



Legal Basis for Enabling Watershed Authorities in BC

An ELC Clinic report prepared for:
Okanagan Basin Water Board

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Introduction

This report contributes to the discussion in British Columbia about the potential for watershed management entities that exercise some delegated authority from the provincial government. Past reports, particularly the POLIS report “A Blueprint for Watershed Governance in British Columbia,” have detailed some of the best practices available for what watershed management entities should do once they are enabled. However, no report focused on *how* these watershed entities were enabled, the source of their powers and funding, or the legislative mechanisms that actually make them happen. Therefore, this report is dedicated to just that. This report describes the legislative framework for three of the case study areas highlighted by POLIS as ‘best practice’ entities:

1. Regional Councils as watershed authorities in New Zealand;
2. The Murray-Darling Basin in Australia; and
3. Conservation Authorities in Ontario, Canada.

Each case study area is examined under the following eight categories:

1. Government, population, geography, and associated water issues;
2. A basic overview of the watershed entity;
3. The enabling legislation;
4. The key functions and features of the watershed entity;
5. The internal structure of the watershed entity;
6. The decision makers of the watershed entity;
7. The accountability and enforcement mechanisms for the watershed entity; and
8. How the watershed entity is funded. Following the detailed report on each case study area, Table 1 summarizes the key features of each watershed entity, offering a comparison between each category and case study area.

One cross-cutting issue that was intentionally left out of this report is how Indigenous communities in each of these case study areas interact and are involved with the watershed management entity. Due to the watershed-specific complexities of Indigenous relations in all three case study areas, this report does not address the underlying Aboriginal rights and title to water held by the Indigenous communities in each region. It is important to note, however, that these case studies do offer instructive ideas for how to create collaborative water governance structures that give substance to Aboriginal water rights, and to incorporate traditional knowledge into water management practices. As such, this report recommends that the next step in the process of considering empowering watershed authorities in British Columbia, perhaps through a *Watershed Authority Act*, is to further explore how such a structure could ensure the expression of Aboriginal rights to water and collaboratively govern with Indigenous communities.

1. NEW ZEALAND

1.1 Government, Population, Geography and Associated Water Issues

The country of New Zealand (NZ) has a current estimated population of 4,778,827.¹ The country is a constitutional monarchy, and a unitary state with parliamentary sovereignty. Due to this, New Zealand has a unitary Central Government, which is led by the Prime Minister.

The governance structure in NZ is highly decentralized below the Central Government. There are 78 'local authorities' who are responsible for the majority of local planning and implementation, guided by Central Government policies that direct and bind the actions of those local entities.² The Central Government's role is not to 'command and control,' but rather to oversee and assist local government as necessary.³ The 78 smaller 'local authorities' are broken down further as follows: there are 11 Regional Councils, which are based generally on watershed basin boundaries and hold the most power of all the local government structures;⁴ 54 District Councils;⁵ 12 City Councils, which are primarily urban centers; and 1 Auckland Council, which is the amalgamation of eight former councils.⁶ Further, Territorial Authority (TA) is the overarching term for both city and district councils, whose boundaries are typically drawn within the boundaries of a larger Regional Council.⁷ Additionally, currently six of the TAs have the powers of a Regional Council and are sometimes called Unitary Authorities.⁸

New Zealand is comprised of 2 main islands, which are located in the temperate zone of the South Pacific Ocean. The country is approximately 1600km long and 450km at its widest. New Zealand has a vast array of geographical features, including a range of mountains that forms the 'spine' along both main islands and causes a rain shadow effect.⁹ Rivers in NZ tend to be aggressive and land suitable for use tends to be prone to flooding, as the country's terrain is rugged and constantly shifting due to ongoing geological uplift.¹⁰ As a consequence of this rugged geography, NZ has a wide range of water management issues that vary from region to region. For example,

¹ Stats NZ, *Population clock*, online: <http://www.stats.govt.nz/tools_and_services/population_clock.aspx>.

² Jackie Dingfelder, *New Zealand's Approach to Integrated Freshwater Management with a Focus on Indigenous Interests* (New Zealand: Fulbright New Zealand, August 2016) at 13 [Dingfelder]

³ Eric Pyle et al, "Establishing Watershed Management in Law: New Zealand's Experience" (2001) 37:4 *American Water Resources Association J* 783 at 787 [Pyle]

⁴ Pyle, *supra* note 3 at 786-787.

⁵ New Zealand, Department of Internal Affairs, *District*, online: <http://www.localcouncils.govt.nz/lcip.nsf/wpg_URL/Profiles-Councils-by-Type-District>.

⁶ New Zealand, Department of Internal Affairs, *About Local Government*, online: <http://www.localcouncils.govt.nz/lcip.nsf/wpg_URL/About-Local-Government-Index?OpenDocument> [New Zealand Department of Internal Affairs].

⁷ Martin Berka, "Funding of regions in New Zealand" (September 2006) online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=930140> at 2 [Berka].

⁸ New Zealand Department of Internal Affairs, *supra* note 6.

⁹ Pyle, *supra* note 3 at 784.

¹⁰ Pyle, *supra* note 3 at 784.

one part of the country might be suffering from extreme drought, while another area floods at the same time.¹¹

New Zealand has a large Indigenous population, who identify as Maori peoples. The Treaty of Waitangi in 1840, and the subsequent document, the *Treaty of Waitangi Act 1975*, are both essential to the understanding of the Crown's relationship with the Maori peoples.¹² The *Treaty of Waitangi Act* created the Waitangi Tribunal, which is a legal avenue for the Maori to seek redress for breaches of the Treaty.¹³ In terms of water management, the government has publicly acknowledged that the Maori iwi and hapū (tribal councils) have rights and interests in fresh water. However, the Crown also holds the position that no one owns freshwater, and that freshwater resources need to be managed locally on a catchment-by-catchment basis within the national freshwater management framework.¹⁴ The *Resource Management Act*, which will be discussed in more detail below, provides the statutory direction for iwi/hapū involvement in freshwater planning and governance, and recognizes the role accorded to Māori under the Treaty of Waitangi.¹⁵ To date, "...over twenty-five co-governance and co-management arrangements have been agreed between the Crown and various Maori groups, including joint committees, statutory boards, and regional council committees."¹⁶

¹¹ Pyle, sote 3 at 784.

¹² Dingfelder, *supra* note 2 at 27-28.

¹³ *Ibid* at 28.

¹⁴ *Ibid* at 27.

¹⁵ Dingfelder, *supra* note 2 at 30.

¹⁶ *Ibid* at 29.

1.2 Regional Councils as Watershed Authorities – The Basics

The highly decentralized governance in NZ also applies to how water and resources are managed. The 'local authorities,' led by the Regional Councils, have the majority of authority and responsibility over their regional water and resource management decisions.¹⁷ Enabled by section 12(2) of the *Local Government Act 2002*, 'local authorities' are able to do anything within the context of the purpose of a local government.¹⁸ The *Local Government Act 2002* also lays out that Regional Councils have a variety of other statutory duties, including, most notably, under the *Resources Management Act 1991* (RMA),¹⁹ which pertains directly to water management. Under the RMA, Regional Councils are charged with the detailed planning, policy creation and the issuing of all the resource consents (the country's permitting system) within their jurisdiction. New Zealand's water resources are managed on a watershed basin scale,²⁰ and Regional Councils' boundaries are generally based along watershed basin boundaries. Watershed management based on catchment basin boundaries has been the structural set up of NZ's Regional Councils since the *Soil Conservation and Rivers Control Act 1941*.²¹

With the implementation of this resource management regime through decentralized government, it is no longer the Central Government's role to 'command and control' the Regional Councils. It is rather its responsibility to guide and oversee these devolved entities in order to ensure nation-wide success.²² As such, the Central Government has a role under section 43 of the RMA to set National Environmental Standards (NES), which establish minimum requirements that apply automatically to Regional Councils, and must be implemented as part of their regional and local plans.²³

As the *Local Government Act* governs all Regional Councils, their structures and powers are relatively similar. As such, this section of the report will not focus on one Regional Council specifically, but will detail the Regional Councils' role as water resource management entities more generally.

¹⁷ Pyle, *supra* note 3 at 787.

¹⁸ *Local Government Act* (NZ) 2002/84 at s 12(2) [*Local Government Act*].

¹⁹ New Zealand Department of Internal Affairs, *supra* note 6.

²⁰ Pyle, *supra* note 3 at 786-787.

²¹ *Ibid* at 788.

²² *Ibid* at 787.

²³ *Resource Management Act* (NZ) 1991/69 at s 43 [*Resource Management Act*].

1.3 Regional Councils as Watershed Authorities – Enabling Legislation

Resource Management Act (NZ) 1991/69.

The RMA is the main piece of legislation that enables Regional Councils to manage water resources in NZ.²⁴ Not just limited to water management, however, the RMA encompasses the management of all resources in NZ. Sitting at 685 pages, the RMA introduced the concept of ecosystem management in NZ,²⁵ and is now NZ's primary piece of environmental legislation, repealing more than 60 Acts and amending over 150 others.²⁶ The RMA employs an ecosystem management approach, also called Integrated Resources Management (IRM), which emphasizes collaboration and cooperation, and focuses on the interconnectedness of all resources as well as their interactions with each other.²⁷

The RMA is described as “effects based legislation that created a framework for management and mitigation of adverse environmental impacts of activities.”²⁸ The impetus for its creation was cohesion between institutions and organizations that managed resources in the country.²⁹ The RMA has created a decentralized planning structure, which leaves plan-making and implementation to local levels with guidance and standards provided nationally.³⁰ The RMA also creates an Environmental Protection Authority, as well as allots powers to both the Central Government Ministry for the Environment and the Department of Conservation.³¹ The Minister for the Environment officially administers the Act.³²

The RMA also provides the direction for Maori involvement in freshwater planning and governance. Section 6 of Part 2 requires that all persons exercising functions under the RMA must recognize and provide for matters of national importance, which includes “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.”³³ Further, sections 7 and 8 require that special regard be given to the role of Maori as guardians over specific bodies of water and that the principles of the Treaty of Waitangi are appropriately applied. In addition to these specific sections, the RMA also lays out the involvement of the Maori through iwi management plans, which are planning documents that identify the more important issues pertaining to the management of the resources in their area. These iwi management plans must be taken into account when creating the regional policy statements, and regional and district plans.³⁴

²⁴ *Ibid.*

²⁵ Pyle, *supra* note 3 at 787.

²⁶ *Ibid* at 785.

²⁷ Dingfelder, *supra* note 2 at 11.

²⁸ *Ibid* at 13.

²⁹ Pyle, *supra* note 3 at 785.

³⁰ Dingfelder, *supra* note 2 at 18.

³¹ New Zealand Ministry for the Environment, *Getting in on the Act: An Everyday Guide to the RMA*, online: <<http://www.mfe.govt.nz/sites/default/files/media/RMA/RMA%20Booklet%201.1.pdf>> at 4.

³² *Resource Management Act*, *supra* note 23.

³³ Dingfelder, *supra* note 2 at 30.

³⁴ Dingfelder, *supra* note 2 at 30.

Local Government Act (NZ) 2002/84; Local Government (Rating) Act (NZ) 2002/06; Local Electoral Act (NZ) 2001/35

The national government introduced the three Acts in 2001-2002 as part of a wave of local governance reform in NZ.³⁵ The purpose of the *Local Government Act* is to:

- Provide for democratic and effective local government that recognises the diversity of New Zealand communities;³⁶
- Provide a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them;³⁷
- Promote the accountability of local authorities to their communities;³⁸ and
- Provide for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.³⁹

Further, this Act fundamentally changed the framework of devolved, localized governance by providing local governments with ‘general empowerment.’ This principle means that local governments have full rights and privileges to achieve their purposes, within the limits of the general laws of the country. This is drastically different than the previous laws, which limited local governments to activities specifically outlined in the legislation.⁴⁰ Pertaining specifically to resource management, the *Local Government Act* mentions the RMA 41 times, each one noting how the legislation interacts with provisions of the *Local Government Act*, as well as how these interactions should work in actual practice.⁴¹ The *Local Government Act* also clarifies how local governments interact with the Maori. The 1840 Treaty of Waitangi⁴² and the more recent 1975 *Treaty of Waitangi Act*⁴³ contain specific ‘Waitangi principles,’ which are given practical effect under the *Local Government Act*.⁴⁴

The *Local Electoral Act* and the *Local Government (Rating) Act* contribute to the legislative framework pertaining to watershed management because they dictate how Regional Councils are funded as well as how they are elected and governed.⁴⁵

³⁵ Berka, *supra* note 7 at 4.

³⁶ *Local Government Act*, *supra* note 18 at s 3.

³⁷ *Ibid* at s 3(b).

³⁸ *Ibid* at s 3(c).

³⁹ *Ibid* at s 3(d).

⁴⁰ Berka, *supra* note 7 at 4.

⁴¹ *Local Government Act*, *supra* note 18 18.

⁴² *Treaty of Waitangi* 1840.

⁴³ *Treaty of Waitangi Act* (NZ) 1975/114.

⁴⁴ *Local Government Act*, *supra* note 18.

⁴⁵ New Zealand, LGNZ, *Local Government New Zealand is the Strong Voice for Great Local Government*, online: <www.lgnz.nz/home/nzs-local-government/new-section-page/>.

1.4 Regional Councils as Watershed Authorities – Key Functions and Powers

Section 30 of the RMA establishes the functions of Regional Councils under that Act.⁴⁶ Pertaining specifically to water management, these functions include, but are not limited to, the following:

- Establish, implement and review objectives, policies and methods to achieve integrated resource management for the region, including appropriate objectives and policies specifically for lands ‘which are of regional significance’;⁴⁷
- Control the land in their area for the following purposes: soil conservation; ensuring and enhancing water quality; ensuring and enhancing the ecosystems of water bodies and coastal waters; ensuring the mitigation of natural hazards; and preventing adverse effects from hazardous substances;⁴⁸
- With specific application to coastal marine areas in the region, Regional Councils, in conjunction with the Minister of Conservation, have control over: the extraction of any material from the coastal marine area; the use, damming, diversion and taking of water; the discharge of contaminants into/onto the land, air or water; the dumping of waste in offshore situations; managing the use and subsequent effects of hazardous substances; and surface of the water activities;⁴⁹
- Control the taking, use, damming, and diversion of water; and the quantity, level and flow in any water body;⁵⁰
- Create rules that become part of the regional plan, which pertain to water management and the management of coastal waters;⁵¹
- Generally, to undertake any other ‘functions specified in this Act.’⁵²

Additionally, as mentioned in Part 1.2 of this report, the Central Government must set NES, which the regional and local plans must also incorporate. Part 5 of the RMA outlines these requirements of Standards, Policy Statements and Plans at the National, Regional and District levels.⁵³ Sections 59-62 lay out the details surrounding the purpose and content of Regional Policy Statements.⁵⁴ Specifically, section 60 specifies that there must be a regional policy statement in place in each region at all times.⁵⁵

⁴⁶ *Resource Management Act, supra* note 23 at s 30.

⁴⁷ *Resource Management Act, supra* note 23 at s 30(1)(a)-(b).

⁴⁸ *Ibid* at s 30(1)(c).

⁴⁹ *Ibid* at s 30(1)(d).

⁵⁰ *Ibid* at s 30(1)(e).

⁵¹ *Ibid* at s 30(1)(fa)-(fb).

⁵² *Ibid* at s 30(1)(h).

⁵³ *Ibid* at Part 5.

⁵⁴ *Ibid* at s 59-62.

⁵⁵ *Ibid* at s 60.

1.5 Regional Councils as Watershed Authorities – Internal Structure

It is important to recognize that because of NZ's high level of decentralized government, Regional Councils have significant power in their geographic area. This includes allowing each Council to decide how they are structured and how they each organize themselves to work for their constituents and community.⁵⁶ As such, although Regional Councils are bound by some basic requirements, each may appear unique in structure depending on the specific challenges their area faces.

The basic structural requirements of Regional Councils are set out in the *Local Government Act 2002*⁵⁷ and the *Local Electoral Act 2001*.⁵⁸ These include, but are not limited to the following:

- Section 41 of the *Local Government Act*, which is administered by the Ministry of Internal Affairs,⁵⁹ provides details about the governing bodies of Regional Councils;⁶⁰ Under this section, a Regional Council's governing body must consist of the following: members elected in accordance with the *Local Electoral Act 2001*, and a Chair who is elected by members of the Regional Council;⁶¹
- Each local authority must also appoint a Chief Executive, whose role is as the principal administrative officer for the local authority;⁶²
- Schedule 7 of the *Local Government Act* further lays out the specifics of the local authorities and their members.⁶³ Schedule 7 provides details for the following topics: vacation of office by members;⁶⁴ remuneration of members;⁶⁵ the conduct of members;⁶⁶ election and removal of chairperson, deputy chairperson, and deputy mayor;⁶⁷ calling of meetings;⁶⁸ conduct of meetings (including voting procedure);⁶⁹ procedures at meetings;⁷⁰ subordinate decision making structures;⁷¹ delegations;⁷² and employment of staff (including information pertaining to the Chief Executive's role and responsibilities);⁷³
- The *Local Electoral Act 2001* provides greater detail as to the electoral procedures that Regional Councils must adhere to, under section 19D – Membership of Regional Councils, and section 19E – Basis of election of members of regional councils.⁷⁴ According to section

⁵⁶ New Zealand Department of Internal Affairs, *supra* note 6.

⁵⁷ *Local Government Act*, *supra* note 18 18.

⁵⁸ *Local Electoral Act* (NZ) 2001/35 [Local Electoral Act].

⁵⁹ *Local Government Act*, *supra* note 18 at s 18.

⁶⁰ *Ibid* at s 41.

⁶¹ *Ibid* at s 41(1)(a-b).

⁶² *Ibid* at s 42.

⁶³ *Ibid* at Schedule 7.

⁶⁴ *Ibid* at Schedule 7, s 1-5.

⁶⁵ *Ibid* at Schedule 7, s 6-13.

⁶⁶ *Ibid* at Schedule 7 s 13-16.

⁶⁷ *Ibid* at Schedule 7, s 17-18.

⁶⁸ *Ibid* at Schedule 7, s 22.

⁶⁹ *Ibid* at Schedule 7, s 23-26.

⁷⁰ *Ibid* at Schedule 7, s 27-29.

⁷¹ *Ibid* at Schedule 7, s 30-31.

⁷² *Ibid* at Schedule 7, s 32.

⁷³ *Ibid* Schedule 7, s 33-36.

⁷⁴ *Local Electoral Act*, *supra* note 58 at s 19D – 19E.

19D, every governing body must consist of not fewer than 6 members but no more than 14 members, who are members of the regional council.⁷⁵

Section 34 of the RMA details the 'local authorities' ability to delegate their powers and responsibilities.⁷⁶ Under this section, 'local authorities' are able to delegate any of their functions, powers and duties under the RMA to any committee established under their 'local authority', in accordance with the *Local Government Act*.⁷⁷ Section 34 also notes that each 'local authority' may set the terms and conditions of any delegation as well as revoke the power at anytime.⁷⁸ Section 33 additionally provides guidance for 'local authorities' in allowing them to transfer any of its functions, powers or duties under this Act to another 'public authority,' which include iwi (Indigenous) authorities, a government department, a statutory authority, a local board, or a joint committee set up under the RMA.⁷⁹

⁷⁵ *Ibid* at s 19D.

⁷⁶ *Resource Management Act, supra* note 23.

⁷⁷ *Ibid* at s 34(1).

⁷⁸ *Ibid* at s 34(7).

⁷⁹ *Ibid* at s 33.

1.6 Regional Councils as Watershed Authorities – Decision-Making

Due to the devolved state of NZ's government, the *Local Government Act* specifically notes that the governing body of each 'local authority' is responsible, and democratically accountable, for the decision making of the local authority.⁸⁰ Further, section 42(4) notes that for the purposes of any other Act, the chief executive, who must be appointed by the local authority,⁸¹ is the principal administrative officer of the local authority.⁸² The decision-making procedures of the governing body are scoped out in Schedule 7, Part 1 of the *Local Government Act*.⁸³ However, the interactions between the RMA and the *Local Government Act* result in some variations to the above outlined decision-making procedure in terms of water management. The most essential include the following:

- The national Governor General, by Order in Council, and under the recommendation of the Minister, may create National Environmental Standards (NES). These NES may pertain to contaminants, water quality, level and flow, as well as air and soil quality.⁸⁴ All Regional Council must include these standards in their Regional Plans, and to the best of their ability, adhere to the NES;⁸⁵
- The Minister may also create National Policy Statements (NPS), which pertain to matters of national significance, including issues that affect more than one region and Maori commitments under the Treaty of Waitangi Principles;⁸⁶
- These NES' and NPS' are brought into effect locally through Regional Policy Statements and the subsidiary Regional Plans. Regional Councils are responsible for creating Regional Policy Statements, which must adhere to the NPS' and NES'.⁸⁷ Regional Councils are also responsible for creating Regional Plans, which must also adhere to the NES', NPS' as well as any of their own Regional Policy Statements;⁸⁸
- The Regional Plans are created by the Regional Council and must include the following: the objectives for the region; policies to implement the objectives; and the rules to implement the policies.⁸⁹ More specifically, the Regional Council may prepare a Plan for the whole or part of its region for any or all of the functions specified under section 30 of this Act.⁹⁰ The most essential element of section 30 is "the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region."⁹¹ This results in the Regional Plans pertaining to the integrated management of water, soil and air quality as well as land use planning.
- Part 6 of the RMA delineates the decision-making process for Resource Consents. Resource Consents include land use consents, subdivision consents, coastal permits, water

⁸⁰ *Local Government Act*, *supra* note 18 at s 41(3).

⁸¹ *Ibid* at s 42(1).

⁸² *Ibid* at s 42(4).

⁸³ *Ibid* at Schedule 7, Part 1.

⁸⁴ *Resource Management Act*, *supra* note 23 at s 43.

⁸⁵ See *Ibid* at s 43B, 43C, 44A(7)-(8).

⁸⁶ *Ibid* at s 45.

⁸⁷ *Ibid* at s 59.

⁸⁸ *Ibid* at s 63, s 67(3).

⁸⁹ *Ibid* at s 67.

⁹⁰ *Ibid* at s 65.

⁹¹ *Ibid* at s 30(1)(a).

permits, and discharge permits.⁹² They are required when an activity would contravene a certain rule of this Act or anything prohibited by the Regional Plan or accompanying rules and by-laws. Persons can make applications to either the Environmental Court or to a 'consent authority,' which are regional and territorial authorities under the RMA,⁹³ for the issuance of Resource Consents.⁹⁴ Consent authorities are limited in their power over the issuance of resource consents to within their jurisdiction and the powers given under the RMA.⁹⁵

- Part 4 of the RMA delineates that the national Minister for the Environment is given select areas of decision-making powers and responsibilities.⁹⁶ Specifically, section 24 notes the functions and powers of the Minister, the most important of which include recommending the creation of NPS' and NES' as well as water conservation orders under section 214.⁹⁷ Water conservation orders can be made in respect of any water body, but may only be made in accordance with either the report of a special tribunal under section 208 or where the Environmental Court has conducted an inquiry under section 213.⁹⁸ The affected Regional Councils, through amendments to their Regional Plans, must then immediately implement water conservation orders.⁹⁹
- The Minister for the Environment serves the role of the Central Government's primary advisor on environmental issues, and as the lead agency responsible for freshwater policy development, including investigating the proper implementation of NES' and NPS'.¹⁰⁰ The Minister's powers of oversight is detailed further in Part 1.7.

⁹² *Ibid* at Part 6.

⁹³ *Ibid* at s 2(1).

⁹⁴ *Ibid* at s 87C.

⁹⁵ *Ibid* at s 87A(2)(a)(i).

⁹⁶ *Ibid* at Part 4.

⁹⁷ *Ibid* at s 24.

⁹⁸ *Ibid* at s 214.

⁹⁹ *Ibid* at s 84.

¹⁰⁰ Dingfelder, *supra* note 2 at 15.

1.7 Regional Councils as Watershed Authorities in NZ - Accountability and Enforcement

As noted above, it is the national Ministry of the Environment that actually administers and is responsible for the RMA's success, despite the fact that Regional Councils are given a high level of power and authority over the implementation and administration of the RMA through the provisions of the Act itself.¹⁰¹ As laid out under sections 24 to 27 of the RMA, the Minister for the Environment has, but is not limited to, the following functions, which offer consistency and accountability to how Regional Councils create their own policies and plans:

- To monitor the relationship between the functions, powers, and duties of central government and local government under this Part;
- To consider and investigate the use of economic instruments to achieve the purpose of the RMA;¹⁰²
- To investigate the performance of a local authority in any of its duties under the RMA and make recommendations accordingly. This includes investigating alleged omissions to perform its functions, as well as appointing people to replace the local authority to remedy these omissions or failures. However, this power is limited by the obligation to give written notice to the local authority as to why the Minister proposes such action, as well as to allow the 'local authority' a set amount of time to remedy the issue themselves;¹⁰³
- To require any Regional Council to supply any information upon request for the purposes of investigations.¹⁰⁴

In addition to these specific powers of oversight given to the Minister for the Environment, there are a number of other enforcement and accountability mechanisms included directly in the RMA and the *Local Government Act*. For instance, section 67 of the *Local Government Act* dictates that each 'local authority' must make available to the public a report on the organization's operations during that year, including financial statements, and the auditor's report.¹⁰⁵

Specifically regarding the RMA, the enforcement mechanisms include, but are not limited to, the following:

- The 'local authority' has the power to appoint enforcement officers, whose responsibility it is to ensure that the Regional Districts constituents are not committing offenses under the RMA, such as excessive noise and unpermitted water taking;¹⁰⁶
- The Environmental Protection Authority (EPA) is the agency that hears matters launched by individuals challenging resource consents, and making requests for a new regional plan or amendments to the old one.¹⁰⁷ The EPA then recommends a course of action to the

¹⁰¹ *Resource Management Act*, *supra* note 23 at s 34 – 35.

¹⁰² *Ibid* at s 24.

¹⁰³ *Ibid* at ss 24A, 25, 25A.

¹⁰⁴ *Ibid* at s 27.

¹⁰⁵ *Local Government Act*, *supra* note 18 at s 67.

¹⁰⁶ *Resource Management Act*, *supra* note 23 at s 38.

¹⁰⁷ *Ibid* at ss 42C, 145.

Minister for the Environment,¹⁰⁸ who must then refer the matter to a board of inquiry, the Environmental Court, or the ‘local authority,’ as the situation dictates,¹⁰⁹

- The Environmental Court, which is governed in detail by Parts 11 and 12 of the RMA also offers an enforcement mechanism for Regional Council decisions and their related consequences.¹¹⁰ The most common remedies offered by the court include, but are not limited to, the following: declarations;¹¹¹ enforcement orders,¹¹² and abatement notices.¹¹³
- The Minister for the Environment, as detailed above, also has investigative requirements to ensure the proper implementation of NES’ and NPS’.

Additionally, due to the fact that NZ’s water management Authorities are also their local government, democratic elections help keep ‘local authorities’ accountable to their constituents.

¹⁰⁸ *Ibid* at s 146.

¹⁰⁹ *Ibid* at s 147.

¹¹⁰ *Ibid* at Part 11 – 12.

¹¹¹ *Ibid* at s 310 – s 313.

¹¹² *Ibid* at s 314 – 321.

¹¹³ *Ibid* at s 322 – 325.

1.8 Funding Method

Regional Councils get the majority of their funding from taxes, or rates in NZ, that they may levy on their constituent population.¹¹⁴ Regional Councils rely predominantly on property taxes to raise funds, but water rates, fees and fines, sales tax and national petroleum taxes also contribute to their yearly revenue. *The Local Government (Rating) Act 2002* gives local authorities the right to charge property taxes with considerable discretion. They are “usually based on a mix of unimproved land taxes and improved value taxes, both determined in a three-year valuation cycles.”¹¹⁵ How these rates are levied as well as other details pertaining to record keeping, and debt incurred are detailed in the *Local Government Act* and the *Local Government (Rating) Act*.¹¹⁶ The *Local Government Act*, in subpart 3 – Financial Management, as well as in section 48M, sets out requirements that Regional Council are statutorily obligated to meet in terms of financial planning and budget management.¹¹⁷ Subpart 3 contains balanced budget requirements,¹¹⁸ requirements for revenue and funding policies, as well as requirements for financial and infrastructure strategy policies.¹¹⁹ Further, the RMA requires local plans to be published, each of which includes financial plans of their own. These requirements under the RMA, as well as the obligation to include them in the broader Regional Council financial management, are noted in the *Local Government Act’s* subpart 3 – Financial Management.¹²⁰

The *Local Government (Rating) Act’s* stated purpose is “to promote the purpose of local government set out in the *Local Government Act 2002* by (a) providing local authorities with flexible powers to set, assess, and collect rates to fund local government activities: (b) ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner: (c) providing for processes and information to enable ratepayers to identify and understand their liability for rates.”¹²¹ It is the piece of legislation that actually sets out the mechanisms by which the *Local Government Act* will undertake financial planning by laying out the rates that are allowed to be charged in four different sectors as well as the records that must be kept for each of these charges levied on the population.¹²²

Additionally, Regional Councils are enabled with a significant amount of power over how they use their funds. As part of this independence, the Central Government is not responsible for a local government’s debt.¹²³ However, the above legislation does contain some requirements that ensure accountability to the Central Government in order to avoid financial crises on the part of local governments. For instance, although the Central Government does not approve the local government’s budget, the *Local Government Act* notes that local authorities must produce annual budgets as well as annual reports revealing their actual achievements and spending.¹²⁴

¹¹⁴ Berka, *supra* note 7 at 8.

¹¹⁵ *Ibid* at 9.

¹¹⁶ *Local Government Act, supra* note 18; *Local Government (Rating) Act (NZ) 2002/06 [Local Government (Rating) Act]*.

¹¹⁷ *Local Government Act, supra* note 18 at s 48M, Subpart 3.

¹¹⁸ *Ibid* at s 100.

¹¹⁹ *Ibid* at s 101-103.

¹²⁰ *Ibid* at Subpart 3.

¹²¹ *Local Government (Rating) Act, supra* note 116 at s 3.

¹²² *Local Government (Rating) Act, supra* note 116.

¹²³ Berka, *supra* note 7 at 8.

¹²⁴ *Ibid*.

The RMA also interacts with the *Local Government (Rating) Act* in that the National, Regional and District plans mandated by the RMA also include information about the financial aspects of resources management, such as how money raised through resources in NZ can be spent.¹²⁵ Further, the RMA notes how funds received from rents and royalties are allocated. For instance, section 359 of the RMA discusses the royalties and rents collected from NZ's resources that must be paid into the Crown Bank Account.¹²⁶ Further, the RMA allows the Minister to make grants and loans to assist in achieving the purposes of the Act. This money comes directly from Parliament.¹²⁷

Although Regional Councils are given a lot of power over their own funding under the above legislative pieces, the Central Government continues to fund water and science research.¹²⁸ Further, in 2014 the Government established a \$5 million Te Mana o Te Wai Fund in order to enable the Maori to improve the water quality of specific water bodies that are of importance to them.¹²⁹

To summarize, NZ's localized decision-making and governance structure, within a federal framework, leads to each Regional Council having a high level of control over the management of the resources within their jurisdictions, which are based on catchment basin boundaries. The RMA dictates that all resources are considered in an integrated way, which heavily impacts how water is managed, as water management must be considered alongside soil quality, air quality, and land use planning. Regional Councils are left with the responsibility of creating their own Regional Plans, which pertain to the management of resources and resource consent permits in their area. The Minister for the Environment, who administers the RMA, has oversight responsibilities as well as responsibilities for setting National Environmental Standards and National Policy Statements, which must be implemented in the Regional Plans. Due to this structure, NZ's water management regime is integrated with other resource planning, creating a comprehensive system for dealing with the resources in NZ.

¹²⁵ *Resource Management Act*, *supra* note 23 at s 111.

¹²⁶ *Ibid* at s 359.

¹²⁷ *Ibid* at s 26.

¹²⁸ Pyle, *supra* note 3 at 787.

¹²⁹ Dingfelder, *supra* note 2 at 37.

2. AUSTRALIA

2.1 Government, Population, Geography and Associated Water Issues

The Commonwealth of Australia currently has a population of 24,411,145.¹³⁰ The country functions as a constitutional monarchy and representative democracy. Australia's government structure is a federal one, with a Central Government and 6 state governments.¹³¹ The Central Government obtains its legislative powers directly from the section 51 of the *Australian Constitution*.¹³² The state governments retain the power to make their own laws over matters not specifically enumerated under section 51. Further, state governments have their own constitutions.¹³³ Australia also has 10 territorial areas, which are administered by either the Central Government or can be granted the right to self-government through enabling statutes. Territories consist of areas of land not claimed by one of the six states. The two largest territories, which are independently administered, are the Australian Central Territory (ACT) and the Northern Territory (NT).¹³⁴ The federal structure of Australia's government dictates that when laws conflict, the federal law prevails.¹³⁵ Australia's local governments, also known as local councils, are governed by their respective state or territory government. Due to this, a specific local government's powers, role and responsibilities may differ significantly from state to state.¹³⁶ Pertaining specifically to water, section 98 and 100 of the *Australian Constitution* are the only two provisions that discuss water. Section 98 extends the Parliament's power to make laws with respect to trade and commerce to navigation and shipping.¹³⁷ Section 100 limits this power, however, as it notes that the Commonwealth shall not abridge the rights of the states to the reasonable use of the waters of rivers for conservation and irrigation.¹³⁸ The *Water Act 2007* was the first piece of federal legislation that utilized the federal government's jurisdiction pertaining to water management.

Australia is approximately 7.692 million km² in size,¹³⁹ and is the Earth's driest inhabited continent.¹⁴⁰ Due in part to its large land mass, the Australian continent contains a wide variety of geographical features. Twenty percent of Australia's land mass is considered desert, while over 40 percent of the total coastline is comprised of thousands of small islands. Australia's climate zones

¹³⁰ Australia, Australian Bureau of Statistics, *Population Clock*, online:

<<http://www.abs.gov.au/ausstats/abs@.nsf/0/1647509ef7e25faaca2568a900154b63?opendocument>>.

¹³¹ Australia, Australian Government, *How Government Works*, online: <<http://www.australia.gov.au/about-government/how-government-works>> [Australia].

¹³² *An Act to Constitute the Commonwealth of Australia*, 1900, Chapter 12: 63 and 64 Vict [Australian Constitution].

¹³³ Australia, *supra* note 131.

¹³⁴ Australia, Australian Government, *State and territory government*, online: <<http://www.australia.gov.au/about-government/how-government-works/state-and-territory-government>>.

¹³⁵ *Australian Constitution*, *supra* note 132 at s 109.

¹³⁶ Australia, *supra* note 131.

¹³⁷ *Australian Constitution*, *supra* note 132 at s 98.

¹³⁸ *Ibid* at s 100.

¹³⁹ Australia, Australian Government, *The Australian Continent*, online: <<http://www.australia.gov.au/about-australia/our-country/the-australian-continent>>.

¹⁴⁰ *Ibid*.

also range significantly, from tropical rainforest, to cool temperature forests, to snow-covered mountains. Additionally, the low annual rainfall Australia does receive is also very variable. The rainfall forms a concentric pattern around the extensive arid core in the centre of the continent.¹⁴¹

¹⁴¹ *Ibid.*

2.2 Watershed Authorities in Australia – The Basics

Due to the federal structure of Australia's governments, and the division of legislative powers found under section 51 of the *Australian Constitution*, the management of watershed authorities falls predominantly to the individual state governments.¹⁴² Due to this, each states' water management agencies are structured uniquely, according to their state's enabling and guiding legislation.¹⁴³ However, the consistent element of all the water management agencies' structures in Australia is that they are based on catchment (or watershed) area boundaries, as opposed to political boundaries. This means that decision makers assess the entire river system – from source and tributaries to the mouth of the river – when making management decisions.¹⁴⁴ Australia has twelve large catchment divisions, which are sub-divided into seventy-seven water regions, and two hundred and forty five individual river basins.¹⁴⁵ Five of the twelve large catchment divisions are contained entirely within a single state; however, the remaining seven catchment divisions are split between two or more states.¹⁴⁶ This has resulted in a number of partnership agreements between states to ensure the effective co-management of shared water resources.¹⁴⁷

The most well known partnership of Australian state governments for the purpose of shared water management concerns the Murray-Darling catchment division, whose areas encompasses parts of five states and territories: the State of Queensland, the State of New South Wales, the State of Southern Australia, the State of Victoria, and the ACT.¹⁴⁸ As such, this section of the report will focus strictly on the Murray-Darling Basin Authority (MDBA).

¹⁴² *Australian Constitution*, *supra* note 135 at s 51.

¹⁴³ Australia, Australian Government, *Australian river catchments and the Great Artesian Basin*, online: <<http://www.australia.gov.au/about-australia/australian-story/austn-river-catchments>>.

¹⁴⁴ Australia, Australian Bureau of Meteorology, *Topographic Drainage Divisions and River Regions*, online: <<http://www.bom.gov.au/water/about/riverBasinAuxNav.shtml>>.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Australia, Department of Agriculture and Water Resources, *Water Management Partnership Agreements*, online: <<http://www.agriculture.gov.au/water/policy/partnership-agreements>>.

¹⁴⁸ Australia, Department of Environment and Energy, *About Commonwealth Environmental Water*, online: <<http://www.environment.gov.au/water/cewo/about-commonwealth-environmental-water>>.

2.3 The Murray-Darling Basin Authority – Enabling Legislation

The *Water Act (2007)* is the 250-page piece of federal legislation that established, and continues to enable, the MDBA as an independent expertise-based water management agency in the Murray-Darling catchment division.¹⁴⁹ The Central Government enacted the *Water Act (2007)* so that Basin water resources could be managed in a holistic, integrated and sustainable way with the cooperation of all the applicable states, instead of on a state-by-state basis.¹⁵⁰ Section 9 of the *Act* notes the Constitutional basis for the Central Government legislating in this matter, which is the Commonwealth's legislative powers under sections 51 and 122 of the Constitution, as well as any implied legislative powers of the Commonwealth.¹⁵¹ Section 122 notes that the Parliament may make laws for the government of any territory surrendered by any State, or any territory specifically placed under the Commonwealth's authority by the Queen.¹⁵² The Department of Agriculture and Water Resources administers the *Act*.¹⁵³

The key features and functions of the *Water Act 2007* are as follows:

- Establishes the MDBA,¹⁵⁴ and provides it with functions and powers that are necessary to ensure Basin water resources are managed in a sustainable and integrated way. In doing so, the *Act* created a single body responsible for all water resource planning in the Basin, independent of any one, single state government;¹⁵⁵
- Requires that the MDBA prepare, publish, implement and oversee a strategic Basin Plan for the management of the catchment's water resources.¹⁵⁶ The Basic Plan becomes a legislative instrument,¹⁵⁷ which is an "instrument in writing that is of legislative character and that is or was made in the exercise of a power delegated by the Parliament."¹⁵⁸ The elements that must be included in the Basin Plan are also delineated in the *Act*;¹⁵⁹
- Creates the Commonwealth Environmental Water Holder (CEWH) office under the federal Department of Environment and Energy,¹⁶⁰ and

¹⁴⁹ *Water Act 2007* (Cth) [*Water Act*]; Australia, Murray-Darling Basin Authority, *About Us*, online: <https://www.mdba.gov.au/about-us> [Australia Murray-Darling Basin Authority].

¹⁵⁰ Australia, Australian Government Web Archive, Department of Environment, *Key Features of the Water Act 2007*, online: <http://webarchive.nla.gov.au/gov/20160109201243/https://www.environment.gov.au/topics/water/australian-government-water-leadership/water-legislation/key-features-water-act-2007> [Australia Department of Environment]; *Water Act*, *supra* note 149 at s 3(b) – (c).

¹⁵¹ *Water Act*, *supra* note 149 at s 9.

¹⁵² *Australian Constitution*, *supra* note 135 at s 122.

¹⁵³ Australia, Department of Agriculture and Water Resources, *Commonwealth Water Legislation*, online: <http://www.agriculture.gov.au/water/policy/legislation> [Australia Department of Agriculture and Water Resources].

¹⁵⁴ *Water Act*, *supra* note 149 at s 171.

¹⁵⁵ Australia Department of Environment, *supra* note 151.

¹⁵⁶ Australia Department of Agriculture and Water Resources, *supra* note 154.

¹⁵⁷ *Water Act*, *supra* note 149 at s 33.

¹⁵⁸ *Legislative Instruments Act* (Cth) at s 5.

¹⁵⁹ *Water Act*, *supra* note 149 at Part 2, Division 1, Subdivision B.

¹⁶⁰ Australia Department of Agriculture and Water Resources, *supra* note 154.

- Establishes that the Bureau of Meteorology has water information obligations in addition to their current functions under the *Meteorology Act 1955*.¹⁶¹

¹⁶¹ *Meteorology Act 1955* (Cth); Australia Department of Agriculture and Water Resources, *supra* note 154.

2.4 The Murray-Darling Basin Authority – Key Functions and Powers

Section 172 of the *Water Act 2007* outlines the functions of the MDBA.¹⁶² These include, but are not limited to the following:

- Preparing a Basin Plan for adoption by the Minister. This includes setting sustainable limits on water takings;¹⁶³
- Advising the Minister on matters regarding the accreditation of state-specific water resource management plans;¹⁶⁴
- Developing a Water Rights Information Service, which helps facilitate water trading across the Murray-Darling Basin;¹⁶⁵
- Measuring and monitoring water resources in the Basin as well as gathering information and undertaking research;¹⁶⁶
- Engaging the community, and Indigenous communities in the management of the Basin's resources;¹⁶⁷
- And generally, to make recommendation to the Commonwealth, the Basin States and corresponding agencies, on any matters the Authority considers may impact the quality or quantity of the Basin water resource.¹⁶⁸

Section 173 of the *Water Act 2007* notes the powers delegated to the MDBA.¹⁶⁹ This provision is framed to generally empower the MDBA “to do all things necessary or convenient to be done for or in connection with the performance of its functions...”¹⁷⁰ The only specific limitations to their power are: acquiring, holding and disposing of real or personal property; entering into contracts; and leasing any buildings or land for the purposes of the Authority.¹⁷¹ The general licensing of water in Australia falls to each individual state government, subject to the intergovernmental agreements and MDBA's Basin Plan.¹⁷²

¹⁶² *Water Act*, *supra* note 149 at s 172.

¹⁶³ *Ibid* at Part 2, Division 1, Subdivision E.

¹⁶⁴ Australia Department of Environment, *supra* note 151.

¹⁶⁵ *Water Act*, *supra* note 149 at Part 5.

¹⁶⁶ *Ibid* at s 172(c).

¹⁶⁷ *Ibid* at s 172(j).

¹⁶⁸ Australia Murray-Darling Basin Authority, *supra* note 149.

¹⁶⁹ *Water Act*, *supra* note 149 at s 173.

¹⁷⁰ *Ibid* at s 173(1).

¹⁷¹ *Ibid* at 173(1)(a) – (c).

¹⁷² Jennifer McKay, “Water Institutional Reforms in Australia” (2005) 7:1 Water Policy Journal 35 [McKay].

2.5 The Murray-Darling Basin Authority – Internal Structure

Part 9, Division 2 – Authorities Constitution and Membership – of the *Water Act 2007* notes the mandatory elements that must be part of the internal structure of the MDBA.¹⁷³ The most impactful elements of Part 9, Division 2 include, but are not limited to the following:

- First, and most fundamentally, the MDBA functions as a corporate body with perpetual succession, and as such may sue, and may be sued;¹⁷⁴
- The MDBA must have a chair as well as 4 other members.¹⁷⁵ Persons are eligible if they have a high level of expertise in the Authority’s functions and are not a member of any other relevant interest group’s governing body.¹⁷⁶ Members may serve for various timeframes, with a maximum term of 4 years, with the possibility of reappointment;¹⁷⁷
- Members are under a standing obligation to disclose any conflicts of interest that are constants, as well as present themselves because of a particular project or authority function;¹⁷⁸
- The Chair is under a standing obligation to keep federal Ministers informed on the general operations of the MDBA, in respect to their functions and powers as well as give the Ministers reports, documents and information that they require;¹⁷⁹
- It is the Governor General’s prerogative to terminate the employment of any of the MDBA’s members for the following reasons: financial issues such as bankruptcy;¹⁸⁰ unsatisfactory performance;¹⁸¹ extended absence;¹⁸² and a general failure to fulfil the obligations of members as layout in the above bullet points;¹⁸³
- The Authority’s staff are persons engaged under the *Public Service Act 1999*.¹⁸⁴

In addition to the basic parameters of governance as laid out above, the *2008 Intergovernmental Agreement on Murray-Darling Basin Reform and Commonwealth Water Act 2007*¹⁸⁵ (‘2008 Agreement’) impacts the corporate structure of the MDBA. The 2008 Agreement is an agreement between the state governments of Victoria, New South Wales, Southern Australia, Queensland, as well as the Central Government and the ACT government.¹⁸⁶ The 2008 Agreement sets out that “two of the four part-time members are nominated by the Basin states water ministers and two positions are nominated by the Commonwealth water minister... Applications for the

¹⁷³ *Water Act*, *supra* note 149 at Part 9, Division 2.

¹⁷⁴ *Ibid* at s 176(1).

¹⁷⁵ *Ibid* at s 177.

¹⁷⁶ *Ibid* at s 178(2).

¹⁷⁷ *Ibid* at s 179.

¹⁷⁸ *Ibid* at s 182-183.

¹⁷⁹ *Ibid* at s 184.

¹⁸⁰ *Ibid* at s 189(2)(a)(i-iv).

¹⁸¹ *Ibid* at s 189(2)(b).

¹⁸² *Ibid* at s 189(2)(c).

¹⁸³ *Ibid* at s 189(2)(f-g).

¹⁸⁴ *Public Services Act 1999* (Cth); *Water Act*, *supra* note 149 at Part 9 Division 4.

¹⁸⁵ The Commonwealth of Australia, Australian Capital Territory, and States of New South Wales, Victoria, Queensland, and South Australia, *Agreement on Murray-Darling Basin Reform*, (3 July 2008), online: https://www.coag.gov.au/sites/default/files/agreements/Murray_Darling_IGA.rtf [Murray Darling Agreement].

¹⁸⁶ *Ibid* at 2.

Commonwealth nominated positions are considered by the Commonwealth water minister in consultation with the Basin state water ministers.”¹⁸⁷ The MDBA may also hire other staff, who do not have a say in decision-making for the Authority. In 2014-2015 there were 303 other staff who were employed by the MDBA.¹⁸⁸

According to MDBA publications, their corporate structure includes four divisions: River Management; Policy and Planning; Environmental Management; and Corporate Affairs. The Office of the Chief Executive of the MDBA leads all these divisions.¹⁸⁹ The River Management division is responsible for managing all aspects of the Murray River Basin, including the sharing of waters between the states.¹⁹⁰ The Policy and Planning division is responsible for overseeing the implementation of the Basin Plan, as well as taking the lead on certain key Basin Plan aspects such as water markets and trades.¹⁹¹ The Environmental Management division is responsible for managing the environmental management programs, as well as leading the implementation of ecological monitoring and evaluation and model based advice supports.¹⁹² The Corporate Affairs division is responsible for “providing legal, parliamentary, finance, budget, human resources, governance, planning, performance reporting, information technology, records management, office administration, security, media and internal & external communications services to the agency.”¹⁹³ Additionally, the Corporate Affairs division is responsible for managing the Basin Plan’s compliance and providing secretariat support to all other Authority councils and committees.¹⁹⁴

Part 9, Division 3, Subdivision C of the *Water Act 2007* notes the Authority’s ability to delegate tasks out to other bodies,¹⁹⁵ and Part 9, Division 3, Subdivision D of the *Water Act 2007* outlines the establishment, functions, membership, and other details of the MDBA’s advisory committees.¹⁹⁶

¹⁸⁷ Australia, Murray-Darling Basin Authority, *The Authority*, online: <<https://www.mdba.gov.au/about-us/governance/authority>>.

¹⁸⁸ Australia, Murray-Darling Basin Authority, *Our Workforce*, online: <<https://www.mdba.gov.au/annual-reports/annual-report-2014-15/management/our-workforce>>.

¹⁸⁹ Australia, Murray-Darling Basin Authority, *Senior Management Committees*, online: <<https://www.mdba.gov.au/annual-reports/annual-report-2014-15/management/senior-management-committees>>

¹⁹⁰ Australia, Murray-Darling Basin Authority, *Corporate Structure*, online: <<https://www.mdba.gov.au/about-us/corporate-structure>>.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Water Act*, *supra* note 149 at Part 9, Division 3, Subdivision C.

¹⁹⁶ *Ibid.* at Part 9, Division 3, Subdivision D.

2.6 Watershed Authority – Decision Making

Decision making, under the *Water Act*, is first noted in section 14, which delineates how state laws should interact with ‘Commonwealth water legislation,’ which includes “this Act (other than Part 7); regulations made under this Act (other than regulations made for the purposes of a provision of Part 7); the Basin Plan; a water resource plan for a water resource plan area that is made under this Act; water charge rules; [and] any other instrument made under this Act (other than Part 7).¹⁹⁷ Section 15 notes that none of the Commonwealth water legislation is intended to exclude or limit the concurrent operation of any law of a State.¹⁹⁸ Section 17 notes that the State legislation overrides the Commonwealth water legislation, but only if the provision under a State law is actually declared to displace a provision of the Commonwealth water legislation.¹⁹⁹

Sections 34 and 35 of the *Water Act* pertain to the effects of the Basin Plan on the Authority, other Central Government Agencies as well as other agencies and persons including Basin State Agencies. Specifically, these two provisions note that all persons must adhere to the Basin Plan and not perform any act that contravenes the Basin Plan.²⁰⁰ Section 35 also includes persons who are an infrastructure operator or any holder of a water access right.²⁰¹

The general licensing of water in Australia falls to each individual state government, although as noted above, this is subject to the intergovernmental agreements and MDBA’s Basin Plan.²⁰² The Basin Plan, created by the MDBA, as noted in section 21(5) of the *Water Act*, “must ensure that there is no net reduction in the protection of planned environmental water from the protection provided for under the State water management law of a Basin State immediately before the Basin Plan takes effect.”²⁰³ As such, although the MDBA creates the overall Basin Plan, there are limits to the extent and reach of its power on State governments’ licensing regimes, which differ depending of the state. However, Part 6 of the *Water Act* delineates the powers and responsibilities on the Commonwealth Environmental Water Holder, which also impacts the country’s water licensing regime.²⁰⁴ Environmental Water Holdings, as per section 108, include “the rights that the Commonwealth holds that are water access rights, water delivery rights, irrigation rights or other similar rights relating to water; and the interests in, or in relation to, such rights.”²⁰⁵ “The function of managing the Commonwealth environmental water holdings includes doing any of the following on behalf of the Commonwealth: exercising any powers of the Commonwealth to purchase, dispose of and otherwise deal in water and water access rights, water delivery rights or irrigation rights; exercising any powers of the Commonwealth to enter into contracts (including options contracts) for the purposes of such purchasing, disposal or other dealing; maintaining an up-to-date record of the Commonwealth environmental water holdings; making available water from the Commonwealth environmental water holdings; entering into contracts or other arrangements in relation [to Commonwealth environmental water

¹⁹⁷ *Ibid* at Part 1, Division 2, s 14.

¹⁹⁸ *Ibid* at Part 1, Division 2, s 15.

¹⁹⁹ *Ibid* at Part 1, Division 2, s 17.

²⁰⁰ *Ibid* at Part 1, Division 2, s 34-35.

²⁰¹ *Ibid* at Part 1, Division 2, s 35.

²⁰² McKay, *supra* note 173.

²⁰³ *Water Act*, *supra* note 149 at Part 1, Division 2, s 21.

²⁰⁴ *Ibid* at Part 6.

²⁰⁵ *Ibid* at Part 6, s 108.

holdings].”²⁰⁶ These function are “...to be performed for the purpose of protecting or restoring the environmental assets of: the Murray-Darling Basin; and other areas outside the Murray-Darling Basin where the Commonwealth holds water so as to give effect to relevant international agreements.”²⁰⁷

Part 9, Division 3 contains the provisions that specifically detail the decision-making procedures of the MDBA,²⁰⁸ outlining the procedures for decision-making through holding meetings, as well as the procedures for decision-making without meetings.²⁰⁹ For decisions made at meetings, the Authority Chair presides if present. If the chair is absent for the meeting, the other Authority members must appoint one of themselves to preside. Additionally, this section mandates that at least nine meetings must be held every financial year.²¹⁰ Further, provisions 193 and 194 outline that four Authority members constitutes a quorum for decision-making and that a question is decided by a majority of votes of the members.²¹¹ Provision 197 sets out the decision-making procedures for decisions without a meeting.²¹²

The MDBA is a Central Government agency because it is enacted under federal legislation, and can thus be directed in certain areas by a federal department.²¹³ In the case of the *Water Act 2007*, it is the Commonwealth Minister for Agriculture and Water Resources who is responsible for the oversight of the MDBA. Specific provisions within the *Water Act 2007* give the federal Minister functions and powers. For instance, it is the Minister’s responsibility to review the Basin Plan or any amendments before being officially adopted for implementation.²¹⁴ This allows the Minister to oversee the most important aspects of the Authority’s mandated responsibilities.

In addition to the Commonwealth Minister’s specific role, the Ministerial Council also oversees the MDBA, which is comprised of Ministers from each of the Basin states as well as the Commonwealth Minister for Agriculture and Water Resources. The Commonwealth Minister also chairs the Council.²¹⁵ The Ministerial Council’s specific policy and decision-making roles are set out under the 2008 Agreement between the state governments.²¹⁶ In relation to actions of the Authority, the MDBA must prepare an annual corporate plan to be approved by the Ministerial Council. The Ministerial Council also has the power to give direction to the MDBA’s advisory committees.²¹⁷

²⁰⁶ *Ibid* at Part 6, s 105(2).

²⁰⁷ *Ibid* at Part 6, s 105(3).

²⁰⁸ *Ibid* at Part 9, Division 3.

²⁰⁹ *Ibid* at Part 9, Division 3, Subdivision A – B.

²¹⁰ *Ibid* at s 191.

²¹¹ *Ibid* at s 193 – 194.

²¹² *Ibid* at s 197.

²¹³ *Ibid* at s 175.

²¹⁴ *Ibid* at s 41-49.

²¹⁵ Australia, Murray-Darling Basin Authority, *Ministerial Council*, online: <<https://www.mdba.gov.au/about-us/governance/ministerial-council>> [Ministerial Council].

²¹⁶ Murray Darling Agreement, *supra* note 187.

²¹⁷ Ministerial Council, *supra* note 217.

2.7 The Murray-Darling Basin Authority – Accountability and Enforcement Mechanisms

Part 9, Division 5, Subdivision D of the *Water Act 2007* creates many record-keeping requirements to ensure a high level of accountability for decisions made by the MDBA.²¹⁸ For instance, the MDBA is responsible for keeping a record of their meeting minutes as well as a record of decisions made.²¹⁹ Further, the MDBA must submit an Annual Report to the Minister of Agriculture and Water Resources, which is then tabled in Parliament, as well as given to each of the Basin state governments.²²⁰ The specific details pertaining to the Annual Report's content are contained within the *Water Act 2007*,²²¹ however, the MDBA describes it as reporting on their performance against their outcomes, as well as providing audited financial statements and other statements of accountability.²²² Additionally, due to a Continuing Order of the Senate, the MDBA must keep an updated index of all of their available publications.²²³

The MDBA is also held accountable through external enforcement mechanisms, which are contained in Part 8 of the *Water Act 2007*.²²⁴ Part 8 applies to the contravention of all provisions of the Act as well as its regulations, which means that these enforcement mechanisms apply to the Authority itself for failing to fulfil its statutory duties. The 'appropriate enforcement agency' can be the Authority itself for contraventions by subsidiary committees or agencies,²²⁵ or the Commonwealth Minister of Agriculture and Water Resources for contraventions by the Authority.²²⁶ The mechanisms apply both to the MDBA and to water users, depending on the circumstances, and include but are not limited to the following:

- The Courts (which in the Act includes the Federal Court of Australia, the Federal Magistrates Court, or a Court of a State or Territory within the Basin)²²⁷ can order a prohibitory, or mandatory, or interim injunction,²²⁸
- The Court can make a declaration of contravention,²²⁹
- The Court can order that persons pay pecuniary penalties for the contravention of 'civil penalty provisions,' which are set out in the Act;²³⁰ and
- There is a system of infringement notices, which function as an alternative to the above Court ordered civil penalty possibility.²³¹

²¹⁸ *Water Act*, *supra* note 149 at Part 5, Division 5, Subdivision D.

²¹⁹ *Ibid* at s 197 – 198.

²²⁰ *Ibid* at s 214.

²²¹ *Ibid* at s 214(2).

²²² Australia, Murray-Darling Basin Authority, *Accountability and Reporting*, online: <<https://www.mdba.gov.au/about-us/accountability-reporting>>.

²²³ Australia, Murray-Darling Basin Authority, *Accountability and Reporting – Index of Files*, online: <<https://www.mdba.gov.au/about-us/accountability-reporting/list-mdba-files>>.

²²⁴ *Water Act*, *supra* note 149 at Part 8.

²²⁵ *Ibid* at s 137(a).

²²⁶ *Ibid* at s 137(c).

²²⁷ *Ibid* at s 138.

²²⁸ *Ibid* at Part 8 Division 2.

²²⁹ *Ibid* at Part 8 Division 3.

²³⁰ *Ibid* at Part 8 Division 4.

²³¹ *Ibid* at Part 8 Division 5.

In addition to the above penalties and enforcement mechanisms, the MDBA is also held accountable through Part 8, Division 8, which delineates that civil penalties can be levied against the Executive Officer of the Authority if they failed to take reasonable steps to prevent the contravention at issue.²³²

²³² *Ibid* at s 169.

2.8 The Murray-Darling Basin Authority – Funding Method

Because the MDBA is both a Central Government agency as well as a body corporate, their funding methods are not limited to one stream. Generally, the MDBA obtains funding from the following sources: individual Basin state governments,²³³ the Central Government through direct funding as well as grants obtained by the Authority,²³⁴ and fees charged by the Authority under provision 212 of the *Water Act 2007*.²³⁵ Provision 212(1) allows the Authority to charge fees for services provided in performing its functions.²³⁶ Provision 212(2 – 5) delineates limitations to charging fees including that the Australian Competition and Consumer Commission must deem the fees reasonable and the fees must be noted on the Authority’s website. Further provisions 212(2)-(5) note that all fees must adhere to the water charge rules under section 92, and “must not be such as to amount to taxation.”²³⁷ These funds are to be held in a ‘Special Account,’ as per the *Financial Management and Accountability Act 1997*.²³⁸

To summarize, Australia’s federal structure significantly impacts how water is managed throughout the country. The MDBA, which is the more successful example of a watershed authority in Australia, manages the water in the Murray Darling Basin. The Central Government and individual State governments also play a role in water management through environmental water holdings and water licensing regimes in each state. Due to this structure, Australia’s water management regime is complex and requires the cooperation and coordination of various agencies, both central government and state government.

²³³ *Ibid* at s 210(b).

²³⁴ *Ibid* at s 210(c).

²³⁵ *Ibid* at s 212.

²³⁶ *Ibid* at s 212(1).

²³⁷ *Ibid* at s 212(2)-(5).

²³⁸ *Financial Management and Accountability Act 1997* (Cth); *Water Act*, *supra* note 149 at s 209.

3. ONTARIO – CANADA

3.1 Government, Population, Geography and Water Issues

The Confederacy of Canada currently has a population of approximately 36 286 400.²³⁹ The country functions as a parliamentary democracy and a federation, with ten provinces and three territories in addition to a Central Government.²⁴⁰ The ten provinces derive their powers and authority directly from the *Constitution Act, 1867* sections 91 and 92,²⁴¹ which divide the legislative powers between the federal and provincial governments.²⁴² The territories do not have inherent sovereignty and thus are only granted legislative powers through their enabling statutes.²⁴³ The division of legislative powers between the levels of government in Canada is a matter of constant contestation, which is often adjudicated by the courts, which use various doctrines of constitutional interpretation and analysis to determine what was meant by the wording of sections 91 and 92 of the *Constitution Act, 1867*.²⁴⁴ In the Canadian federal structure, when laws of the federal government conflict with provincial laws, the federal law normally prevails. Canada's local governments, also known as municipalities, do not have inherent powers under the *Constitution Act, 1867*, but are instead governed entirely by their respective provincial government.²⁴⁵ Most of Canada's municipalities are governed by a provincial municipal Act, which lays out their powers and responsibilities. In Ontario the *Municipal Act (2001)* fulfills this role.²⁴⁶ Because municipalities are governed by provincial statute, it is also the province's prerogative to alter a municipality's role at anytime.²⁴⁷

Canada is approximately 9.985 million km² in size, and is considered a freshwater-rich country, with close to 9 percent of the world's renewable water supply discharged by Canadian rivers. Canada is also home to the Great Lakes, which make up the largest area of freshwater found in one place anywhere in the world.²⁴⁸ Due in part to its large land mass, Canada has a wide variety of geographical features, from expansive coastline to the Rocky mountain range to the Great Canadian shield of bedrock. Canada's expansive size and its array of climate/geographic zones results in unique water issues depending on the area in question.

²³⁹ Canada, Statistics Canada, *Population by year, by province and territory (Number)*, online: <<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm>>.

²⁴⁰ International Energy Agency, *Energy Policies of IEA Countries – Canada 2015 Review* (France: International Energy Agency, 2016) at 19.

²⁴¹ *Constitution Act, 1867*, 30 & 31 Victoria, c. 3. (U.K.) CA, 1867 at ss 91-92 [*Constitution Act*].

²⁴² Canada, Parliament of Canada, *Guide to the House of Commons*, (Canada: Library of Parliament, December 2011) online: <<http://www.lop.parl.gc.ca/About/Parliament/GuideToHoC/index-e.htm>>.

²⁴³ *Yukon Act*, SC 2002, c 7; *Northwest Territories Act*, RSC 1985, c N-27; *Nunavut Act*, SC 1993, c 28.

²⁴⁴ *Constitution Act*, *supra* note 243 at s 91 – 92.

²⁴⁵ *Ibid* at s 92(8).

²⁴⁶ *Municipal Act*, SO 2001, c 25.

²⁴⁷ Michael Dewing & Erin Tolley, "Municipalities, the Constitution, and the Canadian Federal System" (Canada: Library of Parliament, May 2006), BP -276E, online: <<http://www.lop.parl.gc.ca/content/lop/researchpublications/bp276-e.pdf>>.

²⁴⁸ Canada, Department of Natural Resources Canada, *Water*, (Canada: Department of Natural Resources Canada, 2017) online: <<http://www.nrcan.gc.ca/earth-sciences/geography/atlas-canada/selected-thematic-maps/16888>>.

3.2 Watershed Authorities in Ontario – The Basics

Water is not mentioned in the *Constitution Act, 1867*.²⁴⁹ As such, the power to legislate over the management of water resources is not given to any level of government explicitly. However, due in large part to the 1910 Supreme Court case, *Burrard Power v The King*, water management has traditionally fallen to the provinces as flowing with the grant of land when each entered confederation.²⁵⁰ The federal government does retain some legislative jurisdiction over water management, specifically in matters that transcend provincial boundaries and coastal matters, such as fisheries management.²⁵¹

As such, power to create specific water resource authorities falls predominantly to the individual provincial governments to structure and manage, unless there are interprovincial interests in which case the federal government may take a role. Due to this, each province's water resources are managed uniquely, according to their province's method of resource management. This report will detail Ontario's water resource management regime, exclusively.

Ontario's watershed entities are called Conservation Authorities. They are unique in that their boundaries are based on a watershed scale as opposed to a political boundary.²⁵² There are 36 Conservation Authorities in Ontario, which are mainly located along the Southern border of Ontario, yet implicate 90 percent of the province's population.²⁵³ The Conservation Authority model is guided by the following three principles: (i) a local initiative, which is driven by municipalities within a common watershed; (ii) cost-sharing between municipalities and provincial government; (iii) jurisdictions based on watershed boundaries.²⁵⁴ These Authorities are considered 'local public sector organizations,' similar to a school board, but are not themselves considered agencies, boards or commissions alone.²⁵⁵ Conservation Authorities are governed both by the province of Ontario as well as by the municipalities within their jurisdiction. The province, under the *Conservation Authority Act*, has the primary responsibility for establishing an Authority, but this must be at the request of two or more municipalities.²⁵⁶

²⁴⁹ *Ibid.*

²⁵⁰ *Burrard Power Co v The King*, (1910) 43 SCR 27.

²⁵¹ *Constitution Act*, *supra* note 243 at s 91 (12); (10).

²⁵² Ontario, Department of Natural Resources and Forestry, *Conservation Authorities Act Review Discussion Paper*, (Ontario: Department of Natural Resources and Forestry, July 20, 2015), online: <http://apps.mnr.gov.on.ca/public/files/er/Discussion_Paper_2015.pdf> at 3 [Ontario Department of Natural Resources and Forestry].

²⁵³ Ontario Department of Natural Resources and Forestry, *supra* note 254 at 4.

²⁵⁴ *Ibid* at 6.

²⁵⁵ *Ibid* at 7.

²⁵⁶ *Ibid* at 8; see also *Conservation Authority Act*, RSO 1990, c C-27 at ss 2(1), 3(1) [*Conservation Authority Act*].

3.3 Ontario's Conservation Authorities– Enabling Legislation

Conservation Authorities Act, SO 1991, c C-27.

The *Conservation Authorities Act* (1991) is the 40-provision Ontario law that enables Conservation Authorities to be created and managed in Ontario.²⁵⁷ Originally enacted in 1946 in response to flooding, erosion and deforestation due to prior poor resource management practices, the current *Act* has been updated a number of times.²⁵⁸ The purpose of the *Act* is to enable municipalities who share a common watershed, or water resource, to establish a conservation authority to manage these resources, in conjunction with the province.²⁵⁹ Conservation Authorities are to “deliver a local resource management program at the watershed scale for both provincial and municipal interests.”²⁶⁰ The *Conservation Authorities Act* is administered by the Ontario Ministry of Natural Resources and Forestry (OMNRF).²⁶¹

The key features and functions of the *Conservation Authorities Act* are as follows:

- Sets out guidelines and procedures for establishing new Conservation Authorities in Ontario, including jurisdiction and initial financing method. Specifically, section 2 notes that the councils of two or more municipalities that are situated either wholly or partly within a watershed may request that the Minister call a meeting to establish an Authority. The Minister then notifies all the relevant municipalities and sets a date and time for the meeting.²⁶² Each municipalities' representatives present at the meeting then vote for or against the creation of an Authority.²⁶³ Section 3 sets out that once the Minister receives a resolution approving the creation of the new Authority, the Lieutenant Governor in Council may establish an Authority and designate the specific area over which the new authority has jurisdiction;²⁶⁴
- Delineates the relationship and hierarchy of multiple municipalities and 'grouped municipalities';²⁶⁵
- Sets out administrative guidelines for Conservation Authorities and 'grouped municipalities,' such as notice of meetings, quorum, and dissolution or amalgamation of an Authority;²⁶⁶ and
- Notes that Conservation Authorities are corporate bodies, with a degree of autonomy from both individual municipalities and the Province of Ontario, which allows for a high level of flexibility when each Authority creates programs and policies.²⁶⁷

²⁵⁷ *Conservation Authority Act*, *supra* note 258.

²⁵⁸ Ontario Department of Natural Resources and Forestry, *supra* note 254 at 6.

²⁵⁹ *Ibid* at 3.

²⁶⁰ *Ibid*.

²⁶¹ *Conservation Authority Act*, *supra* note 258.

²⁶² *Ibid* at s 2.

²⁶³ *Ibid* at s 2(3).

²⁶⁴ *Ibid* at s 3.

²⁶⁵ *Ibid* at s 8.

²⁶⁶ *Ibid* at s 10 – 11.

²⁶⁷ *Ibid* at s 3(4); see also Ontario Department of Natural Resources and Forestry, *supra* note 254 at 7.

Additionally, the Act is supported by approximately 80 current regulations, which guide Conservation Authorities in how to apply levies, how to manage conservation areas, and how to regulate development and other activities for purposes of public safety and natural hazard management.²⁶⁸

Municipal Act, SO 2001, c 25.

The *Municipal Act (2001)* is the 474-provision Ontario law that delineates the role, responsibilities and powers of Ontario's local governments.²⁶⁹ This Act impacts the management and powers of Conservation Authorities in a few ways, due to the fact that they are sometimes considered 'municipalities' under the *Municipal Act*. Specifically, the provisions detailing informational and reporting requirements, and the provisions detailing municipalities' ability to obtain financial assistance directly impact Conservation Authorities.²⁷⁰ Further, Part VIII details municipalities' powers of taxation, which impacts the funds that Conservation Authorities are able to collect.²⁷¹ This last point is further discussed in section 3.8 –Funding Method.

Other Acts that implicate Conservation Authorities include, but are not limited to, the *Planning Act*;²⁷² *Municipal Conflict of Interest Act*;²⁷³ *Environmental Assessment Act*;²⁷⁴ *Clean Water Act*;²⁷⁵ and the *Aggregate Resources Act*.²⁷⁶

Clean Water Act, SO 2006, c 22

An example of a provincial law that gives direct planning and decision-making authority to Conservation Authorities is the *Clean Water Act*. Following the Walkerton drinking water tragedy, the Ontario government enacted the *Clean Water Act*, which focuses on source water protection and mandates the development of local source protection plans.²⁷⁷ The *Clean Water Act* establishes source protection areas based on existing Conservation Authority boundaries, and groups some of these areas together into 19 source protection regions.²⁷⁸ The regulation that establishes regions designates one Conservation Authority as the lead for each region.²⁷⁹ The role of the lead Conservation Authority is to help the other Conservation Authorities exercise and perform their powers and duties; provide them with scientific, technical, and administrative support; and serve as a liaison with the provincial government.²⁸⁰

Conservation Authorities, which the Act names as "source protection authorities," coordinate the source protection plan process for their entire area. They must establish a multi-stakeholder

²⁶⁸ *Conservation Authority Act*, *supra* note 258 at s 40; see also Ontario Department of Natural Resources and Forestry, *supra* note 254 at 7.

²⁶⁹ *Municipal Act*, SO 2001, c 25 [*Municipal Act*].

²⁷⁰ *Municipal Act*, *supra* note 271 at s 299, 302.

²⁷¹ *Municipal Act*, *supra* note 271 at Part VIII.

²⁷² *Planning Act*, RSO 1990, c P-13.

²⁷³ *Municipal Conflict of Interest Act*, RSO 1990, c M-50.

²⁷⁴ *Environmental Assessment Act*, SC 2012, c 19, s 52.

²⁷⁵ *Clean Water Act*, SO 2006, c 22 [*Clean Water Act*].

²⁷⁶ *Aggregate Resources Act*, RSO 1990, c A-8.

²⁷⁷ Bruce Mitchell et al, "Integrated water resource management: lessons from conservation authorities in Ontario, Canada" (2014) 30:3 *International Journal of Water Resources Development* 460 at 468 [Mitchell].

²⁷⁸ Mitchell, *supra* note 279 at 468; *Clean Water Act*, *supra* note 277 at s 4(1).

²⁷⁹ *Clean Water Act*, *supra* note 277 at s 6(1).

²⁸⁰ *Ibid* at s 6(2).

drinking water source protection committee for their area; support the committee as it works to create a science-based assessment report, and to create the source protection plan based on that report; help implement the plan; and engage in monitoring and annual progress reporting.^{281 282} In source protection regions, the lead Conservation Authority takes on this coordination responsibility, although each source protection area must still have its own source protection plan.²⁸³

A source protection plan contain policies that recommend or require that actions be taken to address activities that the science-based assessment report identifies as threats in vulnerable areas.²⁸⁴ Examples of activities that could constitute a threat include handling and storage of road salt and snow, and handling and storage of liquid waste from a business, including used oil from an auto repair shop.²⁸⁵ The existence of a significant threat policy within a plan is powerful: for example, certain decisions made by municipal and government actors (i.e. decisions made under the *Planning Act* and other legislation) that relate to the source protection area must conform to the significant threat policies in the plan; the plan also prevails in the case of conflict between a policy and an official plan, and between a policy and a zoning by-law.²⁸⁶

Conservation Authorities also have tools for addressing significant threats, which range from soft tools (education and outreach) to strong ones (prohibiting an activity or requiring a risk management plan (RMP) for an activity).²⁸⁷ Conservation Authorities can appoint provincially trained and certified risk management officials (RMOs) to help negotiate an RMP with a person who is undertaking a significant threat activity (such as a landowner or a business owner).²⁸⁸ For example, if fuel stored at a gas station poses a significant threat to drinking water, an RMO would work with the gas station owner to develop an RMP. The RMP must contain best management practices designed to ensure that risks to municipal drinking water sources are reduced or eliminated.²⁸⁹ Risk management inspectors (RMIs) monitor implementation of the plans, and can make orders to enforce RMPs.²⁹⁰ Eighteen Conservation Authorities currently provide risk management services.²⁹¹

²⁸¹ Mitchell, *supra* note 279 at 468; *Clean Water Act*, *supra* note 277 at ss 4(2), 7(5), 22(2), 46.

²⁸² Mitchell, *supra* note 279 at 468; Conservation Ontario, *Drinking Water Source Protection in Ontario*, online: <<http://conservationontario.ca/what-we-do/source-water-protection>> [Conservation Ontario].

²⁸³ *Clean Water Act*, *supra* note 277 at s 7(6).

²⁸⁴ Conservation Ontario, *supra* note 284.

²⁸⁵ Cataraqui Source Protection Area, *Cataraqui Source Protection Area Part IV Primer*, online: <<http://www.cleanwatercataraqui.ca/PDFs/RiskManagement/PartIV/PartIVPrimer.pdf>> [Cataraqui Source Protection Area].

²⁸⁶ *Clean Water Act*, *supra* note 277 at s 39.

²⁸⁷ Cataraqui Source Protection Area, *supra* note 287; Chitra Gowda, Conservation Ontario, “Protecting Our Sources of Drinking Water: Implementation of Source Protection Plans across Ontario” (11 October 2016), *Great Lakes Connection (IJC)* (blog), online: <<http://ijc.org/greatlakesconnection/en/2016/10/protecting-sources-drinking-water-implementation-source-protection-plans-across-ontario/>>; *Clean Water Act*, *supra* note 277 at ss 56 - 57.

²⁸⁸ Note, this is a delegated municipal responsibility; the council of a municipality must enter into an agreement with the Conservation Authority for the Conservation Authority to provide risk management services, and the Conservation Authority can charge the municipality the whole or part of the cost. *Clean Water Act*, *supra* note 277 at s 48.

²⁸⁹ Ausable Bayfield Maitland Valley Source Protection Region, *Risk Management Office*, online: <<http://www.sourcewaterinfo.on.ca/risk-management-office/>>, *Clean Water Act*, *supra* note 277 at s 56.

²⁹⁰ Cataraqui Source Protection Area, *supra* note 287, *Clean Water Act*, *supra* note 277 at s 63.

²⁹¹ Conservation Ontario, *supra* note 284.

3.4 Ontario’s Conservation Authorities – Key Functions and Powers

Section 20 of the *Conservation Authorities Act* notes the purpose of Conservation Authorities is “to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.”²⁹² According to the OMNRF, the objects of Conservation Authorities, and scope of their potential policies and programs, was left intentionally broad in order to allow for tailored programs that suit each Authority’s specific needs and priorities.²⁹³

Section 21 of the *Conservation Authorities Act* outlines the specific powers of Conservation Authorities in order to achieve their stated objects as noted above.²⁹⁴ These include, but are not limited to the following:

- To study and investigate their respective watershed area in order to design a program to ensure the best management of the natural resources of the watershed boundaries, including initiating research projects;²⁹⁵
- To purchase, lease or otherwise expropriate land, as well as own any personal property necessary for the Authority’s objects;²⁹⁶
- To enter any land for the purposes of surveying it;²⁹⁷
- To enter into agreements for broad reasons, such as in order to purchase materials, employ staff, and facilitate the carrying out of a program in cooperation with a private land owner;²⁹⁸
- To build works and structures;²⁹⁹
- To control the flow of surface waters in order to prevent floods or pollution or reduce the adverse effects thereof, and to alter or divert the course of any moving water for the purposes of managing the areas natural resources;³⁰⁰
- To collaborate with ministries, agencies of the government, municipal councils and other such organizations;³⁰¹
- To determine the benefits allocated to the respective municipalities that fall within their jurisdiction;³⁰² and
- Generally, to do all things that are necessary to carry out the objects of the Conservation Authority.³⁰³

²⁹² *Conservation Authority Act*, *supra* note 258 at s 20.

²⁹³ Ontario Department of Natural Resources and Forestry, *supra* note 254 at 7.

²⁹⁴ *Conservation Authority Act*, *supra* note 258 at s 21.

²⁹⁵ *Ibid* at ss 21(1)(a)-(p).

²⁹⁶ *Ibid* at s 21(1)(b) – (e).

²⁹⁷ *Ibid* at s 21(1)(b).

²⁹⁸ *Ibid* at s 21(1)(f) – (g).

²⁹⁹ *Ibid* at s 21(1)(i).

³⁰⁰ *Ibid* at s 21(1)(j) – (k).

³⁰¹ *Ibid* at s 21(1)(n).

³⁰² *Ibid* at s 21(1)(h).

³⁰³ *Ibid* at s 21(1)(q).

Additionally, Conservation Authorities have the power to create regulations as well as set policies and programs that support their provincially-mandated regulatory standards and limitations. This expectation of regulation creation can be found throughout the *Conservation Authority Act*, specifically provisions 28 to 30. These provisions detail the mandatory regulations each Authority must have, as well as regulations regarding the area of the Authority (and land owned) under their jurisdiction.³⁰⁴

³⁰⁴ *Ibid* at ss 28 – 30.

3.5 Ontario’s Conservation Authorities – Internal Structure

The *Conservation Authorities Act* details the mandatory elements that must be part of the internal structure of the Conservation Authority.³⁰⁵ The most impactful elements of the internal structure of the Authorities include, but are not limited to, the following:

- Each Authority, once established, is a body corporate and as such has a ‘board of directors’ to direct it;³⁰⁶
- Members of the board are to be appointed by each of the municipal councils participating in the Authority. The only eligibility requirement noted in the *Act* is that “every member of an authority shall be resident in a participating municipality in which the authority has jurisdiction”;³⁰⁷
- Both the number of municipalities involved in the Authority, as well as the population size of each municipality, dictate the number of members of an Authority. This is because each municipality is allowed to appoint a specific number of representatives, which corresponds with their population size. The minimum number of representatives being one for less than 10 000 people and the maximum number being seven for municipalities with a million or more people. The number of members is adjusted as population sizes change;³⁰⁸
- Members shall each hold office for no more than three consecutive years;³⁰⁹
- To qualify as a member, one must be a resident of one of the participating municipalities;³¹⁰
- Each Authority will appoint a Chair and one or more Vice-Chairs from among the members. This is to happen at the first meeting of each year.³¹¹ In the event of absence, the members must appoint an acting Chair;³¹²
- Each Authority must appoint a secretary-treasurer, and also may appoint other employees as necessary who will be paid directly out of the funds of the authority;³¹³
- Each Authority is also left with the optional power to appoint advisory boards,³¹⁴ as well as to appoint an executive committee from among the members. Should the Authority choose to appoint an executive committee, the Chair and Vice-Chair of the Authority play the same roles in the executive committee;³¹⁵
- Once an authority is created, it can amalgamate with other authorities and more municipalities can join without the involvement of the province.³¹⁶

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid* at s 3(4).

³⁰⁷ *Ibid* at s 14.

³⁰⁸ See *Ibid* at ss 2(2), 14(1), 14(2).

³⁰⁹ *Ibid* at 14(4).

³¹⁰ *Ibid* at 14(3).

³¹¹ *Ibid* at 17(1).

³¹² *Ibid* at 17(3).

³¹³ *Ibid* at 18(1).

³¹⁴ *Ibid* at 18(2).

³¹⁵ *Ibid* at s 19(1) – (2).

³¹⁶ *Ibid* at ss 10 – 11.

Although the above provisions set out clear guidelines for Authority membership, the constitution of each individual Authority can be drastically different due to the number of municipalities involved, and their respective population size.³¹⁷ In addition to these mandatory elements, provision 28 of the *Conservation Authority Act* notes the ability of each Authority to delegate tasks to other bodies.³¹⁸ This section sets out that each Authority may make regulations in relation to their objects. Additionally, as part of the allowed regulations, Authorities have the power to delegate any of their powers, subject only to limitations set out in the regulation itself.³¹⁹

³¹⁷ *Ibid* at 9.

³¹⁸ *Ibid* at s 28.

³¹⁹ *Ibid* at s 28(2).

3.6 Ontario's Conservation Authorities – Decision Making

Section 20 of the *Conservation Authority Act* sets out the objects of the Conservation Authorities, which are broadly delineated as “to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.”³²⁰ Each Conservation Authorities’ powers pertaining to achieving these objects are contained in section 21. These include the following powers:

- “to study and investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed;
- to acquire by purchase, lease or otherwise and to expropriate any land that it may require, and, subject to subsection (2), to sell, lease or otherwise dispose of land so acquired;
- to purchase or acquire any personal property that it may require and sell or otherwise deal therewith;
- to enter into agreements for the purchase of materials, employment of labour and other purposes as may be necessary for the due carrying out of any project;
- to enter into agreements with owners of private lands to facilitate the due carrying out of any project;
- to determine the proportion of the total benefit afforded to all the participating municipalities that is afforded to each of them;
- to erect works and structures and create reservoirs by the construction of dams or otherwise;
- to control the flow of surface waters in order to prevent floods or pollution or to reduce the adverse effects thereof;
- to alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any river, stream, road, street or way, or raise or sink its level in order to carry it over or under, on the level of or by the side of any work built or to be built by the authority, and to divert or alter the position of any water-pipe, gas-pipe, sewer, drain or any telegraph, telephone or electric wire or pole;
- to use lands that are owned or controlled by the authority for purposes, not inconsistent with its objects, as it considers proper;
- to use lands owned or controlled by the authority for park or other recreational purposes, and to erect, or permit to be erected, buildings, booths and facilities for such purposes and to make charges for admission thereto and the use thereof;
- to charge fees for services approved by the Minister;
- to collaborate and enter into agreements with ministries and agencies of government, municipal councils and local boards and other organizations;
- to plant and produce trees on Crown lands with the consent of the Minister, and on other lands with the consent of the owner, for any purpose;
- to cause research to be done;
- generally to do all such acts as are necessary for the due carrying out of any project.”³²¹

³²⁰ *Ibid* at s 20.

³²¹ *Ibid* at s 21.

The decision-making procedures for Conservation Authorities are diverse, depending of the subject matter in question. As such, their specific legislative provisions are interspersed throughout the *Conservation Authority Act*. The common theme throughout the various specific decision-making procedures is that most of Conservation Authority's major decisions are ultimately approved by or decided upon, not by the Authority itself, but by the OMNRF or the Lieutenant Governor in Council. As such, although the Conservation Authority Board, which consists of members of the participating municipalities, are responsible for planning policies and programs, it is ultimately up to agents of the provincial government to make the final decision. For example, although each Authority may create its own project plans, before proceeding with a project, the file plans and a description must get the Minister's approval in writing.³²²

The key legislated elements of the regular decision-making procedure include, but are not limited to, the following:

- Each Authority must hold at least one meeting before March 1st each year, and at least one meeting after July 1st of each year. Further meetings to this are the Authority's prerogative; and³²³
- At meetings held by Authority Boards or their Executive Council, each member is entitled to one vote.³²⁴ A quorum at the meetings consists of one-half of the members appointed, except for Authorities with less than 6 members, in which case a quorum is 3 members.³²⁵ A majority vote of the members present is required to pass any matter at the meeting.³²⁶

The Ontario Minister of Natural Resources and Forestry, and the Lieutenant Governor in Council, both have a direct role in the decision-making procedure of certain aspects of Authority's activities. These include, but are not limited to, the following:

- The establishment of new Authorities → To establish a new Authority, the Minister must approve the resolution passed by two or more municipalities, which requests the Minister call a meeting.³²⁷ At this meeting, the proposed Authority members must pass a resolution requesting that an Authority actually be established. It is then left to the Lieutenant Governor in Council to officially establish an Authority and designate the municipalities and area over which the Authority will have jurisdiction;³²⁸
- To enact regulations → Under provisions 28 and 30, Authorities have the ability to create certain regulations. However, the Minister must always approve all of these regulations in order for them to be in force.³²⁹ Additionally, the Lieutenant Governor in Council has the power to make regulations that govern the content of any Authority's regulations, which further limits the Authority's actual power.³³⁰

³²² *Ibid* at s 24.

³²³ *Ibid* at s 15(1).

³²⁴ *Ibid* at s 16(1).

³²⁵ *Ibid* at s 16(2).

³²⁶ *Ibid* at s 16(3).

³²⁷ *Ibid* at s 2(1).

³²⁸ *Ibid* at s 3(1).

³²⁹ *Ibid* at ss 28(1), 30(1).

³³⁰ *Ibid* at s 28(6).

- Overarching power to act in the public interest → Despite anything else in the Act, the Minister may require specific actions from an Authority in the interest of the public, usually safety and health;³³¹
- Approval for projects → Under provision 24, before proceeding with a project each Authority must file a plan and obtain the Minister's approval in writing;³³² and
- Dissolution → As per provision 13.1(6) the ability to dissolve an Authority is ultimately left to the Lieutenant Governor in Council, ³³³ although the procedure for the Authority to have a meeting and pass a resolution requesting such is still expected. ³³⁴

³³¹ *Ibid* at s 23.

³³² *Ibid* at s 24.

³³³ *Ibid* at s 13.1(6).

³³⁴ *Ibid* at s 13.1.

3.7 Ontario Conservation Authorities - Accountability and Enforcement Mechanisms

As discussed above, both the OMNRF and the Lieutenant Governor in Council have an oversight role as part of the *Conservation Authority Act*. In addition to this there are a limited number of other accountability and enforcement mechanisms as part of the Act. For instance, each member of the Authority must receive each meeting's minutes within 30 days so that every member of the board is apprised of all decisions and actions, despite potential absences.³³⁵ Each Authority must also undergo an annual audit, under the *Public Accounting Act*.³³⁶ The report produced from the audit must be given to all the involved municipalities as well as the OMNRF.³³⁷ Past these however, Conservation Authorities do not have any requirements under the *Conservation Authority Act* to produce a plan or annual report detailing their activities and projects.

The *Conservation Authority Act* does not contain any specific provisions dealing with ensuring that Authorities are fulfilling their roles and responsibilities under the Act. There is no section or provision specifically detailing what should happen should the Authority, or the OMNRF, fail to fulfil a duty or obligation under the Act.³³⁸ Other than the implied oversight and enforcement by the OMNRF, Conservation Authorities do not have legislated punishments for failing in their duties.

The *Conservation Authority Act* does contain provisions regarding the enforcement of regulations set out by each Authority, although they are also few and far between. For instance, provision 28(16) details that contravening any regulation made under section 28 – Regulations by Authority re: area under its jurisdiction – is an offence that results in a fine or no more than \$10 000 or a term of imprisonment of no more than 3 month, if convicted.³³⁹ In addition to a fine or term of imprisonment, the court may also order the person convicted to rehabilitate the watercourse or wetland that was detrimentally affected or remove any work that contravenes the regulations.³⁴⁰ Further to this, however, there are no statutorily mandated enforcement or recourse measures in the *Conservation Authority Act* for when the public, or other organization, may feel that an Authority or the OMNRF are not fulfilling their duties.

³³⁵ *Ibid* at s 15(2).

³³⁶ *Ibid* at s 38; see also *Public Accounting Act*, SO 2004, c 8.

³³⁷ *Ibid* at s 38(3).

³³⁸ *Ibid*.

³³⁹ *Ibid* at s 28(16).

³⁴⁰ *Ibid* at s 28(17).

3.8 Ontario Conservation Authorities – Funding Method

Because Conservation Authorities in Ontario are both a corporate body, as well as provincially governed organizations, their funding methods are diverse and numerous. For instance, according to the OMNRF, in 2013 Conservation Authority funding came from the following sources: 48 percent municipal levies; 40 percent self-generated revenue; 10 percent direct provincial funding; and 2 percent federal funding.³⁴¹ Additionally, because the composition of each Authority's jurisdictional area and population can be so drastically different, funding methods are equally diverse between Authorities. For instance, in the same year provincial funding accounted for 58 percent of one Authority's funding and only 4 percent of another's.³⁴²

The funding methods detailed directly in the *Conservation Authority Act* include, but are not limited to, the following:

- Borrowing → A new Authority may borrow money, as approved by the Minister, that is required for the Authority's purposes until other sources of funding are available;³⁴³
- Municipal levies → Provision 27 of the *Conservation Authorities Act* allows Authorities to levy some of the specific cost of board-approved programs and services against the involved municipalities.³⁴⁴ The levy process is complex because the municipal levy amount must be determined by first determining the allocation of self-generated, provincial and federal funding. Then, this total must be divided between the involved municipalities, according to the benefits each will receive from the project. Levies are usually categorized as maintenance and administration costs,³⁴⁵ or alternatively, for capital and project costs,³⁴⁶
- Charging of Fees → Under provision 21(1)(m.1), Authorities have the power to charge fees for services, with the Ministers approval;³⁴⁷
- Government Grants → Authorities may apply for government grants, as per provision 39 of the *Conservation Authorities Act*.³⁴⁸

Additionally, although not specifically laid out in the Act, most conservation authorities also receive funding from individuals, corporations and foundations through fundraising, gifts, donations and sponsorship.³⁴⁹

³⁴¹ Ontario Department of Natural Resources and Forestry, *supra* note 254 at 14.

³⁴² *Ibid* at 14.

³⁴³ *Conservation Authority Act*, *supra* note 258 at s 3(5).

³⁴⁴ *Ibid* at s 27.

³⁴⁵ *Ibid* at s 27.

³⁴⁶ *Ibid* at ss 24, 26.

³⁴⁷ *Ibid* at s 21(1)(m.1).

³⁴⁸ *Ibid* at s 39.

³⁴⁹ Ontario Department of Natural Resources and Forestry, *supra* note 254 at 18.

4. Conclusion

In conclusion, several themes relating to source of authority, decision making and accountability emerge from these case studies. The first is that each watershed authority is established directly by legislation, and a range of local governance and natural relationship/resource management laws delineate the authority of the watershed entities. The second theme is that a higher level of government or agency oversees in some way the decision making and activities of the watershed authority. This might be through federal or provincial law, or by national standards, guidelines or policies. In some cases a more senior government must approve plans and decisions, however each watershed authority operates within a broader public interest context. Similarly, watershed authorities are tasked with developing and limited by planning documents. The intent is that integrated water resource management will have some role in watershed authority management and decisions. Taking a nested approach, either national or provincial plans will influence watershed authority plans, and/or watershed authority plans will shape other decisions, such as by local governments, at a watershed scale. Uniquely in New Zealand, management plans by iwis or Indigenous communities must be taken into account when developing watershed plans. Finally, each watershed authority has varying responsibility for direct water management decisions. These decisions may be as direct as issuing water licences, in the case of New Zealand, to making determinations about source protection in Ontario.

These themes are instructive when considering forms of watershed authorities in British Columbia. A nested, plan-driven authority that incorporates Indigenous management or law provides a ground-truthed foundation for developing provincial devolved water management entities.

Appendix 1: COMPARISON of WATERSHED AUTHORITIES

	New Zealand	Australia	Ontario, Canada
Government	<p>Highly devolved structure, which allots the majority of power to its 'local authorities.' The largest in the spectrum of 'local authority' are the Regional Councils, which are based on watershed boundaries and encompass the other smaller 'local authority' types.</p> <p>Central Government role is to guide and oversee by setting national standards and assisting 'local authorities' as necessary. It is no longer the Central Government's role to 'command and control.'</p>	<p>Federal structure, with a Central Government, 6 state governments, as well as a number of territories. The Central Government and states obtain their powers directly from the <i>Australian Constitution</i>. The territories are administered by the Central Government or by an enabling statute.</p> <p>Each state is responsible for their local government's structure and functions. As such, they can vary significantly from state to state.</p>	<p>Federal structure, with a Central Government, 10 provincial governments, as well as 3 territories. The Central Government and provinces obtain their powers directly from the <i>Canadian Constitution</i>. The territories are given power directly through their enabling statute.</p> <p>As per the constitution, each province is responsible for their local municipal governments. As such, their structure and functions can vary from province to province.</p>
Basics of the Entity	<p>'Local Authorities' also function as the country's watershed management entities. There are no separate watershed authorities.</p> <p>Regional Councils, which are based on watershed boundaries, are the overseeing bodies of the <i>Resource Management Act</i>, which governs all natural resources in NZ, including water. They must follow National Standards set by the Central Government, but outside this, are</p>	<p>The creation of watershed management entities falls predominantly to each state government, as opposed to the Central Government. As such, the exact structure of each state's watershed entities may have many variances. The consistent element of them all is that they are all based on a watershed basin scale, as opposed to being along political boundaries.</p>	<p>Watershed management falls predominantly to each respective province, except for cross-border issues, due to the division of powers in the <i>Canadian Constitution</i>. As such, each province has the power to structure and manage their watershed entities as they see fit. This has led to a huge variety of methods across the provinces. As such, this report focuses on the province of Ontario, which has created Conservation Authorities to govern water management within their province.</p>

	left with a great deal of individual power to govern as they see fit.	The catchment divisions (or watersheds) identified in Australia sometimes fall in two or more states. As such, intergovernmental cooperation has been a key feature. Specifically, the Murray-Darling Basin Authority (MDBA), which falls in 5 states or territories, has been hailed as a particular success. As such, the rest of the Australia section discusses this entity specifically.	Conservation Authorities are based on watershed boundaries, as opposed to political boundaries. They are locally led initiatives that involve coordination and cooperation between different municipal governments, as well as the municipalities and the province.
Enabling Legislation	<p>Resource Management Act – 685 pages.</p> <p>Federal legislation that uses the concept of ‘Integrated Resource Management’ and, as such, does not deal with water separately from land use planning and other natural resource concerns.</p> <p>Is currently the primary piece of environmental legislation in NZ, as it repealed approximately 60 old Acts.</p> <p>The Federal Minister for the Environment is responsible for its administration.</p> <p>Local Government Act; Local Government (Rating) Act; and Local Electoral Act</p>	<p>Water Act – 250 pages.</p> <p>Federal legislation that established, and continues to enable, the MDBA to act as the independent expertise-based water management agency in the Murray-Darling catchment division.</p> <p>Created in order to ensure the management of the division’s water resources in a holistic, integrated and sustainable way, with cooperation and coordination between state governments.</p> <p>The Federal Department of Agriculture and Water Resources administers the Act.</p>	<p>Conservation Authority Act – 40 provisions.</p> <p>Provincial legislation that governs most aspects of Conservation Authorities in Ontario. Enables the authorities as ‘local public sector organizations,’ similar to a school board.</p> <p>The purpose of the Act is to enable municipalities who share a common watershed to establish one, unifying body to manage those resources, in conjunction with the province.</p> <p>The Ontario Ministry of Natural Resources and Forestry officially administers the Act.</p> <p>Municipal Act – 474 provisions.</p>

	<p>Began a wave of local government reform in NZ that devolved power to 'local authorities' and are now the primary pieces of legislation governing 'local authorities'.</p> <p>Allows 'local authorities' general empowerment to fulfill any of their duties under the Act. This enables local authorities to create plans and programmes that are specifically designed for their area and needs.</p>		<p>Provincial piece of legislation that delineates the roles, responsibilities and powers of Ontario's local governments.</p> <p>Interacts with the <i>Conservation Authority Act</i> because Conservation Authorities are considered 'municipalities' in certain circumstances and are thus governed by this Act.</p> <p>Also delineates the taxation powers of municipalities, which influences each Authorities funding.</p>
<p>Key Functions and Powers of the Entity</p>	<p>Regional Councils are responsible for all of the governance responsibilities of their area, not just limited to water resources management.</p> <p>Under the RMA, Regional Councils are responsible for implementing and reviewing a plan and policies to achieve integrated resource management in their region, which includes soil conservation, water quality, the health of ecosystems, mitigating natural hazards and more.</p>	<p>The MDBA is limited to the functions and powers specifically set out in its enabling statute.</p> <p>The most essential task left to the MDBA is to prepare and implement a Basin Plan, which governs most, if not all, aspects of water management in the catchment division.</p> <p>The MDBA is also responsible for ensuring the coordination of the various states involved, as</p>	<p>Conservation Authorities are enabled directly through the <i>Conservation Authority Act</i>, and, as such, are limited in the powers they are allotted.</p> <p>The purpose of each Authority is noted as establishing and implementing a plan to further the conservation, restoration, development and management of the natural resources in their respective areas.</p>

		well as their subsidiary agencies and accompanying programs or policies.	The functions and powers allotted to Conservation Authorities were left intentionally broad in order to allow for each to tailor their programs and plans specifically to their unique area.
Internal Structure	<p>Regional Councils are bound by the guidelines set out in the <i>Local Government Act</i> and the <i>Local Electoral Act</i>.</p> <p>Each Regional Council has a governing body that must consist of elected members, as well as a Chairperson, who is elected by the other elected members. Each must also have a Chief Executive, which is the administrative officer of the authority.</p> <p>Regional Councils are allowed to delegate some of their powers and responsibilities.</p>	<p>The MDBA is bound by the specific requirements laid out in their enabling legislation.</p> <p>The MDBA is a corporate body.</p> <p>The MDBA must have a Chairperson, as well as 4 other members. Members must have a high level of expertise in the area of water management to qualify. The Chairperson also has a duty to keep the federal Ministers informed on the operations of the MDBA.</p> <p>The MDBA may delegate their responsibilities out to other bodies and may also create advisory bodies to deal with specific matters.</p>	<p>Each Conservation Authority is bound by the specific requirements laid out in their enabling legislation, as well as some aspects of the <i>Municipal Act</i>.</p> <p>Each Conservation Authority is a corporate body.</p> <p>Each Conservation Authority must have a Board of Directors, to be the ‘directing minds’ of the corporation. Members are appointed by each municipalities covered by the Authority. The specific number of members is dictated by the number of municipalities involved as well as each of their respective population sizes. Each Conservation Authority must have a Chairperson, who presides over meetings. Each Conservation Authority may also hire additional employees and create advisory boards, as they deem necessary.</p> <p>Each Conservation Authority may delegate their powers through sets and conditions set out in a regulation created by the Authority.</p>

<p>Decision-Making</p>	<p>The governing body of each Regional Council is the 'decision-maker' under the RMA.</p> <p>Decisions are made at regular meetings. To pass a motion, a quorum must be present. For Regional Councils a quorum consists of a simple majority of the number of elected members. Each member gets one vote, including the Chair, who gets a deliberative vote.</p> <p>The Central Government does not have a direct role in the decision-making process of each Regional Council. Regional Councils are mostly left to their own devices.</p>	<p>The members and Chairperson of the MDBA constitute the decision-making body.</p> <p>Decisions are usually made through meetings, at which the Chairperson presides. A quorum consists of 4 members and any matter is decided by a majority of votes of the members. Decisions may also be made outside of scheduled meetings but the procedure is different.</p> <p>The Central Government retains a level of control over the MDBA as the MDBA remains a Central Government agency.</p> <p>A Ministerial Council, which is comprised on Ministers from each of the involved Basin states, also plays a decision-making role as they are the body that must approve the MDBA's annual corporate plan before the Authority may proceed.</p>	<p>The board of directors acts as the initial decision-making body for each Conservation Authority. However, the provincial Minister of Natural Resources and Forestry retains a significant amount of higher decision-making power, in that they are responsible for ultimately approving many aspects of each Conservation Authority's plans.</p> <p>Decisions in each Conservation Authority are voted upon at Authority meetings. Each member is entitled to one vote. For proceedings to pass, a quorum must be present. A quorum consists of one half of the appointed members. A majority of votes passes a measure.</p> <p>The Minister of Natural Resources and Forestry, as well as the Lieutenant Governor in Council, hold a significant amount of final decision-making power over a number of elements. Specifically, they have the overarching power to act in the public's best interest, and as such can override most of the Conservation Authority's decisions. They also provide the final approval for most plans and programs introduced by each Conservation Authority.</p>
<p>Accountability and Enforcement</p>	<p>The Ministry for the Environment is responsible for the RMA's ultimately successful</p>	<p>The Department of Agriculture and Water Resources is ultimately responsible for the successful implementation of the <i>Water Act</i>.</p>	<p>As noted above, the Minister of Natural Resources and Forestry retains a lot of final decision-making power. This is the main</p>

	<p>implementation. As such, the Minister has a number of oversight powers and responsibilities.</p> <p>Their main responsibility is to help the Central Government set national policy statements and national environmental standards, which all 'local authorities' are bound by.</p> <p>They also have the power to investigate almost anything that a Regional Council has done, or failed to do, under the Act. They may direct Regional Councils to act in order to remedy an issue they have noted.</p> <p>The RMA also created the Environmental Protection Authority, which hears matters of concern launched by constituents.</p> <p>There is also an Environmental Court in NZ, which allows for the judicial process to review and remedy breaches of the RMA.</p> <p>Regional Council's democratic election process also contributes to keeping them accountable to their constituents.</p>	<p>They also have a number of oversight powers and responsibilities.</p> <p>Their main responsibility is to review the Annual Report published by the MDBA, and, ultimately, to ensure the successful implementation of the Basin Plan.</p> <p>The <i>Water Act</i> also introduces a number of enforcement mechanisms, both for when the Authority fails to fulfil their duties, as well as for if anyone commits an offence under one of the provisions of the Act. This includes taking the matter to a judicial court.</p> <p>The MDBA is also held accountable through the Part 8 of the <i>Water Act</i>, which specifies that civil penalties may be laid on the Executive Officer of the Authority should they fail to take the reasonable steps expected of a reasonable man to prevent the contravention.</p>	<p>accountability mechanism to oversee and ensure the success of each Authority.</p> <p>Additionally, each Conservation Authority must undergo an annual audit.</p> <p>Further to this, Conservation Authorities do not have any legislated requirements to publish annual reports detailing their activities. Nor are there any legislated punishments for Conservation Authorities who do not fulfil their duties.</p> <p>The <i>Conservation Authority Act</i> does contain provisions detailing certain offences under the Act and their accompanying punishment, however, these are geared towards constituents who contravene a provision, not if the Conservation Authority contravenes a provision.</p>
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<p>Funding</p>	<p>'Local authorities' obtain most of their funding through the ability to levy taxes on their constituents.</p> <p>The RMA also notes that royalties and rents may be collected from the resources governed by each council.</p> <p>The Minister for the Environment may also make grants or loans to assist in achieving the purposes of the Act. The money for these comes directly from Parliament.</p>	<p>Because the MDBA is a corporate body, as well as a Central Government agency, their funding is not limited to one stream.</p> <p>The predominant sources of funding include: money from each Basin state government, money from the Central Government through direct funding as well as grants, fees that are charged by the Authority.</p>	<p>Because Conservation Authorities are corporate bodies as well as provincially governed organizations, their funding is not limited to one stream. In fact, their funding methods are very complex.</p> <p>The predominant sources of funding include: money from municipal levies, which are then contributed to the Conservation Authority; self-generated revenue through fees and services; direct provincial funding for specific projects; and a small amount of federal funding.</p> <p>Conservation Authorities are also able to borrow money from the province, as well as obtain specific government grants from the province. Further, they obtain funding through donations, sponsorships and fundraising.</p>
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