

The Bill establishes a two-tier governance structure of the water services entities:

- **At the strategic level**, regional representative groups will provide regional and local level direction and oversight, including joint monitoring of the water services entities. The regional representative groups will be based on a representative model.
 - Regional advisory panels may be established by the regional representative groups to provide them with advice about how to perform or exercise their duties, functions, and powers.
- **At the operational level**, the water services entities will appoint independent, skills-based, professional boards. These independent boards will run the day-to-day management of the entities and oversee the maintenance and renewal of water infrastructure.

The Water Services Entities Bill sets out the roles and responsibilities of the regional representative groups. Each regional representative group will consist of between 12 and 14 members, with half of its members appointed from mana whenua within its region, and half from territorial authorities.

The legislation enables each group to determine their own constitutions setting out their composition, and the procedure to appoint representatives from territorial authority owners and mana whenua. This enables greater flexibility for each regional representative group to determine its own governance arrangements and how to establish regional advisory panels to ensure all communities have a strong voice in the new system.

Accountability

The Bill establishes strong accountabilities to communities and consumers on the performance and strategy of a water services entity.

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The water services entity board will:

- consist of between 6 and 10 members who collectively have the appropriate skills to manage the infrastructure and service delivery.
- be directly accountable to the regional representative group.

The regional representative group will form a committee to appoint and remove, if necessary, members of the skills-based board.

At a strategic level, the regional representative group will issue a statement of strategic and performance expectations, which sets the objectives and priorities for services within the entity area. Mana whenua may also provide the entity with a Te Mana o te Wai statement for water services.

The board of a water services entity must give effect to the statement of strategic and performance expectations. It must also issue a plan on how it will take action on any Te Mana o Te Wai statements it receives within 2 years.

Consumer interests

The water services entities must:

- undertake direct engagement with consumers on its asset management plans, funding and pricing plans, and infrastructure strategies.
- establish a consumer forum(s) to assist with effective and meaningful consumer and community engagement, and understand consumer needs, expectations and service requirements.

The chief executive of each water services entity must undertake an annual a consumer engagement stocktake that captures consumer and community feedback on satisfaction with how the entity is performing. The consumer stocktake must set out how the water services entity will respond to consumer and community needs and address concerns.

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Errors and inconsistencies (cont.)

Concern 2: ‘publicly-owned water services entities’ (EN: p.1, 11, 24, 25, Sections 15, 16).

The four BC entities cannot be publicly-owned as they do not form part of the public sector (see Slide 3 above). Note: Although the Bill mentions the term ‘territorial authority owners’ [as a list of territorial authorities by BC entities in Schedule 2], the Bill does not define ‘owners’. In our view the explanatory note is incorrect, the Bill makes clear in s 15 that water services entities are not ‘publicly-owned’. This leads to concern 3, what are the shares?

Concern 3: ‘shares to provide a tangible expression’ (EN: p.2).

The shares cannot be traded (no right, title or interest, s 166) or have any tangible value (see s 16). At best it could be called an ‘intangible expression’, as they are not based on any units of economic value but on units of population. We also consider it inappropriate to refer to these as shares, as the size of the shareholding does not constitute any benefit.

16 Shares in water services entities

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

Errors and inconsistencies (cont.)

Concern 4: ‘an independent, competency-based, professional board’ (EN: p. 3).

The board is not ‘independent’ as board members are decided by the BCRG (or a BCRG sub-committee) and the BCRG set the composition and internal procedures of the board.

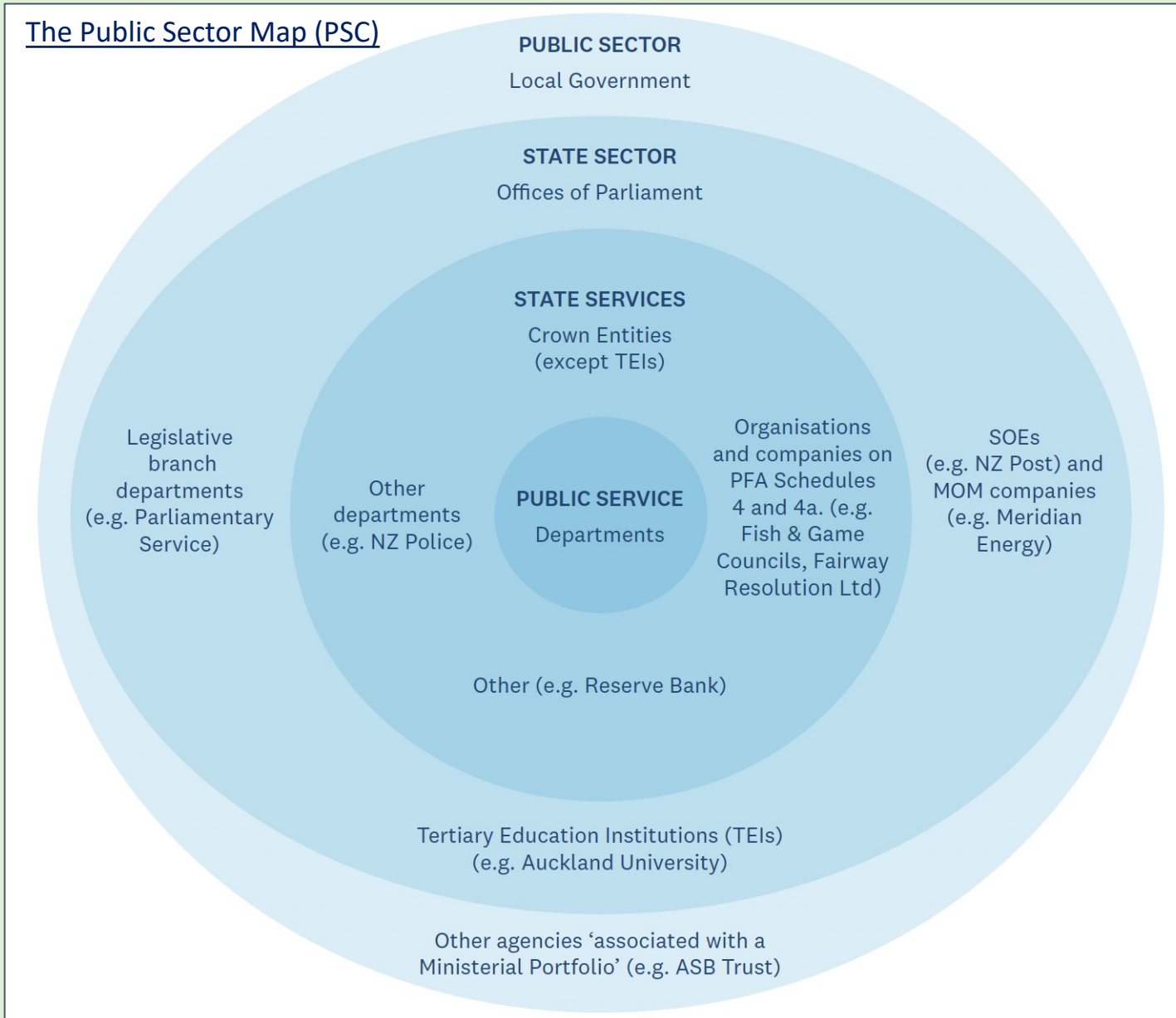
Concern 5: Sections 20-25 – require further explanation/simplification.

Concern 6: No clarity over what the balance sheets look like. The unit holders are not shareholders – therefore creates confusion with the Companies Act 1993.

- a) Local government are only being allocated units based on population size – not economic value. Further, the right to control the BC is determined by the ability to vote, but the vote is given solely to the unit holder (the number of allocations held is irrelevant).
- b) The owners of a body corporate are generally called members – as in members of the body corporate. Membership is often given to a member based on their interest in a shared asset.
- c) (e.g., shared external building or a shared kitchen/media room in an apartment building). So while common property can be legally owned by the BC, the beneficial ownership stays with the member (such as the market value of the apartment is on the apartment owner’s balance sheet).
- d) The term ‘owned’ confers rights that members do not have (e.g. to sell, trade, economic interest).

We believe the current Bill suggests that the assets (and debts) would need to stay on the Council’s balance sheet – not the Water Services Entity. There are two options we suggest that might work (see Slides 11 and 12) – but until this is solved, the Bill should not be passed in the House otherwise Parliament is in effect establishing entities without assets.

2. Models and institutions



OUR BUSINESS MODEL

Who We Are

Scottish Water is a public sector body, classified as a public corporation of a trading nature, answerable to the Scottish Parliament through Scottish Ministers and therefore without shareholders. This ownership model allows the surplus generated to be reinvested in the provision of services to our customers.

Our core services are covered by the Water Industry (Scotland) Act 2002. Under that, the charges for these services must be approved annually by the Water Industry Commission for Scotland (WICS). In delivering these services effectively, we have to make use of our resources to achieve ministerial objectives at the lowest reasonable overall cost. As the economic regulator for the Scottish water industry, the WICS' mission is to manage an effective regulatory framework that encourages the industry in Scotland to provide a high-quality service and value for money to customers.

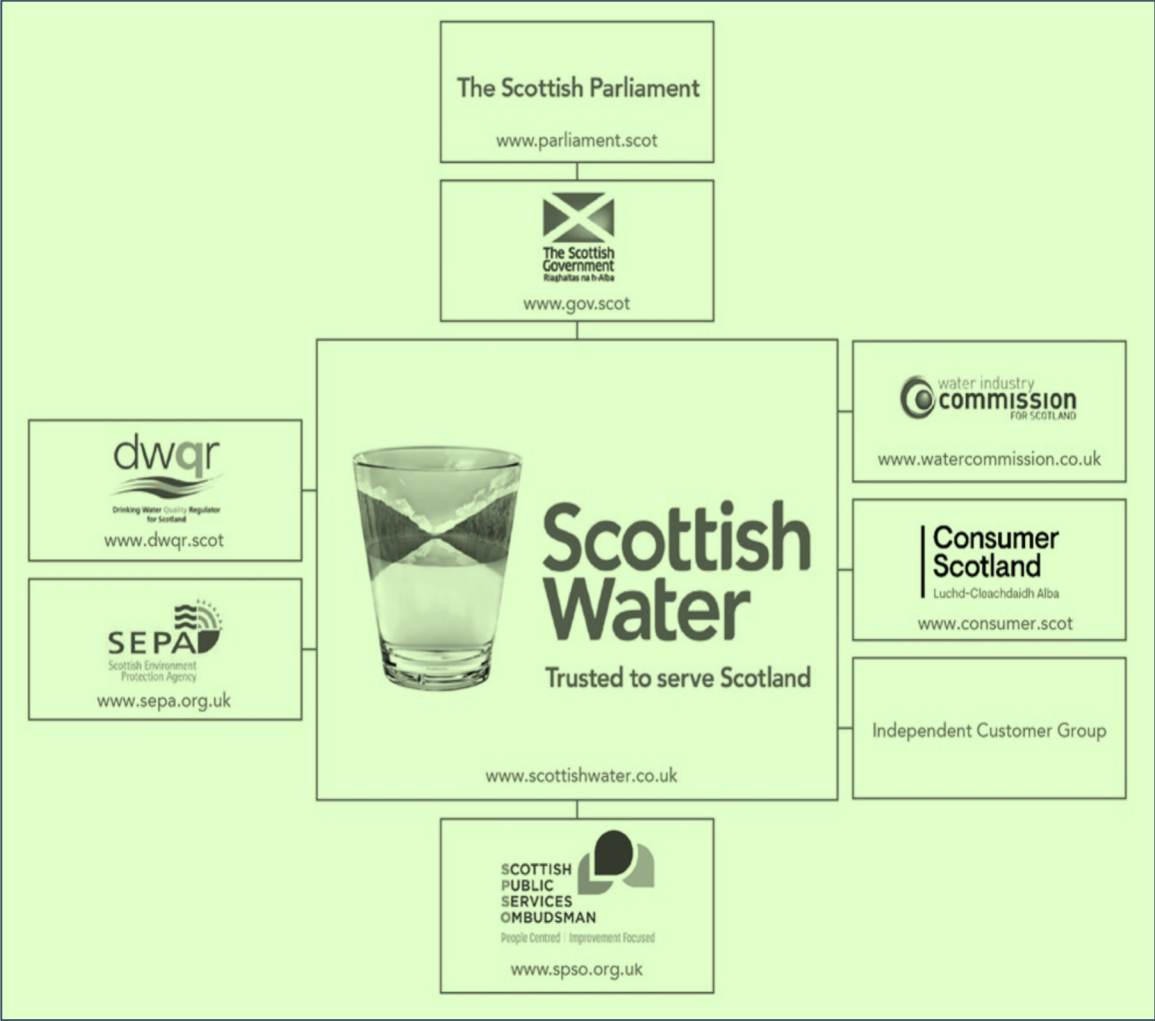
The role of the Scottish Government is as policy maker, owner and banker.

In terms of the NZ public sector map:

- **Scottish Water** is a Crown entity (like ACC or Health NZ). Hence it is subject to scrutiny by Parliament and the Auditor General.
- **WICS** is equivalent to a state service provider.

But if the WSE Bill is passed, it would mean all water services entities would sit outside the public sector (see Slide 3 and Think Piece 39).

Scotland adopted, and then tweaked (and continues to tweak) the Crown entity model



The Scottish Parliament

Holds Scottish Water and Ministers to account and regularly calls executives to its committees to give progress updates.

Scottish Government

Set the objectives for Scottish Water and appoint the Chair and Non-executive Members.

Scottish Water

Responsible for providing water and waste water services to household customers and wholesale Licensed Providers. Delivers the investment priorities of Ministers within the funding allowed by the Water Industry Commission for Scotland.

Water Industry Commission for Scotland

Economic regulator. Sets charges and reports on costs and performance.

Drinking Water Quality Regulator

Responsible for protecting public health by ensuring compliance with drinking water quality regulations.

Scottish Environment Protection Agency

Responsible for environmental protection and improvement.

Scottish Public Services Ombudsman

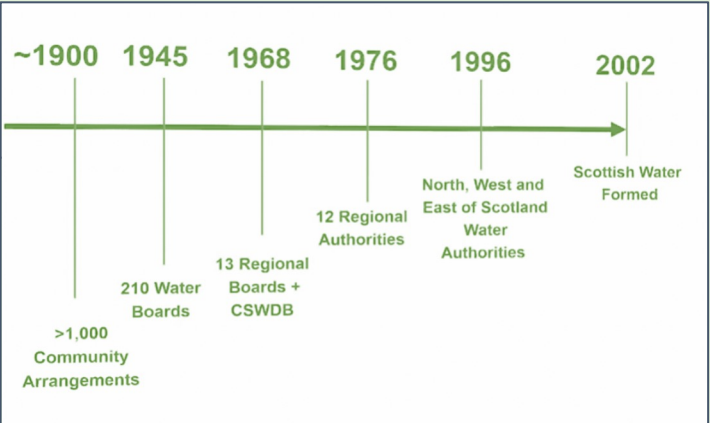
Responsible for investigating complaints about public services in Scotland, including Scottish Water, once the services' complaints procedure has been completed and sharing lessons from complaints to improve the delivery of public services.

Citizens Advice Scotland

Represents the interests of consumers within Scotland's water industry.

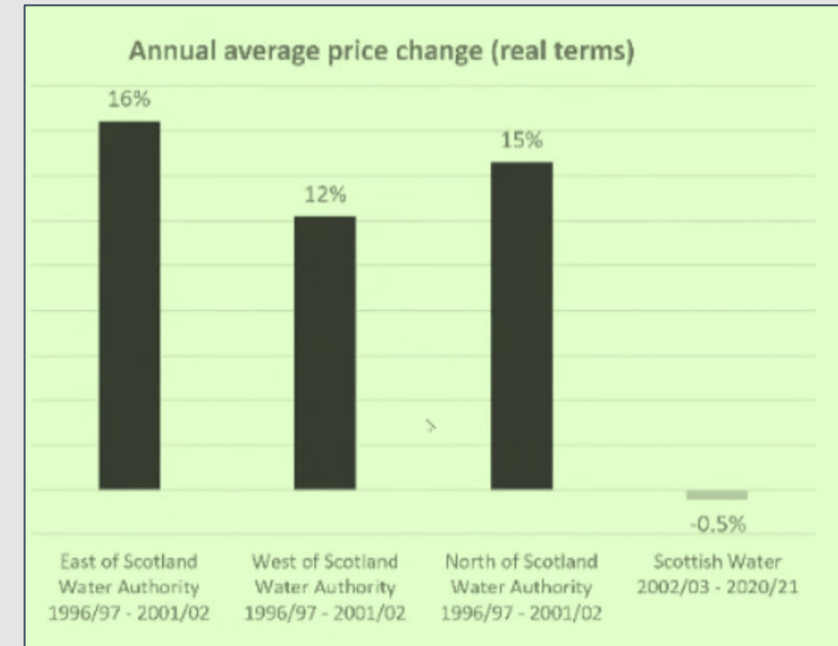


Independent Customer Group



3(A): Improve Governance: Strategic Recommendations

1. Establish a Minister of Water.
2. Create 'one' not four, avoid acute regional trade-offs – create NZ Inc access, durable and stable 'NZ-wide pricing', cheaper insurance, investments, bigger/cheaper repair contracts /bulk purchase of pipes (need to consider why Scottish moved from three (1996) to one (2002) – see graph on right).
3. Instead of BC entities, create:
Option 1: Water Services Council, a new type of local authority under s 21 of the Local Government Act 2002.
Under the Act you can transfer assets to other local authorities.
Option 2: Crown entity (the Scottish model) under the Crown Entities Act 2004.
4. Price all waters, used in society and economy, on a flow-based charging system.
5. Broaden purpose of regulation under this Bill, to maintain flexibility as new information/needs/reporting will become apparent (see esp. s 206 (1)(b)). It is currently too narrow (e.g., rise of nature-based reporting).
6. Include access and risk management in law (copy EU Directive 2020/2184, required to be in law by two years).



Strategic Recommendations cont.

7. Revert to the opt out (more ethical/legal). Concerns that if Rule of Law is not followed, opens up potential water claims by rate payers (i.e., removing assets from owners without consent does not respect the law of the country).

Lawyers and Conveyancers Act 2006; responsibility to uphold the Rule of Law

4 Fundamental obligations of lawyers

Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:

- (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand;
- (b) the obligation to be independent in providing regulated services to his or her clients;
- (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients;
- (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients.

Cabinet Manual 2017 and the Rule of Law

Role of Attorney-General

Law officer role

- 4.3 The Attorney-General has particular responsibility for maintaining the rule of law. The Attorney-General has a responsibility to notify Cabinet of any proposals or government actions that do not comply with existing law and to propose action to remedy such matters. The New Zealand Bill of Rights Act 1990 requires the Attorney-General to report to Parliament if a bill appears to be inconsistent with this Act.

Option 1: Create a Water Services Council

Under Local Government Act 2002

Subpart 1—Structure of local government

21 Local authorities

- (1) Local government in New Zealand consists of the following local authorities:
 - (a) regional councils; and
 - (b) territorial authorities.
- (2) Every part of New Zealand (other than the Chatham Islands) that is within the district of a territorial authority must also be within the region of 1 or more regional councils.
- (3) Part 3 of Schedule 2 applies to the boundaries of regions and districts.

- Ask local authorities to transfer all water service assets to a new type of local authority – a ‘Water Services Authority’.
- All water services debt, insurance, funding is managed by the new ‘Water Services Authority’.
- The new ‘Water Services Authority’ would then be in the public sector, and therefore publicly-owned and subject to scrutiny by Parliament (Minister of Local Government, Minister of Climate Change and ideally a new Minister of Water) and the Auditor General, OIA, Ombudsman, Climate Change Commission, Climate Minister etc.
- Easy accounting, therefore good governance/accountability and good for insurance, funding etc.

Subpart 2—Obligations and restrictions relating to provision of water services

130 Obligation to maintain water services

- (1) This subpart applies to a local government organisation that provides water services to communities within its district or region—
 - (a) at the commencement of this section;
 - (b) at any time after the commencement of this section.
 - (2) A local government organisation to which this section applies must continue to provide water services and maintain its capacity to meet its obligations under this subpart.
 - (3) In order to fulfil the obligations under this subpart, a local government organisation must—
 - (a) not use assets of its water services as security for any purpose;
 - (b) not divest its ownership or other interest in a water service except to another local government organisation;
 - (c) not lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its region or district, unless, in doing so, it retains its capacity to meet its obligations;
 - (d) not, in relation to a property to which it supplies water,—
 - (i) restrict the water supply unless section 193 applies; or
 - (ii) stop the water supply unless section 25 of the Water Services Act 2021 applies.
 - (4) This section—
 - (a) does not prevent a local government organisation from transferring a water service to another local government organisation; and
 - (b) does not override sections 131 to 137.
- Section 130(3)(d)(ii): amended, on 15 November 2021, by section 209 of the Water Services Act 2021 (2021 No 36).

Then add:

- Require iwi/community advice to be taken into account in decision making.
- Add an independent complaints authority.

Option 2: Create a Crown Entity (the Scottish model)

Under the Crown Entities Act 2004

- Ask local authorities to transfer all water service assets to a new Crown entity.
- All water services debt, insurance, funding is managed by the Water Services Crown entity.
- Is public sector, therefore publicly-owned and covered by OAG, OIA, Ombudsman etc.
- Easy accounting, therefore good governance/accountability and good for insurance, funding etc.

Then add

- Require iwi/community advice to be taken into account in decision making.
- Add an independent complaints authority.

7 Meaning of Crown entity and categories of Crown entities

(1) In this Act, **Crown entity** means an entity within one of the following 5 categories:

(a) **statutory entities:**

What are they?

These are bodies corporate that are established by or under an Act

Definition

An entity or office named in Schedule 1

Different types

Crown agents (which must give effect to government policy when directed by the responsible Minister). These are named in Part 1 of Schedule 1

Autonomous Crown entities (which must have regard to government policy when directed by the responsible Minister). These are named in Part 2 of Schedule 1

Independent Crown entities (which are generally independent of government policy). These are named in Part 3 of Schedule 1

(b) **Crown entity companies:**

What are they?

These are companies incorporated under the Companies Act 1993 that are wholly owned by the Crown

Definition

A company named in Schedule 2

(c) **Crown entity subsidiaries:**

What are they?

These are companies incorporated under the Companies Act 1993 that are controlled by Crown entities

Definition

A company that is—

- (a) a subsidiary of another Crown entity under sections 5 to 8 of the Companies Act 1993; or
- (b) a multi-parent subsidiary of 2 or more Crown entities

(d) **school boards:**

3(B): Improve Governance: Operational Recommendations

1. Confirm in law: (i) Water assets transferred from local councils will not be privatised and if not used by the new entity, will be returned to the relevant council and (ii) the water assets will be used to 'ensure availability and sustainable management of water and sanitation for all New Zealanders' (placing SDG 6 into New Zealand law).
2. Require two independent climate expert board members to sit on all four RRG boards, approved by the Minister for Climate Change.
3. Risk Assessment: Copy the EU Directive 2020/2184, put in law assess and risk assessment and risk management of the supply system and catchment areas are carried out by the water supplier (see articles 8 and 9).
4. Complaints: Create one NZ Inc water service complaints authority (this way patterns can be seen over all 4 entities).
5. Amend s 18 (Inquiries) of the Public Audit Act 2001: to enable the Auditor-General to inquire into any matter concerning a water services entity's delivery of public services. Also amend Official Information Act 1982 and Ombudsmen Act 1975 to cover Water Service Entities.
6. The *Conflicts of Interest Register* should be a public register, who is responsible for keeping it and should include potential perceived conflicts of interest between member of this model and 3rd parties (s 99-112).
See 8 (C) overleaf.
7. Suggest moving Te Mana o te Wai statements for water services (s 140 & 141) to reporting obligation part of Bill – as stronger.
8. 'Statutory body corporates' should be required to have their own register on the Companies Office, keeping a record of their constitution, territorial authority allocation, annual reports, climate reports, Te Mana o te Wai statements (see reporting obligations). The entities website is not good enough. Note: It would have been useful to have had a draft of the model constitution with this Bill.

Operational Recommendations (cont.)

9. **Amend s 91 of the Bill: What constitution *must* contain.**
 - A. RRG members must meet four times a year and minutes must be published (within 2 months).
 - B. Public Dashboard/League Tables on key measures reported published one month after month end (measures set by the suggested Minister of Water at the beginning of March, for the year 1 June to 31 July.) Consistent collection of key data made public over time.
 - C. Require those who are in conflict-of-interest situation to sign a self exclusion agreement that is legally binding between them and RRG. This is to be included in a public register, so the public know those parties are excluded from decision making (strengthening public trust and accountability). Definition of conflict-of-interest appears narrow, it should include third parties (e.g., interests in property, or water rights that might be seen to provide an unfair advantage when compared with other developers).
 - D. Annual report to be published and tabled in the House within 3 months of 30 June year end.
 - E. An AGM is held (s 60 does not mention AGM but suggests two public meetings). Standard practice is an AGM and we suggest the Bill is changed to reflect best practice. It should be required to be e-friendly (Zoom). Invitees must include the [new] Minister of Water, Minister for Climate Change, all 'territorial authority board members and territorial authority chief executives. It should also invite the chair of the consumer forum (s 203) to speak/report.

Operational Recommendations (cont.)

Adapted from concept of 'public accountability' in XRB Accounting Standards Framework; NZX Rules and Guidance, NZX Corporate Governance Code, NZX Environmental, Social and Governance Guidance, FMA Corporate Governance Handbook, Companies Act 1993s 211: Contents of an Annual Report, and Lessons from Scottish Industry

G. Contents of Annual Report (additions to s 157). To include:

1. Report by the Chairman of the RRG.
2. Report by the CE of the Board.
3. Report by each iwi who is on the RRG (e.g., this could be a max one page but refer to a longer report on the territorial authorities' website).
4. Report by each territorial authority owner on past performance and future issues (e.g., this could be a brief paper but refer to a longer report on the territorial authorities' website).
5. ESG Reporting (e.g., NZX *Environmental, Social and Governance Guidance*) and Gender reporting.
6. List all loans and borrowings, and interest rates over a reporting threshold (say \$500,000). Separate loans and borrowings from government with those from other sources.
7. List of all insurances (what is insured and for how much). Note: s 164 only says 'total' whereas we suggest a reporting threshold is set). As insurance becomes increasingly difficult/expensive to obtain, this information may impact decision making.
8. List revenue received by water type, 'territorial council owners' location and price paid.
9. List repair expenses by water type, 'territorial council owners' location and price paid.
10. List asset purchases and sales by water type, 'territorial council owners' location and price paid.
11. List of any fees, funds or gifts of any kind received by a member of the RRG, a member of the Board or a member of any RAP over the last 12 months.
12. A list of any fines or penalties (e.g., pollution of water way penalties).
13. A report by the independent water service complaints authority.

Operational Recommendations (cont.)

10: Require the water services entities to:

- Operate its corporate governance arrangements in line with the NZX-listed companies and FMA codes of conduct (like Scottish Water, see 2 below).
- As far as they are appropriate, meet the requirements of the Companies Act 1993 (see 3 below).

Governance

2. (1) Scottish Water shall operate its corporate governance arrangements in line with the principles and best practice contained in the Combined Code on Corporate Governance so far as relevant and applicable, except:
 - (a) where Schedule 3 of the Act requires it to do otherwise;
 - (b) where any other enactment requires it to do otherwise; or
 - (c) where notified to it by the Scottish Ministers in the form of guidance, procedures or directions.
- (2) Scottish Water shall inform Ministers as to the administrative arrangements that it will put in place as a result of its corporate governance arrangements.
3. Scottish Water shall also, in as far as they are appropriate, meet the requirements of the Companies Act 1985 and 2006.

WATER INDUSTRY (SCOTLAND) ACT 2002

The Scottish Water Governance Directions 2009

Contents

Section 1 - Corporate Governance

- Part I - Corporate Governance and Procedures
- Part II - The Business Plan & The Retail Plan
- Part III - General Powers and Delegated Limits
- Reporting Requirements, Surplus Funds, Subsidiaries

Section 2 - Investment of Outperformance

Section 3 - Accounts

- Part I - Historic cost accounts
- Part II - Current Cost Accounts

Section 4 - Previous Directions, Citation and Interpretation

Schedule 1 - Reporting thresholds

Section 3 - Accounts

In section 3, the Scottish Ministers in exercise of the powers conferred on them by section 45(2) of the Water Industry (Scotland) Act 2002 hereby give the following directions:-

1. Scottish Water shall prepare in respect of each financial year an annual report and accounts. These shall comprise:
 - a foreword;
 - an income and expenditure account;
 - a statement of total recognised gains and losses;
 - a balance sheet; and
 - a cashflow statementtogether with such further information as may be necessary to comply with this Direction.
2. The Report and Accounts shall meet in, as far as they are appropriate:
 - 2.1 the accounting and disclosure requirements of the Companies Acts 1985 and 2006, and any regulations made under those acts;
 - 2.2 generally accepted accounting practice including financial reporting standards issued by the Accounting Standards Board;
 - 2.3 the accounts disclosure requirements of paragraph 43 of Chapter 12 of the Listing Rules issued by the Financial Services Authority (formerly the London Stock Exchange);
 - 2.4 the accounting and disclosure requirements given in 'The Scottish Public Finance Manual' as amended or augmented from time to time; and
 - 2.5 the accounting and disclosure requirements contained in other guidance and directions issued by the Scottish Ministers from time to time in respect of Accounts, which are required to give a true and fair view.
3. The foreword to the Report and Accounts shall contain, insofar as it is appropriate a statement confirming compliance by Scottish Water with any Directions, requirements and guidance issued by the Scottish Ministers insofar as such matters relate to the functions of Scottish Water.
4. The income and expenditure account shall be prepared for the financial year ending 31 March 2009 in accordance with profit and loss account format 1 set out in Schedule 4, Companies Act 1985 and for subsequent financial years in accordance with profit and loss account format 1 set out in Schedule 1 of The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. The balance sheet for the financial year ending 31 March 2009 shall be prepared in accordance with balance sheet format 1 set out in Schedule 4, Companies Act 1985 and for subsequent financial years in accordance with balance sheet account format 1 set out in Schedule 1 of The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.
5. The balance sheet shall include indebtedness to the Scottish Ministers under the heading 'capital and reserves'. The notes thereto shall show separately any amounts falling due for payment within 12 months of the date of the balance sheet.
6. The Report and Accounts shall be audited and laid before the Parliament not later than 6 months after the end of the financial year.

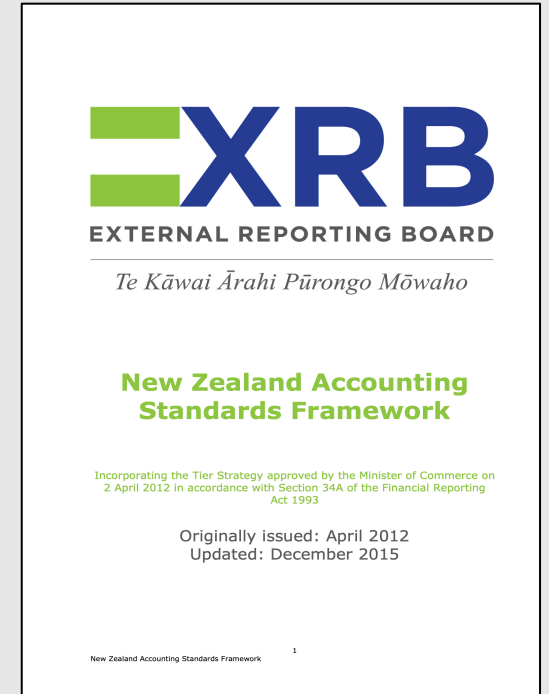
Operational Recommendations (cont.)

11. Align with climate change policy:

Require a Water services entity to be a climate reporting entity.

Climate statements must then to be prepared, as per XRB climate reporting disclosures.

Note: Currently a water services entity are not covered under the Financial Reporting Act 2013 and is therefore not required to prepare a climate report.



entity includes—

- (a) a company, an overseas company, or any other body corporate;
- (b) a corporation sole;
- (c) a trust, a partnership, or an association of persons, whether incorporated or not;
- (d) a scheme or fund;
- (e) a retirement village (within the meaning of the Retirement Villages Act 2003);
- (f) a society or a branch of a society registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982;
- (g) the Crown, a department, or an office of Parliament (within the meaning of those terms in section 2(1) of the Public Finance Act 1989) or an organisation named or described in Schedule 4 of that Act;
- (h) a Crown entity (within the meaning of section 7 of the Crown Entities Act 2004);
- (i) a local authority (within the meaning of section 5(1) of the Local Government Act 2002)

climate-related disclosure framework has the meaning set out in section 9AA

climate reporting entity has the same meaning as in section 461O of the Financial Markets Conduct Act 2013

climate standard means a climate standard issued by the Board under section 12; and includes an amendment to a climate standard that is issued by the Board

climate statements, in relation to a reporting entity and a balance date, means the climate-related disclosures for the entity as at the balance date, or in relation to the accounting period ending at the balance date, that are required to be prepared in respect of the entity by an applicable climate standard

45 Meaning of large

- (1) For the purposes of an enactment that refers to this section, an entity (other than an overseas company or a subsidiary of an overseas company) is **large** in respect of an accounting period if at least 1 of the following paragraphs applies:
 - (a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed \$66 million;
 - (b) in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds \$33 million.

9AA Meaning of climate-related disclosure framework

In this Act, climate statements, group climate statements, a report, or other information complies with the **climate-related disclosure framework** only if the statements, report, or other information complies with—

- (a) applicable climate standards; and
- (b) in relation to matters for which no provision is made in applicable climate standards, an authoritative notice.

Operational Recommendations (cont.)

12. Align with climate change policy:

- Add water services entity to list of 'reporting organisations' under the Climate Change Response Act 2002, s 5ZW (8).
- Require a net zero-carbon entity by 2040 (this is an option; Scottish Water is committed to 2040 and it may have come through the Minister).

Note: Currently a water services entity is not covered under the Climate Change Response Act 2002, which means that the Minister or Commission is not able to request information on climate change adaptation.

5ZW Minister or Commission may request certain organisations to provide information on climate change adaptation

- (1) The Minister or the Commission may, in writing, request that a reporting organisation provide all or any of the following information:
 - (a) a description of the organisation's governance in relation to the risks of, and opportunities arising from, climate change;
 - (b) a description of the actual and potential effects of the risks and opportunities on the organisation's business, strategy, and financial planning;
 - (c) a description of the processes that the organisation uses to identify, assess, and manage the risks;
 - (d) a description of the metrics and targets used to assess and manage the risks and opportunities, including, if relevant, time frames and progress;
 - (e) any matters specified in regulations.
- (2) The reporting organisation must comply with a request made under subsection (1).
- (3) The Minister must, as soon as practicable, provide the Commission with a copy of any information received in response to a request made by the Minister.
- (4) The Commission must, as soon as practicable, provide the Minister with a copy of any information received in response to a request made by the Commission.
- (5) The Minister and the Commission must not publicly disclose any information received in response to a request, unless disclosure of the information is necessary to enable the Minister or the Commission to perform a function or duty imposed by this Part.
- (6) Subsection (5) does not apply in respect of information that is already in the public domain.
- (7) Before publicly disclosing any information received in response to a request, the Minister or Commission must consult with the person to whom the information relates.
- (8) For the purposes of this section and [section 5ZX](#), the following are **reporting organisations**:
 - (a) the public service, as defined in [section 10](#) of the Public Service Act 2020;
 - (b) local authorities, as defined in [section 5\(1\)](#) of the Local Government Act 2002;
 - (c) council-controlled organisations, as defined in [section 6\(1\)](#) of the Local Government Act 2002;
 - (d) Crown entities, as defined in [section 7\(1\)](#) of the Crown Entities Act 2004, but excluding school boards;
 - (e) companies listed in [Schedule 4A](#) of the Public Finance Act 1989;
 - (f) organisations listed in [Schedule 1](#) of the State-Owned Enterprises Act 1986;
 - (g) lifeline utilities listed in [Schedule 1](#) of the Civil Defence Emergency Management Act 2002;
 - (h) the New Zealand Police;
 - (i) the New Zealand Defence Force.

Operational Recommendations (cont.)

Subpart 7—Borrowing

168 Borrowing in foreign currency

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

13: Remove ability to borrow in overseas currency:

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

Raises questions over who is going to fund this model (Govt or overseas investors). Suggest limit borrowings or require debt above a threshold to be signed off by Minister. See Scotland's level of financial controls. Note: Any loans, under this proposed model, will not appear on the government's books but may make us vulnerable to loss of control over water assets in the future.

DIRECTION BY THE SCOTTISH MINISTERS IN ACCORDANCE WITH SECTION 45(2) OF THE WATER INDUSTRY (SCOTLAND) ACT 2002

Under the Scottish Water Governance Directions 2009, which are available on the Scottish Government website, Scottish Water is required to disclose details of certain types of expenditure which exceed given thresholds and which are not disclosed elsewhere in the Annual Report and Accounts. The required information is presented in the following table:

| Project expenditure | Threshold | Project | Cost |
|---|-------------|--|---|
| Capital expenditure on major works including improvements to existing assets | £10 million | Ayrshire strategic resilience Invercannie WTW Improvements Bonnycraig WTW Improvements | £31,100,000 £19,100,000 £15,800,000 |
| Purchase of individual capital items, including land, with a life of more than one year | £1 million | None | – |
| Advertising | £1 million | None | – |
| Sponsorship | £10,000 | Scottish Amateur Swimming Association* | £250,000 |
| Gifts | £100 | None | – |

Finance

Our regulated financial performance over the last year has been strong, with revenues recovering as our customers benefited from the easing of constraints associated with the pandemic, coupled with strong cost control. This has enabled us to generate £39 million greater than plan to support further investment. This performance was towards the top end of the range set out in our Delivery Plan for 2021/22 with a regulatory surplus of £336 million after allowing for £215 million of responsive repair and refurbishment costs. This surplus provides the largest element of funding for our capital programme including water quality and environmental improvement projects and replacing or refurbishing ageing assets. The balance of the capital investment programme was financed from new borrowing from the Scottish Government.

ANNUAL REPORT & ACCOUNTS 2021/22
PERFORMANCE AND PROSPECTS

BALANCE SHEETS AS AT 31 MARCH 2022

| | Note | Group | | Company | |
|--------------------------------|------|------------------|-------------------------|------------------|-------------------------|
| | | 2022 £m | 2021 Restated* £m | 2022 £m | 2021 Restated* £m |
| Assets | | | | | |
| Non-current assets | | | | | |
| Property, plant and equipment | 9 | 6,813.1 | 6,525.9 | 6,773.1 | 6,487.2 |
| Intangible assets | 10 | 26.0 | 30.0 | 12.6 | 17.3 |
| Investments | 11 | – | – | 37.6 | 37.6 |
| Deferred tax asset | 16 | 3.6 | 5.8 | – | – |
| | | 6,842.7 | 6,561.7 | 6,823.3 | 6,542.1 |
| Current assets | | | | | |
| Inventories | 12 | 4.2 | 3.9 | 3.8 | 3.5 |
| Trade and other receivables | 13 | 265.1 | 242.5 | 99.9 | 107.6 |
| Current tax asset | | 11.8 | 4.4 | 11.7 | 3.1 |
| Cash and cash equivalents | 14 | 657.1 | 570.4 | 515.9 | 428.7 |
| | | 938.2 | 821.2 | 631.3 | 542.9 |
| Total assets | 3 | 7,780.9 | 7,382.9 | 7,454.6 | 7,085.0 |
| Liabilities | | | | | |
| Current liabilities | | | | | |
| Trade and other payables | 15 | (495.1) | (445.4) | (356.5) | (322.7) |
| Other loans and borrowings | 18 | (26.3) | (24.9) | (24.6) | (23.3) |
| Current tax liabilities | | (2.6) | – | – | – |
| Provisions for liabilities | 17 | (11.9) | (9.0) | (14.4) | (11.6) |
| | | (535.9) | (479.3) | (395.5) | (357.6) |
| Non-current liabilities | | | | | |
| Trade and other payables | 15 | (84.9) | (87.0) | (65.9) | (61.3) |
| Other loans and borrowings | 18 | (201.5) | (228.0) | (208.7) | (233.3) |
| Deferred tax liabilities | 16 | (644.7) | (441.3) | (640.3) | (436.2) |
| Retirement benefit obligations | 23 | (51.9) | (221.9) | (42.9) | (209.1) |
| Provisions for liabilities | 17 | (9.3) | (7.2) | (10.7) | (10.3) |
| | | (992.3) | (985.4) | (968.5) | (950.2) |
| Total liabilities | | (1,528.2) | (1,464.7) | (1,364.0) | (1,307.8) |
| Net assets | | 6,252.7 | 5,918.2 | 6,090.6 | 5,777.2 |
| Equity | | | | | |
| Government loans | 19 | 4,383.6 | 4,148.4 | 4,383.6 | 4,148.4 |
| Retained earnings | 21 | 1,738.2 | 1,641.9 | 1,573.6 | 1,495.4 |
| Cash flow hedge reserve | 27 | (2.5) | (5.5) | – | – |
| Other reserves | | 133.4 | 133.4 | 133.4 | 133.4 |
| | | 6,252.7 | 5,918.2 | 6,090.6 | 5,777.2 |

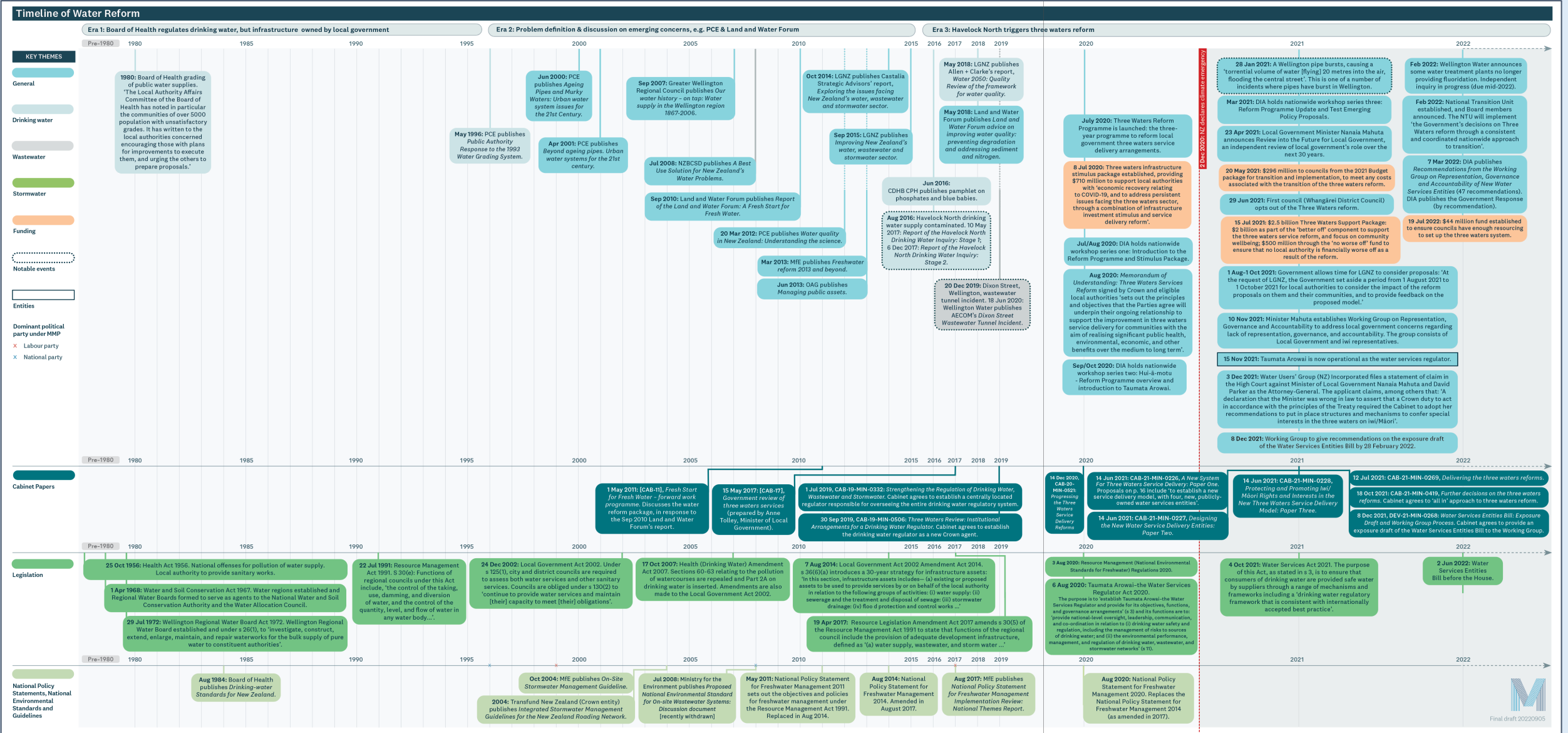
* refer to note 30.

The financial statements on pages 153 to 195 were approved by the Board of Members on 31 May 2022 and signed on its behalf by:

Douglas Millican
Chief Executive

4(A): Hindsight

Timeline of Water Reform McGuinness Institute (Sep 2022)



4(B): Public accountability

2. New Zealand Accounting Standards Framework

2.1 Tier Structure

5. The *New Zealand Accounting Standards Framework* consists of a two-sector, multi-tier structure with different accounting requirements or standards applying to each tier.
6. The tiers, tier criteria and accounting standards are as follows:

For-Profit Entities

- Tier 1: entities that have "public accountability" (as defined) plus for-profit public sector entities that are large (as defined) apply Tier 1 For-profit Accounting Requirements. These are the requirements in the accounting standards (referred to as NZ IFRS) and applicable authoritative notices; and
- Tier 2: entities that do not have "public accountability" (as defined) and for-profit public sector entities that are not large (as defined), and which elect to be in Tier 2, apply Tier 2 For-profit Accounting Requirements. These are the requirements in the accounting standards with reduced disclosures (referred to as NZ IFRS RDR) and applicable authoritative notices.

Public Benefit Entities

- Tier 1: entities that have "public accountability" (as defined) plus entities that are large (as defined) apply Tier 1 PBE Accounting Requirements. These are the requirements in the accounting standards (referred to as PBE Standards) and applicable authoritative notices;
 - Tier 2: entities that do not have "public accountability" (as defined) and entities that are not large (as defined) and which elect to be in Tier 2 apply Tier 2 PBE Accounting Requirements. These are the requirements in the accounting standards with reduced disclosures (referred to as PBE Standards RDR) and applicable authoritative notices;
 - Tier 3: entities that do not have "public accountability" (as defined) and which have expenses ≤\$2 million and which elect to be in Tier 3 – apply PBE Simple Format Reporting - Accrual (PBE SFR-A);
 - Tier 4: entities allowed by law to report in accordance with "non-GAAP" accounting standards and which elect to be in Tier 4 – apply PBE Simple Format Reporting - Cash (PBE SFR-C).
7. The structure that applies under the *New Zealand Accounting Standards Framework* is depicted in Table 1.

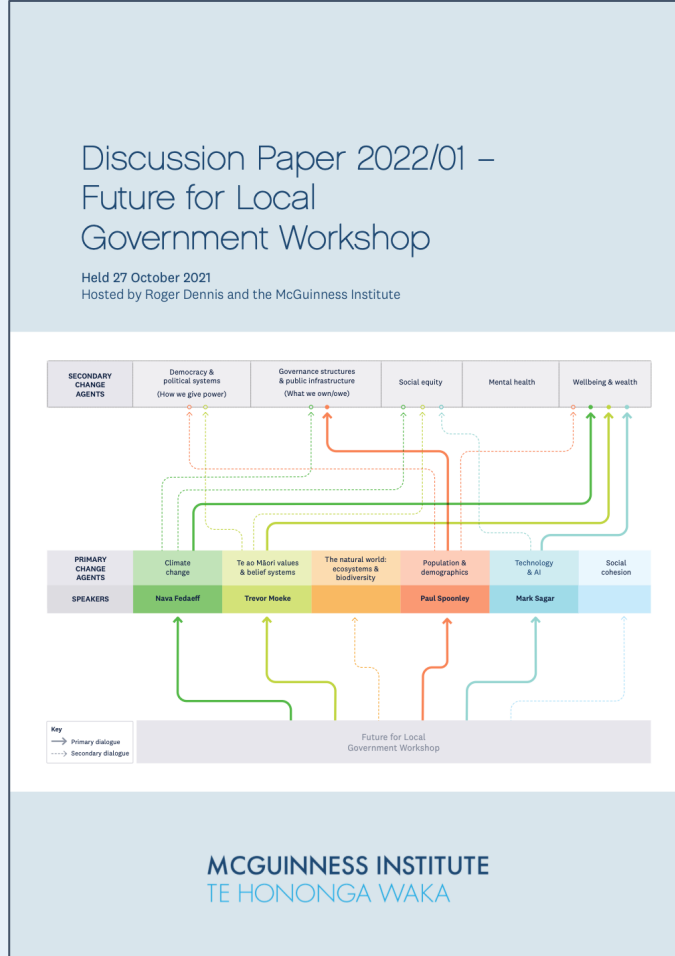
Table 1: New Zealand Accounting Standards Framework

| | For-Profit Entities | | Public Benefit Entities | |
|--------|--|--|---|--|
| | Entities | Accounting Requirements/Standards | Entities | Accounting Requirements/Standards |
| Tier 1 | <ul style="list-style-type: none"> • With "Public Accountability" (as defined) • Large (as defined) for-profit public sector entities | NZ IFRS | <ul style="list-style-type: none"> • With Public Accountability (as defined) • Large (as defined) | PBE Standards |
| Tier 2 | <ul style="list-style-type: none"> • Without "Public Accountability" (as defined) • Non-large for-profit public sector entities <p>which elect to be in Tier 2</p> | NZ IFRS with reduced disclosures (also called NZ IFRS RDR) | <ul style="list-style-type: none"> • Without Public Accountability (as defined) • Non-large (as defined) <p>which elect to be in Tier 2</p> | PBE Standards with reduced disclosures (also called PBE Standards RDR) |
| Tier 3 | | | <ul style="list-style-type: none"> • Without Public Accountability (as defined) with expenses ≤\$2 million <p>which elect to be in Tier 3</p> | PBE Simple Format Reporting - Accrual (also called PBE SFR-A) |

Public Accountability

11. "Public accountability" is the primary criterion that establishes the for-profit tiers, and in particular which entities should be required to report in accordance with Tier 1 requirements. The public accountability distinction has been used by the International Accounting Standards Board (IASB) in developing International Financial Reporting Standards (IFRS) and is generally accepted internationally.

4(C): Foresight



Discussion Paper 2022/01 – Future for Local Government Workshop
McGuinness Institute (Oct 2021)

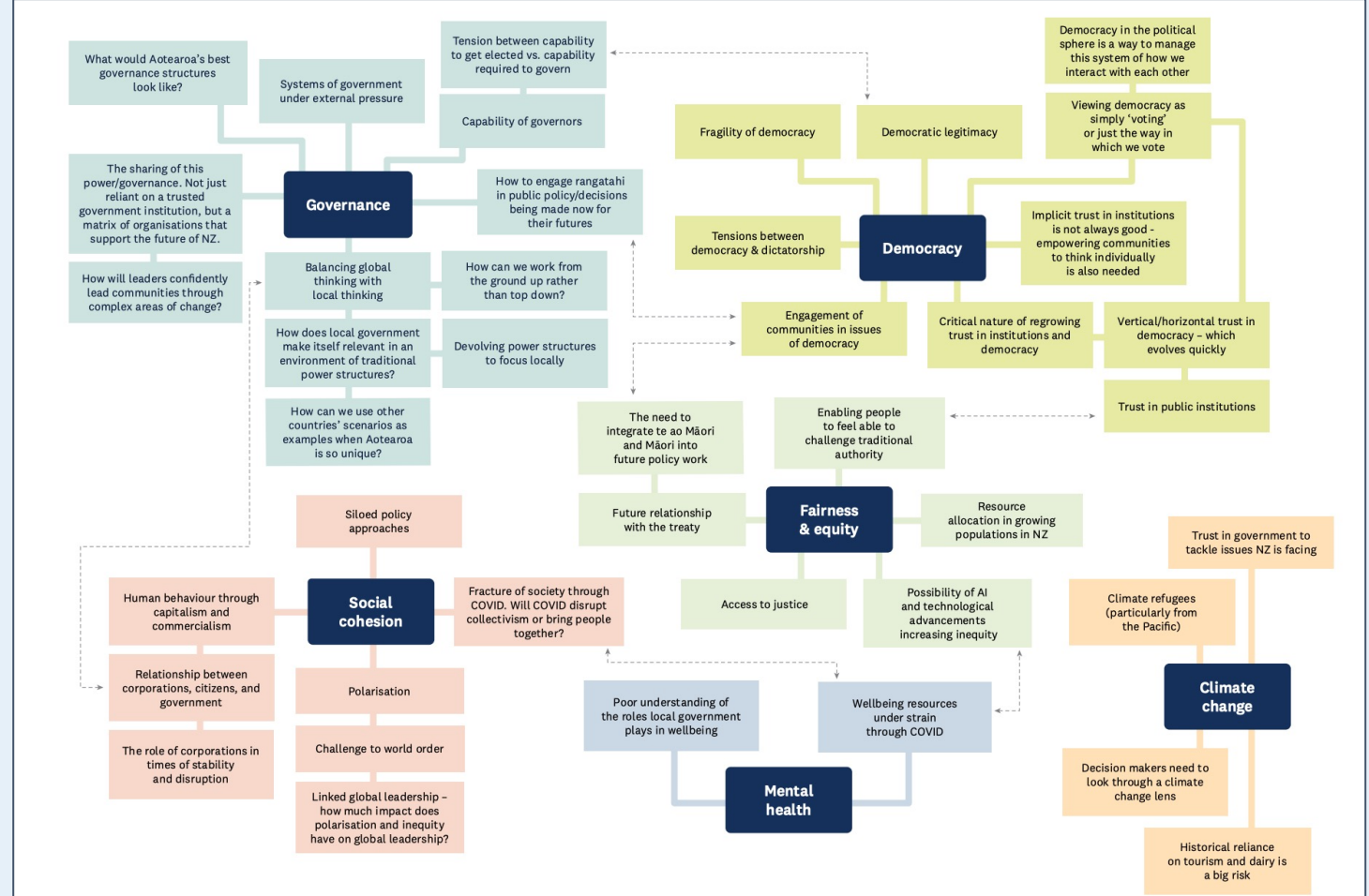
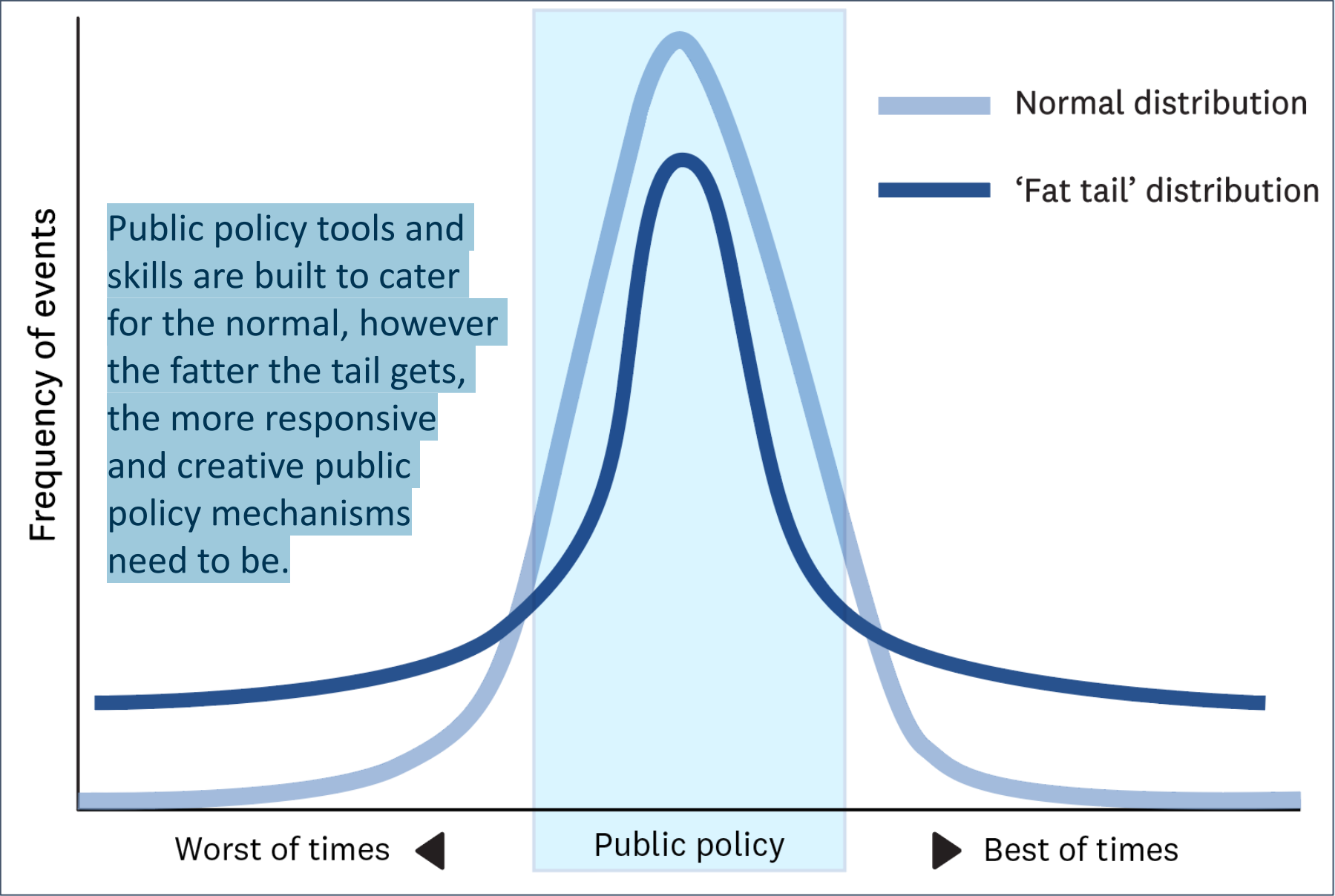


Figure 2: Mapping the issues using sticky notes

4(D): The 'fat tail'



Climate impacts



“The impacts of our changing climate will be the biggest stressor on our water systems this century. This will require high levels of foresight, innovation and flexibility.”

Morgan Williams 2022

5. Climate shocks

New Zealand is especially susceptible to the impacts of extreme weather.

Rain, drought and wildfire risks are expected to increase in many places.

Water sources (ground and storage) for domestic, industry, agriculture/horticulture will be especially hard-hit by droughts.

Two thirds of New Zealanders live within 5 km of the coast. Rising sea levels will make many coastal communities and infrastructure vulnerable to floods, tsunamis and other natural disasters.

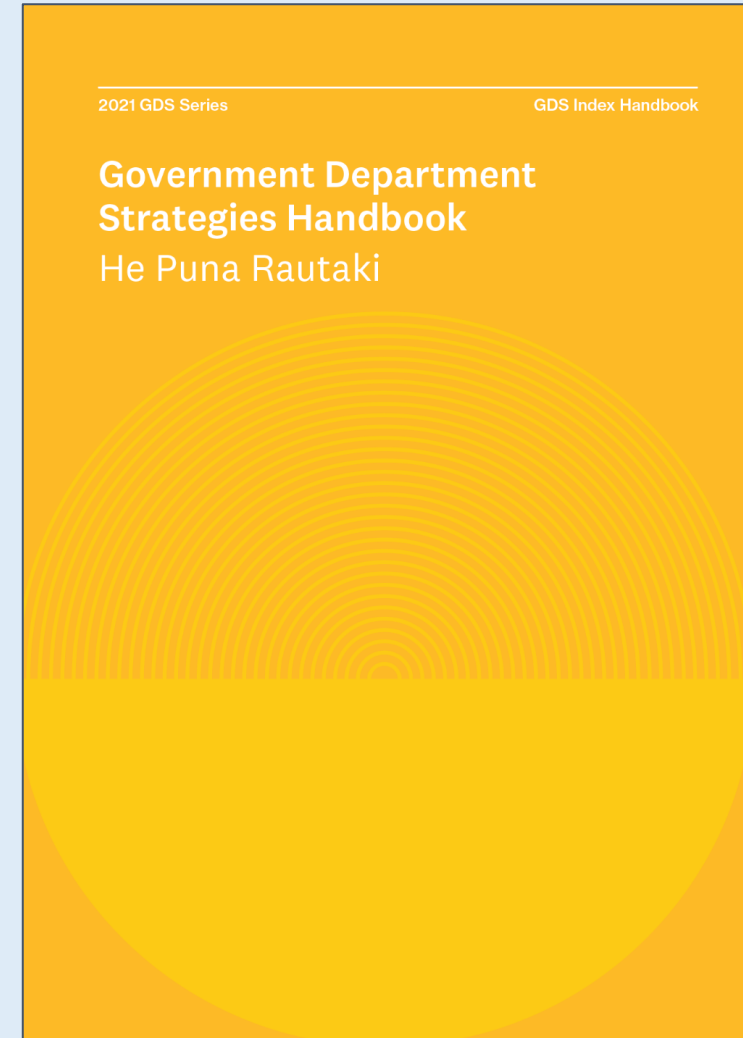
Our drainage networks will need to be upgraded and expanded to manage projected higher storm water flows to avoid flooding.

We need to ensure our systems are well designed to withstand climate shocks.

A nations water strategies and management need to be reflected in the whole of Government

26% of all departmental strategies in operation as at 31 December 2021 (58/221) mention 'water' in the context of:

- water quality,
- water management,
- water infrastructure, or
- water investment.



58 (26% of 221) GDSs in the 2021 *GDS Index* that mention ‘water’

- National Education Strategy 2010–2030
- Mātauranga Whakauka Taiao – Environmental Education for Sustainability (jointly held between DOC and MfE)
- Government Tourism Strategy (jointly held between DOC and MBIE)
- Te Mana o te Taiao: Aotearoa New Zealand Biodiversity Strategy 2020
- Critical Ecosystem Pressures on Freshwater Environments (CRESP) 4 year research strategy
- Three Waters Reform Programme
- National Disaster Resilience Strategy – Rautaki ā-Motu Manawarua Aituā
- National Fuel Plan (jointly held between DPMC and MBIE)
- Cadastre 2034
- Crown Property Strategy
- Regulatory Stewardship Strategy
- Biosecurity Science Strategy for New Zealand – Mahere Rautaki Putaiao Whakamaru
- Aquaculture Strategy and Five-year Action Plan to Support Aquaculture
- Science Strategy – Rautaki Putaiao
- Primary Sector Science Roadmap – Te Ao Tūroa
- Essential Freshwater (jointly held between MPI and MfE)
- Aquaculture Strategy
- Food Safety 2019–2024
- Cadmium and New Zealand Agriculture and Horticulture
- Urban Design Protocol
- National Implementation Plan Under the Stockholm Convention on Persistent Organic Pollutants
- Waste Strategy
- Mātauranga Whakauka Taiao – Environmental Education for Sustainability (jointly held between DOC and MfE)
- Our Science Strategy – Rautaki Pūtaiao
- Essential Freshwater (jointly held between MPI and MfE)
- Shared Interests in Freshwater
- Te hau mārohi ki anamata – Transitioning to a low-emissions and climate-resilient future
- Vision Mātauranga
- Energy Strategy 2011–2021
- He Whare Āhuru He Oranga Tāngata – The Māori Housing Strategy
- Nation of Curious Minds – He Whenua Hihiri I Te Mahara: A national strategic plan for science in society (jointly held between MBIE and MoE)
- National Statement of Science Investment 2015–2025
- Government Tourism Strategy (jointly held between DOC and MBIE)
- Economic Plan for a Productive, Sustainable and Inclusive Economy
- Responsibly Delivering Value: A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand 2019–2029
- National Fuel Plan (jointly held between DPMC and MBIE)
- Agritech Industry Transformation Plan
- Defence White Paper 2016
- Strategic Defence Policy Statement 2018
- Defence Capability Plan 2019
- Nation of Curious Minds – He Whenua Hihiri I Te Mahara: A national strategic plan for science in society (jointly held between MBIE and MoE)
- Opening Doors to China: New Zealand’s 2015 Vision
- Human Rights Strategic Action Plan for International Development Cooperation 2021–2025
- Youth Health: A Guide to Action
- He Korowai Oranga – Māori Health Strategy
- Health Strategy 2016
- Influenza Pandemic Plan: A framework for action
- Whakamaua – Māori Health Action Plan 2020–2025
- Kia Manawanui Aotearoa – Long-term pathway to mental wellbeing
- Smokefree Aotearoa 2025 Action Plan
- Te Tauāki Kaupapa Here a te Kāwanatanga mō te Whakawhanake Whare, Tāone anō hoki – Government Policy Statement on Housing and Urban Development
- MAIHI Ka Ora – The National Māori Housing Strategy 2021–2051 (jointly held between HUD and TPK)
- Māori Housing Investment Strategy 2018–19 to 2020–21
- Framework for Shaping our Transport System
- Transport Evidence Base Strategy
- Government Policy Statement on Land Transport 2021/22–2030/31
- Thirty Year New Zealand Infrastructure Plan
- He Puna Hao Pātiki – 2018 Investment Statement: Investing for Wellbeing

Wastewater treatment plant compliance

Of the 170 wastewater treatment plants analysed in GHD and Boffa Miskell's 2019 report *National stocktake of municipal wastewater treatment plants*:

- 27% of plants (for which monitoring data was provided) achieved full compliance,
- 26% had low-risk non-compliance,
- 22% had moderate non-compliance, and
- **25% had significant non-compliance.**



Wastewater Treatment Plant Map 2020/2021,
Water New Zealand.

The impacts of climate change: A Scottish Water observation:

Scottish Water Annual Report 2019/22 (p. 14): Chief Executive Report, Douglas Millican

The dry summer was interrupted by very heavy rainstorms that deluged drainage systems and impacted local waste water networks. This resulted in an increase in sewer flooding of some customers' properties and spills to the environment. Storm Arwen struck in November with 100 mile-per-hour winds and caused devastation of property and the loss of electricity and communications, which in turn caused problems at our treatment works and interruptions to some customers' water supplies.

I have written before about the age and condition of our assets and how they were never designed to work in the weather conditions that we are now experiencing. Unfortunately, with each significant storm or extended dry period it is becoming more apparent just how much we need to improve our assets to maintain high quality services to customers in future. If we are to replace our ageing assets and keep pace with the impacts of climate change, higher levels of investment in our water and waste water assets are vital.

ANNUAL REPORT & ACCOUNTS 2021/22:
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Water Supply and Weather

Weather conditions during the past 12 months presented a series of challenges to our service and ability to maintain supply to customers. Storms Arwen, Corrie and Malik impacted our services whilst severe winter conditions and sustained dry weather over spring and summer also presented challenges.

CASE STUDY

STORM ARWEN - NOVEMBER 2021

Storm Arwen was "one of the most powerful and damaging winter storms of the last decade", the Met Office said, with widespread impacts in the North East, Dumfries and Galloway and the Borders. Its impact on our infrastructure was significant due to the loss of normal power supply to many sites as well as challenging conditions which caused delays and difficulty accessing areas.

In advance of the storm we put 58 of our water treatment works - which served 1.5 million customers - onto emergency electricity generation. During the storm we deployed another 30 mobile generators to water pumping stations to pump water from tanks in our distribution network to customers. We operated a fleet of road tankers to sustain water supplies and support faster recovery of affected water networks.

Around 17,000 customers were impacted, mostly with interruptions to their water supply. Within 24 hours this had reduced to 5,000 and on the second day to less than 500, with all customers back in supply within 72 hours.

We received 1,800 calls to our call centre over the four days following the storm. We delivered more than 120,000 litres of water to communities that were out of supply for a significant length of time and hand delivered bottled water directly to 500 more remote properties.

We offered compensation to customers whose supplies were interrupted for more than 24 hours and used employees and volunteers to engage and inform customers impacted by the incident.



88 Generators



120 Pallets of bottled water (127,000 litres)



500 door to door deliveries



100 operational staff and 140 volunteers



Over 1000 welfare calls to customers



Welfare checks throughout Aberdeenshire



26 tankers deployed



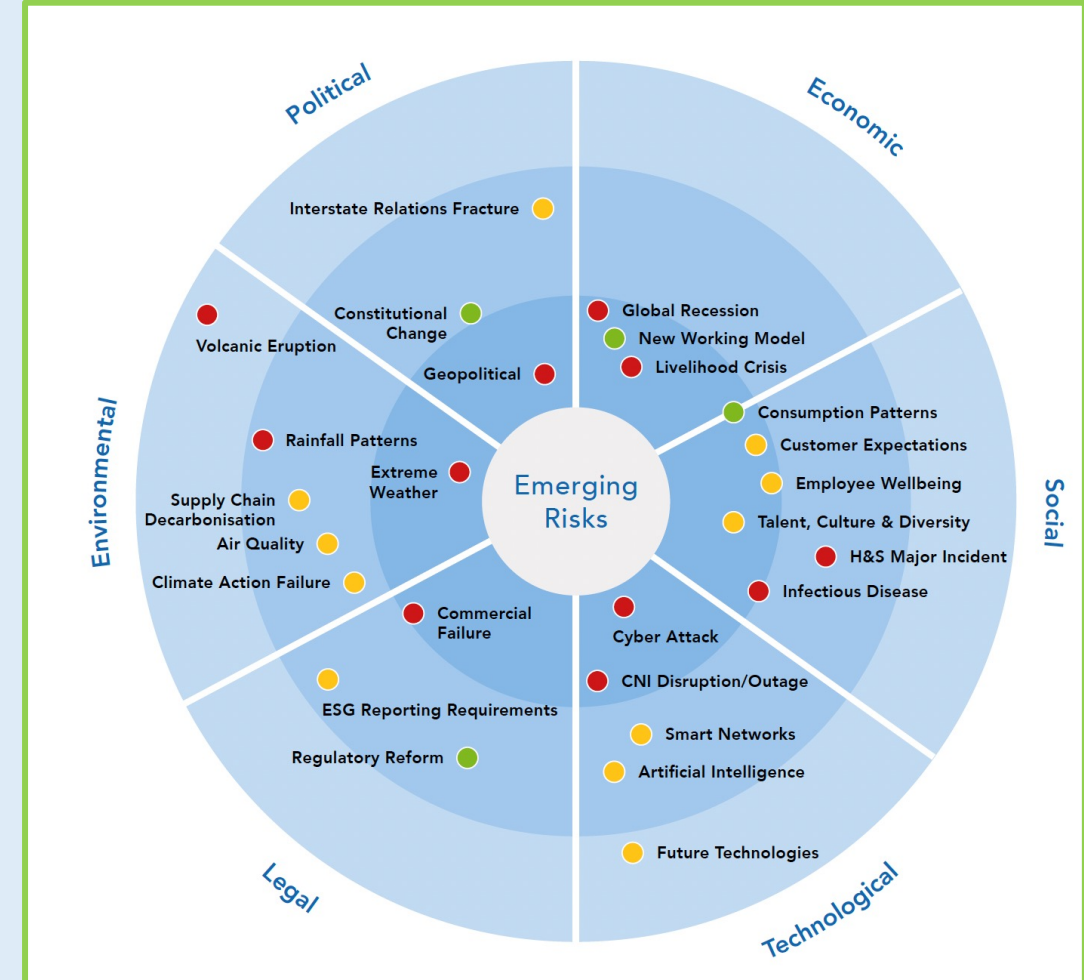
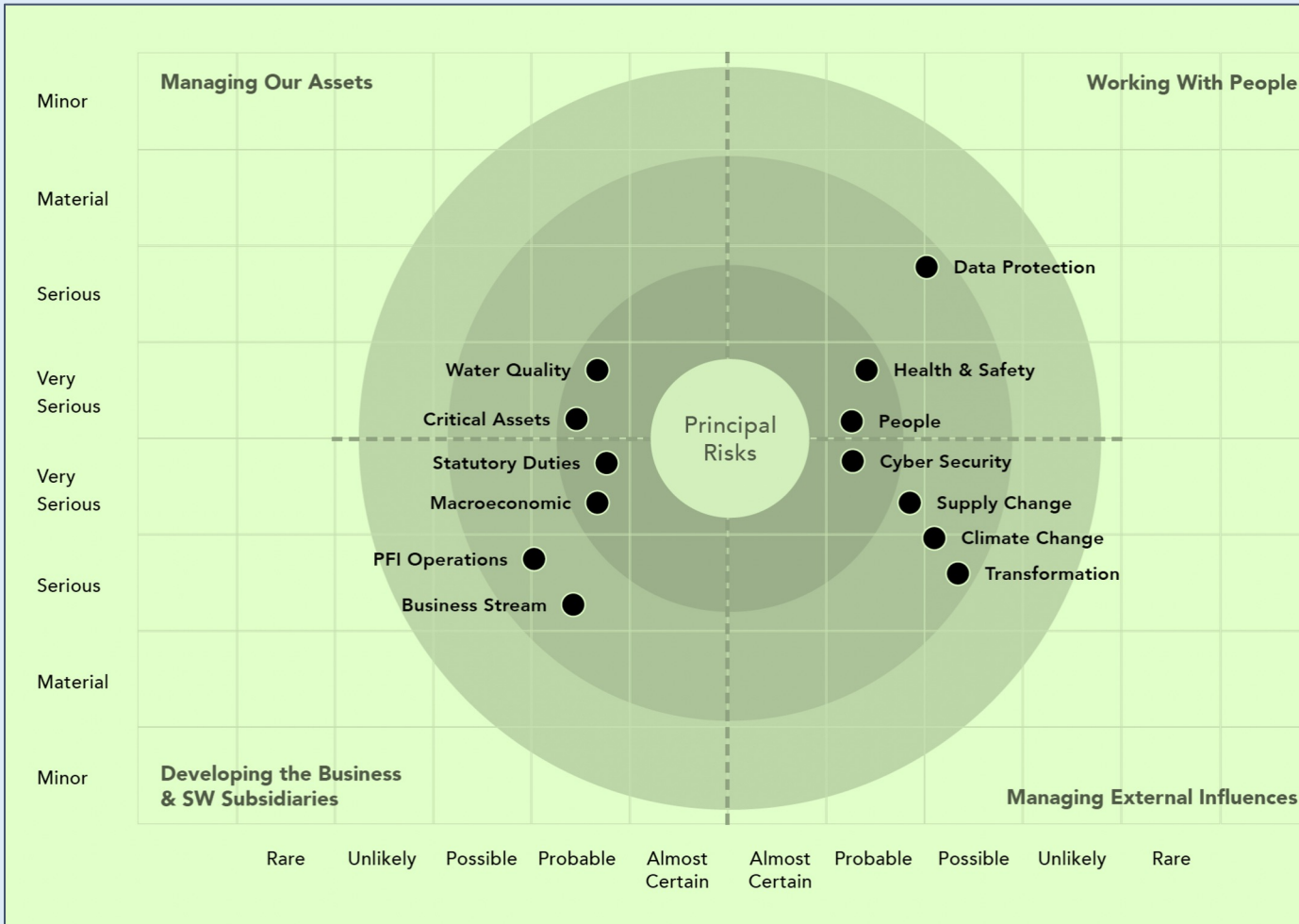
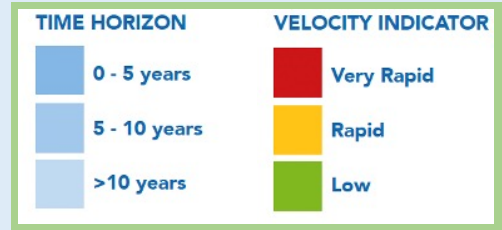
25 community drop offs and 26 welfare hub deliveries

These challenges meant our services had to rapidly adapt and some of our aging infrastructure struggled to cope with the new demands

A Scottish Water observation (cont.)

Scottish Water Annual Report 2019/22 (p. 94-100)

Scottish Water Risk Governance Framework Model



Given the central challenge climate impacts pose for any new water services entities, key strategic needs are:

1. Leadership that prioritises extensive ongoing engagement with the communities they service.
2. Leadership that is 'system focused', recognises the importance of social skills, and seeks out the diverse technical skills and creativity that will be required.
3. An operational model that is effective at emergency responses (the urgent), but also pursues long term transformative work (the important).

Much innovation will be needed on all aspects of water use and management given the current model has its roots in the 19th century.

Monday, 5 September 2022

Thank you
Ngā mihi

Learn more at: www.mcguinnessinstitute.org

For questions, please contact Wendy McGuinness: wmcg@mcguinnessinstitute.org

 **MCGUINNESS INSTITUTE**
TE HONONGA WAKA

Images from McGuinness Institute's written submission on the Water Services Entities Bill

22 July 2022

Figure 2: Types of public assets, by value

Source: OAG (2013), *Managing public assets*, p. 12.

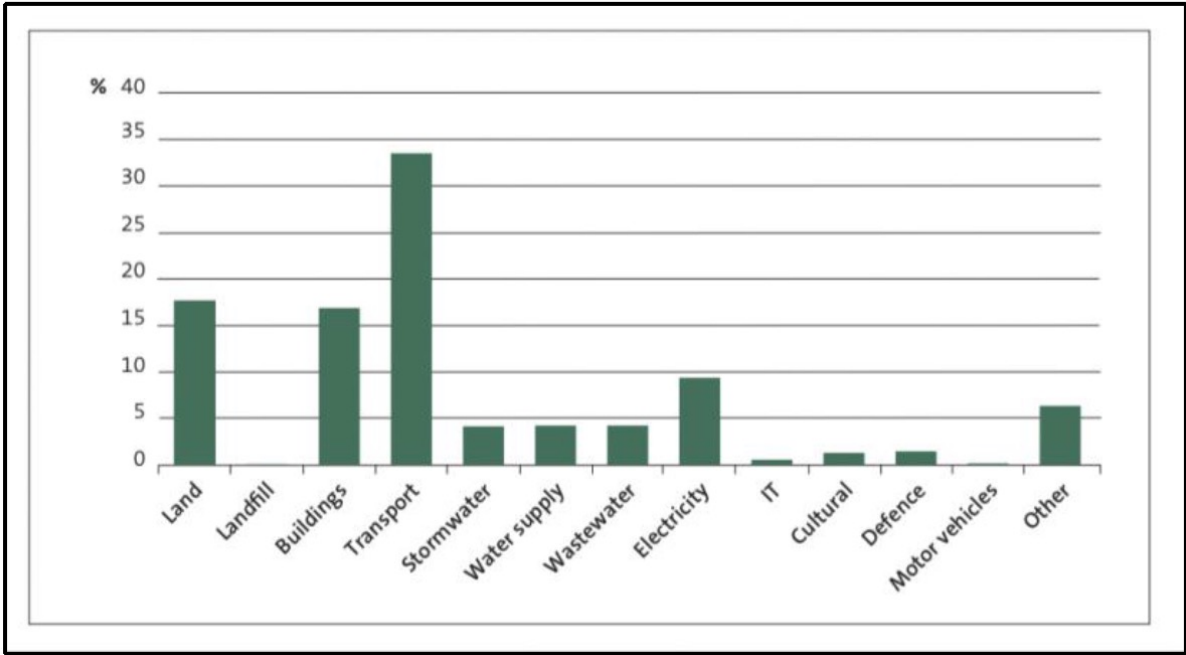
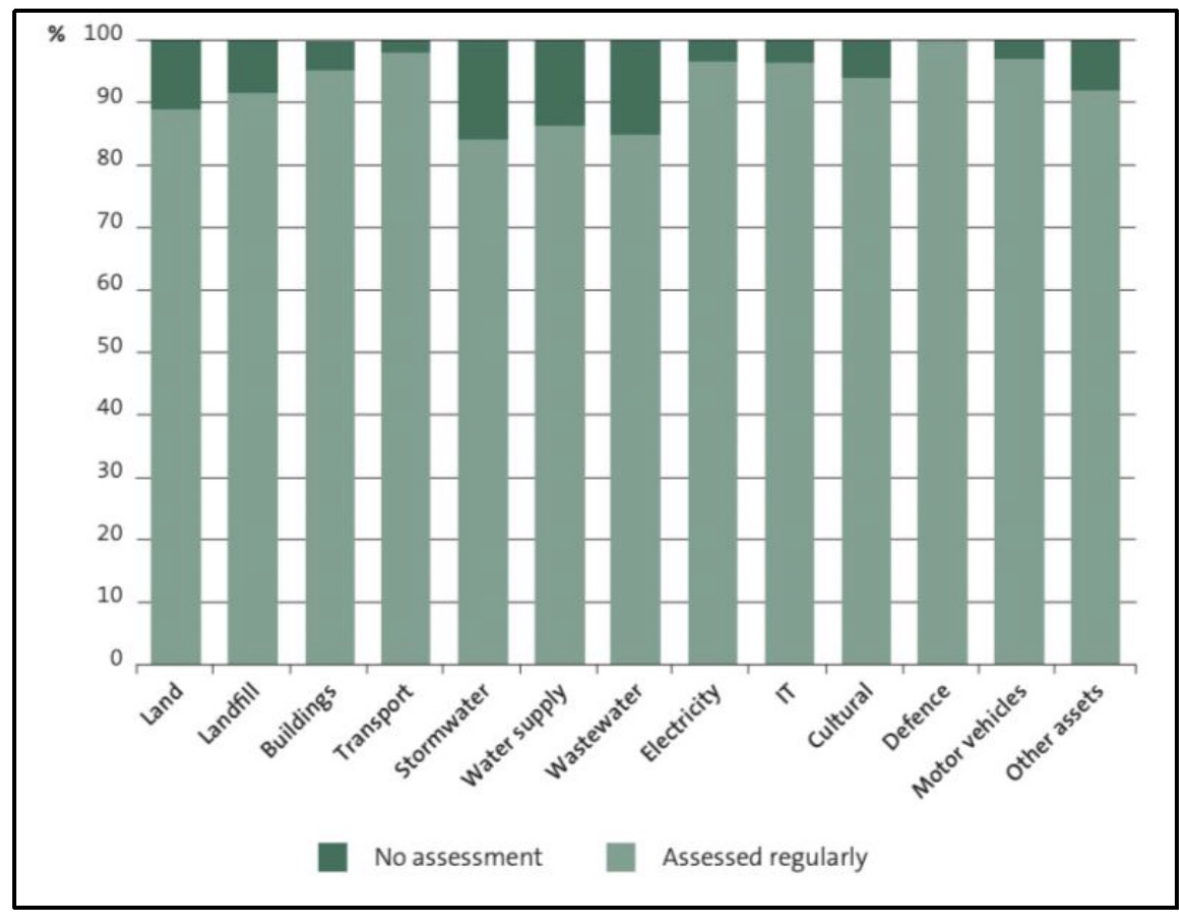


Figure 3: Percentage of assets with regular condition assessments, by type of asset

Source: OAG (2013), *Managing public assets*, p. 19.



Images from McGuinness Institute’s written submission on the Water Services Entities Bill (cont.)

22 July 2022

Figure 4: Goal 6 of the SDGs

Source: www.un.org/fr/sustainable-development-goals



Appendix 2: Three Waters Reform Programme scorecard from the 2021 GDS Index [177 out of 221]

Source: GDS Index Handbook, 2022, p. 53

GDS04-07
Three Waters Reform Programme

2021 Scoring
Rank: 177 out of 221 GDSs
5 out of the 9 GDSs in the Department of Internal Affairs
19 out of the 25 GDSs in the Finance and Government Administration Sector

Legend: — The GDS's score, Average GDS score

Purpose:
[T]o transform the delivery of three waters services.' (p. 1)

Strategy (to achieve the purpose):
The approach is for Government to invite each council to enter into a non-binding MOU and invite stronger iwi/Māori involvement. (p. 1)

| | Strategy score | Out of |
|---|----------------|-----------|
| 1: Opportunities and Threats | | |
| 1.1 Does it identify potential opportunities going forward? | 1.5 | 4 |
| 1.2 Does it identify potential threats going forward? | 2 | 4 |
| 1.3 Does it contain a clear statement describing the problem that the strategy is trying to solve? | 4 | 8 |
| 2: Capabilities and Resources | | |
| 2.1 Does it identify current and future capabilities? | 1 | 4 |
| 2.2 Does it identify what capabilities it does not have and needs to acquire or work around? | 0 | 4 |
| 2.3 Does it identify current and future resources? | 2.5 | 4 |
| 2.4 Does it identify what resources it does not have and needs to acquire or work around? | 1.5 | 4 |
| 3: Vision and Benefits (Purpose) | | |
| 3.1 Does it provide a clear aspirational statement as to what success would look like? | 2 | 8 |
| 3.2 Does it identify who the beneficiaries are and how they will benefit? | 1 | 4 |
| 3.3 Does it describe how success will be measured and over what time frame? | 1.5 | 4 |
| 4: Approach and Focus (Strategy) | | |
| 4.1 Does it break down the purpose into a number of strategic goals/objectives that are tangible, specific and different from each other? | 2 | 4 |
| 4.2 Does it identify a range of strategic options to solve the problem? | 0.5 | 4 |
| 4.3 Does it clearly describe the chosen approach, outlining what it will and will not do? | 1 | 4 |
| 4.4 Does it highlight the risks, costs and benefits of the chosen pathway/approach? | 2.5 | 4 |
| 5: Implementation and Accountability | | |
| 5.1 Does it identify who is responsible for implementing the GDS? | 0 | 4 |
| 5.2 Does it identify who will report on its progress? | 0 | 4 |
| 5.3 Does it explain how progress will be reported and over what time frames? | 0 | 4 |
| 5.4 Does it discuss whether the GDS will undergo a review while it is active or once it is completed? | 0 | 4 |
| 6: Alignment and Authority | | |
| 6.1 Does it discuss predecessors to the strategy and identify any lessons learnt from these? | 0.5 | 4 |
| 6.2 Does it align with its department's SOI? | 3 | 6 |
| 6.3 Does it align with its department's annual report? | 6 | 6 |
| Total | 32.5 | 96 |

Key data
Publication date: July 2020
Duration: 2020-2023
Number of pages: 1
Signed by: Not signed
This GDS replaces: Not applicable
Jointly held with: Not applicable
Transferred from: Not applicable
Strategy map: Not found
Legislation: Not applicable

O-4: Department of Internal Affairs—Te Tari Taiwhenua 53

Additional slides

Added after the Institute's presentation
to the Select Committee (5 Sep 2022)

Given the model is novel (and therefore an experiment) – what is the impact if it fails, what is our Plan B?

A: What are the costs, risks and benefits?

We believe the risks of using a new unproven model to manage such a significant share (about 12%) of our public assets are not prudent management. Experience teaches us to test new models before applying them to big gnarly problems that matter.

What we know

- Scottish Water used a tested model – the Crown entity model – and it worked. Tas Water is owned by local government and the Crown (see industry model in slide 46). Prudent policy would be to adopt a Crown entity approach (very safe) or a national water services council (as part of local government).
- Scottish Water and Tas Water went from four entities to one entity within 5 years because of the benefits of scale. Prudent policy would adopt a one entity approach.
- Scottish Water and Tas Water did not try and cater for all three waters. Prudent policy would be to start with one or two types of water.
- The climate emergency requires a risk-adverse approach. Prudent policy would take compound climate events into account.

Risks should be assessed in terms of:

- Probability/likelihood of success
- Magnitude/impact if the model fails
- Timing/reducing your vulnerability to the risk – can the risk be removed or easily reversed?

B: What happens if the new model fails – what is Plan B?

If this new experimental model fails, the real test is whether the Government could legitimately (i) revert to the status quo (the council-owned and -operated model) or (ii) try another model (e.g. the Crown entity model).

In our view the answer is dependent on whether the proposed new entity sits within the public sector or the private sector. Interestingly, no public sector vs private sector test could be found in our legislation.

Although it is proposed that the new entities will be treated as ‘public entities’ for auditing purposes under Schedule 1 Classes of public entities of the Public Audit Act 2001 (see s 219 of the Bill), that does not necessarily, in our view, mean these new ‘public entities’ automatically become part of the public sector.

As an extreme example, let’s suggest the government of the day decides to make the McGuinness Institute a ‘public entity’ under Schedule 1 of the Public Audit Act 2001. While the Auditor-General would audit the Institute and could inquire into the use of our resources (s 18), we believe auditing by the Auditor-General alone is not a strong enough requirement to make an entity part of the public sector.

We consider the public sector vs private sector test is more about who funds, who owns and who controls the entity, rather than who audits it.

B: Plan B? cont.

Public Audit Act 2001, s 220 and s 222

Amendment to Public Audit Act 2001

219 Principal Act

Section 220 amends the Public Audit Act 2001.

220 Schedule 1 amended

In Schedule 1, insert in its appropriate alphabetical order:

Water services entities established under **section 10** of the Water Services Entities Act **2022**

Amendment to Public Records Act 2005

221 Principal Act

Section 222 amends the Public Records Act 2005.

222 Section 4 amended (Interpretation)

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

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

Public Records Act 2005, Interpretation

local authority—

- (a) has the same meaning as in [section 5\(1\)](#) of the Local Government Act 2002; and
- (b) includes the following organisations defined in [section 5\(1\)](#) of that Act:
 - (i) a council-controlled organisation;
 - (ii) a council-controlled trading organisation;
 - (iii) a local government organisation

Note: Section 222 aligns the new water services entity with local authorities – this may be an error.

B: Plan B? cont.

In our view the Bill creates an oxymoron. We argue that an entity whose assets and debt (borrowings) are not required under law to appear on the balance sheet of Government cannot at the same time be part of the public sector (e.g. see s 15, the entity is not part of the Crown or local government).

Further, we believe the proposed new model creates entities that share more characteristics with private-sector entities than public-sector entities.

Water Services Entities Bill

15 Status of water services entities

Body corporate and separate legal entity

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

Co-owned in shares by territorial authority owners

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

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

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

Compare: 2004 No 115 s 15

B: Plan B? cont.

PSC: Glossary — System architecture and design

Source: www.publicservice.govt.nz/guidance/glossary/system-design-and-architecture

Public sector

A broad term that refers collectively to central and local government.

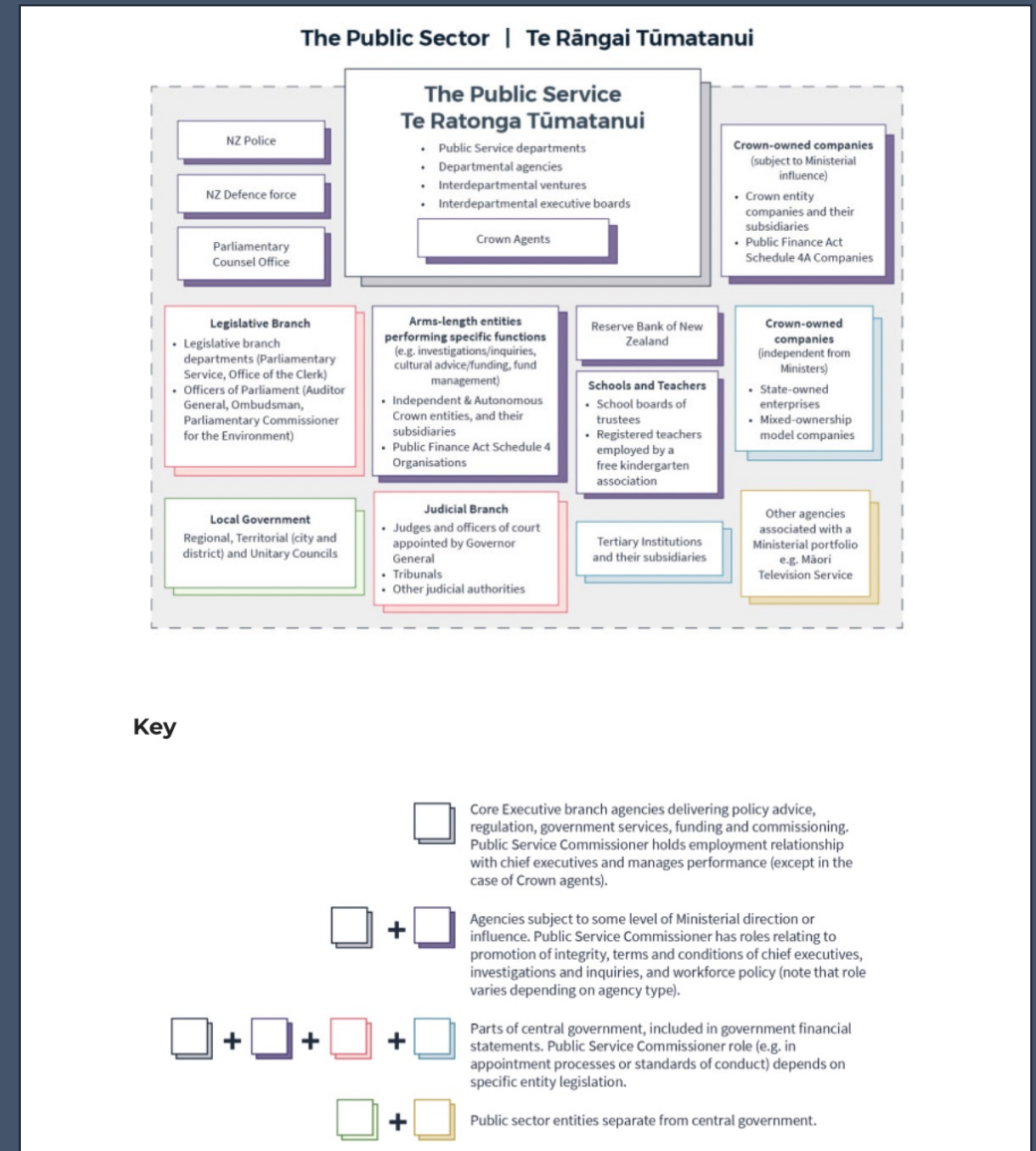
Are these proposed new entities creating a new category?
For example, is the Government adding a new fifth item to the key (at right) – something like: *Public sector entities separate from central and local government?*

If New Zealand's water assets are not going to be owned by government, it is hard to understand how they can be taken back by government if the new model fails.

The risk is that if the new model fails, government will no longer be able to get the assets back due to the rule of law.

PSC illustration of the public sector

Source: <https://www.publicservice.govt.nz/system/central-government-organisations>



B: Plan B? cont.

Plan B thinking could require three tweaks:

1. Existing Bill

Add new (a) to top of s 15 (1) of the Water Services Entities Bill

- (1) A water services entity –
(a) is a public sector entity ...

2. Add to upcoming Water Bill (due mid-Nov) (something similar to an earlier Plan B that sits in the Local Government Act 2002)

- (1) A water services entity –
- a) Cannot divest ownership or an interest in a water service asset other than to another public sector entity
 - b) In cases where a water service asset was transferred under this legislation from a local government organisation to a water services entity, and is either not used or found to be in excess of requirements within 10 years of enactment of this legislation, it must be offered back to that local government organisation at the original transfer cost/price.

Water Services Entities Bill

15 Status of water services entities

Body corporate and separate legal entity

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

Co-owned in shares by territorial authority owners

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

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

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

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

Compare: 2004 No 115 s 15

Local Government Act 2002

Subpart 2—Obligations and restrictions relating to provision of water services

130 Obligation to maintain water services

- (1) This subpart applies to a local government organisation that provides water services to communities within its district or region—
- (a) at the commencement of this section;
 - (b) at any time after the commencement of this section.
- (2) A local government organisation to which this section applies must continue to provide water services and maintain its capacity to meet its obligations under this subpart.
- (3) In order to fulfil the obligations under this subpart, a local government organisation must—
- (a) not use assets of its water services as security for any purpose;
 - (b) not divest its ownership or other interest in a water service except to another local government organisation;
 - (c) not lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its region or district, unless, in doing so, it retains its capacity to meet its obligations;
 - (d) not, in relation to a property to which it supplies water,—
 - (i) restrict the water supply unless section 193 applies; or
 - (ii) stop the water supply unless section 25 of the Water Services Act 2021 applies.
- (4) This section—
- (a) does not prevent a local government organisation from transferring a water service to another local government organisation; and
 - (b) does not override sections 131 to 137.

Section 130(3)(d)(ii): amended, on 15 November 2021, by section 209 of the Water Services Act 2021 (2021 No 36).

B: Plan B? cont.

3. Add to Public Service Act 2020

(i) S 10 – add a new (c)

(c) excludes all other types of public sector entities listed in Part 5 of Schedule 2.

(ii) Schedule 2: Public service agencies becomes:

Schedule 2: Public sector entities

Part 5: Public sector entities that are not public service agencies

– water service entities [add list of types]

Public Service Act 2020

Subpart 2—Public service defined, purpose, public service principles, and spirit of service to community

Public service defined

10 Public service defined

In this Act, the **public service**—

- (a) means public service agencies, which are—
 - (i) departments;
 - (ii) departmental agencies;
 - (iii) interdepartmental executive boards;
 - (iv) interdepartmental ventures; and
- (b) includes Crown agents for the purposes of this subpart and [subpart 4](#) of this Part.

Compare: 1988 No 20 s 27

C: How can we manage/remove the risk from borrowing?

A range of options exist, including:

- (i) Allow borrowing from Govt or a type of Govt bank only,
- (ii) Prevent borrowing in a foreign currency,
- (iii) If borrowing in a foreign currency, require the loan to be fully hedged, or
- (iv) Require borrowing via a type of public finance corporation.

Note: Although Auckland Council is allowed to borrow in foreign currency, all its borrowings are fully hedged.

Local Government (Auckland Council) Act 2009

Borrowing in foreign currency

Heading: added, on 20 September 2011, by [section 4](#) of the Local Government (Auckland Council) Amendment Act 2011 (2011 No 78).

107 Borrowing in foreign currency

Despite [section 113](#) of the Local Government Act 2002, the Auckland Council may borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.

Section 107: added, on 20 September 2011, by [section 4](#) of the Local Government (Auckland Council) Amendment Act 2011 (2011 No 78).

Auckland Council, *Ngā mino moni nō tāwāhi – Foreign currency borrowings (2022)*

Ngā mino moni nō tāwāhi Foreign currency borrowings

Offshore bond investors

The [Local Government Act 2009](#) (amended in September 2011) allows us to borrow in foreign currency.

We have:

- a USD 10 billion Secured Medium Term Notes Programme
- an AUD 3 billion Australian Debt Issuance Programme
- a USD 2 billion Secured Euro Commercial Paper Programme.

This allows multi currency borrowings in offshore markets.

The USD Secured Medium Term Note Programme is listed on the [Singapore Stock Exchange](#).

All foreign currency borrowings are fully hedged to eliminate currency fluctuations.

Offshore investors, like domestic investors, receive the benefit of the charge over our rates and rates revenue as security.

Tasmania Water and Sewerage Corporation Act 2012

See definition of a Tasmania public authority: <https://www.ombudsman.tas.gov.au/complaints/tasmanian-public-authorities>

The Tasmanian Water and Sewerage Corporation Pty Ltd, is trading as TasWater, and we are a **public authority** for the purposes of the Act.

Water and Sewerage Corporation Act 2012

Version current from 10 December 2018 to 31 December 2018 (accessed 6 October 2022 at 7:53)



Water and Sewerage Corporation Act 2012

An Act to provide for the establishment of the Tasmanian Water and Sewerage Corporation, for the transfer to that Corporation of the assets and liabilities of the four corporations established under the [Water and Sewerage Corporations Act 2008](#) , for the repeal of that Act and for related matters

[Royal Assent 11 December 2012]

18. Borrowings

- (1) Except where approved by the Minister, the Corporation or any subsidiary of the Corporation must not borrow from any person other than the Tasmanian Public Finance Corporation.
- (2) The terms and conditions of any borrowing undertaken under [subsection \(1\)](#) are to be in accordance with any guidelines issued by the Treasurer.
- (3) Subject to [subsection \(4\)](#) , the Treasurer may issue guidelines relating to borrowing undertaken under [subsection \(1\)](#) .
- (4) The Treasurer is to consult with councils and the Corporation before issuing any guidelines under [subsection \(3\)](#) .

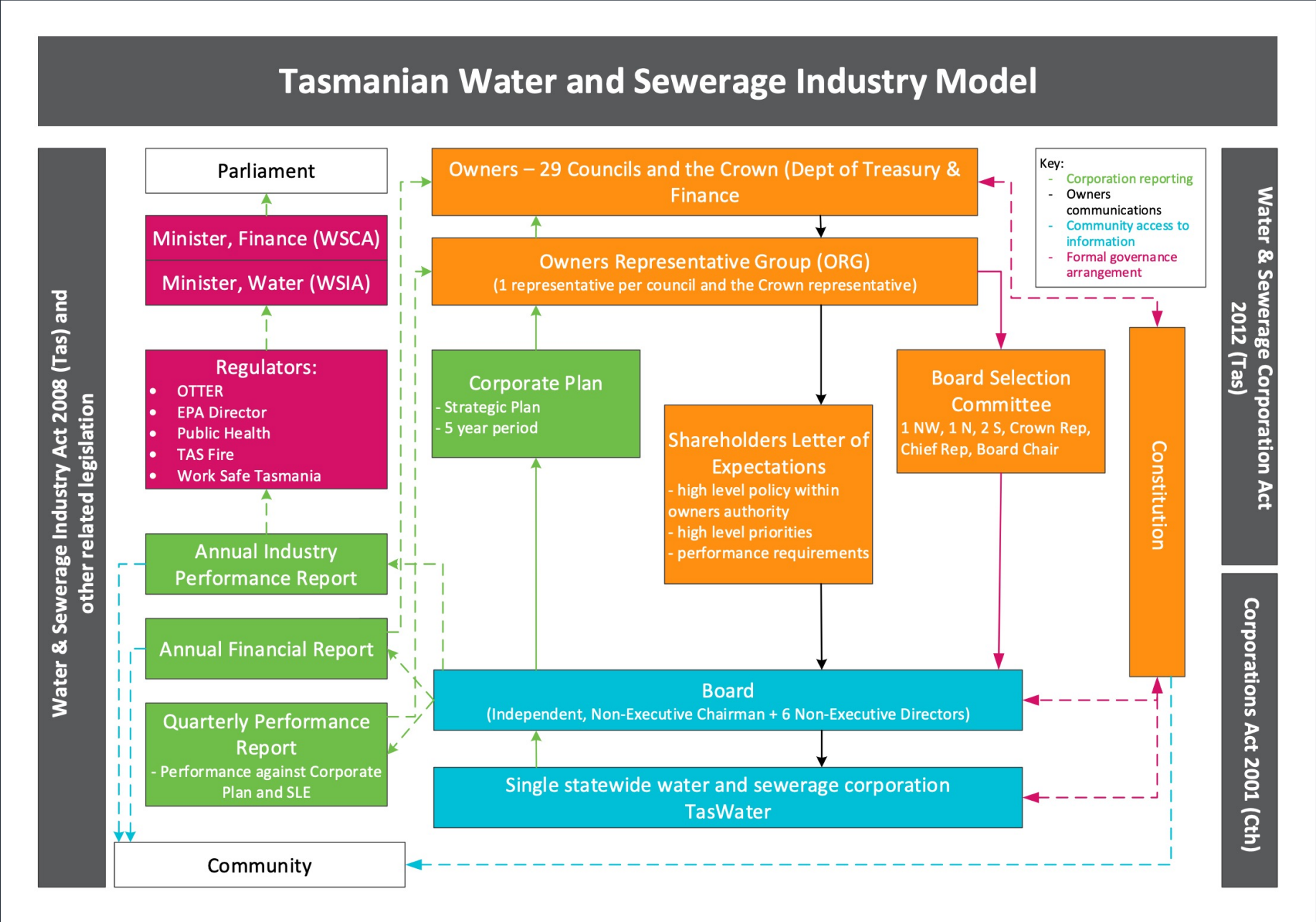
33. No compensation payable

No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

34. Consideration for vesting

- (1) The Minister may, by notice published in the *Gazette*, specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) A notice under [subsection \(1\)](#) is not a statutory rule for the purposes of the [Rules Publication Act 1953](#) .

Current Tasmania water and sewerage industry model



Tasmania previous water and sewage model

Tasmania Water and Sewerage Corporations Act 2008

Water and Sewerage Corporations Act 2008

An Act to provide for the establishment of 3 Regional Corporations and a Common Services Corporation and for related matters

45. No compensation payable

No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

32. Distribution of dividends

- (1) The Board of a Relevant Corporation must determine a dividend policy for that Relevant Corporation.
- (2) The dividend policy of a Relevant Corporation is to –
 - (a) establish the aggregate amount, and the basis of determining the aggregate amount, of dividends payable to members in respect of any period; and
 - (b) in the case of a Regional Corporation, be determined having due regard to the provisions of the shareholders' letter of expectation of that Regional Corporation; and
 - (c) be consistent with good commercial practice; and
 - (d) require adequate provision to be made for expected future capital requirements and operational expenditure before the payment of any dividend to members.
- (3) In setting out the rights attaching to each class of shares for the purposes of [section 12\(2\)\(a\)](#) –
 - (a) the constitution of a Regional Corporation is to provide for the allocation of the aggregate amount of dividends amongst members in the amount and in the manner determined under [section 35](#) ; and
 - (b) the constitution of each other Relevant Corporation (including the Common Services Corporation) must have regard, as far as reasonably practicable, to the intent and operation of [paragraph \(a\)](#) .

Thank you
Ngā mihi

Note: More slides may be added to this slide pack in the future.