

GUIDANCE MATERIAL

DEED RELATING TO INDEMNITY, ACCESS AND INSURANCE TEMPLATE (ALL SERVICE DELIVERY MODELS EXTERNAL TO COUNCIL)

BACKGROUND	<p>The Local Government (Water Services) Act 2025 enables councils to deliver water services through a new water organisation established as a company ("Water Organisation"). While the ownership and governance structure for the Water Organisation may vary between different models used by council(s), the Water Organisation will require directors appointed to its board. Such board appointments must be competency-based and have the appropriate mix of skills, knowledge, and experience. A person cannot be appointed as director if that person is an elected member or employee of a council that is a shareholder in the Water Organisation, an employee of any other shareholder in the Water Organisation (e.g. a consumer trust), or an employee of the Water Organisation.¹</p>
WHO IS THIS TEMPLATE FOR?	<p>The Water Organisation should enter into the Deed of Indemnity, Access and Insurance with each of its directors and officers as part of the appointment process.</p>
PURPOSE OF THIS DOCUMENT / TEMPLATE	<p>This Deed of Indemnity, Access and Insurance provides for the Water Organisation to indemnify and insure its directors and officers from personal liability that may arise in their capacity as directors and officers of the Water Organisation. It documents the terms agreed between the Water Organisation and its independent director or officer (non-employee of the Water Organisation) in relation to the company's indemnity, access arrangements and insurance of the individual, including in accordance with section 162 of the Companies Act 1993 ("Companies Act").</p> <p>This Deed allows the Water Organisation to:</p> <ul style="list-style-type: none"> • define the scope of the indemnity offered to directors (or officers); • define the reimbursement obligations to an indemnified director (or officer); • establish the indemnified person's obligations in relation to the indemnity; • provide that the Water Organisation is able to act on the indemnified director's behalf including in respect of: <ul style="list-style-type: none"> ○ assuming the defence on the indemnified director's behalf; ○ subrogation of rights; and ○ establish the terms of insurance for indemnified persons.
DETAILS ON THE INDEMNITY	<p><i>What does the indemnity cover?</i></p> <p>This Deed of Indemnity, Access and Insurance provides for the Water Organisation to indemnify a director (or officer) from liability for any actions or omissions by the director (or officer) while acting as its director or officer. The director or officer is required to act in good faith while performing the duties of the Water Organisation's director and certain liabilities are excluded from cover. The</p>

¹ Section 48 of the Local Government (Water Services) Act 2025.

indemnity also covers permitted costs that the director incurs defending or settling claims related to such liability.

When does the indemnity not apply?

The Water Organisation may only indemnify a director to the extent permitted by section 162 of the Companies Act and the Water Organisation's constitution.

The Water Organisation's constitution must also expressly permit the Water Organisation to indemnify its directors and officers.

An indemnity would not apply to:

- criminal liability and costs incurred in defending or settling any proceeding that relates to criminal liability;
- liability in respect of a breach of the duty specified in section 131 of the Companies Act (see further below) and costs incurred in defending or settling any proceeding that relates to a breach of that director's duty; or
- liability in respect of a breach of any fiduciary duty owed to the Water Organisation and costs incurred in defending or settling any proceeding that relates to a breach of the fiduciary duty,

but the director will still be reimbursed for costs where the director is acquitted.

Good faith director's duty

Section 131 of the Companies Act requires directors to act in good faith and in the best interests of the company. This means a director must ensure that their actions are taken honestly and in a manner they reasonably believe are in the best interests of the company (eg actions that will benefit the company). In considering the best interests of a company, a director may consider matters other than the maximisation of profit, including environmental, social, and governance matters.

INSURANCE

The Water Organisation is also required to obtain and maintain adequate directors' and officers' insurance in respect of its directors and officers that it is indemnifying under this Deed.

KEY CONSIDERATIONS FOR COUNCILS

Before completing this Deed, council(s) should have:

- established a limited liability company as the Water Organisation; and
- adopted a Constitution that permits the Water Organisation to indemnify directors and officers as contemplated by section 162 of the Companies Act;

After entering this Deed, council(s) should:

- ensure that the Water Organisation enters and maintains an insurance policy with an established and reputable insurer which insures its directors (or officers) to the extent permitted by law (on terms that reasonably reflect market practice for directors' and officers' insurance policies for comparable entities) against permitted liabilities.

How to use this template

This is a standard form template requiring only completion of the names of the Water Organisation and the Indemnified Person.

The Department can provide further information or support to councils if required. Please contact wmdp@dia.govt.nz

Please note that neither this guidance nor the Deed relating to Indemnity, Access and Insurance Template constitute legal advice. If unsure as to their position on any matter, councils should consider obtaining their own independent legal advice.