



## ANALYSIS

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1996, No. 12

**An Act to amend the Local Government Act 1974**

[1 April 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Local Government Amendment Act 1996, and shall be read together with and deemed part of the Local Government Act 1974 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day on which it receives the Royal assent.

**2. Vesting of forestry assets and liabilities in Auckland Regional Services Trust**—(1) Section 707R (2) of the principal Act (as enacted by section 68 of the Local Government Amendment Act 1992) is hereby amended by adding the words “and give effect to the amended provisions (including provisions providing for the vesting in the Trust of any of the specified assets and liabilities)”.

(2) The Auckland Regional Services Trust Vesting Order 1993 (which is published in the *Gazette* of the 1st day of June 1993 at page 1411) is hereby amended, as from its making, by omitting from clause 6 (3) (g) the words “made before 28 February 1994”.

(3) The Auckland Regional Services Trust Vesting Order 1993 (as amended by subsection (2) of this section) is hereby declared to be and to have always been valid.

(4) Notwithstanding any contract or agreement made between the Auckland Regional Council and the Auckland Regional Services Trust pursuant to clause 18 of the Auckland Regional Services Trust Vesting Order 1993 or any provision of the principal Act, the determination made by the Minister, on the 13th day of April 1994, pursuant to clause 6 (3) (f) of that order, in respect of the transfer of forestry assets and liabilities from the Auckland Regional Council to the Auckland Regional Services Trust, and the amendment made to that determination by the Minister on the 16th day of May 1994, are hereby declared to be and to have always been valid and to have taken effect on the 1st day of July 1994.

(5) Any Order in Council made under section 707R (2) of the principal Act to give effect to the determinations referred to in subsection (4) of this section—

- (a) May be made subject to conditions of the kind described in section 707Q (8) (b) of the principal Act; and
- (b) Shall, notwithstanding anything in section 707R (3) of the principal Act, come into force on the 1st day of July 1994.

**3. Water services**—(1) Section 707Z (1) of the principal Act (as inserted by section 12 of the Local Government Amendment Act (No. 2) 1992) is hereby amended by omitting the words “and any other company undertaking the functions and business of the Auckland Regional Council in relation to waterworks, bulk water-supply, sewerage, and the collection, treatment, and disposal of sewage and trade wastes”.

(2) Section 707Z (1) of the principal Act (as so inserted) is hereby further amended by repealing paragraphs (a) to (c), and substituting the following paragraphs:

- “(a) Shall manage its business efficiently with a view to maintaining prices for water and wastewater services at the minimum levels consistent with the effective conduct of that business and the maintenance of the long-term integrity of its assets:
- “(b) May, in accordance with its current statement of corporate intent, fund its business requirements—
  - “(i) By including the cost of its business requirements in its prices and charges for any relevant services; or

“(ii) Notwithstanding paragraph (f) of this subsection, by borrowing or by entering into any financial instrument, financial arrangement, or financial transaction of a debt-raising nature; or

“(iii) By using the money paid to Watercare Services Limited for any issue of shares under subsection (2A) of this section; or

“(iv) By using any or all of the methods described in subparagraphs (i) to (iii) of this paragraph:”.

(3) Section 707ZF (1) (f) (i) of the principal Act (as so inserted) is hereby amended by omitting the word “being”, and substituting the words “powers that could have been”.

(4) Section 707ZF (1) of the principal Act (as so inserted) is hereby further amended by repealing paragraphs (l) to (n), and substituting the following paragraphs:

“(l) Shall, at least 4 months before the end of each financial year, prepare and supply to the Trust and to each customer territorial authority an indicative asset management plan for the next financial year, which asset management plan shall describe the projected condition of its significant assets at the commencement of that year and outline the rationale for and nature, extent, and estimated costs of its proposed activities in respect of—

“(i) The maintenance and repair of existing assets; and

“(ii) The renewal of existing assets; and

“(iii) The upgrading or extension of the performance or capacity of existing assets; and

“(iv) The acquisition or construction of new assets:

“(m) Shall, at least 4 months before the end of each financial year, prepare and supply to the Trust and to each customer territorial authority, after undertaking a comparative assessment of different funding options, an indicative funding plan for the next financial year, which funding plan shall identify for the next financial year the nature and scope of the activities proposed to be undertaken (including, but not limited to, operational requirements, renewals, and significant new projects), and its planned funding requirements and funding sources, showing—

“(i) How the prices and charges proposed in the plan have been calculated:

“(ii) A summary of the results of the comparative assessment of different funding options:

“(iii) An appropriate debt to equity ratio:

“(iv) How any surplus from the previous financial year is proposed to be applied or any deficit from the previous financial year is proposed to be managed:

“(n) Shall, in preparing its draft statement of corporate intent under section 594s of this Act,—

“(i) Consider any written submissions made by customer territorial authorities and the Trust on the asset management plan prepared under paragraph (l) of this subsection or the funding plan prepared under paragraph (m) of this subsection within 40 working days of the supply of that plan; and

“(ii) Include in that draft statement of corporate intent a summary of its proposals in respect of the matters dealt with in the plans referred to in subparagraph (i) of this paragraph:

“(o) Shall deliver to the Trust, the Auckland Regional Council, and each of the territorial authorities within the Auckland Region a copy of its draft statement of corporate intent at the same time as it provides its draft statement of corporate intent to its shareholders under section 594s of this Act:

“(p) Shall—

“(i) Consider any comments on the draft statement of corporate intent that are made to it within 1 month after the delivery of the draft statement of corporate intent under paragraph (o) of this subsection, by any of the Trust, the Auckland Regional Council, and any territorial authorities within the Auckland Region; and

“(ii) Include in the statement of corporate intent completed under section 594u of this Act its decisions in respect of the matters dealt with in the plans referred to in paragraph (n)(i) of this subsection:

“(q) Shall give written notice to all territorial authorities within the Auckland Region of any proposed modifications of its then current statement of corporate intent and consider comments on the proposed modifications made by any of them.”

(5) Section 707Z<sup>F</sup> of the principal Act (as so inserted) is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Subject to subsection (2B) of this section, Watercare Services Limited may at any time invite the customer territorial authorities to subscribe for non-voting shares in Watercare Services Limited in accordance with the following procedure:

“(a) The Trust shall determine all the terms of the share offer, after consultation with the customer territorial authorities; and

“(b) The directors of Watercare Services Limited shall resolve whether to proceed with the share offer on the terms determined by the Trust, and those directors voting in favour of such a resolution shall sign any certificate required in the circumstances by section 47 of the Companies Act 1993, irrespective of whether Watercare Services Limited has, at any relevant time, been reregistered under that Act pursuant to the Companies Reregistration Act 1993; and

“(c) Where an offer to subscribe for non-voting shares is made to a customer territorial authority, that customer territorial authority shall have a period of 40 working days, beginning with the date on which the offer is made, within which to accept or decline the offer, in whole or in part; and

“(d) Where a customer territorial authority accepts the share offer, in whole or in part, Watercare Services Limited shall, on receipt of such payment as is required on allotment by the terms of the offer, issue to that customer territorial authority such shares as that customer territorial authority has accepted.

“(2B) Nothing in subsection (2A) of this section requires or authorises the making of any share offer to any local authority trading enterprise or other company, or authorises the acceptance of any share offer by any local authority trading enterprise or company.

“(2c) Watercare Services Limited shall be deemed to be a local authority for the purposes of Parts I to VI and Part VIII of the Local Government Official Information and Meetings Act 1987.

“(2D) Parts I to VI and Part VIII of the Local Government Official Information and Meetings Act 1987 shall, for the

purposes of subsection (2c) of this section, apply with all necessary modifications and as if—

“(a) Every reference to a local authority were a reference to Watercare Services Limited; and

“(b) Every reference to a member of a local authority were a reference to a director of Watercare Services Limited; and

“(c) Every reference to the principal administrative officer of a local authority were a reference to the chief executive of Watercare Services Limited.”

(6) Section 707zF of the principal Act (as so inserted) is hereby amended by repealing subsection (3).

**4. Functions of Trust**—Section 707zJ (1) (i) of the principal Act (as inserted by section 68 (1) of the Local Government Amendment Act 1992), is hereby amended by omitting the word “territorial”.

**5. Validation of borrowing**—For the avoidance of doubt, all borrowing undertaken, and any financial instrument, financial arrangement, or financial transaction entered into, by Watercare Services Limited after the 12th day of October 1992 and before the commencement of section 3 of this Act is hereby declared to be and to have always been as valid and lawful as it would have been had section 3 of this Act been in force when that borrowing was undertaken or that financial instrument, financial arrangement, or financial transaction was entered into.

**6. Provisions relating to Auckland Regional Services Trust**—Schedule 17A to the principal Act (as inserted by section 76 (1) of the Local Government Amendment Act 1992) is hereby amended by repealing subclause (2) of clause 7, and substituting the following subclause:

“(2) No person may hold any office under this clause while also holding office in a local authority.”