

**Reprint
as at 30 May 1997**



**Community Water Supply
Associations Order 1997**

(SR 1997/93)

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 26th day of May 1997

Present:

His Excellency the Governor-General in Council

Pursuant to section 50A(3) of the Land Act 1948, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Land Information New Zealand.

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Order**1 Title and commencement**

- (1) This order may be cited as the Community Water Supply Associations Order 1997.
- (2) This order comes into force on the day after the date of its notification in the *Gazette*.

2 Interpretation

In this order, unless the context otherwise requires, the term **community water supply association** means a community water supply association—

- (a) formed under section 50A of the Land Act 1948 (whether before or on or after the commencement of the Company Law Reform (Transitional Provisions) Act 1994); and
- (b) registered or reregistered under the Companies Act 1993.

3 Form of constitution for community water supply associations

The constitution of every community water supply association must be in the form set out in the Schedule, subject to such modifications as are—

- (a) permitted under sections 50A to 50F of the Land Act 1948; and
- (b) made in accordance with the Companies Act 1993.

4 Revocation and savings

- (1) The Community Water Supply Associations Regulations 1959 (SR 1959/89) are revoked.
- (2) Despite subclause (1), the Community Water Supply Associations Regulations 1959 continue in force and apply to a community water supply association for so long as the Companies Act 1955 continues to apply to the community water supply association.

Schedule

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**Form of constitution for community
water supply associations**

Constitution of the [*name*] Community
Water Supply Association Limited under the
Companies Act 1993

1 Interpretation

- (1) In this constitution, unless the context otherwise requires,—
the Act means the Companies Act 1993
board means the board (as defined in the Act) of the company
community water supply scheme has the same meaning as in section 50A of the Land Act 1948
company means the [*name*] Community Water Supply Association Limited
delivered means delivered by hand, post, or fax; and **delivering** has a corresponding meaning
person includes a firm, a company, and any other body corporate
water area has the same meaning as in section 50A of the Land Act 1948.
- (2) Unless the context otherwise requires, words or expressions used in this constitution have the same meaning as in the Act.
- (3) In this constitution, unless the context otherwise requires,—
 - (a) words indicating the singular number include the plural number, and words indicating the plural number include the singular number:

- (b) words indicating one gender include the other genders:
 - (c) reference to a clause is reference to a clause of this constitution:
 - (d) reference in a clause to a subclause is a reference to a subclause of that clause:
 - (e) reference in a subclause to a subparagraph is a reference to a subparagraph of that subclause.
- (4) In this constitution, the headings of clauses are included for ease of reference and are not to affect the interpretation of this constitution.

2 Restriction on capacity

The capacity of the company to carry on or undertake any business or activity, do any act, or enter into any transaction is restricted to the matters set out in section 50A(4) of the Land Act 1948.

3 Issue of shares

- (1) The board may issue shares in such numbers and classes as the board determines having regard to the value of and benefit to the water area of the community water supply scheme.
- (2) In accordance with section 50B of the Land Act 1948, no share certificates are to be issued in respect of any shares in the company.

4 Company may acquire its own shares

The company may, in accordance with the provisions of the Act, purchase or otherwise acquire shares that it has issued.

5 Power to refuse or delay registration of transfer of shares

- (1) The board may refuse or delay the registration of a transfer of shares in the company for 1 or more of the following reasons:
 - (a) that the transfer would be a breach of the law, or the Land Act 1948, or this constitution:
 - (b) that the transferee does not have full legal capacity to enter into contracts:
 - (c) that the form of transfer has not been properly completed:

- (d) that it is not in the interests of the company to register the transfer.
- (2) The board's power in subclause (1) is in addition to the board's power to delay or refuse the registration of a transfer of shares in section 84(5) of the Act.

6 Calls on shares

- (1) Where a share in the company renders its holder liable for calls in respect of any money unpaid on the share, the board may make calls only for expenditure for the purposes set out in section 50B(3) of the Land Act 1948.
- (2) A shareholder is not liable to pay a call unless the shareholder has received not less than 14 days' notice in writing specifying when and where the call is to be paid.
- (3) In making a call, the board may—
 - (a) make the call payable at such time or times and in such amount or amounts as the board decides; and
 - (b) require different shareholders or classes of shareholders to pay different amounts or at different times, or both.
- (4) If a share is held in the name of more than 1 shareholder, each holder of the share is jointly and severally liable to pay a call made in respect of the share.

7 Late payment of calls

- (1) If a call payable in respect of a share is not paid by the date it is due, the person liable to pay the call is also liable to—
 - (a) pay interest on the amount due under the call at the prescribed rate from the day after the date on which the call was due for payment to the day when the call is paid; and
 - (b) reimburse the company for any expenses the company has incurred in seeking to obtain payment of the call.
- (2) The board may waive, completely or in part, the payment of any interest or expenses payable under subclause (1).
- (3) In subclause (1)(a), the term **prescribed rate** has the meaning given to that term by section 87 of the Judicature Act 1908.

8 Management review by shareholders

A resolution relating to the management of the company passed by a meeting of the company's shareholders under section 109 of the Act is binding on the board.

9 Annual meeting of shareholders

- (1) Unless subclause (2) applies, the board must call an annual meeting of the company's shareholders to be held—
 - (a) once in each calendar year; and
 - (b) either,—
 - (i) if the company is an exempt company and all the shareholders of the company agree, not later than 10 months after the balance date of the company; or
 - (ii) if the company is not a company to which subparagraph (i) applies, not later than 6 months after the balance date of the company; and
 - (c) not later than 15 months after the previous annual meeting.
- (2) If the company has not been reregistered under the Act, it does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- (3) The company must hold the meeting on the date on which it is called to be held.
- (4) It is not necessary for the company to hold an annual meeting of shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclauses (2) and (3) of clause 11.

10 Special meeting of shareholders

A special meeting of the company's shareholders entitled to vote on an issue—

- (a) may be called at any time by the board;
- (b) must be called by the board on the written request of shareholders holding shares in the company carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

11 Resolution in lieu of meeting

- (1) A resolution in writing signed by not less than 75% of the company's shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those shareholders.
- (2) A resolution in writing that—
 - (a) relates to a matter that is required by the Act or by this constitution to be decided at a meeting of the shareholders of the company; and
 - (b) is signed by the shareholders specified in subclause (3)—is made in accordance with the Act or this constitution.
- (3) For the purposes of subclause (2)(b), the shareholders are,—
 - (a) in the case of a resolution under section 196(2) of the Act, all the company's shareholders who are entitled to vote on the resolution;
 - (b) in any other case, the shareholders referred to in subclause (1).
- (4) Within 5 working days of a resolution being passed under this clause, the company must send a copy of the resolution to every shareholder of the company who did not sign the resolution or on whose behalf the resolution was not signed.
- (5) A resolution may be signed under subclause (1) or subclause (2) without any prior notice being given to the company's shareholders.

12 Proceedings at meetings of shareholders

The provisions of Schedule 1 of the Act apply to meetings of the company's shareholders.

13 Number of directors

The company must have not less than 1 director and not more than 10 directors.

14 First directors

A person named as a director in the application for the registration of the company holds office as a director from the date of the company's registration under the Act until that person ceases to hold office as a director in accordance with the Act or this constitution.

15 Appointment and removal of directors by notice

- (1) Shareholders who hold a majority of the company's shares may, from time to time by notice in writing signed by those shareholders,—
 - (a) appoint a person to be a director of the company;
 - (b) remove a director of the company from office.
- (2) A notice under subclause (1) must—
 - (a) specify a date when the appointment or removal takes effect; and
 - (b) be delivered to the company's address for service.
- (3) A notice under subclause (1) has no effect if—
 - (a) subclause (2) is not complied with;
 - (b) it specifies a date in respect of the appointment or removal that is earlier than the date on which the notice is delivered to the company's address for service.
- (4) A notice under subclause (1) may comprise the notice and 1 or more copies of the notice signed by different shareholders.

16 Appointment and removal of directors by resolution

- (1) A person may be appointed to be a director of the company by ordinary resolution.
- (2) Shareholders may vote on a single resolution to appoint 2 or more persons as directors of the company only if a separate resolution to the effect that shareholders may vote on that single resolution has first been passed without a vote being cast against it.
- (3) A director of the company may be removed from office by ordinary resolution passed at a meeting of the company's shareholders called for that purpose or for purposes that include the removal of the director.

- (4) The notice of a meeting at which it is proposed to remove a director must state that the purpose or a purpose of the meeting is the removal of the director.

17 Director ceasing to hold office

- (1) The office of director of the company is vacated if the person holding that office—
- (a) resigns in accordance with subclause (2); or
 - (b) is removed from office in accordance with the Act or this constitution; or
 - (c) becomes disqualified from being a director pursuant to section 151 of the Act; or
 - (d) dies; or
 - (e) otherwise vacates office in accordance with this constitution.
- (2) A director of the company may resign office by signing a written notice of resignation and delivering it to the address for service of the company.
- (3) A notice given under subclause (2) is effective when it is received at the address for service of the company or, if a later time is specified in the notice, at that time.

18 Alternate directors

- (1) A director of the company may appoint a person to act as an alternate director in place of the director.
- (2) The appointment of an alternate director must be made by notice in writing delivered to the company's address for service.
- (3) A notice under subclause (2) must include an address to which notices may be sent to the alternate director, but failure to include an address does not make the appointment of the alternate director ineffective.
- (4) An address included in a notice under subclause (3) may be amended or altered by notice in writing delivered to the company's address for service.
- (5) A person appointed as an alternate director may, but need not, be another director of the company.
- (6) If a director of the company is absent or unable to act, an alternate director appointed by the director may act in place of

the director, subject to any limitations specified in the notice appointing the alternate director.

- (7) An alternate director is to be treated as a director for the purposes of the quorum for a meeting of the company's board.
- (8) An alternate director—
 - (a) cannot appoint an alternate director;
 - (b) is not entitled to any remuneration, benefits, payments, loans, or guarantees under section 161 of the Act;
 - (c) is not eligible to be elected or chosen to be chairperson of the board.
- (9) The director who appointed an alternate director may revoke the appointment of the alternate director by notice in writing delivered to the company's address for service.

19 Indemnity and insurance

- (1) The company is authorised to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding—
 - (a) that relates to liability for any act or omission in his or her capacity as a director or employee; and
 - (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- (2) The company is authorised to indemnify a director or employee of the company or a related company in respect of—
 - (a) liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
 - (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,—

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company.
- (3) The company is authorised, with the prior approval of the board, to effect insurance for a director or employee of the company or a related company in respect of—

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
 - (c) costs incurred by that director or employee in defending any criminal proceedings in which he or she is acquitted.
- (4) In this clause,—
- director** includes a former director
- effect insurance** includes pay, whether directly or indirectly, the costs of the insurance
- employee** includes a former employee
- indemnify** includes relieve or excuse from liability, whether before or after the liability arises; and **indemnity** has a corresponding meaning.

20 Management of company

- (1) The business and affairs of the company must be managed by, or under the direction or supervision of, the board of the company.
- (2) The board of the company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.
- (3) Subclauses (1) and (2) are subject to any modifications, exceptions, or limitations contained in the Act, the Land Act 1948, or this constitution.

21 Proceedings of board

- (1) Subject to this constitution, the provisions set out in Schedule 3 of the Act govern the proceedings of the board of the company.
- (2) If a director of the company—
 - (a) is resident overseas; or
 - (b) is, to the knowledge of the company, temporarily absent from New Zealand; and
 - (c) in either case, has appointed an alternate director,—

notice of a meeting of the board must be sent to the address of the alternate director specified in the notice appointing the alternate director under clause 18.

22 Manner of serving notices

- (1) A notice, statement, report, accounts, or other document to be sent to a shareholder in the company who is a natural person or a director may be—
 - (a) delivered to that person; or
 - (b) posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
 - (c) sent by fax to a telephone number used by that person for the transmission of documents by fax.
- (2) For the purposes of subclause (1),—
 - (a) if a document is to be served by delivery, service must be made—
 - (i) by handing the document to the person; or
 - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:
 - (b) a document posted or delivered to a document exchange is deemed to be received 5 working days, or any shorter period as the High Court may determine in a particular case, after it is posted or delivered:
 - (c) a document sent by fax is to be treated as having been received on the working day following the day on which it was sent:
 - (d) in proving service of a document by post or by delivery to a document exchange, it is sufficient to prove that—
 - (i) the document was properly addressed; and
 - (ii) all postal or delivery charges were paid; and
 - (iii) the document was posted or was delivered to the document exchange:
 - (e) in proving service of a document by fax, it is sufficient to prove that the document was properly transmitted by fax machine to the person concerned.
- (3) A document is not to be treated as having been served or sent or delivered to a person if the person proves that, through no fault

on the person's part, the document was not received within the time specified.

23 Land Act Regulations 1949

- (1) The directors have, in respect of the shareholders of the company and the land of the shareholders within the water area, all the powers conferred on the Land Settlement Board by regulations 20 and 21(2) of the Land Act Regulations 1949 as if references in those regulations to that Board were references to the company.
- (2) Every shareholder of the company is bound by and must comply with regulations 20 and 21(2) of the Land Act Regulations 1949 as applied by subclause (1).

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the day after the date of its notification in the *Gazette*, prescribes the form of constitution for community water supply associations registered or reregistered under the Companies Act 1993.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 29 May 1997.

Contents

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Notes**1 General**

This is a reprint of the Community Water Supply Associations Order 1997. The reprint incorporates all the amendments to the order as at 30 May 1997, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
